

Timber!!! Updated Law Could Bring Chaos to U.S. Border

From J.P. Morgan Chase Global Trade Services/Philip Sutter

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Timber!!! Look out at the border. Unless several government agencies act quickly, these words could be ringing out at U.S. ports before the end of the year. The commotion will be from importers and exporters trying to cope with a new change to an existing law. An amendment to the 108-year old Lacey Act will require unprecedented detailed reporting (scientific name, quantity, value and country) of any plant matter incorporated into an imported product brought into the United States. This law broadly covers plants used in processing, no matter how minuscule the amount and no matter how far removed from the harvesting of the plant. The amendment will have huge consequences for U.S. importers who will be subject to massive data reporting requirements and will most likely experience unprecedented delays at the border.

It all began with the best of intentions, back in 1900, when Iowa Republican Congressman John F. Lacey proposed and U.S. President William McKinley signed a law to attach civil and criminal penalties to the interstate movement of poached game. Over the years, the Lacey Act expanded to become a cornerstone of protection for all manner of crimes against the animal kingdom. Civil penalties reach as high as \$20,000 per incident, and criminal penalties may result in five years imprisonment.

In early 2008, the Food, Conservation, and Energy Act of 2008 (also known as the "Farm Bill") was passed by Congress, overriding a President Bush veto. Contained within that bill was an amendment to the Lacey Act to extend similar protections to the plant kingdom. Championed by Democrat Senator Ronald L. Wyden of Oregon, the goal is to target illegal logging practices as 10% of annual wood product imports into the United States are derived from illegally logged timber, representing \$3.8 billion dollars. Wyden states his reasoning that, "This legislation addresses an illegal logging crisis. Oregon workers and communities are threatened when American companies are forced to compete with illegal foreign imports. Stopping the importation of illegal timber helps protect the environment, supports living wage jobs, and levels the playing field for American manufacturers."

The United States is now the first country in the world to prohibit the import, export, sale or trade in illegally harvested wood and wood products. Unfortunately, the amendment wording is extreme, going well beyond any meaningful protection of logging interests. Its coverage includes "any wild member of the plant kingdom, including roots, seeds, parts or products thereof". In addition to existing reporting required for flooring and furniture products proving the materials are from legal sources, importers will now be subject to similar reporting for products that may only contain a "de minimis" amount of plant material, or are distant from the harvest of the plant. The amendment's scope potentially encompasses 85 of the 97 Harmonized Tariff Schedule chapters, including automobiles, automobile owner's manuals, cooking pots with wooden handles, tools with rubber grips, epoxy containing cellulose, aspirin, chewing gum, etc.

Though there are exclusions that could potentially limit the scope, they are ill defined. For example, among the exclusions are "common cultivars", "common food crops", and "packaging". This puts the onus on U.S. Customs and Border Protection (CBP) and the U.S. Department of Agriculture (USDA) to determine if they have the authority to further define the terms. Meanwhile importers must wait to learn exactly what will be enforced for reporting information that may be virtually unobtainable.

The vagaries of the exclusions and new reporting requirements will place unreasonable demands on corporate supply chains that will have negative consequences for U.S. importers. Specifically, U.S. importers will most likely experience delays at the border collecting required data and may face severe penalty actions for non-compliance.

The reporting was originally expected to take affect in accord with the December 15, 2008 statutory implementation date, which is before an electronic reporting method would have been available. However, it now appears that CBP will take a phased approach, and enforcement will not begin until April 1, 2009, after CBP has conducted expensive programming to activate an old reporting database within CBP's Automated Commercial System to enable electronic filing. This is critical because the lack of electronic reporting on a program this extensive would "log" jam the borders.

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CBP believes there may be as many as five total phases of implementation. The first phase is voluntary reporting through April 1, 2009. Enforcement will begin with the second phase that will require reporting of conspicuous products--namely, timber and paper pulp. Ensuing phases are to be determined, but CBP and USDA face the challenge of developing a sensible approach for plant products that are many steps removed from their harvest. Also, they must limit the enforcement to meaningful information that fulfills the law's intent. Importers should expect more details from CBP by October 15, 2008.

After contemplating the details of the Lacey Act Amendment, various trade associations are caucusing to see what can be done to better define the law and understand specific requirements for importers. In addition, trade associations are lining up to share their opinions with Congress on how these new reporting requirements will be detrimental to industry. A popular suggested solution is to enact a two-year moratorium on enforcement and have the U.S. General Auditor's Office study the impact on the supply chain.

Obviously, importers should stay alert for developments as requirements are defined. In the meantime, importers should be asking themselves, "Do I have this kind of information for my imports?" Critical steps U. S. importers should take include:

1. Get educated. Contact industry and trade associations to understand nuances of the amendment, its enforcement, and potential impacts to the U. S. importing process.
2. Assess impact. Evaluate all product classifications to understand how your business will be impacted.
3. Speak up. Discuss the amendment with your senior management team highlighting the impact to the business.
4. Be prepared. Reach out to suppliers asking them how they are going to report on the plant material used in their goods. Plan to implement data collection and reporting systems.

Reaching out to your industry's associations or directly to your Congressional representation with this information is advised. With an ever-changing import landscape for security, product safety, compliance, and now environment import rule changes, it is a lesson to stay involved and aware.

About the Author: Phil Sutter is the Vice President of Import Compliance in the Global Trade Services group at J.P. Morgan. A licensed customs broker, Phil manages a team of internal subject matter experts who educate customers on key customs matters such as valuation, classification, special trade programs and post-entry matters. Phil is also a six sigma black belt and enjoys resolving problems and developing customs-compliant solutions. Previous to joining J.P. Morgan, Phil spent 21 years at Ford Motor Company in accounting, finance and customs functions. Phil holds a Master of Science in Finance from Walsh College and a Bachelor of Science in Accounting from Davenport University.
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