

August 29, 2011

Docket No. APHIS-2010-0129  
Regulatory Analysis and Development  
PPD, APHIS, Station 3A-03.8  
4700 River Road Unit 118  
Riverdale, MD 20737-1238

Re: Implementation of Revised Lacey Act Provisions  
Docket No. APHIS-2010-0129

Gentlemen:

This letter is submitted by NAMM, the trade association for the international music products industry, in response to the request for public comment on an Advance Notice of Proposed Rulemaking concerning regulatory options on certain issues related to the Lacey Act import declaration requirements. The ANPR was published in the *Federal Register* on June 30, 2011 (76 FR 38330). NAMM's comments set forth the following recommendations:

- APHIS should develop a *de minimis* exception from the declaration requirements where plant material represents ten percent (10%) or less of the declared value of an imported product;
- Products made in whole or in part with composite plant materials pose a special hardship for the music products industry and therefore APHIS should adopt a simplified declaration requiring disclosure of only the percentage of product material containing composite wood, with more detailed information on genus, species and country of harvest still required for any non-composite component(s) of the finished product;
- A Special Use Code should continue to be utilized for products manufactured prior to May 22, 2008, and should be clarified to state that it also covers products manufactured after May 22, 2008 that are made with plant materials harvested prior to that date;
- Species groupings, such as SPF, should be continued and expanded; and
- APHIS should work to develop a simplified import declaration form which allows for "Check the Box" compliance in certain circumstances.



## **I. NAMM: Who We Are and Who We Represent**

Founded in 1901 and headquartered in Carlsbad, CA, NAMM has more than 9,000 members in the United States and 100 other countries and is dedicated to expanding the market for music products and giving people of all ages the opportunity to experience the proven benefits of making music.

NAMM's members represent all segments of the music products industry, *i.e.*, manufacturers, distributors and retailers, as well as all types of music products entities, including those involved in both instruments and accessories. The association's membership ranges from large companies to individual artisans producing hand-crafted products. As a result, NAMM has a unique perspective on issues facing music products industry members of all types and sizes. All of NAMM's members are dedicated not only to expanding the market, but also to preserving the raw materials that are used in the manufacture of the products they sell.

## **II. Shipments Containing Minimal Plant Materials**

NAMM shares APHIS' stated belief that it is not ideal to apply the Lacey Act import declaration requirement "to minimal amounts of non-listed (*i.e.*, not of conservation concern) plant materials contained in an otherwise non-plant product." NAMM's members often encounter this issue where declaration requirements technically apply to imports of cork used as "bumper" material on a metal saxophone, for example, or composite wood used under the keyboard of an otherwise plastic and electronic instrument.

As acknowledged by APHIS, such requirements do not likely advance the purpose of the Lacey Act and are unduly burdensome to commerce, specifically for NAMM's small and medium-sized businesses. For a small business or individual artisan the additional compliance costs that the import declaration represents in these cases is a significant portion of the company's overall administrative costs.

Thus, in NAMM's view it would be appropriate for APHIS to define with specificity a *de minimis* exception to the import declaration requirement. Implementing a *de minimis* exemption would greatly assist producers and importers who would then be able to structure their business decisions to plan for compliance with these requirements. Moreover, as the exception would not include species "of conservation concern," it would not undermine the overarching conservation goals of the Lacey Act.



Based on our understanding of the business models of many NAMM members, the *de minimis* exception is best defined by a percentage calculation of the value of the plant material included in the overall product. This can be measured simply by computing the value of the plant material component as a percentage of the total declared import value of the entire product. For example, reporting by value is entirely consistent with the reporting requirements for Customs purposes under the Harmonized Tariff Schedule of the United States (“HTSUS”), where HTSUS Chapter 92 covering musical instruments requires an assessment of duty based upon an *ad valorem* basis. Moreover, the computation of volume or weight is too complex and not otherwise required in the normal course of commercial activity for the vast majority of NAMM members.

Further, we believe that the threshold for the value exception should be set at ten percent (10%) of the declared value of the imported product. We believe that such a figure represents a reasonable compromise between those who would want a lower figure to theoretically protect more plant material and those who would be administratively burdened by increased import declaration filing.

In proposing the ten percent (10%) threshold, we are mindful that products containing any plant material in however small an amount (and however measured), would remain subject to the criminal, civil and administrative forfeiture provisions of the Lacey Act. For this reason, setting a threshold at ten percent (10%) of the plant material’s value vis-à-vis the declared value of the entire product would not interfere with enforcement efforts, while lifting a potentially severe administrative burden for many U.S. importers.

## **II. Goods with Composite Plant Materials**

The use of composite wood in many music products presents an especially difficult compliance problem for NAMM members, who rarely specify a particular genus, species or country of origin when purchasing this material. In the music products industry, companies do not provide such specifications primarily because composite wood is generally not used in a way in which it would be visible to consumers, but rather for such non-obvious uses as an internal bed for electronics in lower-priced keyboards (where the primary materials are plastic and electronics) or as strengthening material for musical instrument cases covered in fabric or metal.

In fact, identifying the material used in various types of composite wood is often impossible for several reasons. First, some 80% of the particleboard used in the industry is derived from recycled wood such as construction waste. Additionally, the species used in composite wood change from time to time depending on cost and supply (*e.g.*, some multiple



density fiberboard is made from a variety of broad-leaf trees). Further, the distribution chain for much of this material could include four to six different companies (tree butcher, sawmill, chip processor, domestic trading company, etc.) before reaching the ultimate instrument or accessory manufacturer.

For these reasons, NAMM urges APHIS to permit importers to require a simple declaration in the case of a product composed in whole or in part of a composite wood material. As APHIS has suggested, the import declaration would disclose the average percent of composite wood content without regard to the genus, species or country of harvest, in addition to the required information for any non-composite content.

### **III. Dated Products**

NAMM has previously commented (most recently on April 14, 2011, Docket No. 2008-0119) on the difficulty, if not impossibility, encountered by its members in obtaining information and accurately determining the genus, species and country of harvest of products manufactured prior to the effective date of the May 22, 2008 Lacey Act amendments. NAMM commends APHIS for issuing its April 21, 2011 guidance document implementing and further describing a Special Use Code for items “Manufactured Prior to May 22, 2008 – Sourcing of Pre-Amendment Materials Untraceable Despite Due Diligence.”

However, we would like to take this opportunity to request that APHIS clarify that this Special Use Code should be utilized for both: (1) products manufactured prior to May 22, 2008, and (2) products manufactured after May 22, 2008, which are made with plant materials harvested *prior* to that date. It has been regularly recognized, as in this Notice of proposed rulemaking, that scientific name and country of harvest information for “plants in some products made of *re-used plant materials*, or *harvested* or *manufactured* prior to the passage of the Lacey Act Amendments of 2008,” is extremely difficult to determine. 76 Fed.Reg. 38,331 (emphasis added). Moreover, it is noted that APHIS anticipates that the Special Use Code should “allow for trade in existing inventories” and would diminish in use as pre-amendment inventories do.

Based on these statements, we understand that it is intended that the “dated products” Special Use Code also covers products that may have been physically assembled or manufactured after May 22, 2008 with pre-amendment materials. Even if an instrument is not manufactured entirely prior to May 22, 2008, all of its component wooden parts may have been harvested years prior to 2008. Indeed, it is often the case that guitars and violins, for example, currently being manufactured, are made from wood inventory that is pre-Lacey Act 2008



amendment. However, based on a plain English interpretation of the Special Use Code as currently drafted, these products may not be covered.

NAMM therefore strongly urges that the Special Use Code and accompanying guidance be amended to “Harvested or Manufactured Prior to May 22, 2008” and to permit:

“[an] Importer to declare that the product being imported was *harvested* or manufactured prior to May 22, 2008, and that in the exercise of due care the genus, species, and/or country of harvest is unknown.”

Moreover, NAMM recommends that APHIS incorporate the Special Use Codes into both regulations that may be promulgated and the official instructions accompanying Form PPQ 505.

#### **IV. Declaration Revision**

NAMM appreciates the willingness of APHIS to simplify the import declaration to make compliance easier, particularly for small businesses which import musical instruments. Specifically, we encourage APHIS to move forward with proposed revisions which provide a “check the box” alternative for products either manufactured entirely prior to May 22, 2008 or containing material harvested prior to that date for which the importer cannot determine, in the exercise of due care, the genus, species and/or country of harvest of the plant materials. Streamlining the import declaration in this manner would likely eliminate any existing confusion as to what must ultimately be reported under this Special Use Code, as well as others.

We would urge APHIS to draft a proposed revision of the import declaration Form PPQ 505 and include it in a formal Notice of Proposed Rulemaking on these and other subjects covered by the ANPR.

#### **V. Use of Species Groupings**

NAMM urges APHIS to continue to permit the use of species groups, such as “SPF” (for spruce, pine and fir) and to continue to explore the addition of other groupings when appropriate.

#### **VI. Conclusion**

NAMM and its members are most appreciative of the flexibility shown by APHIS in the past in implementing the import declaration requirements of the 2008 Lacey Act Amendments.





We believe that the suggestions made in this submission will provide greater clarity in the further implementation of these requirements.

NAMM would be happy to discuss these issues in greater detail with appropriate APHIS personnel.

Sincerely,

A handwritten signature in black ink that reads "Mary L. Luehrsen". The signature is written in a cursive style with a large, prominent "M" and "L".

Mary L. Luehrsen  
Director of Public Affairs and  
Government Relations

