

April 14, 2011

Docket No. APHIS-2008-0119
Regulatory Analysis and Development
PPD, APHIS, Station 3A-03.8
4700 Rover Road Unit 118
Riverdale, MD 20737-1238

Re: Implementation of Revised Lacey Act Provisions
Docket No. APHIS-2008-0119

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 implementation of the Lacey Act import declaration requirements published in the *Federal Register* on February 28, 2011 (76 FR 10874). NAMM's comments set forth the following recommendations:

- APHIS' published guidance regarding "Special Use Codes" for use on the import declaration should be incorporated into the official Instructions to PPQ Form 505 in order to eliminate confusion about appropriate use and application of the Codes;
- Musical instruments exported from the United States and returned after use at a "trade show" should be expressly exempt from the import declaration requirement;
- Alternatively, the Special Use Code for musical instruments traveling to and from a "Performance" should be expanded to encompass trade samples traveling to and from trade shows; and
- APHIS should expand the Special Use Code for products manufactured "prior to Amendment" to cover musical instruments that have been manufactured since the 2008 Lacey Act Amendments using component material acquired prior to the Amendments.

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. Special Use Codes and the Lacey Act Import Declaration

A. Special Use Codes and Form PPQ 505

NAMM and its members are appreciative of the guidance issued by APHIS on November 29, 2010, "Lacey Act Special Use Codes for the Plant and Plant Product Declaration Form," particularly regarding its applicability to products manufactured prior to the effective date of the Lacey Act amendments ("Manufactured Prior to Amendment") and to musical instruments traveling to and from a performance ("Musical Instrument(s) travelling to/from Performance").

However, we urge that this guidance be incorporated into any revision of the official Instructions to Form PPQ 505 to eliminate confusion as to the appropriate use and application of the Special Use Codes. For example, an importer who is unaware of the Special Use Codes may inadvertently make a mistake on the form by disclosing an erroneous genus/species or country of origin and how they are to be entered on the form, such as where the guidance provides that entry of "Special" and "Performance" in the genus and species fields may have been appropriate under a Special Use Code. Such inadvertent mistakes could lead to confusion and unnecessary delays in gaining entry for the product into the United States, especially if a Customs official is not aware of the Code guidance issued by APHIS.

Additionally, we recommend that the Instructions incorporate a brief description of each of the Special Use Codes for ease of reference and clarity. Where all of this important information is located in the same place, and officially incorporated into the Form PPQ 505, we believe that it will assist in educating importers and increase compliance with these requirements.



B. Post-Trade Show Imports

NAMM further believes that APHIS' guidance should be amended to clarify that no import declaration is required for imports of musical instruments returned after use at a trade show; or alternatively to provide a similar Special Use Code for musical instruments traveling to and from "trade shows," or expositions. For instance, it is common practice in the music products industry for U.S. luthiers (one who makes stringed musical instruments, such as violins or guitars) to travel outside of the United States with a few of their signature guitars and/or other instruments in order to demonstrate their work for potential buyers at trade shows in Canada or elsewhere. These instruments are not exported for sale, but for display or demonstration. They are specifically exported with the intention of temporary use abroad and re-import into the United States at the conclusion of the event.

Similar to treatment of "informal entries" under the Lacey Act, NAMM recommends that no PPQ Form 505 be required when these trade samples are returned to the United States. In the alternative, NAMM suggests that if an import declaration is required, i.e., because the value of the instruments exceeds the \$2,500 limit for "informal entries," the same Special Use Code permitted for instruments traveling to and from a "Performance" be expanded to encompass these trade samples.

Enforcement of the Import Declaration requirement under the Lacey Act applies only to "formal entries" and not to "informal entries," as defined in the US Customs and Border Protection ("CBP") regulations. In adopting these terms, it was recognized that the import declaration is an "entry issue," similar to classification of imports under the U.S. Harmonized Tariff Schedule ("HTSUS") and associated duty rates. We respectfully suggest that APHIS look to the special procedure already established within Chapter 98 of the HTSUS, which covers "Articles Exported and Returned, Not Advanced or Improved in Condition," and exclude post-trade show imports from import declaration requirements.

It is well-settled under U.S. Customs procedures that items exported for a trade show or exhibition abroad may be reentered into the United States duty free. *See* Subheading 9801.00.60, HTSUS ("Articles, when returned after having been exported for use temporarily abroad...if imported by or for the account of the person who exported them: *Exhibition or use at any public exposition, fair or conference.*") (emphasis added). Musical instrument trade samples exported for use at a trade show and returned to the United States would properly be imported under subheading 9801.00.60, HTSUS, which subheading is not included within the HTS Chapters for which an import declaration is required under the Lacey Act.



Importantly, “entry” under this tariff code allows CBP to track such formal imports and eases the burden on importers under these circumstances. As with “informal entries,” we therefore recommend that instruments traveling to and from a trade show for demonstration be *expressly* exempt from import declaration requirements. We also ask that APHIS provide clarification on this issue to assist in importer’s understanding of and compliance with these import requirements.

In the alternative, we recommend that such instruments be provided for under the Special Use Codes. Just as musical instruments exported for use in a “performance” abroad are exported temporarily and returned to the United States, typically by or on account of the person who exported them, so are instruments exported for demonstration at trade shows. We therefore alternatively recommend that the Special Use Code for instruments traveling to and from a “Performance” be expanded to encompass these trade sample imports.

Similarly, many foreign music product manufacturers bring trade samples into the United States for the purpose of exhibiting at trade shows (*e.g.*, the “NAMM Show” held every January and July) and other merchandise fairs. If these instruments are not intended to be sold at such shows, they should be exempt from import declarations; alternatively, the Special Use Codes designated for performance-related instruments should be expanded to apply to these imports. The products are being imported into this country for the primary purpose of exhibiting, not selling them, and therefore a Special Use Code designation would, in NAMM’s view, be more appropriate. Thus, we suggest that a Special Use Code for musical instrument “trade samples” traveling to and from “trade shows,” or expositions, be developed and included in the official Instructions which accompany import declaration, PPQ Form 505.

C. “Post-Amendment” Products Made from “Old Wood”

As import declaration requirements are currently written, musical instruments that have been recently manufactured (*e.g.*, post- 2008 Lacey Act Amendments) using component material acquired prior to the Amendments do not meet any of the criteria for utilizing Special Use Codes. For instance, many higher-value stringed instruments are customarily crafted from wood aged for at least six years. In the industry, it would not be unexpected for a concert-quality lute manufactured in 2011 to be constructed of wood harvested as early as 1981.

In these cases, the import declaration requirement is unduly burdensome for importers of these products because the required information may be unknown, especially



for wood acquired in the 1980's and 1990's, particularly since the manufacturer was not required to collect this information when he ordered/acquired the wood many years ago.

Therefore, NAMM urges APHIS to expand the Special Use Code for pre-Amendment products to cover pre-Amendment components of post-Amendment products in order to remove from the importer the threat of substantial civil and criminal penalties for failure to properly disclose information which simply may not be available.

III. Conclusion

NAMM and its members are most appreciative of the flexibility shown by APHIS 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,



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NAMM
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