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SUBMITTED via Federal eRulemaking
Portal

Attn: George Balady
Regulatory Analysis & Development, PPD,
Animal Plant Health Inspection Service
United States Department of Agriculture
Station 3A-03.8
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Riverdale, MD 20737-1238

RE: Notice of Request for Extension of Approval of an Information Collection; Lacey
Act Declaration Requirement; Plants & Plant Products
Docket No. APHIS-2012-0036

Dear Mr. Balady:

The Government of Canada submits the enclosed comments in relation to the above
referenced matter.

We would like to thank you in advance for your consideration of these comments.
Please feel free to contact the undersigned at (202) 682-7612 should you have any
questions or require additional information.

Yours sincerely,

Paul Robertson
Minister (Economic)

Enclosure: 2012 GoC Lacey Act Comments for APHIS-2012-0036

Canada

**Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products
Docket No. APHIS-2012-0036**

Comments of the Government of Canada

Introduction

The Government of Canada welcomes the opportunity to provide comments to the Animal and Plant Health Inspection Service (APHIS) as it evaluates the information collection associated with the *Lacey Act* (the *Act*)¹. These comments supplement the comments submitted previously by Canada.²

Canada sees this review as an important opportunity to enhance the utility of the declaration for plants and plant products. As stated in previous submissions, Canada shares with the United States the objective of combating illegal logging and the associated trade in illegally harvested plants and plant products. At the same time, Canada believes there is opportunity to avoid unnecessary burdens on legitimate trade in forest products while maximizing the effectiveness of the effort and expense associated with administration and enforcement.

In February 2011, President Obama and Prime Minister Harper released *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*.³ In the *Shared Vision*, the leaders stated, "We will look for ways to reduce the cost of conducting legitimate business across the border by implementing, where practicable, common practices and streamlined procedures for customs processing and regulatory compliance." In November 2011, as part of the Asia-Pacific Economic Cooperation 2011 *Leaders' Declaration*, the leaders also committed to "work to implement appropriate measures to prohibit trade in illegally harvested forest products and undertake additional activities in APEC to combat illegal logging and associated trade."⁴

Adjusting how information is collected under the *Act's* declaration requirement could deliver on the commitment to reduce the cost of conducting legitimate business across the border. Examining options for how the United States and Canada could better cooperate together to control imports of illegally harvested plants and plant products from third-party countries could potentially minimize the volume of information collected, enhance the value of the information that is collected, and optimize the allocation of resources at the border to combat illegal logging and associated trade.

In sum, Canada suggests that APHIS reconsider and revise some aspects of the information collection requirements rather than extend the current approach for another three years. In recognition that major changes may not be possible in the near-term, Canada recommends making practical adjustments within the next year and using the remainder of the three year period to collaborate on approaches to data collection and enforcement that will further the objective of combating illegal logging and associated trade in both of our countries.

¹ Federal Register, Vol. 77, No. 109 (June 6, 2012). Docket No. APHIS-2012-0036

² Comments by the Government of Canada dated December 8, 2008, March 6, 2009, April 6, 2009, November 2, 2009, October 4, 2010, April 14, 2011, and August 29, 2011.

³ Declaration by President Obama and Prime Minister Harper of Canada – *Beyond the Border, Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*, February 4, 2011, <http://www.whitehouse.gov/the-press-office/2011/02/04/declaration-president-obama-and-prime-minister-harper-canada-beyond-border>

⁴ Asia-Pacific Economic Cooperation, 2011 *Leaders' Declaration: The Honolulu Declaration – Toward a Seamless Regional Economy*. November 12-13, 2011. http://www.apec.org/Meeting-Papers/Leaders-Declarations/2011/2011_aelm.aspx

Comments on specific issues related to Docket No. APHIS-2012-0036

In the June 6, 2012, Federal Register Notice of Request, APHIS indicated its intention to request approval to extend the collection of information required by the *Act* for the importation of certain plants and plant products for an additional three years. APHIS has indicated that it is soliciting comments concerning the information collection requirements to help the agency in the assessment of the following indicators (shown in bold type below). In response, Canada is offering specific comments to APHIS for consideration and these comments are shown below the relevant sections.

1. Evaluation of whether the collection of information is necessary and whether the information will have practical utility

As described in previous submissions⁵, Canada questions the usefulness of collecting information additional to "country of harvest" on the Plant and Plant Product Declaration (APHIS Form PPQ 505) where an identified country of harvest exhibits a negligible risk of illegal logging, regardless of the species in question. Canada reiterates its view that a risk-based approach should be used as a starting point, requiring identification of genus and species only where the country of harvest shows a demonstrable risk of illegal harvesting. After having identified that a shipment of imported wood was harvested in a country with negligible risk, additional information on the import declaration no longer contributes to advancing the objectives of the legislation.

However, in order to factor in the risks associated with imports of illegally harvested plants and plant materials, a process of risk assessment and the development of a database indicating countries with effective legislative and regulatory supervision – countries that can provide adequate assurance of the legality of these harvested materials – would be required. Since such a database has not yet been developed, Canada understands that APHIS must collect the additional product information required under the *Act*, e.g., genus, species, recycled content.

In order to improve the utility of the information collection, Canada suggests that in the near-term APHIS consider implementing the option of allowing importers to submit an annual blanket declaration for each product. The annual declaration would contain the information required by the *Act* that goes beyond what is filed in the Entry Summary (CBP Form 7501) that is submitted to U.S. Customs and Border Protection (CBP) with each shipment. Then a notation could be included on CBP Form 7501 that references the annual blanket declaration that APHIS maintains on file.

In practice, this would mean that the scientific name of the plant product being imported would normally be contained in the annual blanket declaration, while the value and quantity of the product would be declared on CBP Form 7501 on a shipment-by-shipment basis. If a product does not fit under a blanket declaration, then the importer would be required to declare that shipment with an individual declaration submitted prior to importation, in compliance with current import regulations.

Canadian exporters of forest products have expressed concerns about the current level of duplication associated with filing much of the same information in CBP Form 7501 and APHIS Form PPQ 505. Adjusting the information collection in the near-term as described above would achieve efficiencies and reduce costs for both government and business, while continuing to meet the requirements of the *Act*.

In the longer term, Canada is open to exploring with the United States approaches to information collection that would eliminate the need for the use of APHIS Form PPQ 505 or an equivalent declaration for plants and plant products harvested in Canada and traded across our border. Ultimately, the utility of the information collection would be optimized by dramatically reducing the volume of data collected on

⁵ Comments of the Government of Canada to Docket Nos. APHIS-2008-0119 and APHIS-2010-0129.

low risk Canadian exports, in favour of focusing administrative and enforcement resources on countries or regions of greatest risk. Suggestions for how we might be able to work together to accomplish this are discussed below in Section 5.

2. Evaluation of the accuracy of the estimate of the burden of the collection of information

Canada has noted the estimates of the reporting burden presented in Docket No. APHIS-2012-0036 (the Notice) and does not dispute most of these figures. However, based on the feedback that we have received from Canadian exporters, the time required to complete APHIS Form PPQ 505 may be underestimated.

APHIS has estimated the average reporting burden for the collection of information as approximately 0.48 hours per response (i.e., per declaration). In recent correspondence⁶, Canadian exporters have indicated that the aggregate time required to file each declaration requires 1.5 person hours per declaration (i.e., the time required by brokers to file the declaration plus the time invested by the companies to establish and maintain the records for each shipment), which is approximately three times higher than the estimate presented in the Notice. As such, each declaration represents a significant, incremental cost for shipments into the United States.

The prospect of expanding the list of regulated products under the Act to include more complex or composite products would only increase the burden associated with the collection of information given the challenges in identifying the genus, species and weight of plant materials in these types of products. Even if it were technically feasible for companies to comply with providing weight, genus and species information for plant materials in complex and composite products, doing so on a shipment-by-shipment basis would be time and cost prohibitive. The current approach of allowing importers to employ 'special use designations' for some of these products may mitigate some of the administrative burden, but it is unclear how requiring this information on shipments of products from jurisdictions of negligible risk of illegal logging, such as Canada, would contribute to the effort to reduce the incidence of illegal logging.

3. Enhancing the quality, utility and clarity of the information collected

While the quality and clarity of the information currently being collected in APHIS Form PPQ 505 may be adequate, Canada believes that the practical utility of the information is hampered by the volume of submissions and by missed opportunities to achieve efficiencies, e.g., recognizing more commonly used species groupings and sharing of information via modern, linked datasets.

Canada supports APHIS' approach on the use of species groups or trade names when products are comprised of multiple species originating from the same geographic areas, and when the species are sufficiently similar as to make their individual identification difficult or immaterial. Canada is pleased that SPF (Spruce-Pine-Fir), a commonly used species grouping in North America, has been recognized and is now accepted as a special use designation in place of detailed genus and species information. APHIS has indicated that it is willing to consider the identification of additional species groupings, and Canada supports further simplifying the declaration process through recognition of additional groupings, such as:

- i. Hem-Fir (Hemlock and True Firs) because these are often grown, managed and sold together as a product group, and are indistinguishable as a finished product; and
- ii. Northern Bleached Softwood Kraft (NBSK) pulp species which are from like-managed forests and are indistinguishable as chip inputs.

Canada also believes that the utility of the information collection would be increased by reducing the annual volume of responses to be collected and analyzed by APHIS (which are currently estimated at

⁶ Letter from the Canadian Manufacturing Coalition to the House Committee on Natural Resources, May 14, 2012.

more than 420,000⁷). In the near-term, moving to an annual declaration using APHIS Form PPQ 505 to report on detailed product information combined with CBP Form 7501 to report on value and quantity on a shipment-by-shipment basis (as described in Section 1 above) would reduce duplicative information collection for Canadian exporters. This should also reduce the volume of responses received by APHIS. However, this approach must be facilitated by robust electronic reporting mechanisms and datasets that can be easily shared in a timely manner by agencies responsible for different aspects of border enforcement. In the longer-term, working together to eliminate the need for information collection regarding plants and plant products harvested in Canada while cooperating on an approach to combat illegal logging beyond our borders is a strategy with the greatest potential benefit.

4. Minimizing the burden of the collection of information on those who respond

Although detailed information may be necessary to ensure the legality of forest products made of wood harvested in regions which pose a significant risk of illegal logging, the imposition of such requirements on products made of wood harvested in regions with effective legislative supervision is not necessary. The additional information does not add value to the efforts to combat illegal logging and unnecessarily undermines the cost competitiveness of forest products. Information requirements should be specifically linked to the level of risk of illegal logging in countries of harvest, taking into account legal, regulatory and enforcement regimes, as well as industry practices.

Canada urges the United States to recognize the unnecessary burden of import declarations on producers who – abiding by Canada's rigorous regulatory framework – already source legally-harvested wood from sustainably managed forests. Any extra cost burden can impact the competitiveness of enterprises on both sides of the border, since extra costs imposed in Canada must be passed along to customers in the United States.

Beyond the time and cost savings that might be achieved for Canadian exporters by moving quickly to an annual plant and plant products declaration linked to existing CBP information requirements, Canada recommends a more streamlined approach to information collection that benefits enterprises in both countries.

Canada and the United States share a risk profile for illegal logging that is extremely low. Canada's risk profile is determined by rigorous supervision of legislated standards that provide assurance that Canadian forest products are made from timber originating from legal sources. All jurisdictions (federal, provincial and territorial) in Canada have extensive sustainability laws and regulations, which include forest monitoring programs to inspect and report on access, harvest, renewal and maintenance activities. Canada's commitment to sustainable and legal forestry recognized worldwide and the risk of illegally logged wood originating in Canada is negligible⁸.

Like the United States, Canada is also committed to preventing the importation of wildlife (including plants) harvested in contravention of the laws of the country of harvest. In 1992, Canada's *Wild Animal*

⁷ Federal Register, Vol. 77, No. 109 (June 6, 2012). Docket No. APHIS-2012-0036

⁸ The following organizations/studies have recognized Canada as a low risk country/region for illegal logging:

- European Commission (see http://ec.europa.eu/environment/forests/pdf/impact_assessment.pdf, Page 13, Table 3.1)
- World Business Council for Sustainable Development and the World Resources Institute (see http://pdf.wri.org/sustainable_procurement_guide.pdf, Page 2.20, Figure 4)
- UK Timber Trade Federation has classified Canadian wood products as low risk for illegality and rated our documentation as highly reliable (see http://ttf.co.uk/Timber_industry/Country_Details.aspx, however, 'Country Guidance' is in a restricted area of the website.)
- FSC Global Forest Registry (<http://www.globalforestregistry.org/>)
- Cashore, B. and C.L. McDermott. 2004. Global Environmental Forest Policies: Canada as a constant case comparison of select forest practice regulations. Victoria, BC: International Forest Resources.
- Indufor Oy. 2009. Comparison of Selected Forest Certification Standards. (see report summary at <http://www.naturallywood.com/sites/default/files/Comparison-selected-forest-certification-standards-summary.pdf>)

and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRITA) came into force. Sub-section 6(1) of WAPPRITA sets out similar importation prohibitions as those in Section 3372(a)(2)(B) of the Lacey Act.

WAPPRITA, Sub-section 6(1)⁹:

No person shall import into Canada any animal or plant that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.

Presently, on-the-ground compliance with WAPPRITA is monitored via verification of CITES permits, audit declarations, conducting inspections at ports of entry, conducting routine or spot inspections, sharing information with border officials and other national or international agencies, gathering intelligence and following up on tips from the public. Canada does not currently have an information collection requirement under WAPPRITA that is equivalent to Form PPQ 505. However, the Canada Border Services Agency (CBSA) is updating Memorandum D19-7-1, *The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRITA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*, which provides information and guidance on the legislation, regulations, policies, and procedures that the CBSA uses at the border to administer WAPPRITA and CITES on behalf of Environment Canada. In particular, the updated Memorandum reinforces the message to importers that wood products obtained from sources associated with illegal logging may be subject to WAPPRITA import prohibitions and that such shipments may be detained by border services officers and referred to Environment Canada for further action.

Canada is also engaged in a major initiative to streamline border processes, as the U.S. is currently doing with the International Trade Data System and the Automated Commercial Environment. Canada's Single Window Initiative (SWI) will establish an integrated approach for processing commercial trade, replacing the paper documentation that has been required for the importation of shipments containing goods regulated by participating government agencies. Canada and the U.S. are aligning import information requirements to the extent possible. SWI will help increase the efficiency of the border process by providing importers and brokers with a "single window" through which all required information can be submitted electronically. As part of the information collection updates for the SWI, Canada will collect the following information on plants and plant products: country of harvest, genus, species, whether the material is live or wood, and volumes for basic wood imports.

In addition, Canada is working on a novel approach that will bring increased taxonomic certainty to the wildlife trade, including forest products. Species information is of increasing value in the analysis of global trade and is obligatory for reporting under CITES permitting regulations, the Lacey Act plant product declaration and the EU timber regulation. World Customs Organization Harmonized System (HS) codes are designed to define and track products in trade, but are ill-suited to the capture and sharing of data regarding wildlife products (including forest products). Canada, as part of SWI, along with the United States, will require descriptions of scientific names of wildlife species in international trade as part of import declarations and both countries will be establishing commodity identification strategies, such as the use of Taxonomic Serial Numbers of the Integrated Taxonomic Information System as a means of effectively tracking and capturing trade data on wildlife species. These codes are unique, stable and persistent, and are intended to complement existing HS codes.

It is clear that Canada and the United States share not only a commitment to combating illegal logging, but are moving toward similar approaches and procedures for collecting and sharing information that will

⁹ *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (S.C. 1992, c. 52). <http://laws-lois.justice.gc.ca/eng/acts/W-8.5/index.html>

detect and deter importation of illegally harvested plants and plant products. In consideration of the above, and the unique nature of the trading relationship between our countries, Canada is suggesting a different approach to the collection of information than what is currently in place and being proposed for a three-year extension.

5. Canada's suggestions for APHIS' consideration

Rather than extending the current *Lacey Act* information collection activities for another three years, Canada proposes that, within the next year, APHIS implement a modified information collection approach. This new approach would involve an annual blanket declaration for detailed product information (i.e., country of harvest, scientific name(s), percent recycled content) that is electronically linked to standard shipment-by-shipment customs reporting.

Within the period of the three year extension, Canada and the United States would work toward further lessening the burden on both Canadian exporters and American government agencies caused by the *Lacey Act* declaration requirement and strengthen the practical response of both countries to the threat of illegal imports by:

- i. Establishing a consistent or mutually recognized process for risk assessment, which would permit both the United States and Canada to focus regulatory and enforcement efforts on imports of plants and plant products from regions where there is a demonstrable risk of illegal harvesting. Linking future information collection requirements to the level of identified risk for countries of harvest would allow the United States and Canada to allocate administrative and enforcement resources to the regions of greatest risk, increasing both the efficiency and effectiveness of such resources.
- ii. Developing a database indicating countries which, by an agreed upon process of risk assessment, are recognized as having effective legislative supervision and providing adequate assurance of the legality of their forest products. With the development of a database, the existing declaration process could be amended to include instructions that no further information is required if the country of harvest appears in a negligible risk category ¹⁰ (The information on countries of harvest could be linked to an electronic resource.) Such an approach would not increase the risk of transshipments of illegally harvested wood through the negligible risk countries because importers would still be required to identify the country of harvest, regardless of last country of export.
- iii. Implementing and promoting a more effective and mutually beneficial "perimeter approach" to prevent imports of illegally harvested plants and plant products into the Canada-United States trade zone. This approach would recognize the negligible risk of illegal logging in both countries and allow limited enforcement resources to be focused on imports from higher-risk countries. Eliminating the declaration of detailed information for low risk plant materials harvested in either the United States or Canada would reduce the volume of unnecessary data collection; reduce costs and administrative burden for government agencies; and reduce the reporting burden, and therefore compliance costs, for exporters in Canada and the United States.

¹⁰ Detailed taxonomic information and permits would still be required in all cases for CITES-listed species.