



Chamber
Music
America

League
of American
Orchestras

July 1, 2020

Docket No. APHIS-2008-0119
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-2008-0119)

Dear Sir or Madam:

This letter is submitted by the American Federation of Musicians of the United States and Canada, the American Federation of Violin and Bow Makers, Chamber Music America, and the League of American Orchestras. We are writing in response to the request for public comment on the Notice to implement Phase VI of the Lacey Act enforcement schedule (Federal Register on March 31, 2020 (85 FR 17849)). The Notice will add several product categories to those required to file declarations when transporting certain covered plant products into the United States.

The American Federation of Musicians of the United States and Canada (AFM), celebrating 122 years of existence, is the largest organization in the world dedicated to representing the working interests of professional musicians. The AFM's more than 80,000 members perform all styles of music: alternative, rock, classical, pop, gospel, jazz, country, folk, big band, reggae, contemporary Christian, to name just a few. AFM musicians can be found in recording studios for motion picture and film, as back up musicians for internationally recognized featured artists, in American and Canadian symphony orchestras, and any other venue that requires the use of highly trained professional artists.

The American Federation of Violin and Bow Makers was founded in 1980 to provide the musical community with a standard of work and expertise upon which they could depend. The Federation's mission is to enhance the public's understanding and appreciation of the violin and bow families, and of related areas of expertise, including the making of new instruments, as well as conservation and restoration of historical and modern instruments. Now numbering over 170 of the finest makers, dealers, and restorers in the United States and Canada, the Federation has strict requirements for membership. In addition to submitting an example of work for review, a prospective member must have at least nine years of experience working in the profession.

The mission of Chamber Music America (CMA), the national network of ensemble music professionals, is to develop, support, and strengthen the chamber music field. Since its inception in 1977, CMA has defined chamber music as music for small ensembles between two and ten musicians, one per part, generally without a conductor. Because of the broad definition, multiple styles of music are included in CMA: Western and non-Western classical and contemporary, jazz, and evolving forms. Its 6,000+ members include ensembles, concert presenters, independent musicians, educators, music businesses, and others who advocate for and appreciate music for small ensembles.

The League of American Orchestras is the not-for-profit service organization for the field of symphony orchestras. Founded in 1942 and chartered by Congress in 1962, the League represents a diverse membership of orchestras across North America and it links a national network of thousands of instrumentalists, conductors, managers and administrators, board members, volunteers, and business partners. There are more than 1,600 nonprofit orchestras in all 50 states, serving virtually every community. As members of the 501(c)(3) charitable sector, orchestras depend upon private philanthropy and civic support to fuel programs that serve community needs. Orchestras actively engage in international cultural activity through touring globally and inviting guest artists to perform for audiences in the United States.

Effective Date of Declaration Requirement

The Notice solicits public comments on the proposed Harmonized Tariff Schedule list by July 1, 2020. We assume that a notice containing a final Harmonized Tariff Schedule will be issued following the comment period. The Animal and Plant Health Inspection Service (APHIS) has proposed that the Phase VI enforcement should begin on October 1, 2020. Because the covered product list is subject to change, we believe the effective date for declaration filing should be six months after the final notice is issued. A six-month effective date would enable exporting and importing stakeholders to inform their constituencies and prepare for compliance with the new declaration requirements.

Enforcement Discretion

In the case of musical instruments, it is important to recognize that a very substantial proportion of instruments in international circulation are years, decades, or even centuries old, raising very difficult challenges for those interested in complying with declaration questions calling for identification of the scientific name of each plant product contained in the instrument, the quantity of the plant products, the country from which the plant was harvested, and the value of the import. We urge APHIS to recognize the difficulty of establishing the provenance of plant specimens contained in many musical instruments and to exercise its enforcement discretion by waiving or relaxing enforcement of declaration requirements in the case of older finished musical instruments, parts, or accessories containing plant specimens. In its most recent rulemaking published on March 2, 2020 at (7 CFR Part 357, Docket No. [APHIS-2013-0055](#)), APHIS adopted “a threshold of no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of products in the same 10-digit HTSUS provision does not exceed 2.9 kilograms.” The rule further states that, “We will continue to consider ways to implement *de minimis* exceptions based on criteria other than weight to the plant declaration requirement.” Most older musical

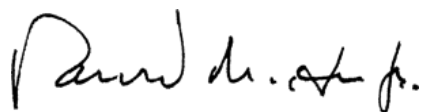
instruments will contain wood that exceeds the 5 percent *de minimis* exemption. We suggest that APHIS consider an exemption based on criteria that take into account the age of musical instruments.

Definition of “Import”

In its most recent rulemaking published on March 2, 2020, APHIS also restated its decade-long enforcement policy that the term “import” is limited to formal entries only, saying “In a notice published in the Federal Register on February 3, 2009 (74 FR 5911, Docket No. APHIS-2008-0119), we stated that we would be enforcing the declaration requirement only for formal consumption entries (*i.e.*, most commercial shipments). In that notice we also stated that we did not intend yet to enforce the declaration requirement for informal entries (*i.e.*, most personal shipments), personal importations, mail (unless subject to formal entry), transportation and exportation entries, in-transit movements, carnet importations (*i.e.*, merchandise or equipment that will be re-exported within a year), or upon admittance into a U.S. foreign trade zone or bonded warehouse.” We urge APHIS to include a statement of this enforcement policy in a final Notice on Phase VI declaration enforcement. The very many traveling musicians and ensembles that depend upon international artistry to advance their livelihoods and international cultural exchange will need absolute assurance of exemptions from the declaration requirements.

The American Federation of Musicians of the United States and Canada, the American Federation of Violin and Bow Makers, Chamber Music America, and the League of American Orchestras appreciate APHIS’s continued cooperation, and we are available as needed to discuss Lacey Act enforcement and related issues.

Sincerely,



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