

# WOOD PACKAGING MATERIAL, ENFORCEMENT OF COMPLIANCE

On September 16, 2005, the United States (U.S.), in cooperation with Mexico and Canada, began enforcement of international phytosanitary standards for regulated wood packaging material (WPM) entering North America. On February 1, 2006, this enforcement moved to Phase II, with enforced compliance of the regulation requiring exportation of non-compliant WPM. Full enforcement, Phase III, began July 5, 2006. Enforcement of the international standard will be conducted in accordance with Customs and Border Protection (CBP) operational guidelines and procedures.

On March 9, 2007, a liquidated damages and penalties provision on issues related to WPM went into effect. Additional questions have been raised, and we would like to address those now.

**Q: What is the effective date for liquidated damages and penalties under the guidelines?**

**A:** The guidelines will only be applied to shipments that arrive on or after the effective date of March 9, 2007. Shipments that arrived before March 8, 2007, will not be subject to the new guidelines. When determining whether a party is subject to penalties based on their prior record for failure to comply with WPM regulations, CBP will only consider an Emergency Action Notification (EAN) received by the party for shipments that arrived on or after March 9, 2007.

**Q: Why is CBP now issuing liquidated damages and penalties for WPM violations?**

**A:** The regulations set forth in 7 C.F.R. § 319.40 are intended to protect U.S. agricultural resources from the introduction of potentially injurious wood-boring pests. Failure to comply with these regulations poses significant pest risks to U.S. agriculture. This policy provides the means to assess liquidated damages against those who do not comply with the action specified on the EAN for failure to comply with WPM regulations. The policy also enables CBP to penalize those documented importers, carriers, or bonded custodians who have made multiple attempts to enter violative WPM or who attempt to conceal a WPM violation.

**Q: When will an EAN be issued?**

**A:** An EAN will be issued when a “WPM violation” is discovered. A “WPM violation” occurs when WPM entering the U.S. does not adhere to the required treatment under the “Guidelines for Regulating Wood Packaging Material in International Trade,” of the International Standards of Phytosanitary Measures (ISPM-15), the WPM regulations and any associated amendments, revisions or exemptions identified by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS).

**Q: Who will receive an EAN for failure to comply with WPM regulations?**

**A:** The party that is responsible for the WPM (*i.e.*, the party whose bond was obligated) at the time that the violation is discovered will receive an EAN.

**Q: How long will the violator be given to comply with the EAN for failure to comply with WPM regulation?**

**A:** The time frame in which the action must be completed will be specified in Block 17 of the EAN. CBP will use its discretionary authority to determine a reasonable time for completion of the specified action.

**Q: What happens when violative WPM is found with in-transit or in-bond containers or cargo?**

**A:** Shipments that arrive in the U.S., or enter the U.S. under a bond, or are in-transit through the U.S. from foreign must meet all conditions of the bond and adhere to all rules and regulations set forth under U.S. laws and regulations. If an in-bond shipment is found to contain violative WPM, then the party who is responsible for the merchandise under a bond will be issued an EAN. Upon receipt of the EAN, it is expected that expeditious action shall be taken to comply with the terms and conditions of the notification. In the event that the recipient is non-compliant with the EAN and there is a failure to export the WPM, then liquidated damages will be assessed.

**Q: When will liquidated damages be assessed?**

**A:** Liquidated damages will be assessed when a party fails to comply with the terms of an EAN. Therefore, liquidated damages claims shall not be assessed for the mere importation of violative WPM, but will be assessed for non-compliance with the EAN issued as a result of the importation of violative WPM.

**Q: Who will be subject to a liquidated damages claim for failure to comply with WPM regulation?**

**A:** The party that received the EAN and failed to comply with the terms of the EAN will be subject to a liquidated damages claim. In the event that a party receives an EAN, but was not responsible for the shipment (their bond was not obligated), it will not be subject to liquidated damages.

**Q: When will penalties be assessed?**

**A:** Penalties may be assessed when a party attempts to conceal a “WPM violation” or a party has received five (5) prior EANs in the previous fiscal year, nationally. Penalties based on a party’s prior history of receiving EANs may be assessed even if the party has complied with past EANs and/or has complied with the EAN that resulted in the penalty.

**Q: Is WPM that remains onboard a vessel subject to potential liquidated damages and penalties?**

**A:** Unmarked WPM that remains onboard a vessel (seagoing carrier) is not in violation of the ISPM-15 markings standard. However, if the WPM is unladed and found violative, then the vessel owner or carrier shall be issued an EAN if it is still responsible for the shipment at the time the violation is discovered. If the recipient does not comply with the terms and conditions of the EAN, it shall be subject to liquidated damages.

### ***Other Frequently Asked Questions Regarding WPM***

**Q: What is the reason for the WPM regulation?**

**A:** Untreated wood poses a significant risk of introducing plant pests, including pathogens, that can be detrimental to agriculture and to natural, cultivated, and urban forest resources. U.S. Department of Agriculture (USDA) regulations contain provisions to mitigate plant pest risk presented by the importation of such wood. Because wood packaging materials (WPM) are very often reused, the true origin of any piece of WPM is difficult to determine and, thus, its treatment status cannot be ascertained.

Therefore, the USDA amended its regulations to decrease the risk of WPM introducing plant pests into the U.S. by adopting the international standard for WPM approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention (IPPC) on March 15, 2002. By adopting the IPPC Guidelines, the U.S. is harmonizing its trade requirements with a host of other countries that have also adopted the guidelines and have, or are preparing to, implement the requirements.

**Q: What kinds of WPM are covered by this regulation?**

**A:** Most wood packaging materials are covered by the new rule including wooden packaging materials such as pallets, crates, boxes, and pieces of wood used to support or brace cargo. These materials are currently referred to as solid wood packing material (SWPM), which is defined as “[w]ood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.”

**Q: What are the actual treatment and marking requirements?**

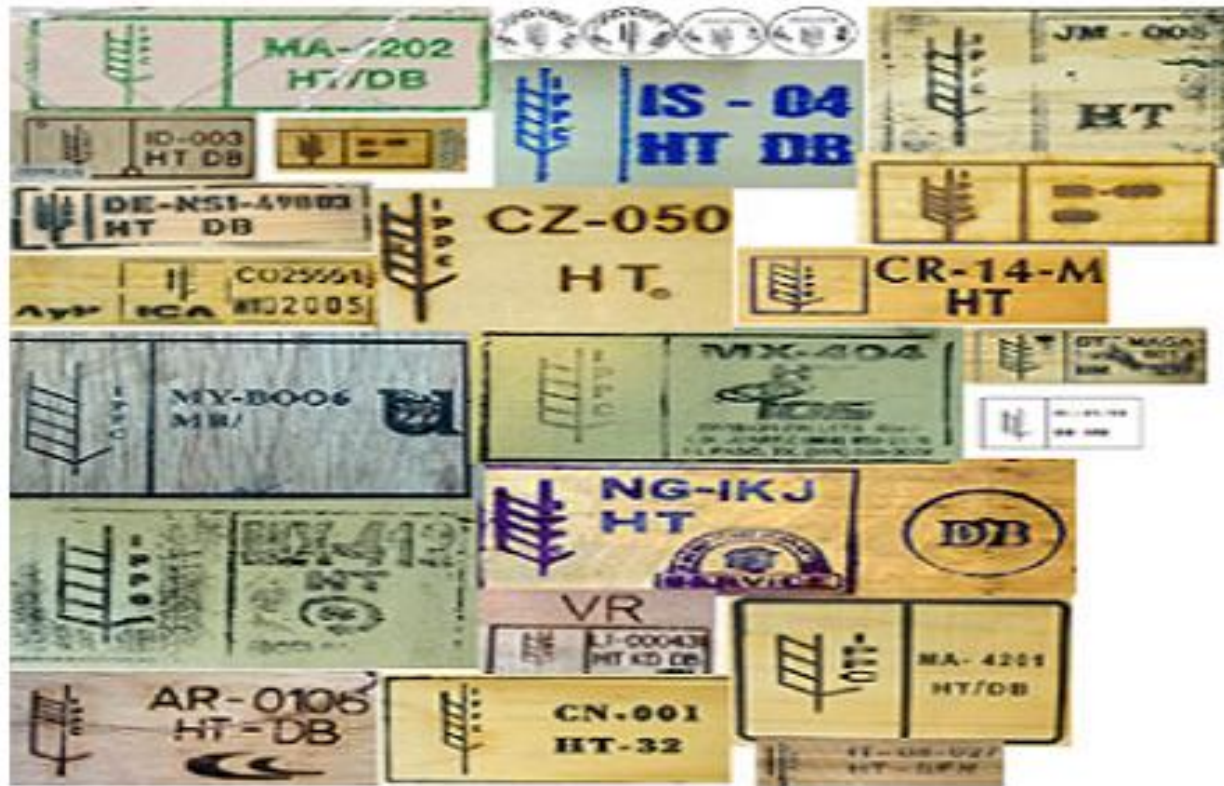
**A:** There are two treatment options, heat treatment or fumigation with methyl bromide. For heat treatment, WPM must be heat treated to achieve a minimum wood core temperature of 56°C for a minimum of 30 minutes. For fumigation, the WPM must be fumigated with methyl bromide in an enclosed area for at least 16 hours at the regulated dosage and then must be aerated to reduce the concentration of fumigant below hazardous exposure levels.

After either of these treatments, the WPM must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark, approved by the IPPC, to certify that wood packaging material has been subjected to an approved treatment.

**Q: What does the approved mark look like?**

**A:** Marks will vary by country and treatment establishment. Following are some examples. As you can see, the marks may vary in size, shape, and color. What the mark must include is the IPPC trademarked graphic symbol, the ISO two-letter country code for the country that produced the wood packaging material, a unique number assigned by the national plant protection agency of that country to the producer of the wood packaging material, and an abbreviation disclosing the type of treatment. In addition to these four required components, marks may also include other information.

APHIS has stated that they recognize the Guatemalan “TT” and “BM” markings as being valid indicators of treatment type. Based on this, shipments with such markings from Guatemala will be considered compliant.



**Q: What will happen when the WPM is marked but pests are found anyway?**

**A:** The enforcement of the WPM regulation is a separate process from the normal course of pest interdiction duties conducted by CBP Agriculture Specialists. In every case of discovery of a pest infestation, the protocol associated with safeguarding or eradication of the pest threat will supersede WPM enforcement. Once a pest threat has been eliminated, the WPM enforcement will be applied.

**Q: How often does WPM need to be re-treated?**

**A:** Acceptable treatments (*i.e.*, heat treatment or fumigation with methyl bromide) need only be done once. Once the WPM are properly treated and marked by an approved treatment facility in any country, the mark will be accepted as proof of compliance for the life of the WPM.

**Q: Are there any invoice or certificate requirements?**

**A:** Paper certifications of treatment will no longer be required or accepted. Invoice statements are no longer required for importation into the U.S. The only exception is noted above, where non-Canadian merchandise entering directly from Canada on Canadian-origin WPM will experience fewer delays at the Canada-U.S. border if entry documents contain a statement as to the origin of the WPM. Other countries may require or accept certificates, statements, or treatment and marking.

**Q. What about ABI requirements?**

**A:** The formerly required ABI field on SWPM from China and Hong Kong is now an optional field. An ADMIN message was posted on October 5, 2005, under the title "SOLID WOOD PACKING MATERIAL SYSTEM CHANGES FOR CN/HK COMPLETED". This ADMIN message explains that the SWPM field was made an optional field to give the trade time to make necessary changes. It also contains contact information should ABI participants have systems or operational questions on this change.

**Q: Is there a list of compliant countries and approved fumigators?**

**A:** There is a list of signatory countries. Signing the Agreement and being in compliance are not necessarily the same. A list of signature countries is maintained at <http://www.nwpca.com/ExportTreatment/ProgramOverview.htm>.

Contact information for international treatment facilities outside the U.S. may be requested from the appropriate country's plant protection agency. A listing of international plant protection agencies is maintained at the IPPO website. (<https://www.ippc.int/IPPE/En/nppo.jsp>)

USDA has designated two entities to manage the treatment programs in the U.S. The National Wooden Pallet & Container Association (NWPCA) manages the fumigation program and the American Lumber Standards Committee (ALSC) manages the heat treatment program.

A list of approved U.S. fumigators is maintained at the NWPCA website:  
<http://www.nwPCA.com/ExportTreatment/ProgramOverview.htm>

A list of approved U.S. heat treatment facilities may be found at the ALSC website:  
[http://www.alsc.org/WPM\\_facsimile\\_mod.htm](http://www.alsc.org/WPM_facsimile_mod.htm)

**Q: Is treatment the same for noncompliant WPM in all 137 signatory countries?**

**A:** No. For example, fumigation may be allowed in Mexico and phytosanitary certificates may be allowed in Canada under certain circumstances. CBP recommends that the trade verify a country's requirements before shipping internationally.

**Q: What is the United States?**

**A:** There are many different definitions of the United States. For purposes of importing WPM into the U.S., CBP uses the USDA definition, as this is a USDA regulation. For purposes of this regulation, the United States consists of the 50 states, American Samoa, District of Columbia, Federated States of Micronesia, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States. WPM traveling solely between ports in the above-listed areas will, for purposes of enforcement of the WPM regulation, be considered to be domestic WPM.

Please take special note of the fact that CBP defines the "Customs territory of the United States" as the 50 states, District of Columbia, and Puerto Rico. Therefore, some goods coming from outside the Customs territory will be considered to be using domestic WPM.

Finally, other countries will use other definitions. Canada, for example, exempts only continental U.S. WPM. In other words, WPM from Hawaii or any U.S. territory or commonwealth will need to be treated and marked for transit into Canada; only WPM from the contiguous 48 states, Alaska, and the District of Columbia are exempt from marking when going directly to Canada. If you have questions about a particular country's implementation of the ISPM 15, please contact the appropriate NPPO officer. A list of contacts is maintained at <https://www.ippc.int/IPPE/En/nppo.jsp>

**Q: How is CBP enforcing this regulation?**

**A:** The USDA regulation allows for enforcement discretion. CBP has completed its implementation plan and posted information to the trade at [www.cbp.gov](http://www.cbp.gov).

**Q: What happens when untreated or unmarked WPM arrives in the U.S.?**

**A:** If WPM is unmarked, it is considered to be untreated and non-compliant. The regulation allows for immediate export of non-compliant WPM. It does not allow for fumigation. It does not allow for any alternative disposal methods. Other countries may have other options, but the U.S. regulation allows only for export of the non-compliant WPM. Exportation of non-compliant WPM will be the responsibility of the importer of the merchandise.

If it is feasible to separate merchandise from non-compliant WPM, all expenses associated with that separation are the responsibility of the importer or importers of the merchandise. Separation of non-compliant WPM from compliant WPM or associated merchandise is not an absolute right; it is an option left to the government's discretion. All expenses related to the movement, inspection, separation, safeguarding, storage, and ultimate disposition of non-compliant WPM are the responsibility of the importer and at their expense. Specific protocol for this process will be posted at this site when approved.

**Q: Can separation of violative WPM from merchandise be authorized for a shipment that can be identified by a separate bill as a part of NVOCC consolidated cargo?**

**A:** As is the case with any shipment held by CBP for non-compliance with the WPM rule, the importer or other party of interest may request that CBP allow the separation of WPM from the imported commodities. The

requesting party must submit a completed CBP 3499 with all evidentiary materials required by the Implementation Plan. Part of the required material is evidence of commitment to export the non-compliant WPM that is separated from the merchandise referenced in the CBP 3499. In the case of a consolidated shipment, any affected importer or other party of interest may make application for separation. Export of any shipment (and export of the violative WPM separated from any shipment) remains the responsibility of the importer or other party of interest.

After separation, the cargo and non-violative WPM will be released. Export of violative WPM will be at the expense of the importer or other party of interest and may be accomplished via any carrier. The importer or other party of interest responsible for the exportation is not limited to using the services of the importing carrier, whether VOCC or NVOCC. Ordinarily, this will mean that entry will be denied and an IE will be cut. If movement outside of the original U.S. port becomes necessary to cause the ordered exportation, it will be on a restrictive T&E in conjunction with an appropriately executed USDA Emergency Action Notification (EAN) (PPQ-523). The EAN will provide and document restrictions as to routing, diversion, and authorized timeframe to complete the restricted T&E movement.

**Q: If a shipment contains non-compliant WPM and the country of export or the country of origin will not take it back, what then?**

**A:** The regulation does not state that violative WPM must be returned to any particular country. It simply states that the violative WPM may not come into the U.S. and may be exported. It will be the responsibility of the importer to determine an alternate destination that will accept the untreated WPM.

**Q: What if I export goods from the U.S. and the importing country refuses to let them in because the WPM is not marked?**

**A:** The answer to this question is dependent on circumstances. Basically, CBP will permit return of U.S. origin goods another country has rejected because of violative WPM as long as the shipment has not left customs custody or control in the other country and the entry refusal reason accompanies the shipment.

A shipment that consists only of supposedly returned non-compliant U.S. WPM (that is, the violative WPM have been removed from the merchandise), is to be allowed entry only if there is acceptable proof that ties the WPM to the original export from the U.S. Any shipments of supposedly returned U.S. WPM that do not have acceptable documentation will be treated as foreign WPM and refused entry.

**Q: How will CBP handle T&E and IT shipments that are not compliant?**

**A:** Violative WPM that is discovered by CBP will be required to be exported.

**Q: How will CBP handle WPM in consolidated shipments, mixed loads, bulk cargo, and any merchandise traveling in bond or on a carnet?**

**A:** All regulated WPM must be treated and marked; the regulation does not differentiate among types of loads or types of entry document. All regulated WPM is either compliant or non-compliant and will be handled accordingly.

**Q: There are concerns with third-country maritime containers arriving on a T&E at a Canada-U.S. land border port. If such a container has violative WPM and is refused entry by the destination country, how should it be handled?**

**A:** In cases of other country non-compliant WPM that have transited Canada or Mexico *en route* to the U.S. and are discovered at a U.S. port of entry, Canada or Mexico may allow the shipment to move in bond and under close scrutiny to an exit port.

The reciprocal is also true; that is, other country non-compliant WPM that have transited the U.S. *en route* to Canada or Mexico and are discovered at a Canadian or Mexican port of entry, may transit the U.S. on a T&E as long as any pest risk is mitigated and a PPQ Form 523 (clearly stating the transit and export conditions) accompanies the shipment. If there is a paper inbond CBP document, it must be marked to indicate the intended disposition of the shipment.

**Q: Are there any exemption in this regulation?**

**A:** There are certain exemptions written into the regulation, yes. They are:

- Manufactured wood materials such as fiber board, plywood, whisky and wine barrels, polywood, strandboard, and veneer,
- Pieces of wood that are less than 6 mm (0.24 in) in any dimension,

- Sawdust, wood wool, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces less than 6 mm in any dimension, and
- WPM used by the U.S. Department of Defense (DOD) to package non-regulated articles, including commercial shipments pursuant to a DOD contract.

Firewood, mesquite wood for cooking, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes will continue to be allowed to enter directly from Mexican border states.

There is no requirement for treatment or marking of WPM in domestic circulation.

Other exceptions that USDA has outlined include the following:

WPM made entirely from Canadian origin wood or U.S. origin wood are exempt from the treatment and marking requirements in trade between the two countries. Please see additional detail in these FAQs concerning shipments from Canada.

USDA has grandfathered in all wine crates for vintage years preceding 2006. This means that wine crates for any wine with a vintage year through 2005 are exempt from treatment and marking requirements regardless of when entry is made. Wines of vintage year 2006 and beyond will be required to be in crates that have been treated and marked.

Articles of wood that are manufactured to transport a specific non-regulated commodity (for example, fuel gauges, armaments, ammo boxes, etc.) are not considered to be WPM and are not required to be treated and marked.

WPM that is part of any bundle of imported lumber is exempt from the rule. Other WPM used in the transport of bundled lumber (for example, pallets or planks) are not exempt and are regulated WPM.

**Q: Part of the implementation plan is a section about exceptions for boxes made to house ammo, fuel gauges, etc. Would this include boxes made to house any machinery, like on a cruise ship, or aircraft parts, etc.?**

**A:** No. This exception refers to worked wood boxes, usually containing hinges, handles, and a molded or partitioned interior cradling feature, which are reused for the life of the non-regulated commodity. These boxes are usually (but not always) manufactured at the time of initial shipment of the commodity and generally are used for a unique item. They may, for example, house a unique antique armament or a specific, numbered fuel gauge.

The exception does not refer to WPM used to contain articles on a one-time basis even if the box is made specifically for the commodity (for example, to ship a motorcycle, a generator, or airplane parts, or for articles being returned for repair).

**Q: Cruise ships load stores in the U.S. before going foreign and then bring the empty pallets back to the U.S. Since these pallets started out in the U.S., do they have to be marked?**

**A:** These pallets need to be properly marked. There is no special exception granted by USDA for cruise ships. Therefore, CBP views WPM from cruise ships to be the same as any other WPM. Empty pallets must be treated and marked when coming from foreign.

**Q: Please explain about WPM in shipments to and from Canada.**

**A:** WPM made entirely of Canadian origin wood or U.S. origin wood is exempt from the treatment and marking requirements in trade between the two countries. The exemption only pertains to WPM coming directly to the U.S. (as defined by USDA) from Canada or directly to Canada from the U.S. (as defined by Canada).

For purposes of enforcement of the USDA WPM regulation, CBP has decided that the country of origin of the commodity is the country of origin of the WPM on all shipments coming from Canada absent an indication to the contrary. In other words, WPM in shipments of Chinese-made goods coming from Canada will be considered Chinese and must be treated and marked unless there is documentation to prove the WPM is Canadian. WPM in shipments of Canadian-made goods coming from Canada will be considered Canadian and need not be marked.

**Q: I still don't understand Canada—do I need to have a statement or not?**

**A:** CBP has decided for operational purposes that the country of origin of the associated merchandise is the country of origin of the WPM absent indication to the contrary. Therefore,

- If the country of origin of the goods is Canada, and the goods are coming directly from Canada into the U.S., we will hold that the country of origin of the WPM is also Canada absent an indication to the contrary. Canada origin WPM is exempt from the regulation, so nothing more is required. You do not need a mark or a statement.
- If the country of origin of the goods is, say, China, and the goods are coming directly from Canada into the U.S., we will hold that the country of origin of the WPM is also China absent an indication to the contrary; China origin WPM need to be treated and marked. You need a mark, not a statement.
- If the country of origin of the merchandise, to follow through on this example, is China, but it has been repackaged in Canada on Canada WPM, and the shipment is coming directly from Canada into the U.S., we will still hold that the country of origin of the WPM is China absent an indication to the contrary. A statement is the simplest way to provide CBP with an indication to the contrary.

In a nutshell, then, if other-than-Canada origin merchandise is coming directly from Canada into the U.S. with Canada origin WPM, CBP needs some way to know that the WPM are Canada origin. This can most simply be a statement that the officer will see when the load arrives.

**Q: We are considering the feasibility of taking advantage of the Canada origin exception by maintaining a stockpile of Canada origin WPM in the EU and using only that WPM for cargo to the U.S. Is this a good idea?**

**A:** The Canada origin wood exception is based on a reciprocal agreement between these two countries only. The exception applies only to Canada origin wood coming directly from Canada into the U.S.

**Q: Because of high levels of condensation inside many containers, the IPPC stamp is sometimes not readable. If the stamp is not legible, should the WPM in the shipment be considered noncompliant? Should these markings be considered counterfeit?**

**A:** The regulation says that the mark must be permanent and legible. Therefore, if the mark is not permanent or not legible, the WPM is violative. CBP will not validate any mark; this activity is left to USDA. CBP's responsibility under the regulation is to ensure that the WPM is legibly and permanently marked.

**Q: Sometimes the IPPC mark is not visible on dunnage because of in transit damage or on bracing if smaller pieces are cut from one 4x4. What is going to happen in those cases?**

**A:** Dunnage presents unique challenges. Often, pieces of dunnage are cut to fit a load and may, during that process, be separated from the IPPC marking. Other times, during the course of transit, dunnage is broken, crushed, abraded, or otherwise damaged; in these cases, too, pieces of dunnage will likely be separated from their compliance mark.

For purposes of enforcement of this regulation as it relates to dunnage, CBP intends to exercise its discretionary authority so that if CBP believes that cut or damaged pieces of dunnage are part of a larger piece of properly marked wood, CBP will determine that the unmarked dunnage has been treated and marked, and consider the unmarked dunnage to be non-violative.

**Q: Can compliant dunnage be offloaded without notifying CBP?**

**A:** *No, CBP must be notified prior to off loading compliant dunnage.*

**Q: I understand that Canada allows a workaround for the marking requirement for treated dunnage.**

**A:** Other countries may have other implementing criteria than the U.S. The U.S. regulation states that WPM must be treated and marked. Importers are encouraged to verify another country's requirements with the other country.

**Q: Where can I get more information?**

**A:** A careful reading of these FAQs will provide an answer for most of your questions. Other answers will be found in the Implementation Plan, also posted on [www.cbp.gov](http://www.cbp.gov).

If, after reading all the materials on this site, you have questions about the regulation itself, you may contact USDA. USDA has set up a toll free phone line to answer questions about the regulation. That number is **1-866-738-8197**.

Please note that USDA will **not** answer any questions about CBP operational issues. Those issues are most appropriately directed to your local port if your question has not been answered on [www.cbp.gov](http://www.cbp.gov).