



U.S. Department of Justice

Criminal Division

---

Washington, D.C. 20530

March 22, 2000

Raymond W. Kelly  
Commissioner  
United States Customs Service  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Dear Mr. Kelly:

You have asked whether we can restrict the importation of products that contain what is commonly referred to as "hemp." These products have been routinely imported into the United States for use as birdseed and in the manufacture of cloth and paper. In addition, a wide variety of products not intended for human consumption are also manufactured from hemp fiber and seed oil, including clothing, shoes and accessories such as wrist bands and necklaces, cosmetics, food products, and skin and hair products.

Over the past several years, however, we have received information that sterilized cannabis seed has been imported not solely for birdseed, but for the manufacture of health food products intended for human consumption, most commonly as dietary or nutritional supplements. Many of these products have tested positive for the presence of small amounts of naturally occurring tetrahydrocannabinol (THC). I have been informed that those hemp products intended for human consumption have THC at levels too low to trigger a psychoactive effect and are not purchased, sold or marketed with the intent of having a psychoactive effect.

Under the Controlled Substances Act, "[T]he mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of such plant which is incapable of germination" are excluded from the definition of marijuana. 21 U.S.C. §802(16). Therefore, products derived from this portion of the cannabis plant commonly referred to as "hemp" are explicitly excluded from regulation under the Controlled Substances Act.  
Id.

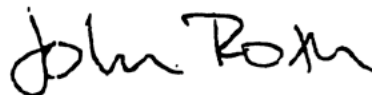
It has been suggested that "hemp" products containing THC are subject to regulation as a Schedule I drug under 21 U.S.C. §812(c)(17). However, 21 U.S.C. §812(c)(17) refers only to synthetic THC, not the THC naturally occurring within marijuana. The pertinent regulation, 21 C.F.R. §1308.11(d)(27), defines THC as "synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity...." (Emphasis added). Several courts of appeal have also held that the THC referred to in the statute is synthetic THC. United States v. McMahon, 861 F.2d 8, 10 (1st Cir. 1988); United States v. Wuco, 535 F.2d 1200, 1202 (9th Cir. 1976). No courts have held to the contrary, and we consider this well settled law. Thus, it appears we are not able to regulate or prohibit the importation of "hemp" products based on any residual or trace content of naturally occurring THC.

Finally, we have considered the so-called "marijuana derivatives" argument. Courts have held, for example, that hashish and other products are Schedule I controlled substances notwithstanding the fact that they are not specifically listed within the statutory definition of marijuana. Courts have so held because of the obvious Congressional intent to criminalize marijuana products derived from the marijuana plant which have the same narcotic effects as marijuana itself. With "hemp," by contrast, Congress has made its intent known by specifically excluding these products from its definition of marijuana.

While the Department's overall policy towards the cultivation of cannabis for the purpose of "hemp" production is currently undergoing review by the Attorney General, it is our legal opinion that we presently lack the authority to prohibit the importation of "hemp" products, absent regulatory language that interprets, or legislative action to modify, the definition of marijuana contained in 21 U.S.C. §802(16).

Please contact me if you have any questions.

Sincerely,



John Roth, Chief  
Narcotic and Dangerous Drug Section