

**GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP**  
**COUNSELORS AT LAW**

399 Park Avenue  
25<sup>th</sup> Floor  
New York, New York 10022-4877  
(212) 557-4000  
Fax: (212) 557-4415

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**New Import Declaration Requirement for Plants and Products**  
**Made from Plants**

By: Alan R. Klestadt & John A. Schoenig

The Farm Bill, H.R. 2419, contains a significant revision to the Lacey Act (16 USC 3371) which will establish a new import declaration requirement for “plants and plant products.” This new declaration requirement will become effective for goods arriving on or after November 24, 2008 and could impact a wide range of imported products containing wood, paper, and other materials.

Historically, the United States Department of Agriculture (USDA) and the Animal & Plant Health Inspection Service (APHIS) has been delegated oversight of plant and plant product imports into/exports from the United States. As a means of performing this function, USDA/APHIS required that the commercial invoice accompanying “regulated” plant or plant product shipments (i.e., shipments containing species listed under the Convention on the International Trade in Endangered Species (CITES) or the U.S. Endangered Species Act (ESA)) had to identify the scientific name of the plant species (i.e., genus and species) and the country of origin of the plant species contained within the shipment. However, no standardized declaration form or notice was required. In addition, there was no declaration requirement for non-regulated species.

Effective November 24, 2008, any person importing *any plant or plant product* must file a declaration upon importation that contains the (1) scientific name (i.e., genus and species) of any plant contained within the shipment, (2) the plant species country of origin (i.e., the country where the plant was harvested, cut, logged, or removed), and (3) a description of the value of the importation and quantity (including the unit of measure) of the plant/plant product.

While the language of the new law is vague and will require clarification from the administering federal agencies, we understand that the declaration requirement is intended to cover, with certain limited exceptions, all members of the plant kingdom (e.g., plants, trees, etc.) and products constructed thereof, all “regulated” and non-regulated plants and products constructed thereof, and both wild and artificially propagated (i.e., planted by man) plants and products constructed thereof.<sup>1</sup> Thus, the new plant declaration requirement markedly expands

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<sup>1</sup> The declaration requirement is not intended to cover plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

upon the previous declaration requirement which only applied to “regulated” plant species. Conceivably, this new requirement may extend to all wood and paper products (e.g., furniture, picture frames, paper stationary, etc.).

Notably, the law specifies that for plant products where the required species information is not definitively discernable, the importer must declare all potential species and countries of origin of the plants that may have been used in the plant product. For example, in the case where the plant species used to produce a plant product is unknown, the declaration must contain the name of each species of plant that may have been used to produce the plant product. The same would apply in instances where the plant country of origin is unknown. In addition, for paper or paperboard plant products that include recycled plant products, only the average percent of the recycled content must be declared without any reference to the actual species or country of origin of the recycled plant product. However, all declaration requirements (e.g., species scientific name, country of origin, etc.) would apply for the non-recycled plant content.

Failure to comply with the plant declaration requirement could result in civil fines of up to \$10,000 and criminal prosecution. In addition, violations could result in the suspension or revocation of any licenses/permits authorizing the import of plant products, such as a Protected Plant Permit, which authorizes an individual to import, export, and re-export protected plant species.

At this time, the exact format of the plant declaration (e.g., paper form, electronic filing, dissemination of required information on commercial invoice, etc.) has not been published. However, our office is currently in contact with the pertinent governmental agencies responsible for the formulation of the declaration in order to obtain information as to the declaration format as soon as it determined.

We will endeavor to provide further information as this issue continues to develop. In the meantime, please feel free to contact our office if you have any questions.