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**To Clients and Friends:**

**The "Farm Bill" and Revisions to the Lacey Act**

The recently passed "Food, Conservation and Energy Act of 2008", *aka* the "Farm Bill", has placed an additional burden on importers of wood and certain plants, as well as products made thereof, by amending the *Lacey Act*. The "Farm Bill" expands the scope of unlawful activity in violation of the *Lacey Act* plant protections to include import and export of *plants* that are:

- (i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates--
  - (I) the theft of plants;
  - (II) the taking of plants from a park, forest reserve, or other officially protected area;
  - (III) the taking of plants from an officially designated area; or
  - (IV) the taking of plants without, or contrary to, required authorization;
- (ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or
- (iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants.

With a possible implementation date as early as November 18, 2008, the "Farm Bill" imposes a new requirement that "**plant importers**" submit at the time of entry a certification that provides the following information regarding the plant component[s] of their imported merchandise:

- (A) the **scientific name of any plant** (including the genus and species of the plant) contained in the importation;
- (B) a **description of--**
  - (i) the **value of the importation**; and
  - (ii) the **quantity**, including the unit of measure, of the plant; and
- (C) the **name of the country** from which the plant was taken.

Violation of the plant certification requirement will now expose importers to the civil penalties under the Lacey Act of up to \$10,000 per negligent violation. There are also criminal penalties for knowing violations of the Lacey Act prohibitions against trade in plants/plant products. Note that certifications will not be required if the plant/plant products are used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

Official agency guidance concerning the new requirements is not yet available. A source at APHIS' Plant Health Programs has advised that the agency remains in the process of working out (1) the logistics of implementation with Customs and Border Protection and (2) the breadth of enforcement with CBP and a number of other U.S. agencies. It is anticipated that the agency will publish in September a notice with further details, and that enforcement may not take place as of November 18th.

An overly strict interpretation as to covered wood products in particular can have very significant impact on importers, as the requirements might extend to any printed matter with the imported articles. In light of the uncertain extent of enforcement, importers will need to review their product lines to determine if any products might contain wood and/or wild plant components, *or components derived from trees or wild plants*, so as to determine whether certifications may be required for particular products before the implementation date.

As to who will now be considered **a plant importer** subject to the requirements, the law provides the following new definition of *plant for purposes of the Lacey Act prohibitions*:

*(1) IN GENERAL- The terms ‘plant’ and ‘plants’ mean any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, **and including trees from either natural or planted forest stands.***

Accordingly, all products derived from wood are potentially subject to the importer certification requirement. The list of potentially affected tree and other “wild” plant products is extensive, and may include products such as textiles composed of fibers derived from wood in addition to articles containing wood components, such as furniture, rulers, footwear, umbrellas, and jewelry, or wild plant components, such as plant displays, decorative wreaths or articles of straw. In many instances, the original tree or plant source will not be evident, and this will necessitate the filing of more detailed certifications, to meet the statutory requirements, as provided in the new law.

Specifically, if the plant or wood source is not known, the “Farm Bill” provides that new product certifications required of *plant importers* must include the following detailed information:

(A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product;

(B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, contain the name of each country from which the plant may have been taken; and

(C) in the case in which a paper or paperboard plant product includes recycled plant product, the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection.

These detailed requirements will place a significant burden on importers of products determined to be subject to the certification requirements and may require corrective legislation. We will update public information as it becomes available, and, in the interim, are available to review the potential requirements affecting articles in client product line.

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