

Farm Bill Plant Declaration Requirement Expected to Cover Wide Range of Products

Under the recently-passed Food, Conservation and Energy Act of 2008 (commonly referred to as the "Farm Bill"), a new import declaration requirement will apply to "plants and plant products" imported into the United States. The requirement is expected to become effective by December 15, 2008.

The new law makes it unlawful for any person to import covered products unless the person files, at the time of importation, a declaration that contains:

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

The law currently provides that where species and/or origin information of the plant is unknown, the declaration must include all potential species and/or countries of origin of the plants that may have been used to produce the imported product. Furthermore, if a paper or paperboard plant product includes recycled plant product, the declaration must contain the average percent recycled content without regard for the species or country of origin of the recycled plant product. The declaration information noted above must be provided for the portion of the product that is not recycled plant product.

The scope of products covered by the term "plant products" is not defined in the Farm Bill and has not, to our knowledge, been finally determined. However, CBP has indicated that the term includes wood and wood products, paper products, textiles, apparel, toys, games and sporting goods. CBP estimates that approximately 8,000 tariff lines may be affected by the new requirement. CBP is currently working with representatives of the trade community in determining a compliance strategy.

The plant declaration requirement does not apply to plants used exclusively as packaging material, unless the packaging material itself is the item being imported.

Violations of the plant declaration requirement can result in severe penalties. The law provides for civil penalties up to \$10,000 per violation, as well as possible suspension or revocation of import permits relating to plants and plant products, and even criminal penalties.

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The format of the declarations has not, to our knowledge, been determined. There currently is concern that paper declarations will have to be filed. If paper declarations are required, CBP may require the filing of paper entries (as opposed to "paperless" entries) for products covered by the requirement.

We will provide additional information as it becomes available. We also anticipate providing genus and species information for covered products in the near future. If you have any questions, please contact us at compliance.us@ngjensen.com.

