

ALERTS AND UPDATES

The Lacey Act Has Teeth

September 20, 2011

Though enacted more than 100 years ago, recent amendments to the Lacey Act, 16 U.S.C. 3371 *et seq.* (the "Act"), have renewed its relevance. On August 24, 2011, for the second time in two years, armed federal agents raided the factories of world-famous Gibson Guitar Corporation to search for and seize inventory, materials and files relating to what the federal government believes is wood unlawfully exported from a foreign country in violation of the Act. The raids on Gibson illustrate that ***the Act has teeth***, and any businesses and individuals that trade in plants or products using plants, such as furniture, paper and lumber, sourced from foreign countries should take notice.

The Act Prohibits Trading in Illegally Sourced Plants and Plant Products

The relevant amendments to the Act, which became effective on May 22, 2008, and have been phased in since, have expanded the scope of the Act. It now prohibits the import, export, transport, sale, receipt, acquisition or purchase, ***in interstate or foreign commerce***, of plants that are taken, possessed, transported or sold in violation of any law or regulation of ***any state or any foreign law*** that protects or regulates plants or governs their export or transshipment. The Act defines the term "plants" to include any part or derivative product of a plant—including trees—which thus implicates such wood products as certain musical instruments, furniture, wood flooring and other construction materials, or their component parts.

The Act Requires Truthful and Accurate Declarations

Pursuant to the recent amendments, the Act also now prohibits making or submitting any false record, account or label for, or any false identification of, any plant or plant product that has been, or is intended to be: (1) imported, exported, transported, sold, purchased or received from any foreign country; or (2) transported in interstate or foreign commerce. In particular, the Act requires a specific importation declaration that contains: (1) the scientific name (genus/species) of the plant used in the product, or all possible plants that could have been used if the specific plant is unknown; (2) the value of the importation; (3) the quantity of the plant product being imported; and (4) the country of origin of the plant used in the product, or all possible countries of origin if the specific country of origin is unknown.

The Act Imposes Civil and Criminal Penalties for Trading and/or Declaration Violations

Businesses and individuals who "knowingly" violate the trading ban may be subject to stiff criminal and civil penalties, such as fines up to \$500,000 and up to five years in prison per violation. Businesses and

individuals who, "in the exercise of due care," should have known they were violating the trading ban, *i.e.*, negligently violated the Act, may be subject to fines up to \$10,000 and up to one year in prison per violation. Furthermore, any plant or product using a plant traded in violation of the Act may be seized and forfeited.

Businesses and individuals who "knowingly" violate the declaration requirement may be fined up to \$200,000 and may receive up to five years in prison per violation. Negligent violations of the declaration requirement are subject to a fine of \$250 per violation. Again, the offending plant and plant product may be forfeited to the government for a violation of the declaration requirement.

Enforcement of the Act

Agencies interested in the enforcement of the Act include, but are not limited to: (1) U.S. Fish & Wildlife Service; (2) Animal Plant Health Inspection Service; (3) Immigration and Customs Enforcement; (4) Customs and Border Protection; (5) U.S. Department of Agriculture; (5) Federal Bureau of Investigation; and (6) U.S. Forest Service. In investigating potential violations of the Act, these agencies may receive information from a wide variety of sources, including industry participants, foreign governments and border agents. It is important to note that the Lacey Act provides a "whistleblower" reward for any person who provides information leading to an arrest or civil penalty under the Act.

What Can Businesses and Individuals Do?

Given its renewed relevance, businesses and individuals trading in plants and products using plants sourced in foreign countries should consider taking steps to ensure their compliance with both the trading ban and the declaration requirement under the Act. Such steps should include efforts to: (i) identify the source of the plants being used, their scientific genus/species and their value; (ii) document the supply chain of the plants being used, such as any exporters, carriers and freight forwarders; and (iii) verify the accuracy of the information contained in customs-related documentation, including the import declarations, bills of lading and transshipment documentations. A systematic Lacey Act compliance program may help insulate businesses and individuals from the disruption of a federal investigation and from the significant criminal and civil penalties authorized under the Act.

For Further Information

If you have any questions about this *Alert*, please contact [Beatrice O'Donnell](#) or [Seth Goldberg](#) of our [Philadelphia](#) office, any of the [members](#) of the [Trial Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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