

The Day the Music Died

Most people will recognize the name of Gibson Guitar, one of the most widely known makers of guitars in the United States. Unfortunately the company was recently raided by the US Fish and Wildlife Service for a failure in the compliance arena. However, it was not for a violation of the Foreign Corrupt Practices Act (FCPA); UK Bribery Act; OFAC or other more widely recognized anti-corruption statutes. Gibson Guitar was raided through an investigation of the Lacey Act. As reported in the September 1 edition of the Wall Street Journal (WSJ), in an article entitled “*Gibson Guitar Wails on Federal Raid*” James Hagerty and Kris Maher reported about an August 24 raid by the US Fish and Wildlife Service. All of this reminded me of my ‘This Week in FCPA’ colleague Howard Sklar’s multiple discussions of compliance convergence.

The Lacey Act

The 111-year-old Lacey Act, originally passed to protect wildlife, was expanded in 2008 to cover wood products. This expansion of the Lacey Act requires companies to “make detailed disclosures about wood imports and bars the purchase of goods exported in violation of a foreign country’s laws.” In a subsequent WSJ article on September 2, entitled “*Forestry Law Splits Wood Industry*”, the same reporters stated that “that companies need to be more diligent about ensuring their entire supply chain is sourcing wood legally. The authors also quoted Leonard Krause, a Lacey Act consultant who is advising his clients to retain local counsel in the countries where the wood is purchased to make sure that the wood is not exported in violation of local law.

The Allegations

According to the American Shipper, in an article entitled “*Lacey Act ensnares Gibson Guitar Corp.*”, the Fish and Wildlife Service reportedly made two allegations in its affidavit, to obtain a search warrant for the raid. The first was that product in question “was exported from India by Atheena Exports under an incorrect tariff code (HS 9209), allegedly to avoid the Indian government’s prohibition on export of sawn wood products (HS 4407), and was declared upon import as finished veneer (HS 4408).” The second was that Gibson Guitar was not identified as the end user. The importer of record, Luthier Mercantile International, listed itself as the end user.

Compliance Convergence

So how does a company, or indeed an entire industry subject to the Lacey Act, manage all of these risks? I suppose the first thought would be to only buy American but that thought is probably as unrealistic as a US based energy company not doing business overseas because of the FCPA. No, I think the answer is that a company must first identify the risks it faces and then manage those risks. Here the primary risks would appear to be knowledge of local laws and liability for the acts of those in your supply chain. I would submit there are two keys to

managing these risks. The first is Process, Process and Process. The second is Document, Document and Document.

Whatever business you are in, the requirement is for you to understand what laws are applicable to your business. If you have to hire local lawyers in the jurisdiction where you are doing business to ascertain if your exports violate local law, don't whine about it, hire them. If your company has strict liability for those in your supply chain, engage in due diligence, train those vendors in the law and your requirements and manage those relations going forward. All of the above should be documented so that if your company is investigated it can produce those records in short order. Talking about unfair 111 year-old laws will not get you much sympathy, from the US Department of Justice, the US Fish and Wildlife Service or a Federal Judge.

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