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The Lacey Act Gives Gibson Guitar the Blues



BY MARCUS A. ASNER, SAMUEL M. WITTEN, AND GRACE PICKERING

Federal officials Aug. 25 raided two Gibson Guitar Corp. factories in Tennessee in connection with the U.S. government's investigation of whether Gibson had violated the federal law known as the Lacey Act.¹ The Lacey Act prohibits, among other things, trade in wildlife, fish, plants, and plant products that have been taken, transported, or sold in violation of law, including the law of other countries. Falsifying import declarations regarding plants or plant products within the scope of the Lacey Act also constitutes an offense under that law.²

The recent raid has brought national attention to the Lacey Act, a law that has broad implications for both conservation and international trade. The ensuing media storm and sometimes intense and ill-informed discussion has generated a great deal of controversy and misinformation both about the Lacey Act and the reach of U.S. law enforcement's jurisdiction with respect to this law. As we (authors) have no dog in this fight, we

thought it would be useful to take a step back and try to explain a bit about the Lacey Act and some of the underlying issues. Our hope is that the reader will then be better armed to understand what is actually at issue—and what is not at issue—in this case.

Evolution of the Lacey Act

Congress enacted the Lacey Act in 1900. It is the nation's oldest wildlife statute.³ Although the Lacey Act was originally designed to protect U.S. migratory birds, Congress has expanded the statute's reach through the years. Most recently, in 2008 Congress expanded it to cover any plant or plant product—including paper and wood—taken or logged in violation of a federal, state, or national law, including foreign laws. The 2008 amendment was intended in part to help counter the world's illegal logging trade by making it a crime to knowingly

¹ 16 U.S.C. §§ 3371-3378. The information in this article regarding the active proceedings against Gibson is believed to be current as of the date this article was published.

² 16 U.S.C. § 3372(f).

³ Department of Agriculture, *Lacey Act Primer* (April 2010), available at http://www.aphis.usda.gov/plant_health/lacey_act/downloads/LaceyActPrimer.pdf; see also Marcus A. Asner & Grace Pickering, *Advisory: The Lacey Act and the World of Illegal Plant Products* (2009), available at http://www.arnoldporter.com/resources/documents/Advisory_The_Lacey_Act_and_the_World_of_Illegal_Plant_Products_111009.pdf (describing the Lacey Act's provisions and history).

import wood unlawfully logged elsewhere in the world and to protect American forestry jobs against cheap and illegal wood imports.⁴

Not the First Raid. Gibson had been raided before, in 2009, in what at that time was the highest profile Lacey Act enforcement action based on the 2008 amendments targeting plants or plant products. Federal agents seized guitars made partially from ebony and “ebony wood in various forms,” such as fingerboards and guitar necks, that allegedly had been harvested and exported in violation of the law of Madagascar.⁵ Following that raid, the U.S. government commenced a forfeiture action in the Middle District of Tennessee against some of the Gibson material seized in the raid.⁶ The district court recently scheduled for Dec. 12 oral argument on the government’s renewed motion to stay the forfeiture action because of an ongoing and unresolved discovery dispute and on Gibson’s motion to reconsider and reopen the case.⁷

The August raid of Gibson has generated extensive public debate, and much confusion, about the nature of the Lacey Act and its enforcement. The current debate has featured three main issues:

- the factual basis for the U.S. government’s enforcement action;
- the Lacey Act’s “due care” requirement; and
- the Lacey Act’s impact on U.S. commerce.

Factual Basis For Enforcement Action

The Interior Department’s Fish and Wildlife Service (FWS) conducted its recent raid on Gibson’s premises based on the government’s June 2011 seizure of imported ebony that the FWS alleged had been exported in violation of an Indian statute prohibiting the export

of unfinished wood.⁸ The FWS also alleged that previous recent imports of Indian ebony were accompanied by paperwork that:

■ falsely characterized the ebony as finished wood (which is legal to export from India); and

■ did not disclose that Gibson was the importer.⁹ The U.S. government filed a forfeiture action for “25 bundles of Indian ebony wood” that were seized in June 2011 en route to Gibson, alleging that the bundles were unlawfully exported from India and were accompanied by false paperwork.¹⁰

While some criticism of the government’s position appears to dismiss the Indian regulation as a mere technicality unrelated to any conservation interest, that criticism is misplaced. Such regulations are fairly common and in part are designed to provide countries a way to reap more economic value from their natural resources and to regulate the exploitation of these resources.¹¹ Gibson maintains that it imported finished wood in the form of fingerboards and thus acted law-

⁸ Affidavit of Special Agent John M. Rayfield in support of search warrant # 11-MJ-1067 A, B, C, D ¶¶ 15-25 (Aug. 18, 2011) (the “FWS India Affidavit”). India prohibits the export of wood that falls under the international tariff HS 4407: “[w]ood sawn or chipped lengthwise, slices or peeled, whether or not planned, sanded or end jointed, or a thickness exceeding 6mm other than sawn timber made exclusively out of imported logs/timber.” E.g., ITC-HS, *Export Schedule-2, Table-B, Chapter-44, Wood and Articles of Wood; Wood Charcoal*, available at <http://www.eximguru.com/exim/dgft/itc-hs-export-schedule-2/table-b-chapter-44-wood-and-articles-of-wood-wood-charcoal.aspx>.

⁹ Affidavit in support of civil forfeiture ¶¶ 13, 17-27, *United States v. 25 Bundles of Indian Ebony Wood*, No. 3:11-cv-00913, docket no. 3 (M.D. Tenn. Sept. 27, 2011) (the “Seiler India Affidavit”); see also Andrew Stern, *Gibson Guitar to Fight U.S. Probe of Its Wood Imports*, REUTERS (Aug. 25, 2011), <http://www.reuters.com/article/2011/08/25/industry-us-gibsonguitar-probe-idUSTRE7707KC20110825>.

¹⁰ Complaint ¶¶ 2-5, *25 Bundles of Indian Ebony Wood*, No. 3:11-cv-00913, docket no. 1 (M.D. Tenn. Sept. 27, 2011). This case has been consolidated with the Madagascar wood action. Order, *25 Bundles of Indian Ebony Wood*, docket no. 6, No. 3:11-cv-00913 (M.D. Tenn. Sept. 30, 2011). The U.S. government has moved to stay the case to allow civil discovery; both Gibson and Luthiers Mercantile International Inc., the importer that sold the wood to Gibson, have opposed the motion. Motion to stay, *25 Bundles of Indian Ebony Wood*, docket no. 8, No. 3:11-cv-00913 (M.D. Tenn. Oct. 4, 2011); Claimant Gibson Guitar Corp.’s response to plaintiff’s motion to stay, *25 Bundles of Indian Ebony Wood*, docket no. 14, No. 3:11-cv-00913 (M.D. Tenn. Oct. 18, 2011); LMI’s response to the government’s motion to stay, *25 Bundles of Indian Ebony Wood*, docket no. 15, No. 3:11-cv-00913 (M.D. Tenn. Oct. 19, 2011).

¹¹ See U.N. Office on Drugs & Crime, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010), available at [http://www.unodc.org/documents/data-and-analysis/tocta/7.Environmental resources.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/7.Environmental%20resources.pdf) (“A number of countries have strict controls on logging, and some ban the export of whole logs or rough sawn wood, which serves both to protect the local timber processing industry and to reduce forest loss”); Nalin Kishor, et al., *Economic and Environmen-*

⁴ See Michael Davidson, *Where We Stand: The Lacey Act and Our Law Enforcement Work*, U.S. Fish & Wildlife: Open Spaces (Sept. 22, 2011), available at <http://www.fws.gov/news/blog/index.cfm/2011/9/22/Where-We-Stand-The-Lacey-Act-and-our-Law-Enforcement-Work>.

⁵ Affidavit of Kevin L. Seiler, ¶¶ 5-6, 9-11, *United States v. Ebony Wood in Various Forms*, No. 3:10-cv-00747 (M.D. Tenn. Aug. 9, 2010), docket no. 3 (the “Seiler Madagascar Affidavit”). Mr. Seiler is a U.S. Fish and Wildlife Service special agent who investigated Gibson’s alleged Lacey Act violations involving the ebony from both Madagascar and India.

⁶ Complaint, *Ebony Wood in Various Forms*, docket no. 1 (Aug. 9, 2010).

⁷ Order, *Ebony Wood in Various Forms*, docket no. 72 (Nov. 10, 2011). Gibson has moved for reconsideration of its motions, renewing its argument that the export of the wood was legal under Malagasy law. Claimant Gibson Guitar Corp.’s memorandum in support of motion to reconsider and reopen case at 8-12, docket no. 70 (Oct. 7, 2011).

fully under Indian law. It filed as an exhibit with its court papers a letter from the Indian government to support Gibson's position, using it to argue that because the export was lawful, U.S. authorities have no basis to bring an enforcement action under the Lacey Act.¹² The U.S. government, in contrast, asserts that the fingerboards are blanks and, thus, are unfinished.¹³ Regardless of whether Gibson's argument ultimately will prove persuasive, it does not squarely address the U.S. government's allegations about inconsistent characterization of the wood in the export and import forms and Gibson's alleged failure to disclose that it was the final destination for the wood.¹⁴ These disputed areas no doubt will be fleshed out further in the upcoming court battles.

Gibson similarly disputes the U.S. government's interpretation of the foreign law in the forfeiture proceedings that arose out of the 2009 raid involving imports from Madagascar. In that action, Gibson questions the U.S. government's interpretation of a Malagasy interministerial order regarding declarations accompanying ebony exports. The U.S. government argues that Gibson imported unfinished, semi-worked, and sawn ebony from Madagascar through an importer that did not have authorization to export such materials.¹⁵ Gibson maintains that the imports from Madagascar were legal because the exporter was authorized by that country to export fingerboards. It asserts that although the U.S. government has characterized the fingerboards as being "unfinished," Madagascar law expressly defines fingerboards as finished and therefore permissible for export.¹⁶ The U.S. government has responded that the seized items were sawn lumber intended to be finished in the United States and therefore were not finished

products.¹⁷ The court has not made a determination on the parties' opposing arguments and for now the case is stayed because of a discovery dispute.

Interpreting Foreign Law. Although disputes about foreign law can be complex, and critics of the U.S. government claim that U.S. courts should not be in the business of addressing issues of foreign law,¹⁸ the interpretation of foreign law is fairly common in U.S. legal proceedings, and U.S. federal courts have well-established procedures for resolving such issues.¹⁹ Nor is it really a defense that the relevant foreign country does not enforce its own environmental regulations.²⁰ Jurisdiction under the Lacey Act does not depend on the vigor with which the relevant foreign government enforces relevant laws.

Moreover, as the world's largest consumer, the United States has a strong interest in seeing that the world's renewable natural resources remain healthy, in part to protect the supply of resources we rely upon and in part to protect American business from being undercut by cheap resources illegally harvested overseas.

So it should come as no surprise that the Department of Justice has made clear that whether a nation actively enforces its own environmental laws is not relevant to a Lacey Act prosecution.²¹ In this respect, vigorous Lacey Act enforcement by U.S. authorities deters trade in unlawfully taken wildlife and plants where other nations do not enforce their own laws due to, for example, corruption, lack of resources, or political will.²²

'Due Care' Requirement

Gibson and other critics have questioned the Lacey Act's requirement that the importer exercise "due care"

tal Benefits of Eliminating Log Export Bans—The Case of Costa Rica, 27 THE WORLD ECONOMY 609 (April 2004) (acknowledging countries institute bans for this reason but arguing that it would be a Pareto improvement to eliminate the ban); *Recent Trends Show Indian Forest Products Business Booming*, 3 WOOD & PANEL WORLD: COVERING GLOBAL WOOD AND PANEL INDUSTRY 108-109 (July-August 2009), available at <http://woodandpanel.com/WPWJuly-Aug09/indusinfo108-109.htm> ("Until 1982, India was a net exporting country of wood and wood products, but since India's independence, the forest cover has dropped at an alarming rate—from 23% to 8%—prompting the government to drastically ban felling in Indian forests, allow imports of wood and wood products in a phased manner and ban exports of round as well as sawn timber.").

¹² Claimant Gibson Guitar Corp.'s response to plaintiff's motion to stay, *25 Bundles of Indian Ebony Wood*, No. 3:11-cv-00913, docket no. 14 (M.D. Tenn. Oct. 18, 2011); Letter from Daya Shankar, India's deputy director general of foreign trade, to Shri M. Gopalakrishnan, president, Wood Product Exporters Association (July 13, 2011), *25 Bundles of Indian Ebony Wood*, docket no. 14-1, No. 3:11-cv-00913 (M.D. Tenn. Oct. 18, 2011).

¹³ See Seiler India Affidavit, *supra* note 9, ¶¶ 5, 24, 27.

¹⁴ According to the FWS India Affidavit, the export paperwork stated that wood imported in June 2011 was HS 4408, but the mandatory Lacey Act declarations that accompanied the import listed the wood as HS 4407. FWS India Affidavit ¶¶ 21 & 25. Additionally, the FWS India Affidavit lists several examples of a failure to indicate that Gibson was the destination of the imports. *Id.* ¶ 30.

¹⁵ Seiler Madagascar Affidavit, *supra* note 5, ¶¶ 5, 18-20.

¹⁶ Memorandum in support of claimant Gibson Guitar Corp.'s motion to dismiss at 10-11, *Ebony Wood in Various Forms*, docket no. 8, No. 3:10-cv-00747 (M.D. Tenn. Oct. 14, 2010).

¹⁷ Preliminary response in opposition to claimant Gibson Guitar Corp.'s motion to dismiss at 3, *Ebony Wood in Various Forms*, docket no. 13, No. 3:10-cv-00747 (M.D. Tenn. Nov. 18, 2010).

¹⁸ E.g., Hank Campbell, *Gibson Guitars & the Lacey Act Misused*, SCIENCE 2.0 (Sept. 3, 2011), http://www.science20.com/science_20/gibson_guitars_and_lacey_act_misused-82210 (criticizing foreign law in U.S. courts).

¹⁹ E.g., Fed. R. Crim. P. 26.1.; Fed. R. Civ. P. 44.1 (both providing a protocol for the use of foreign law).

²⁰ See, e.g., Heath E. Combs, *Gibson Raid Raises Attention on Lacey Act Enforcement Furniture Importers Watching for Implications for Industry*, FURNITURE TODAY (Sept. 6, 2011), http://www.furnituretoday.com/article/542690-Gibson_raid_raises_attention_on_Lacey_Act_enforcement.php ("There's no provision [in the Lacey Act] that goes 'Find out if this law is important to the country. And then if it is important enforce it and if it's not important don't enforce it.'").

²¹ DOJ Environmental Crimes Section, *Lacey Act Amendments of 2008* at 17 (2009).

²² In its papers supporting its motion to strike Gibson's claims for lack of standing, the U.S. government attached as an exhibit a report regarding the unlawful harvesting of Madagascar's rosewood by the Environmental Investigation Agency, a nongovernmental organization. The report found "substantial evidence" of "[c]onfusion regarding the legal framework" concerning the "export of precious wood, created by conflicting ministerial and inter-ministerial orders and decrees." It also found that the Malagasy Ministry of Environment and Forests displayed a "lack of adherence to laws and regulations governing the forest sector." Global Witness & Environmental Investigation Agency, *Investigation into the Illegal Felling, Transport and Export of Precious Wood in Sava Region Madagascar* (2009), *Ebony Wood in Various Forms*, docket no. 31-2, No. 3:10-cv-00747 (M.D. Tenn. June 4, 2011).

in identifying the source of imported wildlife, plants, or wood. For example, the *Wall Street Journal* reported that Gibson hired attorneys to craft an amendment to the Lacey Act, spelling out in detail what “due care” means, and was looking for Congressional sponsors for the amendment.²³

Heated Debate. Although this “due care” issue has led to passionate criticism of the statute, it is worth noting at the outset that this issue has had no apparent impact to date on the Gibson cases. In fact, up to this point, it does not appear that the U.S. government is basing either enforcement action on the “due care” prong of the act. The Gibson case relating to Madagascar was based on a forfeiture theory rather than a civil or criminal prosecution based on an absence of due care. A forfeiture case turns on a strict liability standard, since forfeiture may be ordered “notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution.”²⁴

People or entities that possess wood products unlawfully taken, harvested, or exported to the United States may not keep those products, in the same way people who receive stolen goods have no right to keep them.

Gibson’s forfeiture proceeding turns on whether the wood is actually illegal contraband. Whether Gibson knew or should have known the imports from Madagascar were illegal if it had exercised “due care” is not at issue.²⁵ Similarly, the issues in the Indian wood case to date include not whether Gibson exercised “due care” but whether the wood was legal to export from India and whether the accompanying paperwork was accurate.²⁶

Context Important. However, since the “due care” standard has become a subject of debate, it is important to understand the context of the discussion and the way in which “due care” can arise in Lacey Act cases. The Lacey Act makes it a misdemeanor offense for a person to possess knowingly an object containing wood that was illegally taken, possessed, transported, or sold in violation of a federal, state, or other nation’s law—including regulations—if that person, “in the exercise of due care,” would have known that the wood was illegal.²⁷ As part of a misdemeanor prosecution under this provision, the U.S. government has to prove beyond a reasonable doubt that the defendant failed to exercise “due care” in making sure that she was not importing illegal goods.

There are no bright line rules in the statute about what qualifies as “due care,” and for good reason.

Given the complexities of international trade and variations in individual countries, what constitutes “due care” is very case- and fact-specific.

For example, the importation or handling of products from countries with known smuggling problems or higher levels of corruption would require greater diligence than analogous imports from countries without these concerns.²⁸

In fact, there is actually nothing particularly new about a nuanced standard such as “due care.” Businesses and individuals, despite their thirst for certainty, have long faced similar standards in other contexts and have adopted compliance programs to seek to ensure compliance with those standards. Our society and its judicial system readily accept the idea of prosecuting people for negligent homicide or civil tort actions for negligence, and “negligence” is not significantly different from the absence of “due care.” Whether someone was negligent or exercised “due care” typically is a matter for the judge or jury to decide.

Impact on U.S. Commerce

Critics have publicly condemned the Lacey Act’s potential negative effects on U.S. businesses, in part due to the cost of compliance and the requirement to exercise “due care” in following the law, and have therefore suggested that enforcement of the Lacey Act could cost U.S. jobs.²⁹

For example, to demonstrate her unhappiness with the Gibson enforcement action, Rep. Marsha Blackburn (R-Tenn.) invited Gibson’s chief executive officer to President Obama’s recent jobs speech before the U.S. Congress.³⁰ House Speaker John Boehner (R-Ohio), in a speech before the Economic Club of Washington, also reportedly called the Gibson raid an example of “excessive regulations [that] are making it harder for our economy to create jobs.”³¹

Additionally, some members of the House Committee on Energy and Commerce directly questioned DOJ’s actions, expressing particular concern at “the suggestion that if Gibson had the skilled work done in India, using the same wood, instead of here in America, then the importation would have been legal and the Department of Justice would not have carried out this heavy-handed enforcement action.” Those members further argued

²⁸ DOJ Environmental Crimes Section, *supra* note 21, at 16 (describing “Common Sense ‘Red Flags’”).

²⁹ Fox News, *Friday Lightning Round: Gibson Guitars Raid*, available at

<http://www.foxnews.com/on-air/special-report/2011/09/12/friday-lightning-round-gibson-guitars-raid> (Charles Krauthammer positing that the raid on Gibson was “another example of job destroying actions by the federal government”); Maher, *supra* note 23, at B4 (quoting Erik Autor of the National Retail Federation).

³⁰ Rep. Blackburn press release, *Blackburn to Host Gibson Guitar CEO for President Obama’s Address To Congress* (Sept. 7, 2011), available at <http://blackburn.house.gov/News/DocumentSingle.aspx?DocumentID=255344> (Blackburn stating her reason for inviting the Gibson CEO was that “Gibson Guitar is at the heart of this jobs debate . . . Maybe if the President spent more time finding real solutions to empowering small business owners and less time hindering businesses like Gibson, we’d see more new jobs being created.”).

³¹ See 157 Congressional Record H6276 (daily edition Sept. 21, 2011) (statement of Rep. Blumenauer).

²³ Kris Maher, *Raid at Gibson Strikes Sour Note*, WALL STREET JOURNAL, Sept. 21, 2011, at B4.

²⁴ 16 U.S.C. § 3374(a)(1).

²⁵ Rep. Jim Cooper (R-Tenn.) Oct. 14 introduced a bill titled “Retailers and Entertainers Lacey Implementation and Enforcement Fairness (RELIEF) Act” that would, among other things, eliminate the forfeiture provision, reduce penalties for first-time offenses, and require the Federal Trade Commission to review the effects of the RELIEF Act on competitiveness in the domestic market for raw materials used to make musical instruments. H.R. 3210, 112th Cong. (2011).

²⁶ Complaint ¶¶ 2-5, 25 *Bundles of Indian Ebony Wood*, docket no. 1 (M.D. Tenn. Sept. 27, 2011).

²⁷ 16 U.S.C. § 3373(d)(2). The crime becomes a felony if the person involved knowingly possessed, sold, or transported the item concerned and knew of the illegality of the item’s taking. Section 3373(d)(1).

that “it is hard to conclude anything other than the fact that your agencies and this Administration are actively pursuing regulatory and legal policies that discourage job growth in the United States and encourage shipping those very same jobs overseas.”³²

Policy Choices Ignored. This criticism simply ignores the policy choices that have led U.S. legislators for more than a century to endorse the Lacey Act—including concerns about conservation and renewable natural resources, protection of trade rights, respect for the laws of other countries, and the protection of U.S. jobs.

On the final point, there is no agreement that enforcing the Lacey Act harms American jobs. Lacey Act advocates in both Congress and the forestry industries have applauded the role that the Lacey Act plays in preserving U.S. jobs. Rep. Earl Blumenauer (D-Ore.), a sponsor of the 2008 amendments that added timber to the scope of the Lacey Act, has pointed to the job-saving role of the act, noting the estimated billion dollars of “lost opportunities and lower prices” due to illegally logged wood coming into the U.S. market and the industry support for the expansion of the law.³³

James French, CEO of Northland Forest Products Inc., told the *Wall Street Journal* that the Lacey Act “very much is a bill that has helped save domestic jobs in the hardwood industry.”³⁴ Lacey Act supporters also point to its power to reduce the import of cheap, illegally logged hardwood that could otherwise flood the U.S. market and lead to losses in U.S. jobs.³⁵ Despite the current criticism of the enforcement action in some circles, the Lacey Act has significant support from many parts of the private sector.³⁶

³² Letter from House Energy and Commerce Committee to U.S. Fish & Wildlife Service, Interior Department, and DOJ (Sept. 8, 2011), available at <http://republicans.energycommerce.house.gov/Media/file/Letters/090811%20Letter%20to%20DOJ%20Interior%20Fish%20and%20Wildlife.pdf>.

³³ 157 Congressional Record H6276 (daily edition Sept. 21, 2011) (statement of Rep. Blumenauer).

³⁴ Maher, *supra* note 23, at B4.

³⁵ *Id.*; see also Hearing on H.R. 1497—the Legal Timber Protection Act, House Committee on Natural Resources Subcommittee on Fisheries, Wildlife and Oceans (Oct. 16, 2007) (statement of Ann Wroblewski, vice president of global government relations for International Paper Co., on behalf of the American Forest & Paper Association), available at <http://naturalresources.house.gov/uploadedfiles/wroblewski10.16.07.pdf> (“Illegal logging, associated illegal border trade, and the use of illegally obtained timber in manufacturing distort international trade and reduce market opportunities for U.S. suppliers. The very presence of illegally procured wood fiber in the international marketplace affects the competitiveness of U.S. producers who operate legitimately in accordance with national and international environmental and trade rules.”).

³⁶ By coincidence, on the same date Rep. Blumenauer made his speech in Congress, the World Future Council awarded the U.S. government a “Future Policy Award” for the 2008 amendments to the Lacey Act. The World Future Council applauded the 2008 amendments because they “forced importers to take responsibility for their wood products and have already produced positive results in increasing due diligence assessments

Finally, much of the public discussion of the Gibson matter has thus far been one-sided, with critics of the U.S. government action speaking loudly and the government not replying point by point. This is because the U.S. government is pursuing an enforcement action and, true to form, generally does not publicly discuss the issues of the case outside the proceeding itself.³⁷ Nonetheless, DOJ has responded to Rep. Blackburn, affirming that those who unknowingly violate the Lacey Act do not face criminal prosecution and stating that its enforcement efforts are focused on “those who are removing protected species from the wild and making a profit by trafficking in them.”³⁸

Conclusion

The most recent Gibson action has stirred up a lot of high-profile and high-intensity rhetoric and confusion regarding the content and goals of the Lacey Act and the basis for the pending enforcement actions. The issues are serious and important, but we think it would help the discussion if the case and the current arguments are considered carefully and dispassionately. The Lacey Act is one of the bulwarks of U.S. efforts to control international trade in illegally taken wildlife and plant products, and it has long been recognized as important for both U.S. and foreign economies. As with any other law, there is room for debate on its merits and the manner in which it is enforced, but such arguments must be founded on the law itself, its history and objectives, and on the cases where it is being invoked.

and demand for certified wood products.” World Future Council, *Future Policy Award 2011: Factsheet of Winning Policies*, available at http://www.worldfuturecouncil.org/fileadmin/user_upload/PDF/Factsheet_2011_Future_Policy_Award.pdf.

³⁷ Letter from Christopher J. Mansour, Department of Interior, and Ronald Weich, DOJ, to Rep. Blackburn (Sept. 19, 2011), available at http://blackburn.house.gov/UploadedFiles/DOJ_-_DOI_response_re_Gibson_Guitar.pdf (“Pursuant to longstanding Department of Justice policy, we are not in a position to provide a briefing or details relating to ongoing investigations or matters in litigation.”).

³⁸ *Id.* at 3.

Marcus Asner is a partner in the white collar criminal defense practice group at Arnold & Porter LLP’s New York office. His practice encompasses international and domestic criminal matters, including complex business fraud cases.

Samuel Witten is counsel at Arnold & Porter and joined the firm’s Washington, D.C., office in 2010 after 22 years at the State Department, where he served as deputy legal adviser and specialized in international law enforcement cooperation.

Grace Pickering is an associate in Arnold & Porter’s New York office, where she is a member of the litigation practice group.