Lacey Act Amendments of 2008 Exercising Due Care To Ensure Compliance



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History of the Lacey Act

- Oldest wildlife protection statute in the U.S.
- Well-established tool to combat trafficking in illegal wildlife, fish, and plants
- Amended in May 2008 to provide a tool to combat illegal logging and trade in illegally taken plants

The Amended Lacey Act

The Lacey Act now makes it unlawful to <u>import</u>, <u>export</u>, <u>transport</u>, <u>sell</u>, <u>receive</u>, <u>acquire</u>, or <u>purchase</u> in <u>interstate</u> or <u>foreign</u> <u>commerce</u> any plant, with some limited exceptions, taken or traded in violation of plant protection laws of the U.S. or foreign governments.

Examples of Illegal Logging:

- Theft of timber, including taking from parks, forest reserves, protected areas, and officially designated areas
- Taking without, or contrary to, required authorization
- Taking without payment of royalties, taxes, or stumpage fees
- Taking in violation of law governing the export or transshipment of plants.

Lacey Act Enforcement

Penalties for Lacey Act Violations:

- Forfeiture—seizure of product
- Civil Penalties—Monetary penalties
- Criminal Penalties—Fines and potential imprisonment

Lacey Act Violations

• Forfeiture

 Strict liability forfeiture if the plant was illegally taken, possessed, transported, or sold.

Civil Penalty

In the exercise of due care should have known plant was illegally taken, possessed, transported, or sold

Criminal Misdemeanors

- In the exercise of due care should have known plant was illegally taken, possessed, transported or sold
- Or knew of illegality, but plant value of less than \$350

Criminal Felonies

- Knowing violation
 – knowledge of facts and illegality, need not know specific law violated
- Involves import or export or commercial conduct with plant value of more than \$350

Exercising Due Care

"Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances."

Due care "is applied differently to different categories of persons with varying degrees of knowledge and responsibility."

Due care: Common-Sense Red Flags

 Goods significantly below going market rate

 Cash only or a lower price for goods without paperwork

Paperwork invalid or otherwise suspect

Unusual sales methods or practices

 Transactions fit the description of illegal transactions discussed in trade/industry publications

Inability of suppliers to provide rational answers to routine questions

Tools to Demonstrate Due Care

- Develop a compliance plan
- Document how you follow compliance plan in business transaction
- Train employees—they are your agents
- Visit suppliers
- Ask questions
- Develop and follow industry standards

Lacey Act Enforcement Cases

U.S. v. Harlan Crouch and Cocobolo, Inc.,
Wood From Peru Valued At \$7,150.00

 Strict Liability Administrative Forfeiture Under Lacey Act

Petition for Remission (Return of Wood)
 Denied June 2010

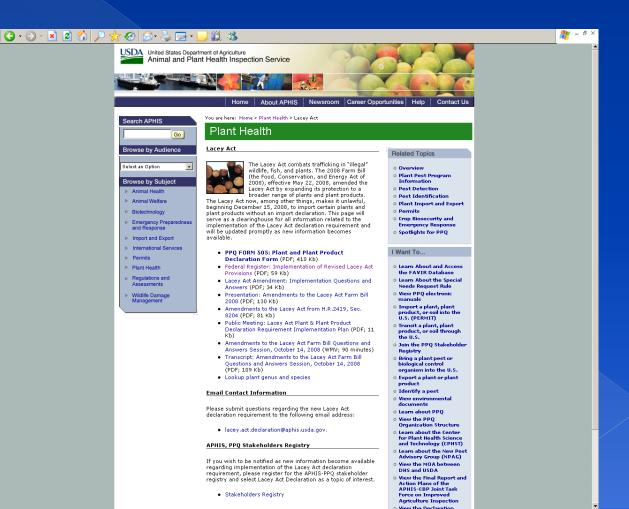
Lacey Act Enforcement Cases

U.S. v. Gibson Guitar Co.

- August 6, 2012 Criminal Enforcement
 Agreement with the U.S. Department of Justice
 - Monetary Penalty of \$300,000
 - Community Service Payment of \$50,000
 - Gibson Agreed to Forfeiture of Wood from Madagascar valued at \$261,000

APHIS Lacey Act Website

http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml



Please refer Lacey Act inquiries to:

lacey.act.declaration@aphis.usda.gov

