

# Sending A SWAT Team To Collect On A Parking Ticket

**G**ibson's agreement to pay \$350,000 to settle with the Department of Justice over alleged Lacey Act violations prompted a flood of press releases from environmental groups, lawmakers, and U.S. wood manufacturers. In unison, they hailed the settlement as a win for the world's forests, a blow against slave labor, a victory for American jobs, and a triumph of diligent law enforcement. The actual settlement agreement, jointly signed by Justice officials and the Gibson legal team, paints a far different picture. Presenting a set of facts both sides agree on, it depicts overzealous and poorly informed enforcement officials in hot pursuit of a company that was trying in good faith to comply with contradictory foreign statutes. It also inadvertently sums up all that is wrong with the Lacey Act provision that holds U.S. firms criminally liable for violations of foreign laws.

Suspecting a Lacey violation, in 2009, the Environmental Crimes unit of the Justice Department, aided by the FBI and Fish and Wildlife Service, raided Gibson's Nashville factory and seized pallets of ebony fingerboard blanks that had been imported from Madagascar. In 2006, Madagascar had banned the export of unfinished ebony, and two years later had prohibited the export of all ebony, so the DOJ felt they had a strong case. On a closer reading of the statutes, however, their case started to unravel. The order banning "unfinished" ebony contained a provision specifically permitting the export of guitar fingerboards. While it didn't make a clear distinction between fingerboard blanks, and partially finished and fully finished, fretted fingerboards, does the global environment truly hang on whether a piece of ebony has a fret slot?

Upon banning ebony exports in 2008, the Madagascar government simultaneously issued licenses permitting select forest operators to legally ship wood that had been cut previously. The DOJ acknowledges that Gibson's ebony came from a logger who had obtained one of the coveted export licenses. Documents seized during the raid also showed that Gibson had acquired the wood from a Forest Stewardship Council certified broker, who had provided ample assurances that it was in compliance with all relevant statutes. DOJ said that these circumstances partially exonerated Gibson, but that an internally circulated email from a company wood buyer stating "Proving legality is a major problem," somehow showed criminal intent.

While they were sorting through the complexities of Madagascar law, in 2011 the DOJ raided Gibson again, seizing Indian rosewood fingerboard blanks from plants in Memphis and Nashville. This time, they charged that the wood was "unprocessed" under Indian law and unlawful to export, because it was several millimeters too thick. The Indian Foreign Trade office, along with several local industry groups, pushed back immediately and said that the DOJ had completely misread the law, noting that millions of similar

fingerboards had been exported without issue over the past three decades to guitar makers around the world.

Proven wrong on a factual point, the DOJ returned the seized rosewood and gave Gibson the green light to continue importing it as they had in the past. To save face, they sheepishly noted that if India ever changes its laws to prohibit such export, and Gibson fails to act accordingly, another raid may be in the works.

So three years and two armed raids later, the Justice Department admitted that Gibson did nothing wrong in importing Indian rosewood. Ambiguously drafted statutes make the Madagascar case less clear cut, but the best the presiding Assistant Attorney General can say is that the guitar maker "may have" violated some foreign statutes. This "may have" cost Gibson \$350,000 in fines, the loss of wood valued at \$261,000, and \$2.4 million in legal fees. Not to mention the costs associated with disruptions in production, and having a reputation tarred by a government agency.



The biggest argument against the amended Lacey Act is that it holds U.S. companies liable for violations of the laws of all the world's 200 countries. But if the U.S. Department of Justice, with its virtually unlimited resources, has a demonstrated problem grasping the nuance of foreign law, is it fair to hold private enterprises like Gibson to a higher standard? Furthermore, should arguments over the fine points of Madagascar law be elevated to criminal status? Gibson CEO Henry Juskiewicz rightly calls his company's legal odyssey "a matter that could have been addressed with a simple contact by a caring human being representing the government. Instead, the Government used violent and hostile means with the full force of the U.S. government and several armed law enforcement agencies costing the taxpayer millions of dollars."

But what's worst about this case is how an unlikely coalition of environmental groups, U.S. wood manufacturers (whose wood consumption dwarfs the music industry), and the Department of Justice can transform the use of raw coercion on flimsy legal grounds into some kind of a victory. For anyone who thinks our assessment is overly harsh, we suggest they go to Gibson's website, where they can read the Department of Justice Settlement for themselves. There is no argument against proper stewardship of finite wood resources. However, there is something wrong with abandoning basic concepts of due process and proportionality, and creating scapegoats in the name of a worthy cause.

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