



U.S. Department of Justice  
United States Attorney  
Middle District of Tennessee

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Nashville, Tennessee 37203-3870

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July 27, 2012

Donald A. Carr, Esq.  
William M. Sullivan Jr., Esq.  
Pillsbury Winthrop Shaw Pittman, LLP  
2300 N Street, NW  
Washington, DC 20037

Re: Gibson Guitar Corporation

Dear Mr. Carr and Mr. Sullivan:

On the understandings specified below, the United States Attorney's office for the Middle District of Tennessee (hereinafter referred to as "this Office") and the United States Department of Justice, Environmental Crimes Section (hereinafter referred to as "ECS"), (hereinafter collectively referred to as "the Government"), and Gibson Guitar Corp. (hereinafter referred to as "Gibson"), by its undersigned attorneys, pursuant to the authority granted by Gibson's Board of Directors, hereby enter into this Criminal Enforcement Agreement ("the Agreement").

This Agreement is part of a resolution of criminal matters relating to allegations that Gibson ordered, purchased, or imported ebony and/or other wood originating in Madagascar, and ebony and rosewood originating in India, to the United States in violation of the Lacey Act, Title 16, United States Code, Section 3371, *et seq.* and other applicable civil and criminal laws, including, but not limited to Conspiracy, Title 18, United States Code, Section 371. A related agreement resolves the related civil forfeiture matters as further described below.

By this Agreement the Government agrees that it will not prosecute any criminal action, against Gibson (except for criminal tax violations, as to which the Government cannot and does not make any agreement) related to violations of the Lacey Act or any other law resulting from Gibson's order, purchase, or importation of ebony and/or other wood from Madagascar and ebony and rosewood from India, from the beginning of this matter through the date of execution of this Agreement, including without limitation, from June 2008 through September 2009, as described, in part, in Appendix A (Statement of Facts) hereto, which is incorporated by reference herein. The Government enters into this Agreement based, in part, on the following factors: (a) Gibson's voluntary disclosure of the facts described in Appendix A; (b) Gibson's cooperation with the Government and the investigation conducted by the Fish and Wildlife Service; (c) remedial efforts already undertaken, and to be undertaken, by Gibson, as described in Appendix B (Lacey Act Compliance Plan) hereto, which is incorporated by reference herein; (d) unique

considerations relative to Malagasy/U.S. diplomatic relations; and (e) the evidence discovered during the course of the investigation.

It is understood that Gibson accepts and acknowledges responsibility for the conduct set forth in Appendix A. The parties agree that their public statements regarding this Agreement will not contradict the statement of facts in Appendix A.

No information given by or on behalf of Gibson as of the date of this Agreement or at the request of the Government (or any other information directly or indirectly derived there from) will be used against Gibson in any prosecution by the Government or other action against Gibson related to these matters. In the event of any material breach of this Agreement by Gibson, the preceding sentence shall become ineffective. This Agreement does not provide any protection against prosecution for any crimes except as set forth herein, and applies only to Gibson, and not to any other entities or individuals except as set forth in this Agreement. Gibson expressly understands that the protections provided to Gibson under this Agreement shall not apply to any acquirer or successor entities unless and until such acquirer or successor formally adopts and executes this Agreement.

This Agreement shall have a term of eighteen months from the date of this Agreement, except as specifically provided herein. It is understood that for the eighteen month term of this Agreement, Gibson shall: (a) commit no criminal violations; (b) truthfully and completely disclose, upon request, non-privileged information with respect to the activities of Gibson, its current and former directors, officers, and employees, and others, concerning the import or purchase of ebony or other woods for use in manufacturing guitars; and (c) bring to the Government's attention all criminal conduct by, or criminal investigations of, Gibson or any of its senior managerial employees, that comes to the attention of Gibson or its senior management, as well as any administrative proceeding or civil action brought by any governmental authority that alleges fraud or criminal violations by or against Gibson.

During the term of this Agreement, Gibson shall: (a) cooperate fully with the Government and any law enforcement agency designated by the Government regarding Lacey Act investigations (b) assist the Government in any Lacey Act investigation or prosecution arising out of the conduct described in this Agreement by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding concerning the Lacey Act; (c) use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, agent, or employee at any meeting or interview or before the grand jury or at any trial or other court proceeding; and (d) respond to requests for all non-privileged information, documents, records, or tangible evidence or any designated law enforcement agency inquiries concerning a Lacey Act investigation or prosecution.

It is understood that Gibson agrees to pay a monetary penalty of \$300,000 to the United States. Gibson must pay this sum within ten days of executing this Agreement. Pursuant to the Lacey Act, 16 U.S.C. § 3375(d), the payment of the penalty imposed shall be directed to the Lacey Act Reward Account. Gibson acknowledges that no tax deduction may be sought in connection with this payment.

It is further understood that Gibson agrees to make a community service payment of \$50,000 to the National Fish and Wildlife Foundation ("NFWF") to be used by NFWF or another organization selected by NFWF for the purpose of funding a project or projects related to research and/or activities to promote the conservation, identification, and/or propagation of protected tree species used in the musical instruments industry as well as the forests in which those species occur. Gibson acknowledges that no tax deduction may be sought in connection with this payment and that it shall not advertise this community service payment except as being a condition for resolving this matter.

It is further understood that Gibson will continue to strengthen its compliance, bookkeeping, and internal controls standards and procedures, as set forth in Appendix B. Gibson further agrees to report to the Government regarding its compliance with this Agreement at the mid-point of the term of the Agreement (9 months after its execution) and 60 days prior to the expiration of the 18-month term of the Agreement.

The Government and Gibson acknowledge and agree that certain questions and inconsistencies now exist regarding the tariff classification of ebony and rosewood fingerboard blanks pursuant to the Indian government's Foreign Trade Policy. Accordingly, the Government will not undertake enforcement actions related to Gibson's future orders, purchases, or imports of ebony and rosewood fingerboard blanks from India, unless and until the Government of India provides specific clarification that ebony and rosewood fingerboard blanks are expressly prohibited by laws related to Indian Foreign Trade Policy. The Government agrees to provide Gibson notice of any such clarification from the Government of India in the future and a reasonable period of time (60 days or as otherwise agreed) to address the potential change in the understanding of the law as it relates to shipments received by or en route to Gibson.

This Agreement shall have force and effect only upon the occurrence of both: (a) execution of this Agreement by the Government and Gibson; and (b) execution of a Civil Settlement Agreement in three civil forfeiture actions before the United States District Court for the Middle District of Tennessee: (a) United States v. Ebony Wood in Various Forms, Civ. No. 3:10-cv-00747, (b) United States v. 25 Bundles of Indian Ebony Wood, Civ. No. 3:11-cv-00913, and (c) United States v. Indian Ebony and Rosewood, Civ. No. 3:12-mc-00014 (in which a complaint has not yet been filed), whereby Gibson will withdraw any and all claims interposed in U.S. v. Ebony Wood in Various Forms, Civ. No. 3:10-cv-00747, pertaining to wood from Madagascar, and will withdraw any and all claims and file corresponding petitions for remission and mitigation, as provided by law, in the remaining two actions referenced in (b) and (c) above, pertaining to wood from India, which the Government does not oppose.

It is also understood that, if the Government determines that Gibson has committed crimes under the Lacey Act subsequent to the date of signing of this Agreement, determines that Gibson has given false, incomplete, or misleading testimony or information at any time, or should Gibson otherwise violate any material provision of this Agreement, Gibson shall thereafter be subject to prosecution for any federal violation of which the Government has knowledge. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Gibson, notwithstanding the expiration of the statute of limitations between the signing of this Agreement

and expiration of the term of this agreement plus one year. Thus, by signing this Agreement, Gibson agrees that the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed shall be tolled for the term of this Agreement plus one year.

It is further understood that, if the Government determines that Gibson has committed any crime after signing this Agreement, or that Gibson has given false, incomplete, or misleading testimony or information, or has otherwise violated any provision of this Agreement, the Government may proceed with further investigation and enforcement. In such further enforcement, Gibson shall not seek to suppress: a) any statements made by Gibson (through any of its current or former officers, directors, or employees) to the Government or other designated law enforcement agents in furtherance of the negotiation of the Agreement or between the date of the Agreement and the violation of the Agreement (including Appendix A hereto and any future testimony given by Gibson or its employees, agents, and officers, before any tribunal), under Rule 410 of the Federal Rules of Evidence or any other statutes, rules, or Constitutional provisions specifically pertaining to statements made to the Government during the course of plea discussions; and b) any information or evidence derived from leads based on any statements made by Gibson (through any of its current or former officers, directors, or employees) to the Government or other designated law enforcement agents in furtherance of the negotiation of the Agreement or between the date of the Agreement and the violation of the Agreement (including Appendix A hereto and any future testimony given by Gibson or its employees, agents, and officers, before any tribunal), under Rule 410 of the Federal Rules of Evidence or any other statutes, rules, or Constitutional provisions specifically pertaining to statements made to the Government during the course of plea discussions.

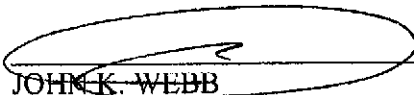
It is further understood that this Agreement does not bind any federal, state, local, or foreign prosecuting authority other than the Government as defined in this Agreement. The Government will, however, bring the cooperation of Gibson to the attention of other prosecuting and investigative offices, if requested by Gibson.

It is further understood that Gibson and the Government may disclose this Agreement and the attached appendices to the public.

With respect to this matter, from the date of execution of this agreement forward, this Agreement supersedes all prior, if any, understandings, promises, and / or conditions between the Government and Gibson. No additional promises, agreements, or conditions have been entered into than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

Sincerely,

JERRY E. MARTIN  
United States Attorney

  
~~JOHN K. WEBB~~  
Deputy Chief, Criminal Division

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Div.

LANA N. PETTUS  
Trial Attorney

JAMES B. NELSON  
Trial Attorney

Acknowledged and Agreed by:

\_\_\_\_\_  
Donald A. Carr, Esq.  
Attorney for Gibson Guitar Corp.

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Date

\_\_\_\_\_  
William M. Sullivan, Jr., Esq.  
Attorney for Gibson Guitar Corp.

\_\_\_\_\_  
Date


\_\_\_\_\_  
Bruce Mitchell  
Executive Vice President, General Counsel, and  
Corporate Secretary  
Gibson Guitar Corp.

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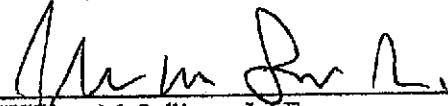
Acknowledged and Agreed by:



Donald A. Carr, Esq.  
Attorney for Gibson Guitar Corp.

7-26-12

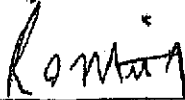
Date



William M. Sullivan, Jr., Esq.  
Attorney for Gibson Guitar Corp.

7/26/12

Date



Bruce Mitchell  
Executive Vice President, General Counsel, and  
Corporate Secretary  
Gibson Guitar Corp.

7/26/12

Date

## APPENDIX A

### STATEMENT OF FACTS

The parties agree that the facts to be resolved by this agreement are as follows:

1. Defendant Gibson Guitar Corp. ("Gibson") is a privately-held corporation incorporated in Delaware and headquartered and doing business in Nashville, Tennessee. It has a number of different divisions and subsidiaries that manufacture a variety of musical instruments, most notably guitars. Gibson's U.S. guitar manufacturing plants are located in Nashville (Gibson Electric/Gibson USA and part of Gibson Custom); Memphis, Tennessee (Gibson Custom); and Bozeman, Montana (Gibson Acoustic). Gibson also owns the guitar brand, Epiphone, which manufactures guitars in factories outside of the United States, including in China. The majority owners of Gibson are Henry Juskiewicz and David Berryman.
2. The manufacture of guitars includes the manufacture and use of parts called "fretboards," also referred to as "fingerboards." The fretboard of a guitar is the piece attached to the neck of the guitar, immediately under the strings. Technically, on a musical instrument that has frets, a fretboard may be distinguished from a fingerboard by the installation of frets that run perpendicular to the length of the fingerboard. Ebony is one type of wood used by Gibson to make fretboards for its guitars. "Fingerboard blanks" are sawn boards of wood manufactured into fretboards, by drying, cutting, and shaping them, among other steps. (See Figures 1 - 4). Gibson and others frequently refer to what this Agreement describes as "fingerboard blanks," simply as fingerboards. Gibson typically purchases wood in the form of fingerboard blanks cut to particular specifications (length, width, and thickness) from a variety of suppliers.





Figure 1 – Fretboard and two fingerboard blanks

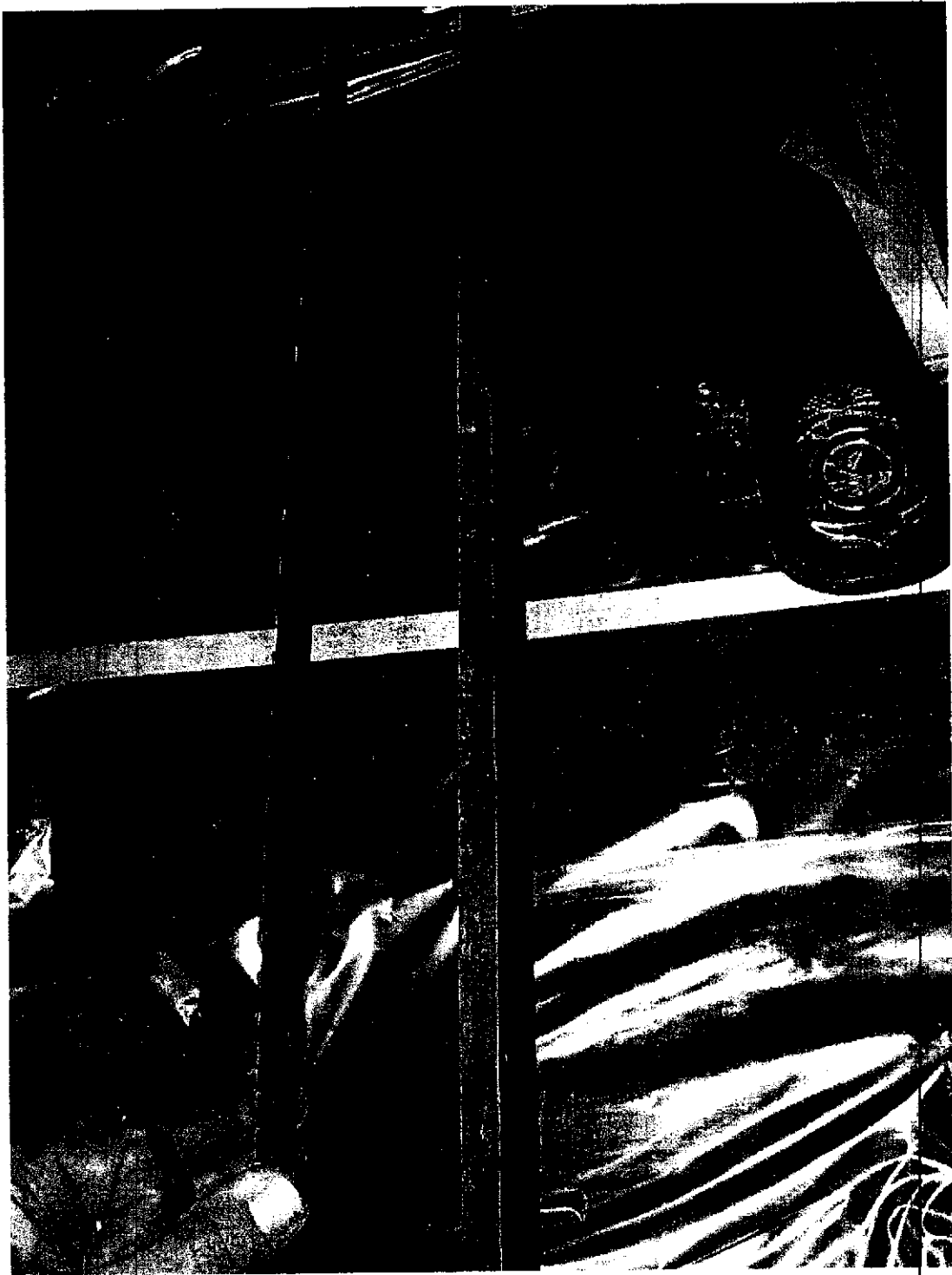


Figure 2 – Fretboard and fingerboard blank, edgewise

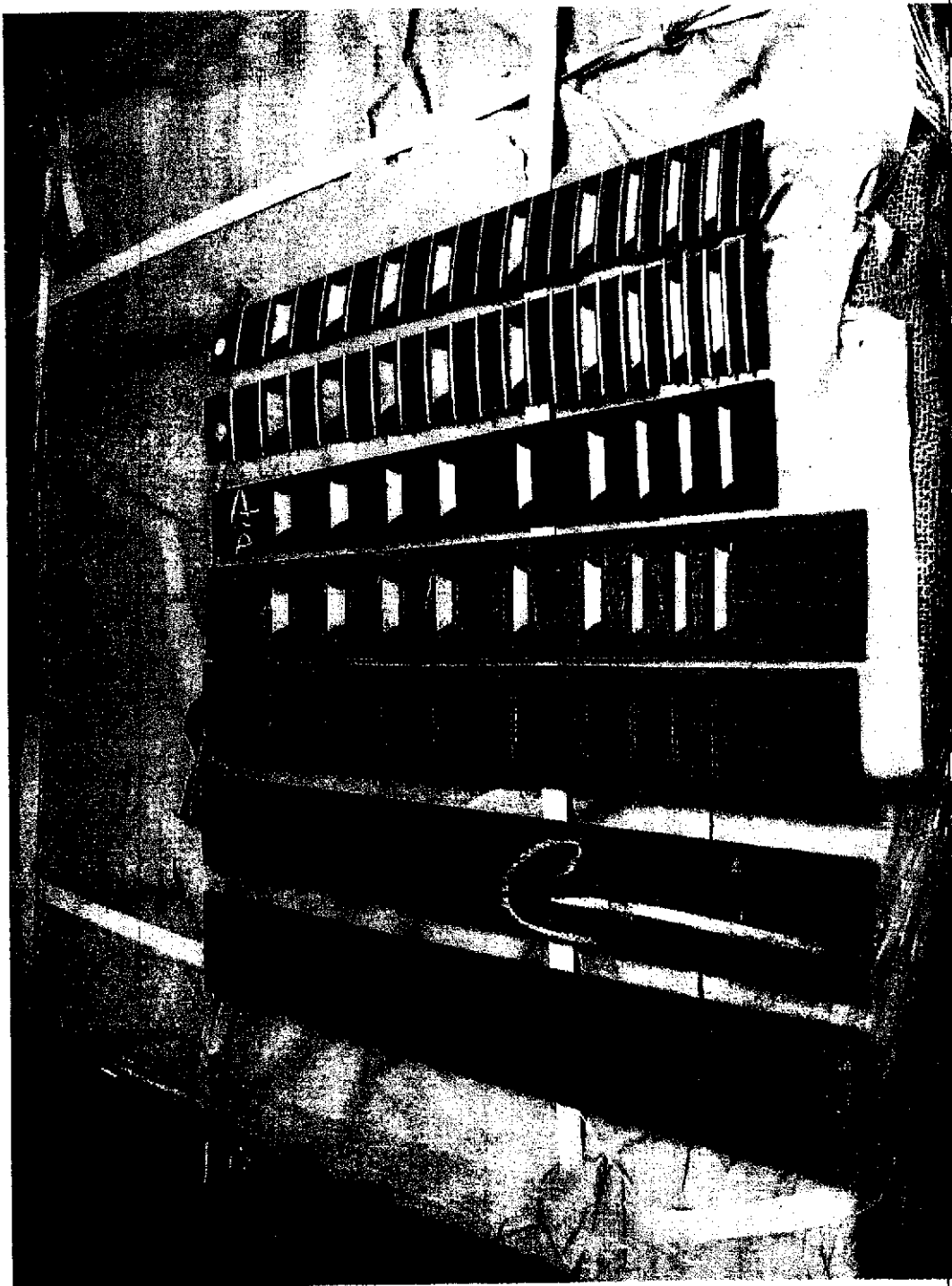
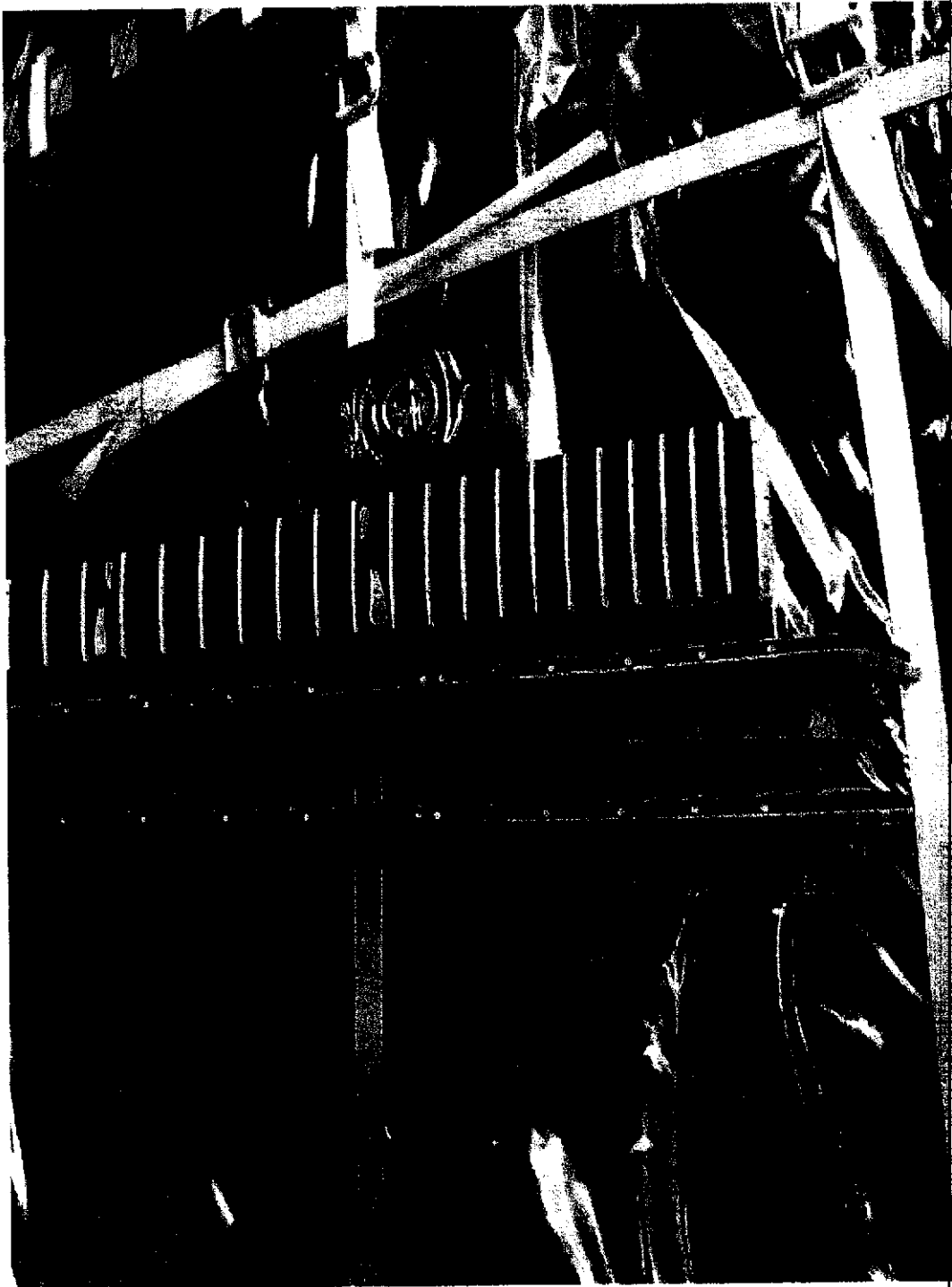


Figure 3 – Examples of progression of the manufacturing process from fingerboard blank to fretboard.



**Figure 4 – Fretboards attached to guitar necks**

3. Madagascar Ebony (*Diospyros spp.*) is the term used to describe members of the genus *Diospyros* found naturally on the island of Madagascar. Madagascar Ebony is a slow-growing tree species and supplies are considered threatened in its native environment due to over-exploitation. Both legal and illegal logging of Madagascar Ebony and other tree species have significantly reduced Madagascar's forest cover. Madagascar's forests are home to many rare endemic species of plants and animals.
4. Gibson ordered ebony fingerboard blanks to use in the manufacture of guitars from T.N. GMBH, a company based in Hamburg, Germany. Based upon documentation now in Gibson's possession, T.N. purchased some of its ebony fingerboard blanks from R.T., a forestry operator in Madagascar. Gibson maintains that specific information concerning that sourcing was not provided to Gibson by T.N. when Gibson placed its orders. Gibson assumed, without asking, that T.N. had undertaken to provide it with lawfully harvested and exported materials and, after the execution of the search warrant in this case, T.N. represented to Gibson that it had supplied legally obtained and exported materials.

#### *Malagasy Law and the Status of Ebony*

5. The parties acknowledge that the following memoranda and orders were part of the applicable body of law in Madagascar relating to the harvest and export of ebony:
  - a. Departmental Memorandum 001/06/MINENVEF/Mi, issued on February 15, 2006, by the Ministry of the Environment, Water, and Forests mandated that any stockpiles of ebony not declared to the Madagascar government prior to February 15, 2006, were illegal.
  - b. Madagascar Interministerial Order 16.030/2006 was issued in September 2006 by three Malagasy Ministries: the Ministry of the Environment, Water, and Forests; the Ministry of Economy, Finance, and Budget; and the Ministry of Industrialization, Trade and Private Sector Development. Articles 1 and 5 of Interministerial Order 16.030/2006. Order 16.030/2006 banned all harvest of ebony and prohibited the export of ebony except in the form of "finished wood" or "finished products." According to the Department's translation of Interministerial Order 16.030/2006, the order further defined "finished" wood as "any wood that has been shaped and processed to its final use and is no longer capable of being modified." Interministerial Order 16.030/2006, Article 6, musical instrument parts, including "guitar fingerboards," were listed as one example of "finished products;" however, "fingerboard blanks" are not specifically listed.

- c. In late 2008, the Republic of Madagascar compiled inventory records of existing stocks of previously harvested Madagascar ebony and rosewood. After compiling the inventory and determining whether any wood in the stockpiles was legal, "exceptional authority" was granted to specific forest operators to export specific quantities of ebony logs and rosewood pieces and logs. Interministerial Order 003/2009. R.T., who supplied Madagascar ebony to T.N., was listed in the order as being granted exceptional authority to export pieces of rosewood from his stockpiles. R.T. was not listed as having been granted exceptional authority to export ebony logs.

#### *June 2008 Madagascar Trip*

6. At the invitation of Greenpeace and other non-profit environmental groups, on June 9, 2008, a Gibson wood product specialist ("Gibson representative") flew to Madagascar for a "fact finding" trip with a group called the "MusicWood Coalition," spearheaded by Greenpeace. The trip was designed to assess the potential for supporting sustainable forestry in Madagascar. Part of the justification for the Gibson representative's participation in the trip was that the ebony species preferred for some of Gibson's instruments is found in Madagascar.
7. In connection with the trip, the Gibson representative received a translation of Madagascar Interministerial Order 16.030/2006, banning the harvest of ebony and the export of any ebony products that were not in finished form. The translation of the Order received by the Gibson representative stated that "fingerboards" are considered "finished" under Madagascar Law. Participants in the MusicWood Coalition trip to Madagascar, including the Gibson representative, were informed by trip organizers that, under the organizers' interpretation of the 2006 Interministerial Order, the harvest of ebony was illegal and that instrument part "blanks" would be considered "unfinished" and, therefore, considered illegal to export.
8. Following the trip, one of the trip organizers, produced a trip report that contained the following statements, among others:
  - a. "There are many legal issues pending on wood harvesting and export particularly with ebony and rosewood. It is currently illegal to harvest or export ebony."
  - b. "Currently, all wood products have to be in a final finished form before they can be exported. This issue would have to be addressed as instrument makers require wood blanks and pieces that can be further processed to desired dimensions. A possible export contract document that specified dimensions was suggested by the chief law enforcement officer that was traveling with us

as a way to comply with finished form regulations. This would have to [be] negotiated at the government level.”

- c. “It is currently illegal to harvest any species from natural forests until permitting has been resolved.”
- d. “Proving legality is a major problem and tracking woods from origin is even harder.”
- e. “There are at least two companies that have controlled the wood export for ebony and rosewoods both of which sell to [T.N.].... We visited [R.T.]’s ([T.N.] supplier) wood yard and he is obviously a main player in the market....His wood is under temporary seizure and cannot be moved.”

The trip report, containing the above statements, was also attached to an email sent to the Gibson representative and Gibson’s President. The Gibson representative forwarded an email, with the trip report attached, to a Gibson wood purchaser and others.

***Gibson Ebony Purchases After June 2008***

- 9. Based on documentation received by Gibson, T.N. continued to receive shipments of wood from R.T., including ebony fingerboard blanks, exported from Madagascar in 2007, after Interministerial Order 16.030/2006 became effective.
- 10. According to import documentation as described in the table below, Gibson continued to order Madagascar ebony fingerboard blanks after June 20, 2008. According to import documentation, shipments of Madagascar Ebony fingerboard blanks destined for Gibson entered the United States on the following dates, at the following ports, in the following amounts, for the following invoiced amounts:

<b>Arrival Date</b>	<b>10/2/2008</b>	<b>12/22/2008</b>	<b>4/2/2009</b>	<b>9/28/2009</b>
<b>Port of Entry</b>	Charleston, SC	Newark, NJ	Charleston, SC	New York, NY
<b>Quantity (pcs.)</b>	5147	2014	9066	7133
<b>Invoice Amount</b>	\$52,036.17	\$32,505.96	\$100,985.16	\$76,317.59

11. Gibson's President received from the Gibson representative, as early as April 2007, information that Gibson had purchased Madagascar ebony from T.N. The trip report emailed to Gibson's President and the Gibson representative indicated that R.T. was a supplier for T.N.'s Madagascar wood. The Gibson representative reported to his superiors on February 25, 2009, that in light of political instability and violence in Madagascar, R.T. would be able to supply T.N. with ebony "for the grey market," referring to wood that was not documented to be the product of sustainable forestry practices.
12. Gibson placed and confirmed orders for, and accepted delivery of, at least some of the shipments of Madagascar ebony fingerboard blanks listed in paragraph 10 and scheduled delivery of shipments of Madagascar ebony fingerboard blanks listed in paragraph 10 after June 20, 2008. Gibson also made payments to T.N. and its agent, a Connecticut-based import company, toward the purchase of the Madagascar ebony fingerboard blanks after June 20, 2008.
13. For the shipment of Madagascar ebony fingerboard blanks that entered the United States on September 28, 2009, the Madagascar customs documents reflect the ebony was described as classified under series 4418.9010 of the Harmonized Tariff Code ("HTC") when it left Madagascar. The 4418 series applies to "Builders' joinery and carpentry of wood, including cellular wood panels and assembled flooring panels; shingles, and shakes." HTC 4418.90 applies to a subcategory of "other" within the larger category of wood used by builders. Subcategories under 4418.90 include "drilled or notched lumber studs," "wood flooring," arches, roof trusses, and "prefabricated partitions and panels for buildings."
14. The U.S. Customs documents reflect that when the September 28, 2009, shipment entered the United States, T.N., acting through a U.S.-based agent, declared the ebony for U.S. Customs purposes under a different tariff classification, HTC series 4407 (wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or end-jointed), from that used when the shipment left Madagascar. No evidence exists to demonstrate that Gibson prepared or participated in the preparation of the tariff classifications at issue.
15. Between June 20, 2008, and November 17, 2009, Gibson did not ask for or obtain paperwork or official assurances from officials in Madagascar that the wood it was purchasing from Madagascar through its German supplier was legally harvested and exported from Madagascar, notwithstanding the information received by Gibson during the June 2008 trip to Madagascar. Before November 2009, Gibson further did not ask for additional paperwork or other confirmation from its supplier that the wood it was purchasing from Madagascar was legally harvested and exported, although



T.N. supplied information to Gibson purporting to represent the wood's legality after the execution of the search warrant. Instead, Gibson relied on the fact that T.N. was an established, FSC chain of custody certified supplier. Before ordering or accepting delivery of the fingerboards, Gibson should have taken a more active role and exercised additional diligence with respect to documentation of legal forestry practices in the areas of Madagascar from which those shipments from its wood supplier may have originated. Information received by the Gibson representative during the June 2008 trip to Madagascar was not further investigated or acted upon, prior to the continuing placement of orders with the supplier, T.N. Information sent to company management by the Gibson representative and others following the June 2008 trip to Madagascar also was not further investigated or acted upon, prior to the continuing placement of orders with the supplier, T.N. Instead, Gibson continued to purchase Madagascar ebony after June 20, 2008.

16. The investigation into the harvest and export of valuable tone woods served important environmental and law enforcement objectives, and accordingly, Gibson ceased acquisitions from Madagascar following the execution of the search warrants. Gibson now recognizes that its duties under the Lacey Act with respect to the acquisition of musical instrument parts from foreign sources include reasonable corroboration of the circumstances of their harvest and export, so as to guard against the acquisition of wood of illegal origin.

## **APPENDIX B**

### **Lacey Act Compliance Program**

#### 1 Compliance Objectives

As an industry leader, Gibson is committed to helping to conserve, protect and restore threatened forest habitats and safeguarding the future of natural resources critical to making musical instruments. A large part of this commitment is the support and use of legally harvested and exported sustainable wood sources. Compliance with relevant laws including the Lacey Act (16 U.S.C. §§ 3371 *et seq.*), amendments, or regulatory interpretations of the Lacey Act, is a critical component of a transparent, legal, and sustainable supply chain. The objective of this compliance program is to support legal wood sourcing through the implementation of a structured Lacey Act compliance program, which will expand upon the sustainability goals of Gibson's existing Responsible Wood Purchasing Policy. This document sets forth Gibson's policies, procedures and processes with regard to Lacey Act compliance ("Lacey Act Compliance Program").

#### 2 Legal Background

The Lacey Act is the oldest wildlife protection statute in the United States. Initially enacted to protect animal species, the Lacey Act was amended, effective May 22, 2008, to include plant species. A major rationale for the inclusion of plant species in the Lacey Act was to prevent trade in illegally harvested lumber and wood products made from illegally harvested lumber.

##### 2.1 General Prohibitions Under the Lacey Act

The Lacey Act makes it unlawful to:

- Trade in any plant that is taken, possessed, transported, or sold in violation of the laws of the United States, a State, Indian Tribe, or any foreign law that protects plants;
- Falsify or submit falsified documents, accounts or records of any plant covered by the Lacey Act;
- Import plants and plant products (with some exemptions) without an import declaration.

As it concerns Gibson, the definition of plant contained in the Lacey Act includes wood used for the purposes of manufacturing guitars or guitar parts. The full text of the Lacey Act can be found at attachment A. In addition, a useful reference guide can be found at [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/index.shtml](http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml).

##### 2.2 Lacey Act Penalties

Violations of the Lacey Act carry serious penalties for companies and individuals. In addition to civil fines and forfeiture of goods, criminal penalties may also attach to individuals or companies found to have knowingly and, in some cases with lack of due care, violated the Lacey Act.

A misdemeanor violation of the Lacey Act, punishable by 1 year in prison and a fine of \$100,000 (\$200,000 for companies), may be found if, in the exercise of due care, the individual or the company should have known the wood it purchased was illegally taken, possessed, transported or sold. Felony culpability, punishable by 5 years in prison and a \$250,000 (\$500,000 for companies), may lie for knowing violations of the Lacey Act.

### 2.3 Due Care Standard

To exercise due care, one must use the degree of care which a reasonably prudent person would exercise under the same or similar circumstances. The exercise of due care will minimize the risk of purchasing plant products that were harvested or traded illegally. A Lacey Act violation may also occur if an individual or company fails to exercise due care in evaluating its supply chain.

The obligation to exercise due care accordingly requires that certain reasonable steps be undertaken to ensure that the Lacey Act is not being violated and wood is not being purchased in violation of the relevant laws in the place of origin. As such, Gibson seeks to enhance its current due care standards when purchasing wood products. As a part of this effort all purchasing staff at each division are trained annually (see Section 3.5) to follow this legal compliance plan and shall adhere to the following steps prior to purchasing any wood product:

- Step 1: Communicate with suppliers about Gibson's policies to determine any challenges the supplier may have in implementing the policies and work with the supplier to solve the issue.
- Step 2: Ask Questions to find as much information as possible regarding the supplier and where wood based products are originating, using "Gibson's Legal Compliance Procurement Checklist" (example questions from which are attached hereto at attachment A) to determine whether the product meets Gibson's minimum requirements for known/legal wood products.
- Step 3: Do not rely solely on the checklist to identify risky sources, but conduct independent research and exercise care before making a purchase. This may include internet research, consultation with U.S. or foreign-based experts or authorities, arranging an on site supplier/forest visit, if possible, or speaking with local authorities and/or experts on documentation required for legal export and the validity of such documentation received from the supplier. (see Sections 3.2 and 3.3)
- Step 4: Request sample documentation prior to wood purchase to reasonably ensure that all forms provide sufficient information to comply with the Lacey Act requirements and to assist in verifying the validity of the documentation as described in Step 3.
- Step 5: Make a determination based on a review of all of the information collected.
- Step 6: Maintain records documenting all efforts to ensure legality.
- Step 7: In the event uncertainty exists regarding satisfaction of the above criteria or the ultimate determination of legal compliance, Gibson's policy is that Gibson should not pursue the purchase.

### 3 Gibson Policies and Procedures

Gibson is committed to exercising due care in determining whether prospective wood sources are legal prior to purchase. Gibson's due care standard is outlined in Section 2.3 and supplemented by Gibson's policies and procedures. Gibson will not knowingly purchase wood that has been illegally harvested or exported from its country of origin. If Gibson discovers that an importer/supplier has engaged in illegal activities, it will cease business dealings with the violating entity and, where appropriate, notify the relevant enforcement agency.

#### 3.1 Procurement of Wood

Gibson's objective is to procure wood products sourced from forests where legal harvest and chain of custody can be verified and from recycled sources. Gibson encourages all of its suppliers to work with a third-party certification group, such as the Forest Stewardship Council (FSC), to validate the legality and sustainability of their harvesting practices. Gibson requires that wood suppliers who claim their product is "certified" maintain valid FSC or equivalent certification and that the certification number (CoC # in the case of FSC) be listed on each invoice. These third-party certified claims will be verified on an annual basis by Gibson during its Supply Chain Audit (see section 3.4). Gibson also requires that all shipments of wood that it receives, whether from the original wood supplier or an importer, include copies of all relevant import forms and declarations (including required Lacey Act Plant declarations) and export documentation, including from the country of origin and/or harvest. All Gibson importers and suppliers will also be required to furnish to Gibson copies of any applicable export or business licenses that they maintain to be updated on at least an annual basis.

#### 3.2 Verification of Foreign Law and Foreign Certifications/Licenses

When working with a new supplier or new country of origin, or during the annual Supply Chain Audit for existing suppliers and sources, Gibson will make a reasonable inquiry into the foreign laws governing the protection and export of wood from the country of origin where Gibson wood purchases originate. Gibson will make such inquiry directly of applicable foreign government agencies or, if appropriate, of practitioners of law in such countries. Gibson will also work with third-party certifiers, non-profit organizations or NGOs dedicated to sustainable sourcing practices to supplement its inquiry into foreign law.

#### 3.3 Using Watch Lists and Other Resources to Determine Risk

When working with a new supplier or new country of origin, or during the annual Supply Chain Audit for existing suppliers and sources, Gibson will research available information on illegal logging practices to perform a risk assessment at the species level, considering source location, using the following key resources to determine or clarify risk:

- CITES (Convention on International Trade in Endangered Species) listed tree species;
- IUCN (International Union for the Conservation of Nature) Red List of Threatened Plants;

- National endangered or threatened species lists (typically listed in government legislation, natural heritage databases, etc.) – available through government agencies or conservation-oriented NGOs; and,
- UNEP-WCMC (World Conservation Monitoring Centre) tree species database ([http://www.unep-wcmc.org/trees/trade/ara\\_ang.htm](http://www.unep-wcmc.org/trees/trade/ara_ang.htm)).

Gibson will refer to the sources above to identify countries and regions that are substantially impacted by illegal logging. In addition to consulting the above sources, Gibson will use reasonable efforts to research any available industry or governmental guidance related to the appropriate measures for verifying the legality of wood originating from countries designated as high risk by any reliable third-party certifier, governmental agency or NGO. At annual training sessions (see Section 3.5) the results of Gibson's risk assessment will be relayed to Gibson employees involved in purchasing. In addition, any purchases from countries or regions designated as high risk will require a heightened level of diligence.

For instance, in addition to complying with all other Gibson policies and procedures, wood can only be purchased from a country source identified as high risk if (a) the product is certified against a chain of custody or traceability standard, (b) the supplier certificate is valid and the scope includes the product supplied, (c) the product has been traced by Gibson along an unbroken and verified chain of custody from the purchaser back to the source entirely by obtaining supplier certification codes on documentation for that product down to forest level, and (d) the harvest and export of the species is not restricted or prohibited in the source country.

### 3.4 Supply Chain Audit

On an annual basis Gibson will conduct an audit of its wood purchasing practices that evaluates all documents, certifications, licenses, and other records associated with its wood purchases to ensure compliance with Gibson's Lacey Act Compliance Program. During this audit, Gibson will evaluate the adherence to existing laws governing the protection and export of wood from all countries where Gibson wood purchases originate. At this time, Gibson will also make inquiries of foreign government agencies, third-party certifiers, non-profit organizations, or NGOs as to changes in foreign forestry or export laws. To the extent practical, the Supply Chain Audit will include audits of each division's application of the Compliance Program. The Supply Chain Audit will identify any material weaknesses in Gibson's Lacey Act Compliance Program and establish appropriate corrective action, to include amending the compliance program as necessary to reflect changes in the laws.

### 3.5 Training

On an annual basis, following the Supply Chain Audit, Gibson will conduct Lacey Act compliance training seminars with employees and managers responsible for wood purchases to reinforce the importance of complying with Gibson's Lacey Act Compliance Program and to provide updates on applicable law, high risk countries, and identified weaknesses in compliance. A training record will be created for each training session. As necessary, Gibson will also conduct training sessions for wood suppliers to educate them on Gibson legality requirements and to provide them with links to existing resources.

### 3.6 Retention of Records

All records associated with Gibson's Lacey Act Compliance Program will be retained for at least 5 years.

### 3.7 Disciplinary Action for Non-Compliance

Any Gibson employee that is found to have violated any of the procedures contained in Gibson's Lacey Act Compliance Program will be subject to discipline and possible termination. Gibson will maintain records related to any such disciplinary action in the personnel files of any impacted employee.

### 4 Conclusion

Gibson is committed to a successful implementation of its Lacey Act Compliance Program and the broader goals of sustainable and lawful sourcing that the program seeks to promote. Gibson will endeavor to share its methods and results of its compliance efforts with others in the musical instrument manufacturing industry in an effort to be a leader in this area.

## ATTACHMENT A – SAMPLE CHECKLIST QUESTIONS

- 1. Does supplier have long standing relationships with the supplier/s (exporter) of this product? How long?**
- 2. Do the supplier/s of this supplier buy this product from 'spot markets'?**
- 3. Does supplier regularly question their suppliers regarding the origin of this product?**
- 4. Did supplier provide you with all required documentation?**
  - a. e.g., for non high risk countries, a written and signed document from supplier identifying companies included in the full supply chain of the product back to the harvesting entity/ies, including name and location of the harvesting entity/ies and Forest Management Unit.**
  - b. A list of supplying companies harvesting wood from source forests and copies of the associated harvesting permits for supplied product and/or other form of authorization from the forest owner, including, for example:**
    - i. species, district of origin information and any other related harvesting or purchasing agreements.**
  - c. Evidence of compliance with timber transportation documents: Copies of transport or sales permits with specification of species and volumes as applicable.**
- 5. Have you reviewed the documents and verified that they meet Gibson requirements?**
- 6. Is there any reason for supplier to believe that paperwork from their suppliers may not be authentic for this product?**
- 7. Is there a ban on exports from this region/country?**
- 8. Have you checked on approved species/products with State/Province for that supplier?, etc.)**
- 9. Have you retained copies of required documentation?**
- 10. Is this supplier sourcing from a high risk country?**

**11. If yes, verify that additional required procedures were followed, e.g.,**

- a. product is certified against a Chain of Custody or Traceability Standard,**
- b. the supplier certificate is valid and the scope includes the product supplied,**
- c. the product has been traced by Gibson along an unbroken and verified chain of custody from the purchaser back to the source entirely by obtaining supplier certification codes on documentation for that product down to forest level, and**
- d. the harvest and export of the species is not restricted or prohibited in the source country.**