SEP 19 2011

The Honorable Fred Upton
Chairman, Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter dated September 8, 2011, to Attorney General Holder, Secretary of the Interior Salazar, and Fish and Wildlife Service Director Ashe regarding the investigation of Gibson Guitar Corporation. We are sending identical responses to Representatives Cliff Stearns, Mary Bono Mack, and Marsha Blackburn, the other signatories of your letter.

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. However, in response to your inquiries regarding the Lacey Act (Act), we are pleased to provide you with information about the Lacey Act and relevant procedural issues.

Prior to 2008, the Lacey Act broadly prohibited trafficking in wildlife and fish taken in violation of United States, state, tribal, or foreign laws, but contained more limited prohibitions with respect to illegally traded plants and plant products. In 2008, Congress amended the Lacey Act to extend its prohibitions to a much broader range of plants and plant products. Section 8204 of the Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide enforcement agencies with legal tools to address illegal logging and trafficking in timber. These statutory changes were supported by several industry groups and environmental organizations, and by the Bush Administration as a component of the President's Initiative Against Illegal Logging (see testimony of Deputy Assistant Attorney General Eileen Sobeck, Subcommittee on Fisheries, Wildlife, and Oceans, House Committee on Natural Resources, Oct. 16, 2007, at 2, 9, available at http://naturalresources.house.gov/Calendar/EventSingle.aspx?EventID=194063).

A key reason for the broadly supported change in the law was that illegal logging practices have a negative impact on U.S. businesses that operate by the rules. At the same 2007 hearing before the House Natural Resources Committee at which the Bush Administration endorsed the extension of the Lacey Act, the American Forest and Paper Association testified: "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." (AFPA testimony at same website).

As amended, the Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with certain exceptions, taken, possessed, transported, or sold in violation of any Federal, state, tribal, or foreign law that protects plants. 16 U.S.C. § 3372(a)(1) and (a)(2). Thus, the Lacey Act prohibits a person from bringing into the United States any plant or plant product taken in violation of a foreign law that protects plants or that regulates a specific statutory list of plant-related offenses. 16 U.S.C. § 3372(a). The prohibitions of the Lacey Act as amended in 2008 also apply to plants and plant products, including timber and wood products that are taken in violation of Federal and state laws. In this way the Lacey Act also protects our own forests and natural resources as well as those of foreign countries.

By prohibiting trafficking in wood illegally harvested overseas, the Lacey Act prohibits companies from undercutting law-abiding U.S. wood products companies, including numerous small businesses, by trading in artificially inexpensive raw materials that have been illegally harvested from foreign forests. The Lacey Act provides the Federal Government with an important tool to ensure that all businesses, including foreign companies that send their goods into this country, are operating on a level playing field by using only legally harvested wood. The Lacey Act also provides an effective enforcement tool to combat widespread deforestation resulting from illegal timber harvesting and the ecological, societal, and economic harms that result from illegal timber harvesting.

Since the enactment of the 2008 amendments to the Lacey Act, the U.S. Government has worked diligently to educate relevant industries and their trade associations, both in the United States and overseas, on the newly enacted requirements of the Lacey Act. For example, in June 2011, a representative of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) gave a presentation on the Lacey Act to the Association of Stringed Instrument Artisans. The APHIS maintains a website providing detailed information on compliance with the Lacey Act.

We are also pleased to provide general information about the process by which Federal law enforcement agents conduct a search. Before performing a search for evidence in a privately-owned location, Federal agents must make an application to a Federal magistrate judge, explaining, among other things, the basis for probable cause to believe that a search may uncover evidence of a violation of law. After reviewing this information, the magistrate judge must determine whether or not probable cause exists for a search. Following these procedures, the searches of Gibson's facilities were authorized by a U.S. Magistrate Judge, based on an application providing probable cause. Law enforcement agents are required to carry side arms during the execution of warrants for their own protection and generally wear clothing and badges identifying themselves as law enforcement. SWAT teams and similar tactical units were not used in the execution of the warrants at Gibson's facilities.

As noted, this matter is currently under investigation and we will not provide specific information related to that investigation. Any decision as to whether to file charges will be based strictly on the applicable law and the relevant facts disclosed through investigation. In the event

charges are filed, the Government will be required to prove its case beyond a reasonable doubt in a court of law.

Finally, people who *unknowingly* possess a musical instrument or other object containing wood that was illegally taken, possessed, transported or sold in violation of law and who, in the exercise of due care, would not have known that it was illegal, do not have criminal exposure. The Federal Government focuses its enforcement efforts on those who are removing protected species from the wild and making a profit by trafficking in them.

We hope that this information is helpful. If we may be of assistance regarding any other matter, please do not hesitate to contact this office.

Sincerely,

Christopher J. Mansour, Director
Office of Congressional and Legislative Affairs
Office of the Secretary
United States Department of the Interior

Ronald Weich
Assistant Attorney General
Office of Legislative Affairs
United States Department of Justice

cc: The Honorable Henry Waxman

Ranking Minority Member