

U.S. DEPARTMENT OF THE INTERIOR	)	
	)	
v.	)	
	)	
Three pallets of tropical hardwood	)	INV No. 2009403072
	)	
Harlan Crouch, II, Claimant	)	

DECISION IN RESPONSE TO PETITION FOR REMISSION

The claimant and importer in this case is Harlan P. Crouch, II, 6500 47<sup>th</sup> Street N Suite # 6, Pinellas Park, Florida 33781. On or about June 9, 2009, he imported a shipment of three pallets of tropical hardwood from Iquitos, Peru, to Tampa, Florida.

The United States Fish and Wildlife Service (AFWS@ or AService@) received information on May 29, 2009, regarding a shipment of tropical hardwood lumber scheduled for importation into the United States from Peru. James Louis King, the owner of the Peruvian business Amazon Reserve and Resort, S.A.C., provided information that the shipment was being imported on the vessel *Yacu Puma* with stolen and forged documents. King had temporarily closed his business for tax reasons and became aware of the shipment when he received a bill from the shipper.

A FWS Special Agent (ASA@), conducted an inspection of the shipment on June 9, 2009, at the Port of Tampa and identified three pallets of wood that were consigned to Cocobolo, Inc. The SA removed a total of fifteen representative samples and sent them to Dr. Alex Wiedenhoef at the United States Forest Service, Wood Products Laboratory for identification. The SA detained the shipment on June 9, 2009, for identification purposes.

The shipment contained a variety of species. These have been partially identified by Dr. Wiedenhoef as including *Brosimum rubescens*, and woods of the genus *Peltogyne* and *Platymiscium*. The Peruvian exporter provided a partial identification of species including *Platymiscium pinnatum* (Maria buena/sachacumaseba), *Swartzia arborescens* (tigrillo/culantrillo), *Brosimum rubescens* (palisangre/violeta), *Peltogyne altissima* (palisangre/violeta), *Cynometra spruceana* (limoncillo/dalman), and *Zygia cataractae* (tigre caspi). The exporter=s listing agrees in general with the Service=s identification but the exact species information is not critical to this decision as discussed below because the violation stems from the category of wood rather than its exact species.

The shipment was declared under the Harmonized Tariff Schedule (AHTS@) number 4421.90.9760 with Peru as the country of origin. The SA consulted with a United States Customs and Border protection (ACBP@) Import Specialist and determined that the proper declaration for

the shipment would have been under Chapter 4407 of the HTS, more specifically 4407.9901 suffix 93 for AOther non coniferous@ tropical woods sawn into the form appropriate for Chapter 4407. Chapter 4407 of the HTS describes wood as “sawn or chipped lengthwise, sliced, or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.” The shipment was valued at \$7,150.00 and it was seized on August 12, 2009, because of the improper import declaration.

The violations identified by the Service include a violation of importing any plant Ataken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law,@ 16 U.S.C. ' 3372(a)(1); 16 U.S.C. ' 3371(a)(2), of submitting any “false record, account, or label for, or any false identification of any . . . plant which has been, or is intended to be - imported, exported, transported, sold, purchased, or received from any foreign country or transported in interstate or foreign commerce,@ 16 U.S.C. ' 3372(d), and false labeling of imports, 16 U.S.C. ' 3372 (d). In addition, there are likely violations of foreign law. Some of the alleged violations of Peruvian law could include of operating a business without a permit and a violation of using stolen and forged documents.

Mr. Crouch submitted a petition for remission on November 13, 2009. In his petition, Mr. Crouch explained that he is a small business owner who operates a lumber business with his father, which they have been struggling to maintain. Mr. Crouch has been in business for about ten years. This transaction was initiated because an exporter in Peru contacted Mr. Crouch, offering wood to sell. Mr. Crouch has previously imported wood from Panama, but this was his first time to import wood from Peru. Mr. Crouch emphasized that in the present state of the economy his business has been particularly impacted by the seizure of the three pallets of tropical hardwood.

## **Discussion**

The Lacey Act, first enacted in 1900, is the oldest wildlife protection statute in the United States. The Act serves as a tool to combat trafficking in Aillegal@ wildlife, fish or plants. 16 U.S.C. ' 3372 (a)(2)(B). It has been amended several times, most recently with an amendment effective May 22, 2008. The 2008 amendment expanded the Act=s protection to a broader range of plants and plant products including Section 8204, Prevention of Illegal Logging Practices. The Food, Conservation, and Energy Act of 2008 (Farm Bill) amended the Lacey Act by expanding the range of plants and plant products protected by the act making it Aunlawful to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce any plant taken in violations of the laws of a U.S. State or any foreign law that protects plants, with some limited exceptions.@ 16 U.S.C. ' 3372; 16 U.S.C. ' 3371(f)(2); H.R. 2419 ' 8204. The definition of Aplant@ includes Aany wild member of the plant kingdom, including roots, seeds, part, or products thereof, and including trees from either natural or planted forest stands.@ 16 U.S.C. ' 3371(f); H.R. 2419 ' 8204. In addition, the Lacey Act makes it Aunlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be - imported, exported, transported, sold, purchased, or received from any

foreign country or transported in interstate or foreign commerce,@ 16 U.S.C. ' 3372(d), and makes it unlawful to import certain plants and plant products without an import declaration. 16 U.S.C. ' 3372(f). The import declaration requires the scientific name of the plant, value of the importation, the quantity of the plant, and the name of the country of origin. *Id.*

The Harmonized Tariff Schedule (AHTS@) is a categorized listing of tariffs charged for products imported into the United States. The United States International Trade Commission, Office of Tariff Affairs and Trade Agreements (AUSITC@) is responsible for publishing the Harmonized Tariff Schedule of the United States. The HTS provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international Harmonized System, the global system of nomenclature that is used to describe most world trade in goods. Although the USITC publishes and maintains the HTSA in its various forms, Customs and Border Protection is the only agency that can provide legally binding advice or rulings on classification of imports. The HTS is regularly updated and products are classified according to the Harmonized International Commodity Coding and Classification System, established by the World Customs Organization. The HTS generally classifies products according to their level of processing.

The United States Department of Agriculture (AUSDA@) Animal Plant Health Inspection Service published notices in the *Federal Register* on October 8, 2008, February 3, 2009, and September 2, 2009, on the implementation of the revised Lacey Act provisions. These announcements detail the revised enforcement phase-in plans for plant product import declaration under the Lacey Act=s requirements.

The declaration requirements of the Lacey Act became effective on December 15, 2008. 74 *Fed. Reg.* 45415. The proposed phase-in schedule of enforcement of the declaration requirements for items containing plant or plant products was first announced in the *Federal Register* October 8, 2008 (73 *Fed. Reg.* 58925). The enforcement of Chapter 4407 of the HTS was proposed to begin on April 1, 2009, effective as of December 15, 2008 (73 *Fed. Reg.* 58925; 74 *Fed. Reg.* 5911; 74 *Fed. Reg.* 45415). The enforcement of Chapter 4421 was proposed to begin on April 1, 2010. *Id.* The HTS provides a list of wood types that are Atropical woods@ and identifies which potential subheadings this list applies to. See United States International Trade Commission, HTS 2010, subheading note.

The purpose of the amendments to the Lacey Act is to ensure that shipments are documented accurately and declared properly under the requirements of the Act and to ensure that shipments are obtained legally. The United States is not required to prove a claimant=s intent to violate the law. The civil forfeiture provisions of the Lacey Act are strict liability provisions. 16 U.S.C. ' 3374 (a)(1). If illegal plant or plant products are brought into the United States, that plant or plant product may be seized regardless of whether the individual or importer knew of the illegal nature of the product. The government, however, must still show that a plant or plant product has been imported or received in violation of a State or foreign law or regulation.

Upon receiving a Petition for Remission, the Solicitor is charged with deciding whether or not relief should be granted. In making this decision, the Solicitor is to consider the information submitted by the Petitioner as well as any other available information relating to the matter. See 50 C.F.R. ' 12.24(e). If the Solicitor finds the existence of such mitigating circumstances as to justify remission or mitigation of the forfeiture, the Solicitor may remit or mitigate the items upon such terms and conditions as may be reasonable and just or may order discontinuance of any forfeiture proceedings. See 50 C.F.R. ' 12.24(f).

The Lacey Act sets forth the authority for remission of forfeiture, which provides, A[a]ll provisions of law relating to the seizure, forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, 16 U.S.C. ' 3374(b).

The term Amitigating circumstances@ as used in the department=s regulation refers to the petitioner=s intent and degree of negligence. In other words, the Solicitor=s Office looks to determine whether the facts demonstrate a person=s honest and good faith intent to comply with the law, their diligence and efforts to comply, and whether the facts tend to show a lack of negligence or moral culpability for whatever failure or mistake is involved in the non-compliance including the extent to which the non-compliance was minor or over which the petitioner had no control or ability to prevent.

The claimant used an import brokerage firm in order to complete the shipment of the tropical hardwood from Peru. Importers typically use such brokerage firms to facilitate the shipment process by relying on a professional service to provide the necessary expertise regarding the requirements of shipments and necessary documentation and paperwork. In this case, an agent of the broker supplied the incorrect HTS chapter when classifying the shipment of tropical hardwood. The HTS categorizes wood based on the level of processing of the wood. Raw wood, such as the type of wood that was imported in this case, is distinguishable from finished wood items, such as the wood items that fall under HTS 4421.<sup>1</sup> The shipment was declared under HTS number 4421.90.9760, however, the proper declaration for the shipment would have been under HTS chapter 4407, which describes wood as "sawn or chipped lengthwise, sliced, or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm." Under this chapter, the proper category for this shipment was 4407.9901 suffix 93 for AOther non coniferous@ tropical woods sawn into the form appropriate for Chapter 4407.

Because the incorrect HTS chapter was selected, the declaration was incorrect in violation of 16 USC § 3372 (d). It seems highly significant that through the broker=s choice in selecting HTS chapter 4421, the broker was not required to fill out the same amount of detail for the shipment of tropical wood because the phase-in schedule for enforcement of HTS chapter 4421 was not slated

---

<sup>1</sup> HTS 4421 covers finished wood products, some of which include clothes hangers, wood dowel pins, wood blinds, toothpicks, pickets, clothespins, and canoe paddles.

to begin until April 1, 2010. However, HTS chapter 4407 enforcement and declaration requirements were already phased-in at the time of the importation. In a phone interview with the SA, the broker's agent explained that she used the HTS chapter 4421 for this shipment based on the HTS category that had previously been used for similar imports for that company. However, it is worth noting that according to CBP records, the broker did select the correct HTS number when filling out the import paperwork for the same company in past shipments. In simple terms, the choice of HTS 4421 at the particular time of this shipment had the effect of avoiding more rigorous enforcement that would have been true under the correct category of 4407.

The recent amendments and phase in schedule for the Lacey Act provisions make it more plausible that errors could occur in the initial period after enactment. However, a company that specializes in international shipments should be well versed in the applicable laws that govern such transactions and should also be up to date on any amendments to the laws. The Lacey Act amendments were passed in 2008, giving the industry time to adjust and become familiar with the changes before enforcement began. The HTS chapter 4421 that was incorrectly used in this case was scheduled to be phased-in on April 1, 2010. Because the shipment at issue was a shipment of tropical wood, HTS chapter 4407 would be the correct chapter. The proper HTS chapter 4407 was phased in on April 1, 2009. The shipment was imported only three months following that phase in on June 9, 2009. However, as stated previously, a brokerage firm that specializes in facilitating the shipment of imports should be aware of the relevant laws and the implementation dates of such laws.

While the brokerage firm in this case was responsible for selecting the incorrect HTS chapter, the claimant could have handled the transaction more thoroughly. In this case, the claimant could have requested the required information of the genus and species from the Peruvian supplier prior to completing the transaction to prepare for the necessary paperwork. In addition, the claimant could have contacted the Peruvian government to verify that he was doing business with a legitimate company. If he had done so, he likely would have discovered that the company was not in operation. Also, the claimant should have been on notice that he was dealing with an individual and not a company when the supplier requested that he pay via money order made directly to her individual name and not the company name. Furthermore, the claimant could have contacted the USDA Animal and Plant Health Inspection Service or the CBP for guidance and clarification.

In addition, our file also contains an indication that the claimant was advised by the seller that the company he was dealing with had gone out of business. In an email on November 11, 2008 (that the claimant later forwarded to the Service) the individual named Mercedes Galo advised him, in broken English that: AI have understood that these interested in buying wood, were working for the company Amazon Reserve & Resort but by problems of investors to close `n his doors, I have the sufficient experience to make business in the sale of wood.@ The essence of this message should have alerted the claimant that Amazon Reserve and Resort was out of business and that the forms used in the transaction with this company name were questionable.

The purpose of the Lacey Act and its recent amendments is to eliminate illegal imports of plants

and plant matter. While the claimant did not select the incorrect HTS on the shipment of the tropical hardwood, the Lacey Act is a strict liability statute. The strict liability provisions of the Lacey Act encourage importers to be involved in the entire shipment process and to ensure that transactions are conducted legally. The purpose of the Lacey Act would be undermined if importers were excused because of errors created by other actors, such as the broker in this case.

## Conclusion

The Solicitor's Office has examined and considered all of the information provided by the Petitioner and the Service. The Solicitor's office does not find sufficient grounds and mitigating circumstances to rescind the forfeiture of the seized tropical hardwood. Mr. Crouch did not do all he could within his power to comply with regulations and ensure that the shipment was authorized by an export permit that properly documented the required information and was declared appropriately under the Lacey Act upon arrival to the United States. In this case, the incorrect HTS category was used for the shipment of the tropical hardwood. Moreover, the tropical hardwood, which, based on the allegations, was probably stolen wood to begin with, was imported using allegedly stolen and forged documents. We conclude that the equities do not favor remission because there is substantial evidence that the exporter did not have legal title to the shipment.

The Service has acted within the scope and intent of the laws and regulations promulgated to protect plants, and, under this decision the *Petition for Remission of Forfeiture* is hereby **DENIED**. The seized and abandoned items will be forfeited to the United States.

Dated this \_\_\_\_\_ day of June, 2010.

FOR THE SOLICITOR  
J. T. BEGLEY  
Field Solicitor

By: \_\_\_\_\_  
J. NICKLAS HOLT  
Staff Attorney  
Office of the Solicitor  
Knoxville Field Office  
800 S. Gay Street, Suite 800  
Knoxville, TN 37929  
865-545-4294  
fax 865-545-4314

CERTIFICATE OF SERVICE

I, J. Nicklas Holt, do hereby certify on this \_\_\_\_ day of June, 2010, that a true copy of the foregoing Decision in response to Petition for Remission was mailed for service by first-class certified mail, return receipt requested, to the following individual(s) entitled to service:

Harlan P. Crouch, II  
Cocobolo Incorporated  
6500 47<sup>th</sup> Street N Suite # 6  
Pinellas Park, FL 33781

Certified Mail No.

---

J. NICKLAS HOLT  
Staff Attorney  
Office of the Solicitor

cc: Senior Resident Agent, Law Enforcement, SE Region, USFWS, Atlanta, GA  
Neil Gardner, SA, Groveland, FL