

# Trading timbers:

A comparison of import requirements under CITES, FLEGT and related EU legislation for timber species in trade

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## Acronyms and Abbreviations

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EC	European Commission
ETIS	Elephant Trade Information System
EU	European Union
Eurostat	Statistical Office of the European Communities
EU-TWIX	European Union – Trade in Wildlife Information eXchange
FAO	Food and Agriculture Organization of the United Nations
FAOSTAT	Food and Agriculture Organization Statistical Database
FLEGT	Forest Law Enforcement, Governance and Trade
ICCWC	International Consortium on Combating Wildlife Crime
INTERPOL	International Criminal Police Organization
ITTO	International Tropical Timber Organization
IUCN	International Union for Conservation of Nature
LAS	Legality Assurance System
MS	Member State (of the EU)
NDF	Non-Detriment Finding (under CITES)
SRG	Scientific Review Group (of the EU)
UN	United Nations
UNECE	UN Economic Commission for Europe
UNEP – WCMC	United Nations Environment Programme – World Conservation Monitoring Centre
US	United States
USD	United States Dollar
VPA	Voluntary Partnership Agreement
WCO	World Customs Organization

# Trading timbers:

## A comparison of import requirements under CITES and FLEGT and related EU legislation for timber species in trade

The European Union (EU) has recently made important policy changes in order to prevent, detect and better address the illegal harvesting of timber and associated trade, pursuant to its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. In particular, import of FLEGT-licensed timber from partner countries is set to begin in 2012, and the EU recently passed a new *EU Timber Regulation* to guard against illegally harvested timber being placed on the EU market. These developments take place against the backdrop of the pre-existing global Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which establishes a permit-based system of trade controls on species listed in the CITES Appendices, including a number of commercially important timber species; and the US Lacey Act which was amended in May 2008 (see Box 1) to prohibit trade in plants and plant products that are sourced illegally from within the US or an outside country. This document analyses and compares the requirements of the FLEGT Action Plan, EU Timber Regulation and CITES for timber imported into the EU, with a focus on the requirements of each for ensuring that timber is legally sourced.

### The EU FLEGT Action Plan

Illegal logging has been a topic of serious national, regional (including EU) and global concern for several decades, due to its serious impacts on forest biodiversity, wildlife habitat, soil quality, access to water, poverty, greenhouse gas emissions and governance (EFI 2011). The EU's policy to "address the growing problem of illegal logging and related trade" was defined in 2003 through the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan<sup>1</sup>. The FLEGT Action Plan has led to the development of two key legal instruments (European Commission 2011):

- the *FLEGT Regulation* (2005)<sup>2</sup>, which allows for the control of the entry of timber into the EU from countries entering into bilateral FLEGT Voluntary Partnership Agreements (VPAs) with the EU;
- the *EU Timber Regulation* (2010)<sup>3</sup>, an overarching measure to prohibit placing of illegal timber and timber products on the internal market.

### The FLEGT licensing scheme

The FLEGT Regulation establishes a licensing scheme for timber products exported to the EU from countries that have entered into a VPA with the EU. VPAs aim to guarantee that the wood exported to the EU is from legal sources and to support partner countries in improving their own regulation and governance of the sector. Currently six VPAs have been agreed, with Cameroon, Ghana, Central African Republic, Republic of Congo, Liberia and Indonesia, with agreements with four other countries under negotiation (Malaysia, Vietnam, Gabon and Democratic Republic of Congo).

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<sup>1</sup> Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan/\* COM/2003/0251 final \*/ Available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003DC0251:EN:NOT>

<sup>2</sup> Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. Available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005R2173:EN:NOT>.

<sup>3</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. Online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0995:EN:NOT>

A key element in each VPA is a Legality Assurance System (LAS). Its function is to identify, monitor and licence legally-produced timber, and ensure that only legal timber is exported to, and imported by, the European Union, although all the VPAs developed to date go beyond this requirement to cover all timber destined for export (regardless of its destination), and some VPAs cover all timber, including for domestic use. All VPAs developed include controls to assure the legality of timber imported into the partner country (from other countries) for subsequent re-export, in order to ensure that illegally acquired timber does not enter the trade chain in this way.

All shipments of timber and timber products imported into the EU from partner countries (and only from partner countries (Art 1)) must be covered by a FLEGT licence issued by the partner country's licensing authority, stating that the products are legally produced (Art 4). These FLEGT licences may cover specific shipments or specific market participants (Art 2(5)). FLEGT licences must be presented to EU authorities at the point of entry, at the same time as Customs declarations (Art 5(1)). The FLEGT Regulation covers commercial shipments of logs, railway/tramway sleepers, sawn wood, veneer sheets and plywood (Art 2(9), Table 1), and individual VPAs may specify a broader range of products to be covered. The VPAs concluded to date all go well beyond these categories to cover all or most timber and timber-based products.

### Exemptions for CITES-listed species

The FLEGT Regulation exempts timber from taxa listed in Annexes A, B, or C of the EC *Wildlife Trade Regulation* (Art 4(3)). Timber from these listed taxa can therefore be imported from FLEGT partner countries with the relevant CITES permits or certificates but will not require an additional FLEGT licence. Note, however, that in FLEGT partner countries, the LAS established may cover all timber and timber products, including CITES species. This is the case for all the African VPAs that have currently been concluded. Where this is the case, specimens of CITES-listed timber species from FLEGT countries will not require a FLEGT licence to enter the EU, but will still be required to comply with the partner country's LAS (documentation for which will differ from country to country), and will continue to require CITES documentation.

### Box 1. The US Lacey Act on wildlife trade: How does the US tackle import of legal timber?

The United States has also recently made important moves to address imports of illegal timber. On May 22, 2008, the US lawmakers widened the scope of the Lacey Act to include plants. The Lacey Act is a more than 100 year old piece of legislation to prosecute illegal trade of wildlife. The amendment targeted the import and trade of illegally sourced timber.

The legislation is very simple – it prohibits trade of wildlife or plants that have been taken, possessed, transported, or sold in violation of any US or foreign state law. Its effect in the context of imports of illegal timber, therefore, is to prohibit handling of timber that is illegal according to the country from which it originated. Sanctions are differentiated according to whether or not “due care” has been exercised to avoid illegally sourced products. In the case of the absence of due care (or knowledge of the illegalities) the sanctions are substantial including imprisonment. The amended Act is operationalised through a long list of timber product groups encompassing an overall annual import to the US of more than 66 billion USD (in 2010, derived from UN-Comtrade database), as well as a requirement to declare under pain of perjury the origin and volume of specific product groups at the time of import.

Due care is a central term of the law’s text. However, the law does not provide a definition, and therefore judicial interpretation will be crucial if future secondary regulations are not more specific. In the meantime, several actors such as NGOs have elaborated guidance on how to undertake due care. This guidance usually recommends risk assessment, documentation of origin and legality, or a certified chain of custody.

The Lacey Act makes no distinction between products exported with a CITES permit or not. There is no exemption for timber products accompanied with CITES documentation, so the US Lacey Act establishes a second layer of control additional to procedures under CITES. However, in the light of judicial interpretation it may be that holding a valid export and import permit for CITES products could be seen as evidence of exercising due care, in which case proven infringements will attract lighter sanctions.

Source: Based on information from US Department of Agriculture (2011)

## The EU Timber Regulation

The *EU Timber Regulation* prohibits placing illegally harvested timber on the internal market (Art 4(1)). It is not a border measure, but applies equally to timber originating from within the EU. It establishes a requirement for operators who place timber for the first time on the internal market to exercise due diligence to minimise the risk that they are placing illegally harvested timber on the market (Art 4(2)). Operators may choose to fulfil their obligations by using a due diligence system established and maintained by a European Commission-registered monitoring organization (see Art 8 for criteria and requirements).

The *EU Timber Regulation* applies to a wide range of timber and timber products, including logs, sawn wood, veneer sheets, manufactured items and pulp and paper (Table 1). It will enter into operation on 3 March 2013.

### Exemptions for FLEGT-licensed timber and CITES-listed species

The *EU Timber Regulation* recognises as legally harvested timber that is imported from a FLEGT partner country and licensed under the FLEGT licensing scheme, where such timber complies with the *EU Timber Regulation* and its implementing provisions (Art 3). Likewise, it recognises as legally harvested timber of species listed in Annexes A, B, or C of the *EU Wildlife Trade Regulation* (see below), the regulation that implements CITES in the EU, where it complies with that Regulation and its implementing

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provisions. Therefore, operators who import FLEGT-licensed or CITES-listed timber into the EU will not be subject to any further due diligence obligations under the *EU Timber Regulation*.

**Table 1. The timber products covered by each mechanism**

FLEGT licensing	EU Timber Regulation	CITES
From all partner countries: logs, railway/tramway sleepers, sawn wood, veneer sheets and plywood. Individual VPAs may specify a broader range of products to be covered – to date all VPAs concluded cover all timber and timber products.	Logs, railway/tramway sleepers, sawn/chipped wood, veneer sheets, shaped wood, particle board, fibreboard, plywood and veneered panels, densified wood, wood frames, wood packing products, wood casks and barrels, wood joinery and carpentry, pulp and paper, wood furniture and wood prefabricated buildings.	Varies according to the specific annotation to the species listing (see Table 2). For some species this comprises logs, sawn wood and veneer sheets; for others it includes all timber and timber products.

## CITES and timber trade involving the EU

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a longstanding international treaty that was concluded in 1973 and entered into force in 1975 (see Box 2). It monitors and regulates trade between its 175 Parties (and between Parties and non-Parties<sup>4</sup>) in species listed in its three Appendices. Its purpose is to ensure that international trade in specimens of wild animals and plants is legal, sustainable and traceable. With the recent addition of 111 timber species to Appendix III<sup>5</sup>, there are currently around 350 tree species listed in the CITES Appendices<sup>6</sup>. The EU imports timber from a range of these species (the most important of which are shown in Table 2), and from other species it imports non-timber products such as oils and bark.

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<sup>4</sup> CITES Parties, when accepting specimens of listed species from non-Parties, must ensure that they are accompanied by documentation which is substantively equivalent to that required by the Convention (CITES Article X).

<sup>5</sup> See online at [http://www.cites.org/eng/news/pr/2011/20110928\\_timber\\_appendixIII.php](http://www.cites.org/eng/news/pr/2011/20110928_timber_appendixIII.php)

<sup>6</sup> For the most recent information on tree species covered by the Convention see [http://www.cites.org/eng/news/SG/2011/20111229\\_YF.php](http://www.cites.org/eng/news/SG/2011/20111229_YF.php)

## Box 2: How CITES works

CITES Parties agree to implement international trade controls, based on a system of permits and certificates for import, export, re-export and introduction from the sea, for species listed in three Appendices.

1. Appendix I lists species that are currently threatened with extinction (such as tigers, gorillas, and rare orchids) which are, or may be, affected by trade. For these species international commercial trade is prohibited. This represents only a small proportion (3%) of the species regulated under CITES, and includes several timber species such as Brazilian Rosewood *Dalbergia nigra* and Alerce *Fitzroya cupressoides*. Wild-harvested specimens of these taxa may not be commercially imported by any Party, including EU Member States. Plant specimens that are artificially propagated, which could include plantation grown timber, are treated as being listed in Appendix II.
2. Appendix II includes “species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival”. This includes ‘look-alike species’ i.e. species of which the specimens in trade look like those of species listed for conservation reasons.” Commercial international trade in species in Appendix II is allowed under certain conditions (e.g. findings of legality and sustainability), and is regulated using permits and certificates. The majority of species listed in the CITES Appendices are listed in Appendix II (96%).
3. Appendix III contains species that are legislatively protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade. This represents about 1% of the species listed in the CITES Appendices.

Decisions about the listing of species in Appendices I and II are taken by the Conference of the Parties, which meets every two-three years. Any State may unilaterally request the inclusion of a species for which it is a range country in Appendix III. The Convention also allows Parties to take “stricter domestic measures” to control wildlife trade. All trade in listed species by all Parties must be recorded and reported annually to the CITES Secretariat – this information is made publicly available in the CITES trade database<sup>7</sup>. Specimens of listed species that do not enter international trade are generally not subject to CITES controls.

## Commercial export of CITES-listed timber species from range States

### Appendix II

The export of timber from a species listed in Appendix II requires an export permit to be granted by the CITES Management Authority of the exporting State and presented upon exit (Article IV). Issue of export permits requires that two main conditions are met:

1. the Scientific Authority of the exporting State must advise that the trade is not detrimental to the survival of the species, ensuring that permits are limited so that the species is maintained throughout its range at a level consistent with its role in the ecosystems in which it occurs.
2. the Management Authority must find that the specimen has not been obtained in contravention of the laws of that State for the protection of fauna and flora. This is known as the “legal acquisition” finding.

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<sup>7</sup> Online at <http://www.unep-wcmc-apps.org/citestrade/trade.cfm>



Point 1 above is known as the “non-detriment finding” or “NDF”. Many Parties determine a voluntary national quota for specific taxa, to replace the making of NDFs for each individual shipment of the same taxon. The quota and the quantity exported are typically indicated on the CITES permit accompanying shipments. Countries should report such quotas to the CITES Secretariat, which makes them available on the CITES website. For example, the Democratic Republic of Congo has established a quota of 50 000m<sup>3</sup> of timber products from African Teak/*Afromosia Pericopsis elata* for the year of 2011<sup>8</sup>.

Re-exports of Appendix II timber require a re-export certificate to be granted by the CITES Management Authority of the re-exporting State and presented on exit. Issue of re-export certificates require that the Management Authority is satisfied that the specimen was imported into that State in accordance with the current provisions of the Convention.

### Appendix III

The requirements for export of timber from Appendix III-listed specimens depends on from what country they are being exported (Article V). Generally, one or more countries list the entire taxon in Appendix III. In this case, export from a country that has listed the taxon in Appendix III requires an export permit from the Management Authority (Article V (4)). In order to grant the export permit, the Management Authority must make a “legal acquisition” finding, as for Appendix II-listed taxa. No non-detriment finding is required. It should be noted that Parties are recommended (by CITES Res. Conf. 9.25) that they ensure “national regulations are adequate to prevent or restrict exploitation and control trade, for the conservation of the species...”(a(ii)) if they consider putting forward a listing.

Export from a country that has not listed the taxon in Appendix III requires only a certificate of origin to be issued, for which no legal acquisition finding is required. Such a certificate of origin from non-listing Parties may assist in preventing “laundering” of specimens from a listing country through mis-declaring them as originating elsewhere.

Re-exports of Appendix III listed timber (where the entire taxon is listed) require a certificate to be granted by the CITES Management Authority of the re-exporting State indicating that the specimen was processed in or is being re-exported from that State.

However, in some cases countries have listed only their national populations in Appendix III (see CITES Notification 2010/042<sup>9</sup>). For instance, Guatemala has listed only its national population of *Cocobolo Dalbergia retusa*. In this case the CITES listing applies only to that national population<sup>10</sup>. Exports from the listing State require the prior grant of an export permit from the national Management Authority, while exports from non-listing countries require no CITES documentation. For instance, exports of *D. retusa* from Mexico would require no CITES documentation. (However, it should be noted that the EU *Wildlife Trade Regulation* requires a certificate of origin to accompany the import of these specimens – see below).

### Plantation timber

CITES establishes an exemption from the above requirements for specimens that are considered “artificially propagated” (Article VII, (5)). In this case a certificate from the exporting State’s Management Authority to that effect can be accepted in lieu of the various permits and certificates set out above. Plantation timber may qualify for this exemption. Note that guidance on the definition of “artificially propagated” for plants has been developed (in CITES Res. Conf. 11.11 (Rev. CoP15<sup>11</sup>), and includes provisions requiring the parental stock is established in accordance with the provisions of CITES and relevant national laws. Unless otherwise indicated, where this document refers to CITES

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<sup>8</sup> Online at <http://www.cites.org/common/quotas/2011/ExportQuotas2011.pdf>

<sup>9</sup> Online at <http://www.cites.org/eng/notif/2010/E042.pdf>

<sup>10</sup> Note that CITES Res. Conf. 9.25 (Rev CoP 15) recommends that for species that are traded for their timber, consideration is given to including only that geographically separate population or populations of the species for which the inclusion would best achieve the aims of the Convention and its effective implementation, particularly with regard to the conservation of the species in the country requesting its inclusion in Appendix III. Online at <http://www.cites.org/eng/res/09/09-25R15.php>

<sup>11</sup> Online at <http://www.cites.org/eng/res/11/11-11R15.shtml>



requirements and their implementation in the EU this refers to requirements for wild-harvested rather than plantation specimens.

## Import of timber and timber products of CITES-listed species into the EU

CITES is implemented in the EU primarily by *Council Regulation (EC) No 338/97 on the protection of wild fauna and flora by regulating trade therein*<sup>12</sup> (hereafter the *EU Wildlife Trade Regulation*). The *EU Wildlife Trade Regulation* contains four Annexes (A-D), the first three of which generally correspond to the three CITES Appendices. The EU imposes certain additional “stricter” requirements on import of CITES species into the EU, listing some species not listed in the CITES Appendices, listing some species in a higher Annex than the corresponding CITES Appendix and also requiring an import permit for Appendix II specimens. However, in the case of all the CITES-listed timber species imported into the EU, the listings in the relevant EU Annex and CITES Appendix correspond. These taxa are referred to here as “CITES-listed species” as shorthand, but it should be borne in mind that it is their listing in the EU Annexes that has legal effect in many of the contexts discussed below. The EU’s Annex D, for which there is no CITES equivalent, lists species for which the EU collects data on levels of trade.

Examination of the CITES Trade Database indicates that in recent years (2000-2011) timber and timber products (using the broad coverage of timber products specified in the *EU Timber Regulation*) of six CITES Appendix II-listed species have been regularly imported into the EU for commercial purposes (Table 2). Timber and timber products of another six Appendix III-listed species were imported for commercial purposes over this period (Table 3). Non-timber products such as bark and extracts from several other CITES-listed tree species are also imported (e.g. African Cherry *Prunus africana*, Red Sandalwood/Red Sanders *Pterocarpus santalinus*). Annotations to each listing specify which specimens the listing covers (Tables 2, 3). The main products currently imported from these species to the EU are logs, sawn wood and timber pieces, with smaller amount of veneer, chips, pieces, carvings and derivatives. All these products are covered by their relevant CITES listing.

**Table 2.** CITES-Appendix II listed taxa of which timber or timber products were imported into the EU 2000-2011 for commercial purposes. Taxa for which only a single trade record over this period was reported are excluded.

Source: CITES Trade Database<sup>13</sup>.

Taxon (common names)	Distribution	Annotation to listing	Main products imported into EU
<i>Pericopsis elata</i> (African Teak, Afromosia, Afromosia)	Central and West Africa	Logs, sawn wood and veneer sheets	Logs, sawn wood
<i>Swietenia macrophylla</i> (Bigleaf Mahogany, Caoba)	Central and South America	Controls apply to Neotropical populations only/ Controls apply to logs, sawn wood, veneer sheets and plywood	Sawn wood

<sup>12</sup> Online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997R0338:EN:NOT>

<sup>13</sup> Online at <http://www.unep-wcmc-apps.org/citestrade/trade.cfm>

<i>Swietenia humilis</i> (Mexican Mahogany, Honduras Mahogany)	Central America	All parts and derivatives except seeds and pollen; seedling or tissue cultures obtained <i>in vitro</i> ; and cut flowers of artificially propagated plants	Carvings
<i>Guaiacum</i> species (Lignum-vitae)	USA, Central and South America	All parts and derivatives except seeds and pollen; and finished products packaged and ready for retail trade	Sawn wood, logs, timber, timber pieces
<i>Gonystylus</i> species (Ramin)	Asia	All parts and derivatives except seeds and pollen; seedling or tissue cultures obtained <i>in vitro</i> ; and cut flowers of artificially propagated plants	Sawn wood, timber, timber pieces
<i>Aquilaria</i> species (Eaglewood)	Asia	All parts and derivatives except seeds and pollen; seedling or tissue cultures obtained <i>in vitro</i> ; and cut flowers of artificially propagated plants	Sawn wood, chips, pieces, derivatives,

**Table 3. CITES Appendix III listed species of which timber or timber products were imported into the EU 2000-2011 for commercial purposes.**

<b>Taxon (common names)</b>	<b>Listing countries/populations listed</b>	<b>Annotation to listing</b>	<b>Distribution</b>	<b>Summary of trades to EU 2000-2011</b>	<b>Main products imported to EU</b>
<i>Cedrela odorata</i> (Spanish Cedar)	Listed by Brazil and Bolivia <sup>14</sup> ; and national populations were previously listed by Peru, Colombia and Guatemala)	Logs, sawn wood and veneer sheets	Central and South America, including West Indies	110 records of trade. Includes a total of 66m <sup>3</sup> of veneer from Bolivia, Peru and Brazil; total of 16 853 m <sup>2</sup> of sawn wood primarily from Brazil, Peru and Bolivia with smaller amounts from six other countries; and a small number of carvings.	Sawn wood, veneer
<i>Dalbergia stevensonii</i> (Honduras Rosewood)	III/C (listed by Guatemala)	Logs, sawn wood and veneer sheets	Central America	Comprised of 150 m <sup>3</sup> of sawn wood from Guatemala, USA and Belize.	Sawn wood
<i>Dalbergia retusa</i>	III/C (national populations listed by Guatemala and Panama)	Guatemala: logs, sawn wood, veneer; Panama: all parts and derivatives except seeds and pollen; and	Central America	Comprised of 10m <sup>3</sup> of sawn wood from the USA and Guatemala.	Sawn wood

<sup>14</sup> Currently the Annotation to the listing in the Annexes of the EU Wildlife Trade Regulation does not refer to Brazil or Bolivia. These recent changes have not yet been reflected in updates to the Annexes.

		finished products packaged and ready for retail trade			
<i>Dipteryx panamensis</i>	III/C (listed by Costa Rica, Nicaragua)	All parts and derivatives	Central America	Comprised of 41m <sup>2</sup> of sawn wood from Panama	Sawn wood
<i>Cedrela fissilis</i>	III/C (listed by Bolivia)	Logs, sawn wood and veneer sheets	Central and South America	Comprised of 1353m <sup>2</sup> of sawn wood from Brazil	Sawn wood
<i>Podocarpus neriifolius</i>	III/C (listed by Nepal)	All parts and derivatives except seeds and pollen; seedling or tissue cultures obtained <i>in vitro</i> ; and cut flowers of artificially propagated plants	East and South-East Asia	Includes 46 carvings from Thailand;	Carvings, live

## Import of Annex B taxa

For Annex B timber species, import into the EU requires the issue of an import permit by the Management Authority of the EU Member State (MS) of destination. This import permit must be issued prior to import into the EU and presented at the point of entry into the EU. This import permit will be issued only if (see *EU Wildlife Trade Regulation Art 4(2)*):

1. the Scientific Authority has found (after considering any opinion from the Scientific Review Group – see below) that import would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of the current or anticipated level of trade (making a further assessment<sup>15</sup> of the conservation impact of the trade). If a Scientific Authority finds that these conditions are not met, this finding will be conveyed to other EU Member States and a uniform position will be taken by the Scientific Authorities);
2. an export permit issued by the exporting State (or re-export certificate from the re-exporting State) is produced to show that specimens were obtained in accordance with legislation on the protection of the species concerned and will not be detrimental to the survival of the species; and
3. the Management Authority is satisfied that there are no other factors relating to the conservation of the species that militate against issuance;
4. there is no import suspension in place.

To ensure coordination, the EU has a Scientific Review Group (SRG) consisting of representatives of Member State Scientific Authorities. The SRG reviews import of species listed in Annexes A and B. For species listed in Annex B it may form an opinion as to whether the import would have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species (*EU Wildlife Trade Regulation Art 4(2)(a)*), essentially making a second, separate NDF for the trade. While their assessment doesn't explicitly focus on legality, questions about the adequacy of regulatory controls on harvesting and their verification and enforcement by producer State authorities can and do influence the SRG's assessment of whether sound NDFs are being made. Voluntary, non-legally binding guidelines for the making of these findings by the SRG have been developed, and include consideration of the effectiveness of the management regime in the exporting country (European Commission and TRAFFIC Europe, 2008, Annex IX).

If the SRG form a negative opinion (for a taxon as a whole or from particular States), imports into the EU will cease. Management Authorities of EU Member States will cease issuing import permits for that taxon from relevant exporting States, and after a process of consultation, if no new information is provided to address the negative opinion, it can lead to a formal import suspension by the European Commission. Import suspensions are published periodically in Commission Regulations<sup>16</sup>. Import suspensions into EU member states can be lifted when the exporting country provides new information that addresses the negative opinion.

## Import of Annex C taxa

For species listed in Annex C, if import is from a country that listed the taxon in Appendix III, an export permit issued by the exporting State must be presented at the EU port of entry, stating that the specimens have been obtained in accordance with the national legislation on the conservation of the species concerned (*EU Wildlife Trade Regulation Article 4(3)(a)*). For imports from other States, a certificate of origin from the exporting country can be accepted instead (*Article 4(3)(b)*). For re-exports, a re-export certificate will be needed.

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<sup>15</sup> See <http://www.cites.org/eng/cop/14/doc/E14-17.pdf> Annex 1 paragraph 8

<sup>16</sup> The current is Commission Regulation (EU) No 828/2011 of 17 August 2011 suspending the introduction into the Union of specimens of certain species of wild fauna and flora. Available online at <http://eur-lex.europa.eu/Notice.do?val=583687:cs&lang=en&list=583687:cs,494582:cs,&pos=1&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte>

For all imports of Annex C taxa into the EU, an import notification must be presented at the point of introduction (EU *Wildlife Trade Regulation* Article 4(3)).

## Legal origin requirements under the three mechanisms

Each of these three mechanisms is designed in part at least to reduce the illegal harvesting of timber and/or its associated trade. However, there are significant differences in the requirements of each mechanism with respect to ensuring the legal origin of timber and timber products, and attention may be needed on how they can best operate together. The requirements of each mechanism are summarised for reference in Table 4.

### Coverage of traded timber

There appear to be two issues regarding the coverage of the *EU Timber Regulation*, with respect to its recognition of timber of CITES-listed species as legally harvested.

First, not all imports and exports of CITES-listed taxa expressly require a finding of legal acquisition. As outlined above, for Appendix III-listed taxa, only imports from the countries that listed the taxon in Appendix III must be accompanied by an export permit requiring a finding of legal acquisition. For instance, *Cedrela odorata* has been listed in Appendix III only by Brazil, Bolivia, Peru, Colombia and Guatemala. However, in recent years sawn timber of *C. odorata* has been imported into the EU from Suriname and Ecuador, and from China (which is not a range country) with no country of origin reported (CITES Trade Database, maintained by UNEP-WCMC under contract with the CITES Secretariat). Imports from these countries require a certificate of origin rather than an export permit. There is no definition of 'certificate of origin' in the Convention and no express requirement for a finding of legal acquisition. As the EU does not require an import permit for specimens of timber species listed in Appendix III, these imports enter the EU with no express finding required as to whether they were legally acquired. As the *EU Timber Regulation* exempts all taxa listed in the Annexes of the EU *Wildlife Trade Regulation* this situation will remain unchanged when the regulation comes into effect.

Second, it is possible that the *EU Timber Regulation* could be interpreted in a way that would exempt specimens of CITES-listed species that are not actually covered by the CITES listing. The *EU Timber Regulation* states in Article 3 that "Timber of species listed in Annex A, B or C" of the *EU Wildlife Trade Regulation*, and complying with that Regulation, is accepted as legally harvested. On the face of it, this language is rather ambiguous, and could potentially be read as exempting all timber products from the listed species from further controls, whereas it is only products covered by the Annotation to the listing that actually require CITES permits. For instance, for imports of Appendix II-listed *Pericopsis elata*, imported from central/west Africa, the CITES listing covers only logs, sawn wood and veneer sheets, so only these products require CITES permits. Parquet flooring, also manufactured for export in some of these countries, does not require CITES permits. It is possible that the wording of the *EU Timber Regulation* could be interpreted as extending recognition as legally harvested to these products also. However, it should be noted that the *EU Wildlife Trade Regulation* defines the scope of the listing of species in the Annexes as including "all parts and derivatives of the species...unless the species is annotated to indicate that only specific parts and derivatives are included"<sup>17</sup>. While this language may mean that only timber products falling within the relevant Annotation are exempted from *EU Timber Regulation* controls, it may be helpful for this to be clarified.

### What laws have to be complied with for timber to be "legal"?

The scope of the definition of "legality" that timber must meet is somewhat different under each mechanism. For example, the provisions of the CITES Convention require that specimens are not obtained "in contravention of laws for the protection of fauna and flora" (CITES Art IV(2)(b)). However,

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<sup>17</sup> Point 11, Note on the interpretation of Annexes A, B and C. Annex to COMMISSION REGULATION (EC) No 407/2009 of 14 May 2009 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. Online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:123:0003:0061:EN:PDF>

it is not necessarily clear whether “laws for the protection of fauna and flora” should encompass laws for the regulation of timber extraction and forest management.

However, the definition of legality used under the *EU Timber Regulation* requires adherence to a considerably wider range of laws, and the definition under FLEGT licensing is wider still. The *EU Timber Regulation* defines “legally harvested” as harvested in accordance with the country of harvest’s legislation on all the following matters: rights to harvest timber; payments for harvest rights and timber; timber harvesting (including environmental/biodiversity conservation protections); third parties’ legal rights concerning use and tenure; and trade and customs (Art 2). Under the FLEGT licensing scheme for imports from partner countries, legality is defined under the terms of each VPA. In VPAs concluded to date, all include in their definition of legality obligations relating to administrative and fiscal requirements, harvesting and forest management, processing, and transport, and some include further criteria such as on broader environmental and social obligations (such as use of local labour, or the participation of local communities and indigenous people).

**Table 4.** A comparison of the controls applied by CITES (as implemented in the EU by the *EU Wildlife Trade Regulation*), FLEGT licensing and the *EU Timber Regulation*. For CITES listed taxa, this table applies only to wild-harvested specimens. For timber from plantations, see text.

	CITES/EU Wildlife Trade Regulations		FLEGT-licensing	EU Timber Regulation
	Appendix II/Annex B	Appendix III/Annex C		
<b>Border measure?</b>	Yes	Yes	Yes	No
<b>Applies to timber products from which countries?</b>	All*	All*	All FLEGT partner countries with VPA	All except FLEGT partner countries, and also to EU-sourced timber
<b>Timber requires government permit?</b>	Yes, both from exporting State and from EU	Yes, from exporting State	Yes, from exporting State	No
<b>Private sector obligations to ensure legality</b>	No	No	No	Yes
<b>Producer country legality finding</b>	Yes: by CITES Mgt Authority	Only if exported from country that listed taxa in Appendix III; by CITES Mgt Authority	Yes, as detailed in individual VPAs	Not required (though may contribute to fulfilling due diligence)
<b>Criteria for legality</b>	Laws for protection of fauna and flora	Laws for protection of fauna and flora	Varies a/c to VPA, but includes laws on: administrative and fiscal requirements, harvesting and forest management, processing,	Laws on: rights to harvest timber; payments for harvest rights; timber harvesting legislation; third parties' rights on use



			and transport	and tenure; trade and customs
<b>Third party verification</b>	Not required	Not required	Yes	Not routinely -subject to checks by authorities
<b>Supply chain tracking</b>	Reliant on national implementation – typically no	Reliant on national implementation – typically no	Yes, as specified in the LAS in place	Will generally be required to fulfil due diligence requirements
<b>Producer country sustainability finding</b>	Yes: by CITES Scientific Authority	Not required	Only if required by national legislation	No
<b>EU permit required for entry</b>	Yes, from EU MS CITES Mgt Authority. Requires separate assessment of conservation impact and concerns over legality may lead to refusing import permit.	No	No	No

\*Unless otherwise annotated. Some Annotations specify that the listing covers certain geographic regions only.

## Assurance and verification of legal timber sourcing

The three mechanisms employ different approaches to provide assurance that timber is legally sourced. A basic distinction is the role governments play. Under CITES and the FLEGT licensing scheme, governments are heavily involved in providing assurance that timber is legally sourced through operating permitting/licensing schemes, whereas under the *EU Timber Regulation* the role of government is primarily to ensure that private sector obligations to ensure legality of timber are met.

In order to issue export permits for CITES species, national Management Authorities should ensure that all legislation for the protection of fauna and flora has been adhered to, which would include any harvest quotas, forest management plans, restrictions on harvest areas, and so forth. The sufficiency of these legal acquisition findings rests on the requirements of national CITES-implementing legislation, the national forestry regulatory framework, and the capacity and motivation of the range State CITES authorities. The Conference of the Parties has never directed the development of formal guidance to facilitate the making of legal acquisition findings, including whether and how they should address chain-of-custody. The subject of legal acquisition findings, however, has been addressed in a number of CITES-related meetings. In general, making a meaningful legal acquisition finding will require that the harvest of the taxon requires official authorization. If this was not required, it is difficult to see how a Management Authority could refuse to issue a legal acquisition finding. In practice, the forest management regulatory system in most CITES timber-producing countries requires the development and authorization of harvest management plans for each concession area. In order to issue CITES export permits, Management Authorities typically check species identification and that the volumes to be exported are within the authorized harvest quota for that area, providing assurance that the harvest does not contravene agreed limits (D. Mahongol, TRAFFIC; C. O’Criordain, WWF and B. Ortiz, TRAFFIC, *in litt.*). Improvements could be made in forest management systems in some CITES timber exporting countries - in some cases there is little or no on-the-ground verification of declared forest inventories and harvest levels, and tracking of chain-of-custody of timber from forest to port is often absent or weak (Hin Keong 2006; Brown et al. 2008). Finally, it should be noted that Appendix III may be

Trading timbers: A comparison of import requirements under CITES and FLEGT and related EU legislation for timber species in trade

unsatisfactorily implemented by some Parties (CITES Res. Conf. 9.25<sup>18</sup>), and it may not be generally associated with the same degree of rigour in monitoring and control as the other two Appendices (Hin Keong 2006).

CITES Appendix II species shipments undergo an additional layer of scrutiny before gaining an import permit to enter the EU, from EU Member State Management Authorities and Scientific Authorities (coordinated through the SRG). While, strictly speaking, the work of the SRG focuses on scientific questions, issues of legal acquisition are often raised in connection with biological sustainability of harvest and export. For timber imports, for instance, the SRG will examine aspects such as distribution, population trends, forest management plans and quota setting, but will also typically examine whether sufficient monitoring and verification systems are in place to minimise illegal logging (H. Schmitz-Kretschmer, German Nature Conservation Agency, *in litt.*). Any concerns raised by the SRG or by individual Scientific Authorities can be conveyed to Management Authorities, who may refuse to issue import permits if they do not have confidence in the range State's legal acquisition finding. The desk-based examination of the SRG faces constraints in accessing information relevant to legal acquisition findings in the exporting State (H. Schmitz-Kretschmer, *in litt.*), although this kind of information can be sought through field visits and delegations on occasion (M. Groves, Royal Botanic Gardens, Kew, pers. comm.). Concerns over legal acquisition have been part of discussions that resulted in negative opinions or formal import suspensions for a number of CITES-listed taxa such as *Pericopsis elata* (C. O'Criodain; H. Schmitz-Kretschmer, *in litt.*).

For FLEGT-licensed timber, authorities of the exporting State must verify that timber shipments have met all the legality criteria of the partner country's LAS, as elaborated in individual Partnership Agreements. Each LAS includes a set of objective verifiers and indicators, which must be met before the finding of legality is made. Each LAS also includes monitoring mechanisms and regulation to enable effective implementation; verification of the supply chain from forest to port; and, importantly, regular independent third party audits of the functioning of the entire LAS. These controls can be backed up at the EU end, although such additional scrutiny does not occur as a matter of course - competent EU authorities may decide further verification is required (Art 5(4)) and seek it from partner country licensing authorities.

The *EU Timber Regulation* prohibits the first placing of illegal timber and products derived from such timber on the EU market. The enforcement of the prohibition is left to the EU Member States, which shall establish penalties and follow procedures provided for in national legislation. The Regulation further places a requirement on the operators who place timber on the market in the EU to exercise due diligence to minimise the risk that timber entering trade is obtained illegally. Due diligence systems used by operators and the level of due diligence exercised will be subject to checks by Member States' competent authorities, which can take measures in cases of noncompliance, including imposition of penalties. Presumably, any placing of timber on the market which is found to be illegal could lead to prosecution under the Regulation, regardless of the standard of due diligence carried out, but this remains to be seen in practice. This may depend in part on the details of the *EU Timber Regulation* implementing provisions, due mid-2012, and on EU Member State implementation. The Regulation also envisages a possibility for operators instead of elaborating their own due diligence systems to use the due diligence systems of so called "monitoring organizations", whose role will be to assist operators in meeting the requirements of the *EU Timber Regulation*. Where operators use the due diligence systems of monitoring organizations to meet their due diligence requirements, these organizations monitor the use of their system by operators, and are required to report to authorities any "significant or repeated" failures (Art 8(1)) by operators to use it properly. A third obligation established by the *EU Timber Regulation* (called traceability) applies to all traders in wood and wood products down the supply chain, who must be able to identify who their suppliers and their customers are. This will likewise be subject to checks and enforcement by EU Member State authorities.

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<sup>18</sup> Online at <http://www.cites.org/eng/res/09/09-25R15.php>

## Compliance and enforcement – exporting countries

Each mechanism has (or will have) compliance or enforcement mechanisms associated with it, and measures or penalties associated with noncompliance or violations. Compliance and enforcement measures will largely determine the incentives for authorities and operators at various levels to act in accordance with the requirements of each mechanism.

In producer countries, FLEGT licensing and CITES both involve implementation and enforcement by national authorities. Under the FLEGT licensing scheme, control of compliance with legality criteria is the responsibility in the first instance of the exporting partner country, with oversight of the implementation of the VPA as a whole to be carried out by a joint EU/partner country management committee. Partner country authorities will remain responsible for enforcement of relevant national legislation. Adequate national implementation of CITES by its Parties requires domestic measures (particularly legislation) which penalize violations of the Convention. All enforcement of CITES-implementing legislation is carried out by national government agencies, including specialized wildlife enforcement agencies, Customs and police and penalties are nationally determined.

In terms of international obligations, CITES requirements are obligatory for all Parties to implement. In general, CITES compliance procedures (set out in Resolution Conf. 14.3<sup>19</sup>) aim to promote or facilitate compliance primarily through advice, assistance and warnings. When such measures are not effective, and countries are in persistent noncompliance with the Convention (such as by failing to establish systems to control and minimize illegal harvest and trade), the CITES Standing Committee can recommend that Parties suspend trade with the affected country. The possibility of Standing Committee recommended trade suspensions have often proved effective in the past in encouraging countries to improve quickly their CITES implementation and enforcement. The Animals and Plants Committees can determine whether Appendix II-listed taxa traded at high levels should enter the “review of significant trade” process, a review of the sustainability of the trade by such committees – for timber species, the Plants Committee. This Committee can make recommendations to the Parties concerned, including, quotas, administrative measures, or the carrying out of field studies or monitoring activities. Significant trade reviews can make similar recommendations and, if these are not satisfactorily implemented, can lead to recommendations by the Standing Committee for CITES Parties to suspend trade in the relevant species from the relevant country. Such suspensions have been advised for certain timber species, such as *P. africana* from the Democratic Republic of Congo and Tanzania<sup>20</sup>. While the terms of reference for significant trade reviews (set out in Res. Conf. 12.8 RevCoP13<sup>21</sup>) are specifically limited to the ecological sustainability of exports (the non-detriment findings), rather than the legal sourcing of those exports, past reviews have in some cases noted issues of legal sourcing (see e.g. PC19 Doc 12.3<sup>22</sup> for *M. swietenia*) which are then brought to the attention of the Standing Committee. It should be noted, however, that the significant trade review process can be a slow process – it can take several years to adopt compliance measures, including recommended trade suspensions, for affected Parties.

## Compliance and enforcement – in the EU

Within the EU, all three mechanisms rely for their effectiveness on implementation and enforcement by EU Member State authorities (whether the same authorities are responsible for implementation of FLEGT, the *EU Timber Regulation* and the *EU Wildlife Trade Regulation* is decided at Member State level). The *FLEGT Regulation*'s prohibition of import of timber from FLEGT partner countries without a FLEGT licence will be the responsibility of designated competent authorities in each Member State, as will be establishing penalties for noncompliance. Likewise the requirements that the *EU Timber Regulation* places on operators will be subject to checks by competent Member State authorities,

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<sup>19</sup> See online at <http://www.cites.org/eng/res/14/14-03C15.php>

<sup>20</sup> See online at <http://www.cites.org/eng/resources/ref/suspend.php>

<sup>21</sup> See online at <http://www.cites.org/eng/res/12/12-08R13.shtml>

<sup>22</sup> See online at <http://www.cites.org/eng/com/PC/19/E19-12-03-a3.pdf>

carried out using a risk based approach or in response to information received about possible noncompliance (*EU Timber Regulation Art 10(2)*). Competent authorities will be responsible for establishing penalties for violations of relevant legislation, which may include fines, seizure of products as well as items used in the commission of an offence, suspension of authorization to trade for a certain period and imprisonment. Likewise the monitoring organizations that will provide due diligence systems for use by operators will be subject to periodic checks by competent authorities. With respect to CITES, Member State authorities are responsible for implementation and enforcement, with penalties for violations of the Convention and relevant laws nationally determined. Cooperation mechanisms across the EU (e.g. the EU Enforcement Group) and with intergovernmental bodies with expertise in and a mandate for combating wildlife crime (e.g. the institutional partners of the International Consortium on Combating Wildlife Crime) are well established, and additional efforts are ongoing to strengthen cooperation with other regional cooperation mechanisms and major trading partners.

### Box 3. CITES in action: a case study of Ramin from Malaysia

The impact of CITES controls and corresponding EU controls on trade in Ramin products provides an illustration of various CITES mechanisms in action for timber. Ramin is the trade term given to the wood of the *Gonystylus* genus, which contains around 31 species. The taxon is used for products such as picture frames, baby cots and cribs and handles of non-striking tools. The EU is a major market, while Malaysia and Indonesia are the primary exporters. For instance, in January - November 2009 Italy and Germany together constituted 52% of the market for Ramin products of Peninsular Malaysia (the greatest source of Ramin) (CITES document SC59 Doc 22). The IUCN Red List classifies 15 species as 'Vulnerable'<sup>23</sup>, with the major threats being overexploitation and habitat loss.

Controversy over alleged illegal and unsustainable international trade in Ramin has been ongoing since at the least the late 1990s. Due to concerns over illegal trade and to support its domestic efforts to control trade, Indonesia listed *Gonystylus* species in CITES Appendix III in 2001 and the taxon was accordingly listed in Annex C of the EU Wildlife Trade Regulations. Ramin was listed in Appendix II at CITES CoP 13 in 2004, and in Annex B in August 2005. Concern over possible cross-border illegal trade prompted the Indonesian, Malaysian and Singaporean governments to establish a tri-national Ramin taskforce.

The CITES listing led to scrutiny by global and regional bodies of the management and trade of Ramin. Concerns were raised in both the SRG and the CITES Standing Committee over the basis for Malaysia's harvest/export volumes, leading to dialogue with Malaysian authorities and requests for Malaysia to lower its harvest quotas, and requiring Malaysian authorities to substantiate clearly their basis for making non-detriment findings (NDFs). These concerns led to the SRG making a negative opinion in 2007, suspending all Ramin imports by the EU from Malaysia. Given the value of the EU market, this suspension is likely to have provided a strong incentive for Malaysia to satisfy the EU that its harvest quotas were robustly justified by NDFs. In less than a year Malaysian CITES authorities had provided the SRG with a comprehensive justification of the basis of its harvest quotas and the controls in place, and the suspension was lifted.

The listing of Ramin and other timber species in CITES also motivated a major joint programme of work between the International Timber Trade Organization (ITTO) and CITES for implementation of CITES for selected tree species, including Ramin. This began in 2006, funded primarily by the EU, involving a wide variety of activities aimed at helping countries which exported tropical timber, including Malaysia, implement the Convention.

Various indications suggest that the listing of Ramin in CITES and consequent processes under the Convention have resulted in substantial strengthening of Malaysia's management regime for Ramin. Malaysia's quota for export of Ramin decreased substantially in 2006, and still further in 2007, and actual exports (as reported to the CITES Secretariat) declined still further. The technical data to support NDFs and the adequacy of Malaysia's CITES implementation for Ramin appear to have significantly improved over the period. For instance, a sound and transparent basis for NDFs, tied to forest inventory and therefore used to prevent any laundering of illegally imported timber, was developed in the following few years.

Source: Dickie et al. (2010)

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<sup>23</sup> See <http://www.iucnredlist.org/documents/RedListGuidelines.pdf> for details on definition of IUCN categories



## Sustainability

The legal sourcing of timber entering the EU is an issue of major concern in part because illegal harvesting is typically associated with unsustainable harvesting. Out of the three mechanisms for controlling illegal logging discussed here, only CITES Appendix II controls involve a formal assurance that timber has been sustainably harvested. Under FLEGT licensing, the sustainability of harvest of timber will be reliant on the extent to which partner country's national legislation establishes measures that address sustainability. Likewise, under the *EU Timber Regulation*, obligations on operators extend only as far as ensuring the legal harvesting of timber that they put on the market – the sustainability of timber harvest will rely on the extent to which the legislation of the producer country requires it.

By contrast, CITES Appendix II/Annex B-listed species require a NDF from the exporting country and a similar finding from importing EU authorities before they enter the EU. In practice, CITES NDFs are closely tied to the legal acquisition finding, as legal acquisition findings essentially involve a finding that the timber has complied with all the requirements established in order to make an NDF, such as harvest quotas and forest management plans. While “sustainability” can be construed as a very broad and far-reaching concept, NDFs under CITES and related findings by importing EU countries address at least fundamental aspects of biological sustainability. Guidance for CITES Scientific Authorities in making NDFs has been developed by IUCN, incorporating consideration of factors such as characteristics of the species, its status, harvest management, control of the harvest regime, monitoring, incentives from harvesting, and areas of protection from harvest (Rosser and Heywood 2002). More detailed guidance on the making of NDFs by producer countries for many CITES-listed timber species was elaborated during an international expert workshop (see Anon 2008a) and at the 18<sup>th</sup> meeting of the Plants Committee in 2009 (PC18 Doc. 14.2), and CITES workshops and processes have developed guidance for NDFs for several species of primary concern (see e.g. *Prunus africana* Working Group 2008; Anon 2008b). Also, the EU has developed Guidelines for the Scientific Authorities of the EU Member States and the Scientific Review Group for the making of NDFs for the import and export of CITES-listed species (European Commission and TRAFFIC Europe 2008).

## Global monitoring

Global monitoring of trade in timber can assist in addressing illegal trade in a number of ways. It allows overall global volumes of trade in particular timber species to be monitored in order to provide early warning of potential overexploitation. It allows total volumes exported from each country to be monitored, enabling comparison with existing stocks and official harvest levels. It allows trade routes to be examined, allowing better understanding of the routes by which timber enters the EU and the potential for any laundering of illegally harvested or illegally exported timber. CITES requirements include annual reporting of all trade in CITES-listed species to the CITES Secretariat, and these data are made publicly available via an online searchable database, the CITES Trade database<sup>24</sup>, as well as tools like the CITES Trade Data Dashboards<sup>25</sup>. The database shows *inter alia* the volumes of CITES-listed taxa traded between each (re)exporting and importing country and the kind of product traded (sawn wood, veneer, etc). As all except a very few countries are CITES Parties, this provides almost global coverage of (legal) trade in CITES-listed species. The Food and Agriculture Organization (FAO) of the United Nations holds several forestry-related databases, including the FAO Statistical Database (FAOSTAT) which provides annual production and trade estimates for forest products, including timber, sourced through annual questionnaires to countries, in collaboration with ITTO, the Statistical Office of the European Communities (Eurostat) and the UN Economic Commission for Europe (UNECE). Where information has not been provided by countries through the questionnaire, 'FAO estimates annual

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<sup>24</sup> Online at <http://www.unep-wcmc-apps.org/citestrade/trade.cfm>

<sup>25</sup> See online at [http://www.unep-wcmc.org/cites-trade-data-dashboards\\_145.html](http://www.unep-wcmc.org/cites-trade-data-dashboards_145.html)

production based on trade journal reports, statistical yearbooks or other sources. Where data are unavailable, FAO repeats historical figures until new information is found.’ Under the FLEGT mechanism, the *FLEGT Regulation* makes clear that monitoring of import of FLEGT-licensed timber into the EU will take place, and information will be made publicly available (Art 8(3)). In addition, all the African VPAs signed to date contain strong provisions regarding information disclosure of harvesting and export information in the partner country. The *EU Timber Regulation* will result in information regarding checks on operators and monitoring organizations being made publicly available, but involves no disclosure of information on overall volumes and species entering the EU and being placed on the EU market.

## Issues and Implications

Implementation of the *EU Timber Regulation*, and the coming on stream of licensed timber imports from FLEGT partner countries, will fundamentally change the policy landscape for control of illegally harvested timber in the EU. The interaction of these controls with the established CITES mechanism will have important implications for their joint effectiveness in addressing illegal logging and trade.

As it stands, the *EU Timber Regulation* appears potentially to open some problematic loopholes for timber and timber products to be placed on the EU market without an assurance that they were legally sourced. CITES Appendix III-listed taxa, when exported from countries other than those that listed the taxon in Appendix III, need not be accompanied by any assurance of legality, yet are recognised under the *EU Timber Regulation* as legally harvested and can be placed on the market with no further due diligence obligations. Timber in this category is currently entering the EU, albeit at low levels. However, this could become more problematic with further Appendix III listings, which can be made unilaterally by any country. For instance, if Papua New Guinea listed Merbau *Intsia* spp. in CITES Appendix III, Merbau from West Papua (Indonesia) could enter the EU with no legality finding, and yet be recognised under the *EU Timber Regulation* as legally harvested. Further, there is a possibility that the wording of the *EU Timber Regulation* could be interpreted as extending recognition as legally harvested to all timber products from CITES-listed taxa (taxa listed in the Annexes A-C of the *EU Wildlife Trade Regulation*), despite the listing Annotation only covering a narrow range of products in some cases. For instance, Papua New Guinea could list Merbau in CITES Appendix III with a restrictive Annotation (e.g. logs and sawn wood). If the broad interpretation of the exemption provided by the *EU Timber Regulation* was taken, this would result not only in Merbau being allowed entry to the EU from Indonesia without any assurance of legality, but would also allow EU operators to put Merbau products like veneer, furniture, or musical instruments from any country on the market with no due diligence requirements or assurance of legality.

Further, there may be concerns that CITES timber coming from non-VPA countries may not meet the broad definition of “legally harvested” set out in the *EU Timber Regulation*, due to the narrower scope of the legal acquisition finding required for a CITES permit. For example, it is plausible that a shipment of Appendix II-listed *Swietenia macrophylla* that was harvested in compliance with laws for the protection of fauna and flora, but in violation of indigenous peoples’ land tenure rights or laws on payment of royalties, could gain a valid CITES export permit, a valid CITES import permit and legitimately be put on the EU market. This would mean that CITES timber was not being held to the same standards of legality as timber imported by private operators under the *EU Timber Regulation*. The significance of this concern will depend in part on the extent to which issues such as protection of indigenous rights or royalty payments are incorporated into forest management and conservation legislation in the producer country – if so, they may in practice be considered part of “laws for the protection of fauna and flora” in that country and taken into account in making the legal acquisition finding. However, it is important to note that this will vary from country to country – CITES does not require that laws beyond protection of fauna and flora are taken into account in issuing permits for exports of timber.

More broadly, while the mechanisms offer opportunities to complement and support their efforts at preventing illegal timber entering the EU their coherent and consistent implementation may be a challenge. Implementation of CITES requirements (and related national legislation) by some range, and some importing, State Management Authorities is subject to technical and capacity constraints



and political will. Weaknesses in governance in some timber-producing and timber-importing countries may mean that “legal acquisition” findings for exports of timber of CITES-listed taxa could be based on inadequate and/or unreliable information on whether laws for protection of fauna and flora were observed in harvesting, particularly when countries may have few means to verify on-the-ground compliance with such laws or no arrangements in place to track the chain of custody back to the forest. At least on paper, the FLEGT VPA requirements appear to offer considerably stronger guarantees of legal sourcing, compared to the other frameworks addressed here, with requirements for supply chain verification and third party auditing of LASs providing particularly rigorous assurance. However, their impact in practice remains of course to be demonstrated, and much will depend on the ability of partner country authorities to establish and maintain stronger systems of governance and accountability. Likewise, the due diligence requirements of the *EU Timber Regulation* expose all operators placing timber on the EU market to penalties should they be found in violation, offering an apparently strong incentive for operators to use effective systems to ensure legal harvesting. Again, however, much remains to be seen in practice, and the impact of the *EU Timber Regulation* is likely to be heavily dependent on effective and consistent implementation and enforcement across all EU Member States.

There may be important lessons to be learned for enforcement of the *EU Timber Regulation* and FLEGT licensing scheme from established mechanisms for cooperation on wildlife trade monitoring, information-sharing and enforcement efforts linked with CITES. For example:

- The International Consortium on Combating Wildlife Crime (ICWC), launched in 2010, brings together the CITES Secretariat, INTERPOL, the UN Office on Drugs and Crime, the World Bank and the World Customs Organization (WCO) to collaborate on addressing illegal wildlife trade (CITES 2011). The expertise and programmatic focus on wildlife crime of these organizations could be of great value to EU enforcement authorities in their efforts against illegal logging and associated trade. Initiatives of ICWC include development of an Analytic Toolkit on Wildlife and Forest Crime (to be released in 2012), and initiatives on “controlled delivery”, which involves tracking illegal items to their destination in order to identify and apprehend those in the supply chain, a technique applicable in efforts against illegal logging. INTERPOL, the CITES Secretariat and the WCO have developed a manual on controlled delivery of illegal items of wildlife (ICCRW 2011); and WCO organized, in cooperation with China Customs and other ICWC partners, a workshop on the establishment of Controlled Delivery Units in countries affected by illegal trafficking in wildlife and timber in Shanghai, December 2011 (WCO 2011a). This will assist specialized wildlife law enforcement agencies, Customs, the police and prosecutors from about 20 countries in Africa and Asia to respond quickly to illegal shipments detected in transport.
- The WCO also hosts the WCO ENVIRONET, a secure, internet-based global communication tool for Customs officials, law enforcement authorities, and international organizations to cooperate with one another and share real-time information in the course of their daily operations (WCO 2009). WCO has urged greater use of ENVIRONET for rapid exchange and dissemination of information relating to the illegal trade in timber (WCO 2011b).
- INTERPOL has developed the Ecomessage system that aims to provide a uniform intelligence data reporting system for the many different law enforcement agencies concerned (INTERPOL 2011). The system is suitable for reporting on all environmental crimes including the illegal trade in fauna and flora.
- CITES, with TRAFFIC, has developed a global database to assist in analysis and monitoring of illegal trade in one taxon of particular concern. The Elephant Trade Information System (ETIS) is a comprehensive information system to track illegal trade in ivory and other elephant products. The central component is a database on seizures of elephant specimens that have occurred anywhere in the world since 1989, with subsidiary databases that track time-specific and country-specific variables such as law enforcement effort, rates of reporting, domestic market controls and background economic variables<sup>26</sup>. Analysis of the information in ETIS is used to

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<sup>26</sup> See <http://www.cites.org/eng/prog/etis/index.shtml>

help understand trade dynamics and advise CITES policy, decisions and interventions as appropriate. A similar global database on illegal timber could be enormously valuable in understanding global patterns of illegal trade and their relationship to a range of underlying variables.

- In the EU itself, EU-TWIX<sup>27</sup> (Trade in Wildlife Information eXchange) is an online database established to assist enforcers of the *EU Wildlife Trade Regulation*, including CITES Management Authorities, police, Customs, prosecutors and others in detecting, analysing and monitoring illegal activities. Introduced in 2005 and managed by TRAFFIC, EU-TWIX is comprised of a unique centralised database of information on wildlife seizures in the EU; an associated mailing list that allows quick and efficient information sharing between designated enforcement officers from all EU Member States (plus some neighbouring States); and information and tools to help in identification, valuation and disposal of specimens (Anon 2005). Extension of EU-TWIX to timber, or establishment of a similar mechanism focused on timber, could be of great value in enabling effective, coordinated and targeted responses to illegal timber trade by enforcers of the *FLEGT Regulation* and *EU Timber Regulation*.

The monitoring requirements of CITES, covering the 350 tree species listed in the Appendices, are a considerable strength of the CITES mechanism. While FLEGT monitoring provisions appear strong, because they are necessarily limited to trade between the EU and partner countries they are unlikely to enable analysis of global trade routes that could shed light on any suspected laundering of timber via third countries. CITES also has the advantage of its sustainability requirements for Appendix I and II listed species. Illegal harvesting is a problem for governance, for government revenue, for indigenous and local communities, but it is also often a problem because it involves unsustainable extraction of timber. The fact that listing commercially traded species in CITES Appendix II provides such an assurance of sustainability for imports to the EU is a clear benefit of listing. While there seem to be weaknesses in the making of NDFs in some timber-producing countries, the making of NDFs can be scrutinised both by the CITES Plants Committee, if the species enters the significant trade process, as *P. elata*, *S. macrophylla* and *Aquilaria malaccensis* have done; and (for EU imports) by the EU SRG. SRG negative opinions on sustainability have encouraged countries to take action to improve significantly their efforts in order to avoid suspensions of imports of timber species many times, including for *P. elata* and *Prunus africana* from central/west Africa, and for Ramin from Malaysia (see Box 3).

The CITES listing of a commercially important tree species has often been seen as likely to lead to reduced demand for that species, and generally opposed by industry interests, because of a widespread perception that CITES deals only with “endangered” species. However, under the *EU Timber Regulation* operators who import FLEGT-licensed or CITES-listed timbers are relieved of any due diligence obligations, potentially making these timber species considerably more attractive. It is possible that the *EU Timber Regulation* could boost demand in the EU for CITES-listed timbers. While the implications are not clear, such an increase in demand could potentially put pressure on management systems in range States that control the legality and sustainability of exports.

## Recommendations

### **To European Commission, EU Member States, and other organizations seeking to promote effective controls on illegal timber entering the EU**

1. Support the development of clear guidance and capacity building for policy and enforcement officers, traders and trading organizations, and relevant non-governmental organizations on the *EU Timber Regulation* and FLEGT licensing system, including their interaction with CITES requirements.

### **To European Commission and EU Member State authorities with responsibilities for controlling timber imports**

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<sup>27</sup> Online at <http://www.eutwix.org/WebApplication2/index.htm>

2. Consider EU legislative means to ensure the legal origin of CITES Appendix III-listed timber taxa. For example, legislation could require that an acceptable certificate of origin for these imports include a statement to the effect that the timber was legally acquired. Alternatively, an amendment to the *EU Timber Regulation* to provide that the exemption for CITES-listed taxa applied to Annex C taxa only for countries that had listed the taxon in question, or where imports were otherwise accompanied by a finding that the timber was legally acquired.
3. Consider development of guidelines for the making of legal acquisition findings for timber species listed in the Annexes of the EU Wildlife Trade Regulation, similar to those guidelines developed by the SRG for the making of NDFs, including for specimens of Appendix III-listed species originating from a non-listing CITES Party, and timber products of CITES-listed species that are not covered by the relevant CITES annotation.
4. Consider initiating discussions in the relevant CITES fora (Plants Committee or Standing Committee) with regard to legal acquisition findings and encourage the development of CITES-wide guidelines on legal acquisition findings.

#### **To European Commission and EU Member State authorities responsible for implementing and enforcing the FLEGT Regulation and the EU Timber Regulation**

5. Ensure the establishment of effective mechanisms for cooperation and information-sharing with ICCWC partners and other relevant intergovernmental bodies with mandates, expertise and resources for combating illegal wildlife trade, engaging their expertise on wildlife crime to assist in efforts to combat illegal timber being placed on the market in the EU.
6. In collaboration with FAO and ITTO, consider the development of a centralised database at EU and/or global level on timber seizures and offences, in order to allow coordination, information-sharing, analysis of patterns and drivers, and provision of intelligence on illegal timber activity. Useful lessons could be learnt from EU-TWIX, the CITES Trade Database and CITES ETIS, and EU-TWIX could potentially be expanded to include timber.
7. Ensure the establishment of effective mechanisms for ensuring effective cooperation in communication and information-sharing on illegal timber between EU Member States and the European Commission, learning lessons where relevant from the functioning of the EU CITES Committee.
8. Develop mechanisms for cooperation and information-sharing between the EU FLEGT Committee and the EU CITES Committee, for instance through the holding of back-to-back meetings or by exchange of observers or Chairs.
9. Within EU Member States, improve mechanisms for effective communication and cooperation at national level between authorities responsible for trade in timber and authorities responsible for trade regulated by the *EU Wildlife Trade Regulation*.

#### **To EU Member State CITES Authorities**

10. Work with key exporters of CITES-listed timber to the EU to gain further assurance of legal harvesting for CITES timber shipments (in compliance with Article 4(1)(b)(i)/Article 4(3) of the *EU Wildlife Trade Regulation*), including for species listed in Appendix III. In order to make the legal acquisition requirements for CITES timber consistent with other timber, support the development and implementation of guidelines for the legal acquisition of timber species, as outlined in recommendations 2 and 3 above, for ensuring all the legislation set out in the *EU Timber Regulation*'s definition of "legally harvested" is complied with in the making of legal acquisition findings.
11. Work with interested key exporters of CITES-listed timber to the EU to assist in establishment and strengthening of chain of custody tracking for shipments of CITES-listed timber, augmenting some current initiatives in this direction. This can be targeted to Parties where there is reliable evidence of illegal activity in the timber sector.

#### **To CITES Parties, Standing Committee, Plants Committee and CITES Secretariat**

12. Consider the development of simple, clear and comprehensive guidance for CITES exporting Parties on the making of legal acquisition findings. This could include consideration of aspects

such as adequacy of CITES implementing legislation and its links to specific legislation that must be complied with for the making of legal acquisition findings; adequate chain of custody monitoring; and mechanisms for on-the-ground verification of inventory and harvest levels.

### **To CITES Management Authorities in Parties exporting to the EU**

13. Develop stronger and clearer bases for the making of legal acquisition findings, based on on-the-ground verification of forest inventory and harvest levels, where possible, and the establishment of effective systems to verify the chain of custody for timber from CITES-listed species.

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