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The EU Timber Regulation and CITES

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INTRODUCTION

This paper examines the interface between the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the European Union Timber Regulation (EUTR). Written to provide background information for a workshop on CITES and the EUTR at Chatham House on 12–13 December 2013, it aims to:

- Explain the requirements of the EUTR and the Forest Law Enforcement, Governance and Trade (FLEGT) principles that underpin it to the CITES community;
- Describe the scope and characteristics of CITES compliance mechanisms for EUTR enforcement agents and FLEGT stakeholders;
- Identify the new commercial incentives and risks generated by the CITES 'exemption' enshrined in the EUTR; and
- Highlight potential compliance/enforcement synergies between CITES and the EUTR.

In addition, the paper makes recommendations on how to improve synergies between the two processes. Developed with input from workshop participants, those recommendations are included on pages 26-28.

OVERVIEW OF THE EUTR AND CITES

The EUTR

When it came into force In March 2013, the EU Timber Regulation established three key requirements:

- Placing illegally harvested timber and products derived from such timber on the EU market for the first time, is prohibited.
- Operators – those who place timber products on the EU market for the first time – are required to exercise 'due diligence' and be able to demonstrate that they have done so.
- Traders – those who buy or sell timber and timber products already placed on the EU market – are required to keep information about their suppliers and customers to make timber easily traceable throughout the European portion of relevant product supply chains.

A credible due diligence system is defined as one that entails:

- Information gathering: The type of information that must be recorded includes details of product and supplier, the country of harvest and compliance with applicable forestry legislation.
- Risk assessment: Operators are required to follow risk assessment procedures that take into account information gathered about the product as well as broader relevant risk criteria, such as the incidence of illegal harvesting in the country of harvest, the complexity of the given supply chain or the availability of appropriate 'third-party' certification and verification schemes.
- Risk mitigation: If risk assessment suggests there is a risk that the product contains illegally harvested timber, risk mitigation procedures must be put in place. Risk mitigation procedures are those that allow a company to ascertain that it is not purchasing illegal wood in situations where illegal wood may be offered for sale. They can include requiring suppliers to provide detailed information on the material source and chain of custody before the products are purchased or buying only products that have an independently audited guarantee of provenance and legality.

The regulation notes that risk mitigation should be 'adequate and proportionate' to the risk of illegal wood entering the product supply chain in question. It suggests that civil society groups provide information – in the form of 'substantiated concerns' – about companies that they consider to be failing to undertake effective due diligence or about consignments of wood that they suspect are illegal. Such formal 'concerns' are to be submitted to the competent authorities of the relevant EU member states; however, to date there are no standards or protocols defining what is an acceptable level of substantiation or how a member state ought to respond.

The EUTR applies to a broad range of primary and processed wood products[1] either imported or domestically produced. Unlike CITES, it is not a border control measure – that is, compliance is not policed at the EU border but rather by enforcement agencies that scrutinize the business of a company or individual whose timber-trading activities are subject to the regulation. Another fundamental difference is that while CITES establishes a global licensing system for controlling trade in listed species, the EUTR focuses on reducing the risk of illegal products entering the supply chain rather than licensing legal ones.

Exemptions to the due diligence requirement are made for products imported in accordance with the EU Wildlife Trade Regulation, which implements CITES in the EU (see the Annex). Article 3 of the EUTR states that 'timber species listed in Annexes A, B or C to Regulation (EC) No 338/97 and which complies with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation'. Similarly products accompanied by FLEGT licenses, issued under the auspices of legally-binding bilateral trade agreements, known as Voluntary Partnership Agreements (VPAs), between the EU and individual timber-producing partner countries, are given an exemption.[2]

The EUTR was one of several measures identified in the EC FLEGT Action Plan, published in 2003.[3] The plan recognized that the EU, as an importer of substantial quantities of timber products from countries with poor law enforcement and governance in the forest sector, had a responsibility to ensure that EU markets did not create incentives for illegal logging. It identified a number of policy options for increasing market access for products verified as 'legal' and reducing demand from EU buyers for 'high-risk' products, not verified as such. Coordination of those policies at the EU level is undertaken by the EU FLEGT Committee, which comprises representatives of all member states, meets regularly in Brussels and is chaired by the European Commission.

CITES

CITES is a multilateral environmental agreement with 180 member countries.[4] Its aim is to ensure that international trade in species of wild animals and plants does not threaten their survival. States that have voluntarily joined CITES and agreed to be bound by the convention are known as parties. Although CITES is legally binding on the parties, it does not replace national laws. Rather, it provides a framework to be respected by each party, which must adopt its own (domestic) legislation to ensure that CITES is implemented at the national level. Parties to the convention monitor and control relevant trade by requiring all imports, exports and re-exports of specimens of species covered by the convention to be authorized through a global licensing system. The parties must record all trade in listed species and report it annually to the CITES Secretariat. This information is made public through the online CITES trade database, managed by the UN Environment Programme World Conservation Monitoring Centre (UNEP-WCMC). In addition, the parties must designate at least one Management Authority responsible for licensing and at least one Scientific Authority responsible for assessing the effects of proposed and actual trade on the status of the species. In order to authorize the export of a specimen of a CITES-listed species, a

1 Timber products subject to the EUTR are listed in an Annex of the regulation using EU customs code nomenclature. They include solid wood products, flooring and plywood as well as some furniture and pulp and paper products.
2 Note that no FLEGT licence has yet been issued for trade. For more information on the principles of legality assurance schemes underpinning credible licensing, see http://www.euflegt.efi.int/documents/10180/28299/FLEGT+Briefing+Notes+3+-+A+timber+legality+assurance+system/e9ce3bcd-6243-4bb6-b702-d48e8843079c.
3 See http://ec.europa.eu/development/icenter/repository/FLEGT_en_final_en.pdf.
4 They include all countries involved in the commercial export of timber to the EU.

national Management Authority must be satisfied that the specimen has been 'legally acquired' and, in the case of species listed in Appendices I and II, that the relevant national Scientific Authority has advised that the proposed export will not be detrimental to the survival of the species.

Species covered by the convention are listed in three Appendices.[5] Appendix I lists species currently threatened with extinction; trade in specimens of these species is permitted only in exceptional circumstances and requires an export and import permit. Appendix II lists species not necessarily threatened with extinction in the immediate term but in which trade must be controlled in order to avoid 'utilization incompatible with their survival'.[6] All parties to the convention are required to control trade in species listed in Appendices I and II in accordance with Articles III and IV of the convention, respectively, and follow the guidance of resolutions adopted by the Conference of the Parties (CoP), which meets every three years. Appendix III lists species that are protected in at least one country that has asked other CITES parties for assistance in controlling trade in those species.[7]

Requirements for the inclusion of products in the global trade licensing system vary depending on the Appendix in which the species is listed. Most commercially traded timber species are listed in Appendices II and III. Some of the listings are limited in scope to certain products. These limitations are set out in an annotation; for example, the listing of Bigleaf Mahogany in Appendix II is restricted to logs, sawn wood, veneer sheets and plywood. The main CITES requirements for licensing listed species for international trade are as follows:

Table 1: CITES requirements for licensing international trade in commercially traded timber species listed in Appendices II and III

Appendix II	**Appendix III**
An export permit or re-export certificate issued by the Management Authority of the state of export or re-export is required. An export permit is to be issued only if the specimen was legally obtained and if the export will not be detrimental to the survival of the species. A re-export certificate is to be issued only if the specimen was imported in accordance with the convention. Wood from plantations considered 'artificially propagated' requires just a certificate to that effect from the Management Authority.[8]	In the case of a state that listed the species, an export permit issued by the Management Authority of that state is required. This is to be issued only if the specimen was legally obtained. In the case of export from any other state, a certificate of origin issued by that state's Management Authority is required. In the case of re-export, a re-export certificate issued by the state of re-export is required.
No import permit is required.	No import permit or certificate is required.

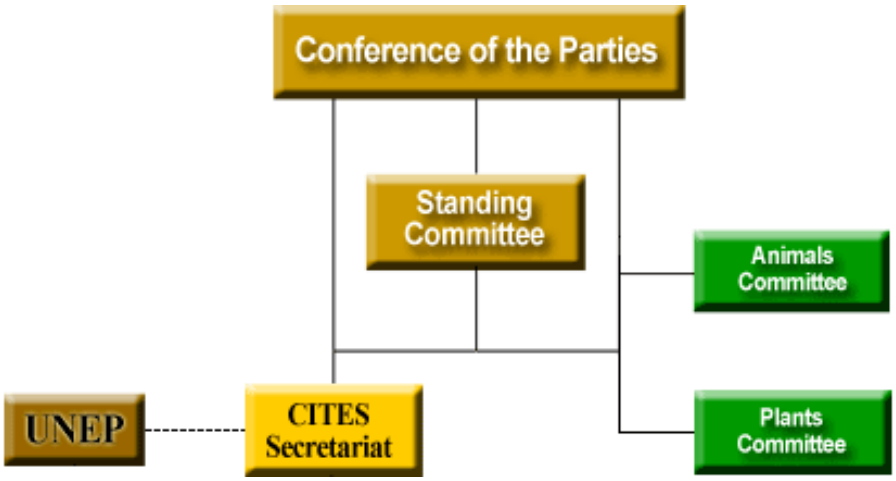
As Table 1 indicates, export permits for specimens of Appendix II-listed species must be based on a scientific non-detriment finding (NDF) and, notably, a legal acquisition finding. Export permits for specimens of Appendix III-listed species (required where the state of export listed the species) need only legal acquisition findings, while certificates of origin require neither NDFs nor legal acquisition findings since those documents only identify the country of export as the country from which the specimen originated. They are not required to include sub-national 'origin' (such as

5 See Article II of the convention at http://www.cites.org/sites/default/files/eng/disc/E-Text.pdf.
6 See Article II 2(a) of the convention.
7 See Articles II.3 and V of the convention.
8 See Article VII, Paragraphs 4–5 of the convention and Resolution Conf. 11.11 (Rev CoP 15).

concession of harvest). The EU Wildlife Trade Regulations stipulate more stringent requirements for both Appendix II- and III-listed species, which are detailed below.

At its last meeting, the CoP adopted a resolution recommending a number of 'concepts and non-binding guiding principles' for making an NDF.[9] No such criteria, however, have been established for legal acquisition findings. Each government of a party state to CITES interprets the convention's relatively limited guidance on this issue either independently or – in the case of the EU – as part of a group. Stakeholder discussions at CITES-related meetings have identified the need for a meaningful legal acquisition finding to decide whether harvest was authorized; most forest codes in timber-producing countries require that harvest management plans for each concession area be drawn up and approved,[10] but this is not reflected in requirements under CITES. Management Authorities are reported, typically, to check species identification and ensure volumes do not exceed CITES quotas. However, there are a number of incidences of quotas being significantly exceeded, while the non-reporting of both quotas and annual trade data remains an issue in a handful of key timber-producing states.

Figure 1: The CITES institutional framework



Source: CITES Secretariat website

CITES compliance processes

Establishing the means to ensure compliance by all parties to the convention is an ongoing process.[11] Several measures have been introduced not only to encourage and increase capacity for compliance but also to sanction those parties that have failed to take appropriate action to resolve problems. This suggests that the capacity and/or political will to comply with commitments is lacking.[12]

A programme jointly run by the International Tropical Timber Organization (ITTO) and the CITES Secretariat and funded mainly by the EU provides capacity-building support for the management of listed timber species. It supports the following activities: undertaking forest inventories, establishing management plans, making NDFs, training control officers in the use of CITES tools and introducing supply chain traceability systems for CITES-listed timber species whose survival is significantly threatened by illegal harvest and trade (currently *Pericopsis elata* and *Prunus*

9 See Resolution Conf. 16.7.
10 Cooney, R, von Meibom, S and Hin Keong, C, (2012): *Trading Timbers, A comparison of import requirements under CITES, FLEGT and related EU legislation for timber species in trade* , Cambridge: TRAFFIC.
11 For a history of the evolution of the CITES compliance system, see Reeve, R, (2002): *Policing International Trade in Endangered Species: The CITES Treaty and Compliance*, London : Chatham House/Earthscan.
12 See, in particular, CITES Resolution 11.3 (CoP15, 2010) and Resolution Conf 14.3.

africana). In Phase 1 of the programme, which was launched in 2007, the focus was initially on three species: *Swietenia macrophylla* (Bigleaf Mahogany) in Latin America, *Pericopsis elata* (Afrormosia) in Africa and *Gonystylus* spp. (Ramin) in Asia (see the case studies on pages 14-21). The programme also assisted Madagascar to undertake the research necessary for that country to propose the listing of more than 100 rosewood and ebony species in Appendix II at the 16th meeting of the CoP (CoP16) in March 2013 and, subsequently, to implement the action plan approved to put the listings into effect.[13]

Following the EU's positive review of Phase 1, the programme has now entered its second phase.[14] It has three regional coordinators – one each in Africa, Asia and Latin America – while the work has expanded to include other CITES-listed tree species in the three regions. Capacity-building under the programme is complemented by diplomatic activity mandated by the relevant CITES committees and performed mainly by the Secretariat. This activity usually takes the form of written requests for information on issues related to non-compliance: from the enactment of legislation to the establishment or identification of appropriate institutions to carry out CITES functions to information on law enforcement. Independent reviews of critically threatened species, in-country missions and field visits are undertaken when deemed necessary.

Sanctions take the form of recommendations to suspend trade, either in individual species ('species-specific trade suspensions') or in all CITES-listed species from countries that consistently fail to comply with CITES provisions ('country-specific trade suspensions').[15] Trade suspensions are considered the final option. They can be triggered by, *inter alia*, the failure to introduce legislation necessary to implement CITES, the consistent failure to provide annual reports or permitting volumes of trade in a given species that are considered detrimental to the survival of that species. CITES trade suspensions are currently in place for 31 countries;[16] of those, 28 are deemed to have engaged in 'significant trade', three to have failed to provide annual reports and three to have failed to put in place necessary legislation. Only one country – Guinea (all species) – was found to have failed to ensure 'enforcement'.[17]

The Review of Significant Trade (RST) is a particularly relevant compliance process for Appendix II-listed timber species. Its aim is to protect those species listed in Appendix II that are most heavily traded. After every CoP meeting, UNEP-WCMC uses annual trade data reported by the parties to the convention to draw up lists of such species and the CITES Animals and Plants Committees select for further review those species for which levels of trade are, or could be, detrimental to their survival. The review is undertaken in accordance with procedures stipulated in Resolution Conf. 12.8 (Rev. CoP13) and comprises several stages that include consultations with the states concerned.[18] Although the focus of the RST is on compliance with CITES Article IV, widespread illegality in a country/sector can be considered as one element of a review. Trade in *Pericopsis elata*, *Prunus africana* (African Cherry), *Swietenia macrophylla* and *Pterocarpus santalinus* (Red Sandalwood) is currently under review as part of this process. It should be noted that the RST can be relatively slow since it depends on trade data which are retrospective and only reported annually, while progress through the review is limited by the periodicity of Animals and Plants Committee meetings which debate the results of the review as well as responses from parties and make recommendations (between meetings of the CoP the committees meet annually, but before and after CoP meetings two years passes before the committee meetings are held). It can take between three and 24 months for concerns to result in the adoption of compliance measures for affected parties. Moreover, trade suspensions are resorted to only after all other measures have been exhausted.

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13 See Decision 16.152 and Annex 3 to the Decisions of the Conference of the Parties in effect after its 16th meeting.
14 The programme has been subject to the results-oriented monitoring process of the EU, which took place in 2009–10 and involved visits to ITTO in Yokohama and to all three regions in which it operates. Another review was scheduled to begin in January 2014 to assess work currently ongoing under Phase 2. The results of the first review were positive; the main criticism was the need to facilitate more inter-country and inter-regional communication and sharing of experiences, which has since been addressed. After the review, US$10 million was approved for Phase 2. The ITTO, for its part, commissioned a separate mid-term evaluation of the programme in 2010, which helped identify priorities for assistance under Phase 2.
15 For case studies, see Reeve, R., (2002): *Policing international trade in endangered species: the CITES treaty and compliance*. London: Chatham House/Earthscan.
16 N.B.: This figure relates to all listed species - roughly 5,600 species of animals and 30,000 species of plants.
17 See http://www.cites.org/eng/resources/ref/suspend.php.
18 See http://www.cites.org/eng/res/12/12-08R13.php.

Commercial CITES-listed timber exports to the EU

According to trade data reviewed by the monitoring network TRAFFIC, only six timber species listed in Appendix II and six listed in Appendix III were exported to the EU in significant volumes during the period 2000–11.[19]

Table 2: CITES-listed timber species exported to the EU in significant volumes from 2000 to 2011

Appendix II	Appendix III
Pericopsis elata (African Teak, Afromosia, Afrormosia)	*Cedrela odorata* (Spanish Cedar)
Swietenia macrophylla (Bigleaf Mahogany, Caoba)	*Dalbergia stevensonii* (Honduras Rosewood)
Swietenia humilis (Mexican Mahogany, Honduras Mahogany)	*Dalbergia retusa*
Guaiacum species (Lignumvitae)	*Dipteryx panamensis*
Gonystylus species (Ramin)	*Cedrela fissilis*
Aquilaria species (Eaglewood)	*Podocarpus neriifolius*

Source: Ferriss, S, (2014): An Analysis of Trade in Five CITES-listed Taxa, London: Chatham House/TRAFFIC.

The EU Wildlife Trade Regulations

Owing to the EU single market and the absence of systematic border controls within the union, CITES provisions have to be implemented uniformly in all EU member states in order to ensure that each party within the union's internal market meets its responsibilities and is compliant. Thus, the convention is implemented through a set of regulations known collectively as the EU Wildlife Trade Regulations (see the Annex).

The core text of these regulations (Council Regulation No 338/97 known as the 'Basic Regulation', or the EU Wildlife Trade Regulation[20]) establishes the essential CITES trade controls under EU law. Species are listed in four Annexes to the regulation, which follow the structure of the CITES Appendices; just as all relevant commercially traded timber species are listed in Appendices II and III of CITES, so those species are correspondingly listed in Annexes B and C of the EU Wildlife Trade Regulation.

19 See Ferriss, S., (2014), *An Analysis of Trade in Five CITES-listed Taxa*, London: Chatham House/TRAFFIC, background paper for the workshop at Chatham House on 12–13 December 2013.

20 Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. See http://ec.europa.eu/environment/cites/legislation_en.htm

Table 3: Species distribution in the Annexes to the EU Wildlife Trade Regulation

Annex A	Annex B	Annex C
All CITES Appendix I-listed species, except those for which EU member states have entered a reservation. N.B.: There are currently no reservations on Appendix I-listed species.	All other CITES Appendix II-listed species, except those for which EU member states have entered a reservation. N.B.: There are currently no reservations on Appendix II-listed species.	All other CITES Appendix III-listed species, except those for which EU member states have entered a reservation.
Some CITES Appendix II- and Appendix III-listed species, for which the EU has adopted stricter domestic measures and some non-CITES species. N.B.: No species commercially traded for timber currently falls into these categories.	Some CITES Appendix III-listed species and some non-CITES species. N.B.: No commercially traded timber currently falls into these categories.	

Requirements for the import into the EU of specimens of listed species vary depending on the Annex in which the species is listed. They are similar to, but stricter than, those of CITES. The most notable difference between the requirements for trade in species listed in Annexes B and C is that imports of Annex C-listed species do not require an NDF.

Table 4: Trade requirements under the EU Wildlife Trade Regulations

Annex B	Annex C
CITES export permit issued by the Management Authority of the producer country.	In the case of states that have committed to controlling trade in the relevant species: CITES export permit issued by the Management Authority of the producer country. In the case of exports from producer countries that have not committed to controlling trade in the relevant species: CITES certificate of origin.
Import permit issued by the Management Authority of the EU member state.	Import notification by importing company or individual; to be submitted, along with CITES Appendix III documents from the (re-)exporting country, to the customs authority of the importing state.

The criteria for the issuing of import permits by EU member states follow the guidance provided by the newly adopted CITES Resolution Conf. 16.7 on NDFs. Further, Article 4 of the EU Wildlife Trade Regulation states that an import permit can be issued only if 'the applicant provides documentary evidence that the specimens have been obtained in accordance with the legislation on the protection of the species concerned'.[21] Currently, it is unclear whether all member states are required to supply evidence of compliance with the relevant laws before import permits are issued; but Article 4 provides the legal basis for a more rigorous review of legality prior to import in those cases in which it is considered reasonable and proportionate to the risk of illegality in the given

21 See Council Regulation (EC) No 338/97 see http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997R0338:EN:NOT

supply chains. As noted above, certificates of origin require neither an NDF nor a legal acquisition finding.

'Compliance' actions taken at the European level under the EU Wildlife Trade Regulations are mandated by the EU Wildlife Trade Committee and implemented by the European Commission. In the first instance, diplomatic overtures by the European Commission and EU member states are undertaken. As in the case of the global CITES process, there is a heavy initial focus on encouragement and support aimed at ensuring that the management of and trade in species is not detrimental to the survival of those species (as noted above, the EU is the primary donor supporting the ITTO-CITES capacity-building programme). More active mechanisms to ensure compliance, or 'stricter domestic measures',[22] include imposing the requirement for an import permit for Annex B-listed species – and thus scientific NDFs and documentary evidence of legality - and an import notification for Annex C-listed species. They also include the ability to introduce trade suspensions in accordance with the criteria stipulated in the EU Wildlife Trade Regulation, which empowers the European Commission to restrict the introduction of specimens of specific species into the EU after consultations with the countries of origin and taking into account any opinion of the EU Scientific Review Group (SRG).[23] The SRG, which was constituted in 1997 and comprises representatives of the Scientific Authorities of member states, is mandated to examine any scientific question related to the application of the EU Wildlife Trade Regulation.[24] The SRG undertakes assessments of 'non-detriment' at EU level, which involves reviewing annual export quotas, trade volumes and so forth, and forms 'positive' or 'negative' opinions or 'no opinion'.[25]

The list of trade suspensions is updated annually; but on the basis of negative advice from a member state or an EU level assessment of 'non-detriment' the SRG may form a 'negative opinion' (which is considered a 'stricter domestic measure') about imports of a specific species from a specific country. Since all member states are required to take account of SRG opinions,[26] this *de facto* suspension may exist until the species/country can be formally added to the list.[27] The case of Ramin exports from Malaysia provides an example of a suspension that led to behaviour change (see the case study on pages 17-19).

Table 5: Current (formal) EU trade suspensions for CITES-listed timber species

Species	Annex	Date of entry into force	Range state
Pericopsis elata (African Teak, Afromosia, Afrormosia)	B	28 May 2013	Cote d'Ivoire
Aquilaria malaccensis (Agarwood)	B	11 September 2012	Bangladesh
Prunus Africana (Iron wood, Red Stinkwood, African Plum, African Prune, African Cherry, and Bitter Almond)	B	30 November 2009	Cameroon
Prunus africana	B	15 September 2008	Equatorial Guinea
Prunus africana	B	15 September 2008	United Republic of Tanzania
Swietenia macrophylla (Bigleaf Mahogany, Caoba)	B	3 August 2010	Bolivia (Plurinational State of)

22 CITES Article XIV.1 protects 'the right of Parties to adopt: (a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or (b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III'.
23 See Council Regulation (EC) No 338/97, Article 4.6.
24 See Article 17 of Council Regulation (EC) No 338/97, adopted 9 December 1996 at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997R0338:en:NOT.
25 'Positive Opinion' – given current or anticipated levels of trade, introduction into the Community 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; 'Negative Opinion' – the information available is insufficient to form a positive opinion on an application and/or the given current or anticipated levels of trade, introduction into the Community might 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; 'No Opinion' - the species is not currently (or is only rarely) in trade, and no significant trade is anticipated, or there are insufficient data on which to make a confident positive or negative opinion. See http://ec.europa.eu/environment/cites/pdf/srg/def_srg_opinions.pdf
26 See Council Regulation (EC) No 338/97, Articles 4.1–4.2.
27 See http://ec.europa.eu/environment/cites/srg_en.htm.

Suspensions under the EU Wildlife Trade Regulations can only be imposed in relation to specific species from a specific CITES range state. There is currently no provision for suspending trade with the EU either in a specific CITES-listed species from all source countries or in all CITES-listed species from a specific source country. However, evidence of widespread illegality in the forest sector of a source country can be considered a threat to the sustainable management and exploitation of endangered species. It is reported that the SRG typically examines whether monitoring and verification systems are sufficient to minimize illegal logging.[28] However, it is hard to reconcile this with the continuation of trade over the last decade with a number of countries that have extremely weak institutional capacity and are unable to impose the rule of law outside major urban centres. The EU also monitors trade in CITES-listed species under a contract with TRAFFIC and UNEP-WCMC and reviews all export quotas published by exporting states.

28 Cooney, R, et al. (2012): *Trading Timbers,* quoting H. Schmitz-Kretschmer of the German Nature Conservation Agency.

WHAT IS LEGALITY?

This section examines how the EUTR's concept of legality fundamentally differs from that of CITES – both in principle and in practice.

As noted above, in the case of specimens of species listed in Appendix I, II, or (for states that listed the species), III, the legality of licensed CITES products is based on the requirement that the national Management Authority issue an export permit only if it is satisfied that the specimens to be exported were not obtained in contravention of the national laws on the protection of fauna and flora. However, there is no guidance on how such a finding should be made or validated.

By contrast, the EUTR defines a legal product as having been produced in accordance with "all applicable legislation", including:

- Rights to harvest timber within legally gazetted boundaries;
- Payments for harvest rights and timber, including duties related to timber harvesting;
- Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting;
- Third parties' legal rights concerning use and tenure that are affected by timber harvesting; and
- Trade and customs, in so far as the forest sector is concerned.[29]

Beyond that, neither the EUTR nor its supporting documents detail specific requirements for validation of legality (it is worth recalling in this context that the EUTR focuses on reducing the risk of illegal products entering a supply chain rather than licensing legal ones). However, as noted above, operators are expected to undertake an assessment of the risk of illegal wood entering a supply chain on the basis of information gathered about the product and supplier, country (and, in high-risk cases, concession) of harvest and compliance with applicable forestry legislation. Though not an explicit EUTR requirement, the demand for such information implies that, in order to deliver it, operators should expect a reliable chain of custody (CoC) system (see Box 1 below) from forest to point of export.

In addition, within the framework of the FLEGT Action Plan (and its supporting guidance documents), credible legality assurance under a VPA that results in the granting of a FLEGT licence requires that compliance with relevant laws be based on a published legality standard and systematically checked and that each national licensing system be subject to regular third-party audits. While those requirements are not enshrined in the EUTR, CITES stakeholders should understand that they help shape the concept of legality that is used in discussions related to FLEGT, VPAs and, frequently, EUTR compliance, particularly in relation to 'high-risk' producer countries.

Table 6: Concepts of legality of CITES and the EUTR/FLEGT

	CITES	**EUTR/FLEGT**
Scope	Laws on the protection of fauna and flora	All 'applicable legislation'
Definition of legality	None	Expectation that both due diligence and enforcement will be based on knowledge of all 'applicable legislation' and, where available, national 'legality definitions' developed as a result of VPAs
Defined process of credible validation	None	Expectation of systematic checks and regular third-party (independent) audits

29 Regulation (EU) No 995/2010
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:01:EN:HTML.

Box 1: Chain of custody best practice in the timber sector

In the timber sector, chain of custody (CoC) is the flow of information through a supply chain that makes it possible to prove that timber has been derived from legal or sustainably managed forests. A CoC system can be paper-based or electronic but must include the information necessary to trace timber and wood products back to their origin. If robust, CoC certification allows forest product manufacturers and traders to ensure there is no illegally harvested material in their supply chains. Attempts to formulate and apply principles for rigorous CoC controls have been made, notably, by the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification (PEFC), several private 'verified legal origin' systems and the FLEGT VPA processes.

Any CoC system needs to be able to track materials with no gap in the chain from point of harvest to point of export, including transportation, processing, storage and distribution.

Two CoC systems are used in the forest sector: physical separation and inventory management. The former requires that products are marked so that they can be indentified individually and that they are processed and stored separately. The latter uses data reconciliation between total input and total output at processing or storage facilities. Both systems require effective mechanisms for measuring and recording the quantities of timber or timber products at different points in the supply chain in order to reconcile quantities and check that the integrity of the control system has been maintained.

The information management and data reconciliation mechanisms on which effective CoC is based are required to be checked regularly – both by the company operating them and by a third-party auditor. Most auditors are accredited, which ensures they have the capacity to judge the effectiveness of those mechanisms and are not subject to conflicts of interests. To issue CoC certificates, the FSC and PEFC require that auditors are satisfied that control systems are in place to ensure that wood from certified forest areas is not mixed with wood from other sources. When they become operational, FLEGT licences issued under the Legality Assurance System (LAS) of a VPA country will require a national wood control system, which is checked both by an agency performing the regulatory role of the government (which may be outsourced to the private sector) and by an Independent Auditor. The ultimate credibility of the LAS in such cases is assessed by a committee comprised of representatives of the partner country's government and the European Commission – both of which may invite other relevant stakeholders.

THREE SPECIES CASE STUDIES

Bigleaf Mahogany (*Swietenia macrophylla*)

Bigleaf Mahogany (*Swietenia macrophylla*) is one of three species of mahogany in the *Swietenia* family. Its range is from Mexico to southern Amazonia in Brazil. Popularly known as *ouro verde* (green gold), it is highly prized commercially. Bigleaf Mahogany is used to make furniture, boats, musical instruments and panelling, among other things. The main importer is the US; the EU accounted for just three per cent of imports over the last decade.[30]

In the early 1990s NGOs launched a campaign to protect mahogany. Described as 'the most significant Amazon campaign in the 1990s', mahogany – and particularly *S. macrophylla* – became a powerful symbol in the campaign against deforestation in the Amazon.[31] Attempts were made in 1992 and 1994 to list *S. macrophylla* in Appendix II but failed. For this reason Costa Rica took unilateral action and in 1995 had it included in Appendix III, restricting the listing to all populations in the Americas. This did not alleviate widespread concern about the unsustainability and illegality of the trade in Bigleaf Mahogany, however; and in 1997 it was agreed to set up a Bigleaf Mahogany Working Group. The next year Bolivia, Brazil and Mexico listed their populations of *S. macrophylla* in Appendix III; and in 2001 Colombia and Peru followed suit.

The working group, which first met in 2001, comprised representatives of range states, importing parties and relevant international organizations (FAO, ITTO, IUCN, the International Wood Products Association and WWF). Its aim was to gain a better understanding of the conservation status of the species and make recommendations for sustainable levels of international trade. It is noteworthy that the terms of reference included an analysis of legal and illegal trade in the species and shortcomings in control measures that resulted from the species being listed in Appendix III rather than Appendix II.[32]

In 2002, in its first report to CoP12, the working group noted a number of weaknesses in the implementation of Appendix III trade controls, including confusion over the use of CITES permits vs certificates of origin. It pointed to the need to detect illegal trade in *S. macrophylla* through pre-trade information exchanges between parties and publish information about legitimate permits online. On the basis of the report, the Secretariat recommended that range states 'seriously consider supporting an Appendix II listing'.[33]

Amid intense NGO pressure, a limited Appendix II listing for logs and part-processed products was passed at the CoP12 meeting in Chile[34] and went into effect in November 2003. Reported export volumes decreased significantly following the listing, but concerns were subsequently raised about illegal trade. Participants in an ITTO workshop in Peru in May 2004 identified links with organized crime syndicates and considered it a priority to tackle smuggling from Brazil, Bolivia and Peru. Analysis submitted to the 15th meeting of the CITES Plants Committee in 2005 suggested that the 'majority of fraud is committed before the timber arrives at port of export' and that 'particularly Peru urgently needed international support to combat this illegal trade effectively and that all range states were in great need of improved mahogany management capacity'.[35]

Despite this, an EU mission to Peru resulted in a positive trade opinion from the EU SRG, which was issued on the understanding that the Peruvian Management Authority would submit a trade quota to the CITES Secretariat by June 2005. Because of continued concern about illegal trade and allegations that 'government officials were unable to make NDFs or legal acquisition findings in

30 For an analysis of mahogany trade over the last decade, see Ferriss, S., (2014): *An Analysis of Trade in Five CITES-listed Taxa*.
31 Zhouri, A., (2000): Transnational Campaigns for the Amazon: NGO strategies, trade and official responses, *Ambiente & Sociedade*, III, No 6/7, 2002 (see www.scielo.br/pdf/asoc/n6-7/20426.pdf).
32 Decision 11.4 (see http://www.cites.org/eng/dec/11/4.shtml).
33 CoP12 Doc 47. (see: http://www.cites.org/eng/cop/12/doc/E12-47.pdf).
34 The listing covered logs, sawn timber, veneer and plywood.
35 Summary record of the 15th meeting of the Plants Committee see http://www.cites.org/eng/com/pc/15/E-PC15-SummaryRecord.pdf.

relation to *S. macrophylla*', the Secretariat undertook a mission to Peru in June 2006.[36] It reported several concerns about management practices – including the inability to distinguish between timber of legal and illegal origin and 'evidence of timber of illegal origin being smuggled from neighbouring countries with the intention of it being "laundered" through timber operations based in Peru and subsequently exported using fraudulently obtained CITES permits'[37] – and recommended to the Standing Committee that a trade suspension be implemented. Although many agreed with the Secretariat's recommendation, the threat of a suspension was dropped following a statement by Peru to its fellow parties in which it 'emphasised its commitment to fully implement the provisions of the Convention with respect to Bigleaf Mahogany'.[38]

The Standing Committee continued to focus on the illegal trade from Peru and in 2007, following another Secretariat mission to that country, made 'targeted recommendations that were mutually agreed with Peru and regularly monitored by the committee'.[39] In 2010, however, the Secretariat expressed concern to the Standing Committee that 'Peru had achieved formal or "paper" compliance but not necessarily real "on-the-ground" compliance' with the committee's recommendations.[40] They identified three benchmark indicators for achieving 'real compliance',[41] and Peru was given until 30 September 2010 to meet those standards or be subject to a postal decision on suspending trade in Bigleaf Mahogany.[42] After several exchanges and bilateral meetings, the Secretariat expressed its opinion that Peru 'had arguably made substantial progress on the indicators' by the deadline so the postal procedure was not initiated.[43] In 2011 the Standing Committee decided the indicators had been implemented but asked for an update on the first indicator ('installation of a modern, effective information system' that was operational) at its next meeting.[44] Peru met that request; and in 2012 it was advised it no longer needed to report to the Standing Committee.[45]

A Secretariat analysis described the process over Peru as 'innovative and successful in a number of ways … provid[ing] a rich trove of lessons learned that might be applied to other range states of Bigleaf Mahogany and to the conservation of, and trade in, other CITES-listed timber species'.[46] One notable innovation was the agreement that the approved concession of harvest would be made clear on Peru's CITES permits.

An important driver of change in Peru along with the CITES process has been the Trade Promotion Agreement (TPA) with the US, which was signed in April 2006 and came into force in January 2009. The TPA includes an Annex on Forest Sector Governance,[47] which contains detailed provisions on strengthening forest governance and combating illegal trade. In particular, it provides for improving the governance and monitoring of CITES-listed species, enabling verification and enforcement and promoting compliance. Under the agreement, Peru is obliged to verify the legality of shipments upon written request from the US; verification is to be achieved through paying on-site visits and examining documents related to compliance with Peru's laws, among other means.[48] Noteworthy is the programme of coordinated capacity-building and information exchanges between the relevant government institutions in Peru and the US that strengthens the agreement. In 2009

36 SC54 Doc. 31.1 see http://www.cites.org/eng/com/sc/54/E54-31-1.pdf.
37 SC54 Doc. 31.1 see http://www.cites.org/eng/com/sc/54/E54-31-1.pdf.
38 Ibid.
39 SC61 Doc 50.1 see http://www.cites.org/eng/com/sc/61/E61-50-01.pdf.
40 SC59 Summary Record see http://www.cites.org/eng/com/sc/59/E59-SumRec.pdf.
41 Ibid.: '1. Installation of a modern, effective information system which is operational; 2. Alignment of the forestry and CITES legislation and the work of relevant institutions in relation to quota determination and authorization for export; and 3. Government's purchase of additional timber authorized for harvest in 2008, which had been the subject of attempted ex post facto revision of the 2008 quota.'
42 Ibid.
43 SC61 Doc 50.1 see http://www.cites.org/eng/com/sc/61/E61-50-01.pdf.
44 SC61 Summary Record see http://www.cites.org/eng/com/sc/61/sum/E61-SumRec.pdf.
45 SC62 Executive Summary–SC62 Sum. 10 (Rev. 1) (27/07/2012) see http://www.cites.org/eng/com/sc/62/sum/E62-ExSum10.pdf.
46 SC61 Doc 50.1 see http://www.cites.org/eng/com/sc/61/E61-50-01.pdf.
47 See Chapter 18, 'Environment': Annex 18.3.4
http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf.
48 Ibid., Paragraph 10(d).

Tomaselli and Hirakuri described the TPA as 'a driving force to change the Peruvian Forest Law, as well as to introduce other changes that are also generally in line with CITES requirements'.[49]

The focus on Peru raised concerns that issues related to compliance by other states exporting Bigleaf Mahogany – in particular, with regard to the implementation of NDFs – were being neglected. In 2008 the CITES Plants Committee included *S. macrophylla* in the RST – earlier attempts to include it having been opposed by range states. Brazil, Guatemala and Mexico were excluded from the review; but 16 range states,[50] among them Peru, were included for failing to demonstrate the ability to implement NDFs. At its next meeting in 2009, the Plants Committee excluded Peru on the basis of having made 'considerable progress' in the implementation of NDFs.[51] Costa Rica, Dominica, the Dominican Republic, El Salvador, Guyana, Panama, St Vincent and the Grenadines and St Lucia were excluded, too, for having no recorded trade in the species; in the case of the Dominican Republic there were no exports of native species, while Costa Rica, had an export ban in place.

However, seven range states – Belize, Bolivia, Colombia, Ecuador, Honduras, Nicaragua and Venezuela – were included in the next round of the review; and at its 19th meeting in 2011, the CITES Plants Committee categorized Bolivia's population of *S. macrophylla* as being of 'urgent concern' and Belize, Ecuador, Honduras and Nicaragua's populations as being of 'possible concern'.[52] Venezuela and Colombia were excluded from the review. Specific recommendations were made to each country; for example, Belize, Ecuador, Honduras and Nicaragua were recommended to set conservative harvest and export quotas and Bolivia a zero export quota.[53] At the time of writing, the review is ongoing.

In 2011 the Secretariat noted in its report to the Standing Committee that 'the conservation of, and trade in, Bigleaf Mahogany were issues that did not only affect Peru and that all countries involved in the export, import and re-export of Bigleaf Mahogany either were or should be making efforts to ensure that such trade was legal, sustainable and traceable'. The same document went on to suggest the following: 'Another approach … that might be better explored in the future is how the burden of proof could be reversed in relation to the verification of legal origin, perhaps through a requirement that the private sector provide written declarations, under penalty of perjury, for certain activities related to mahogany harvest and trade.'[54]

In 2012 – the same year in which Peru received the 'green light' from the CITES Standing Committee – the US-based office of the Environmental Investigation Agency (EIA) issued a damning report on the trade in Bigleaf Mahogany and Red Cedar (*Cedrela odorata*), both CITES-listed species, from Peru.[55] The report included evidence that between 2008 and 2011, more than 20 US companies had imported illegal wood worth millions of dollars from the Peruvian Amazon in violation of the US Lacey Act, CITES laws and the US-Peru TPA on controlling trade in illegal wood. From that report it appeared that those imports had been facilitated through fabricated papers and that Peruvian government officials had approved the trade. More than 35 per cent of all US-Peru trade in the two protected species involved illegal wood, according to the report; that estimate was based on the Peruvian government data and, for that reason, considered conservative. Within the EU, only Spain reported importing *S. macrophylla* from Peru during the period covered by the EIA document.[56]

According to the EIA, problems persist in Peru to this day. Until the new digital timber control system is in place – a development expected in late 2014 – the legal origin of timber shipments

49 I. Tomaselli and S. Hirakuri (2009), 'Converting Mahogany', ITTO Tropical Forest Update, 18:4 see http://www.itto.int/tfu/id=2034.
50 Belize, Bolivia, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guyana, Honduras, Nicaragua, Panama, Peru, Saint Lucia, Saint Vincent and the Grenadines and Venezuela
51 PC18 WG3 Doc 1 and Summary Record: Eighteenth meeting of the Plants Committee see http://www.cites.org/eng/com/pc/18/wg/E-PC18-WG03.pdf and http://www.cites.org/eng/com/pc/18/E-PC18-sum.pdf.
52 Summary record of the 19th meeting of the Plants Committee see http://www.cites.org/eng/com/pc/19/sum/E19_SumRec.pdf.
53 Ibid.
54 SC61 Doc 50.1 see http://www.cites.org/eng/com/sc/61/E61-50-01.pdf.
55 Urrunaga, J.M., (2012):*The Laundering Machine: How Fraud and Corruption in Peru's Concession System are Destroying the Future of its Forests*, London: EIA.
56 See Ferriss, S., (2014): *An Analysis of Trade in Five CITES-listed Taxa*.

from that country cannot be guaranteed.[57] It appears that the problems in Peru originate in the granting of harvest permits to timber concessionaires based on forest inventories prepared independently; since those inventories are not verified, the concessionaires with CITES permits are able to launder timber cut elsewhere into the supply chain. This laundering cannot be detected by the CITES control system, so the Peruvian authorities are conducting field trips to verify forest inventories for *S. macrophylla.* Moreover, CITES requires permits only for partly processed products, so exports of finished products are handled by the customs authorities, which are said to have little knowledge of and limited interest in the timber trade.[58]

The focus on Bigleaf Mahogany in Peru has resulted in a significant reduction in recorded exports of *S. macrophylla* from that country. Since 2010 Peru has been overtaken by Guatemala, Bolivia and Mexico in terms of the volume of recorded exports of this species (although according to the EIA, the actual amounts exported from Peru are unknown[59]). As a result, the CITES institutions, through the partnership with the ITTO, have continued to work with other range states to improve management and have focused strongly on better reporting, capacity-building and encouraging the development of electronic tracking systems. However, concerns were raised in CITES Standing Committee discussions that trade in Red Cedar (*C. odorata*) from Peru was 'replacing trade in mahogany and was affected by the same problems'.[60] During a mission by the Secretariat to Peru in 2008 relating to CITES implementing legislation, 'concerns were expressed' that exports of *C. odorata* had 'increased substantially as mahogany exports have declined'.[61] Since *C. odorata* is listed only in CITES Appendix III[62] and there has not been consistent reporting of trade data or implementation of the listing, it has received much less attention than *S. macrophylla* and less data is available.[63] A 2007 proposal to list the species in Appendix II was successfully opposed by range states. Since then, data on trade and conservation status collected under a CITES Action Plan led to a decision by the Plants Committee in 2012 that *C. odorata* met the trade criterion for Appendix II.[64] However, no listing proposal was submitted to CoP16 in 2013.

Ramin (*Gonystylus* spp.)

Ramin is the common trade name of a number of light-coloured tropical hardwood tree species native to the peat swamp forests of Southeast Asia. It is highly valued for its fine grain and easy-working qualities. The main products in trade are picture frames, pool cues, blinds, tool handles and decorative mouldings.[65] Ramin has been discussed in CITES meetings since 1992, when The Netherlands proposed including it in Appendix II. However, the proposal was opposed by the major range states of Indonesia and Malaysia, which had been logging significant volumes of Ramin since the 1930s. Another listing proposal by The Netherlands in 1994 failed too.

During the 1990s Ramin production declined in Indonesia and Malaysia – a development that was attributed to the exhaustion of the species in virgin peat swamp forest. In 1999 the EIA and Telapak Indonesia launched a joint campaign against illegal logging in Indonesia, the target of which was the Ramin trade.[66] In April 2001, amid concerns over illegal logging in protected areas, Indonesia placed a moratorium on the cutting and trading (with the exception of registered stocks) of Ramin until the end of that year and listed the species in Appendix III with a zero quota. An inventory of Ramin stocks was conducted in April–May 2001 and it was found that the annual allowable harvest (400,000 m^3) had been well exceeded, indicating that the bulk had probably been illegally sourced.

57 Comments made by Peru's Director of Forest Information at a public session of the Subcommittee on Forest Sector Governance on 4 April 2013 (reported in a personal communication by Julia Urrunaga).
58 Personal communication by Julia Urrunaga.
59 Ibid.
60 SC58 Summary Record see http://www.cites.org/eng/com/sc/58/sum/E58-SumRec.pdf.
61 SC57 Doc.36 see http://www.cites.org/eng/com/sc/57/E57-36.pdf.
62 Of the 19 range states, Brazil, Bolivia, Colombia, Guatemala and Peru have listed *Cedrela odorata* in Appendix III.
63 Ferriss, S., (2014): *An Analysis of Trade in Five CITES-listed Taxa*; PC17 Doc. 16.4: Problems Regarding Population-Specific Appendix-III Timber Listings (submitted by the US) see http://www.cites.org/eng/com/pc/17/E-PC17-16-04.pdf.
64 PC20 Summary Record, Annex 13 see http://www.cites.org/eng/com/pc/20/sum/E-PC20-SumRec.pdf.
65 See http://www.kew.org/plants/ramin.html.
66 Currey, D, et al. (2001): *Timber Trafficking : Illegal Logging in Indonesia, South East Asia and the International Consumption of Illegally Sourced Timber*. EIA /Telapak Indonesia; Dr Samedi, (2003): Appendix III and the conservation of ramin(Gonystylus spp.) in Indonesia, in *CITES World: Official Newsletter of the Parties*, No. 11, July 2003.

After 2001 only one certified concession holder in Indonesia was allowed to harvest and export Ramin products.[67]

Both the Indonesian authorities and NGOs considered the listing of Ramin in Appendix III to have helped reduce illegal harvesting and render illegal trade more difficult.[68] However, in 2004 TRAFFIC reported that Ramin illegally logged in Indonesia was still making its way onto the world market, often via Malaysia and Singapore, and that there were 'strong indications that some of this illegal Ramin [wa]s traded with permits issued by the CITES Management Authorities in Malaysia and Singapore'. It said that illegal trafficking in Ramin was a 'widespread international phenomenon', evidenced by several seizures in Indonesia, Malaysia and Singapore as well as in non-range consumer and re-exporting states, including the US, the UK, Canada, Hong Kong and Italy. It attributed the trafficking to weaknesses in the CITES implementation and enforcement systems of Indonesia, Malaysia and Singapore.[69]

When the Appendix III listing came into effect in August 2001, Malaysia – which had overtaken Indonesia as the lead producer of Ramin logs and implemented policies encouraging processing – entered a reservation applicable to all recognizable parts and derivatives of *Gonystylus* spp. except sawn timber and logs.[70] This meant that the country was, in effect, a 'non-party' to CITES for the purpose of trade in Ramin processed products such as mouldings and doweling.[71]The laundering of Ramin from Indonesia through Malaysia 'on an unprecedented scale' was reported by the EIA and Telapak in 2004. A major Ramin trader was said to have told investigators that some 30–40 per cent of the Ramin being exported from Sarawak to Europe and elsewhere under CITES permits came from Indonesia.[72]

Owing to the difficulty in implementing the Appendix III listing, a proposal by Indonesia to list Ramin in Appendix II in October 2004 was approved. However, the illegal trade in Ramin had been brought to the attention of the CITES Standing Committee when, at a meeting earlier that year, it was added to the agenda, despite objections from Malaysia. The EU – a major importer of Ramin (The Netherlands, Italy and Germany were the main importing countries)[73] – expressed concern to the committee about shipments from Asia, reporting problems with certificates of origin. The Secretariat was tasked with participating in a tri-national workshop on Ramin organized by TRAFFIC to facilitate discussions between Indonesia, Malaysia and Singapore and reporting on illegal trade at the next meeting of the Standing Committee.[74] The workshop participants reached agreement on several recommendations for improving the regulation of trade and law-enforcement coordination between the three countries, including the establishment of a tri-national task force on Ramin.[75] At the Standing Committee's pre-CoP meeting in October 2004, all three range states were asked to report on actions taken to address illegal trade in Ramin;[76] and at the committee's subsequent meeting in 2005, importing countries China, Italy, Japan, the UK and the US were asked to report too.[77]

In 2006 the Standing Committee intensified its scrutiny of Ramin trade, requesting that China, Italy, Japan, Malaysia, the UK and the US provide written reports and Malaysia explain the scientific basis for its NDFs in relation to its export quotas.[78] Concerns raised by both the EU SRG and the CITES Standing Committee over Malaysia's harvest and export volumes led in 2007 to a negative

67 The PT. Diamond Raya Timber concession in Riau Province, Sumatra, was certified by Lembaga Ekolabel Indonesia, the national certification scheme, and accredited by the FSC. See T.W. Lim, T. Soehartono and Hin Keong, C, (2004): *Framing the Picture: An Assessment of Ramin Trade in Indonesia, Malaysia and Singapore*, TRAFFIC Southeast Asia.
68 Ibid.; and Currey, D, et al. (2001): *Timber Trafficking.*
69 Lim et al. (2004): *Framing the Picture*; and S. Lawson, S., (2004): *The Ramin Racket: The Role of CITES in Curbing Illegal Timber Trade*, EIA/Telapak Indonesia.
70 CITES Notification No. 2001/068.
71 Lim et al. (2004): *Framing the Picture.*
72 Lawson, S, (2004): *The Ramin Racket*.
73 Import data show that the EU accounted for 97–100% of global direct imports during the period 2002–11. Export data were incomplete but nonetheless showed the EU was a major importer. See Ferriss, S., (2014): *An analysis of trade in Five CITES-listed taxa.*
74 SC50 Summary Record see http://www.cites.org/eng/com/sc/50/E50-SumRep.pdf.
75 SC51 Doc. 14 see http://www.cites.org/eng/com/sc/51/E51-14.pdf.
76 SC51 Summary Record see http://www.cites.org/eng/com/sc/51/E51-SumRep.pdf.
77 SC53 Summary Record see http://www.cites.org/eng/com/sc/53/sum/E53-SumRec.pdf.
78 SC54 Summary Record see http://www.cites.org/eng/com/sc/54/E54-SumRec.pdf.

opinion by the SRG under which all EU Ramin imports from Malaysia were suspended.[79] In that same year Australia also acted to suspend imports of Ramin products from Malaysia.[80] Within less than a year, Malaysian CITES Authorities provided the SRG and Standing Committee with a comprehensive justification of the basis of its harvest quotas as well as details of the controls in place. Consequently, the EU suspension was lifted at the end of 2007, although the Australia suspension stayed in place until 2009. [81] However, until 2011 exporting range states were required to continue to report to the Standing Committee on the progress made and results achieved under the ITTO-CITES programme as well as on the activities of the Tri-National Task Force; the joint programme with the ITTO was initiated in 2008 to provide financial and technical assistance to improving the management and conservation of Ramin.[82] Importing parties, meanwhile, were asked to report on any achievements or problems they wished to draw to the attention of the committee.

In 2010 Malaysia provided a comprehensive report on Ramin trade, controls, enforcement and activities under the ITTO-CITES programme; these activities included the making of NDFs, a forest inventory and the development of a timber monitoring system and DNA database.[83] The report noted that Ramin exports had diminished.[84] In 2011, following oral reports from Indonesia and Malaysia on the technical progress achieved and the tools established under the ITTO-CITES programme, the Standing Committee decided that it was no longer necessary to include Ramin on its agenda.[85]

Cooney et al. argued that the EU suspension was 'likely to have provided a strong incentive' for Malaysia to strengthen its management of Ramin and satisfy the EU that its harvest quotas were robustly justified by NDFs. They reported there were indications that listing Ramin in CITES and subsequent action taken under the convention had resulted in 'substantial strengthening of Malaysia's management regime for Ramin'. As an example, they cited the development of a sound and transparent basis for NDFs – one that was tied to the forest inventory and could therefore be used to prevent the laundering of illegally imported timber.[86]

Afrormosia (*Pericopsis elata*)

Pericopsis elata, also known as Afrormosia or African Teak, is native to countries in West and Central Africa where it is found in the Guinean equatorial forests and Congo Basin. It is valued for the high quality of its wood and used in production of flooring, boats, furniture, window and door frames, decorative veneer, boards (for both coffins and furniture) and tool handles.[87] International trade in timber from Afrormosia began around 60 years ago.

Under threat from international trade, Afrormosia was included in CITES Appendix II in 1992. The EU formed a negative opinion in 2001 in relation to exports of the species from Cameroon and the Republic of Congo (RoC) in particular and suspended trade for one year. In 2002 levels of trade were considered so high as to threaten the survival of the species. Thus Afrormosia was included in the RST by the CITES Plants Committee with a view to recommending actions to ensure that NDFs were made and trade reduced to 'safe' levels.

In 2004 Fauna and Flora International (FFI) conducted a desk-based review of the extraction of and trade in Afrormosia. It found that while exports from West African states were low owing to protection measures or a reduction in stocks resulting from over-exploitation in the past, 'significant stocks do however remain in Cameroon, RoC and DRC [Democratic Republic of Congo], where the

79 Cooney, R, et al. (2012): *Trading timbers*, p. 20.
80 SC59 Doc. 22 see http://www.cites.org/eng/com/sc/59/E59-22%20.pdf.
81 Ibid.
82 SC57, 58, 59 and 61 Summary Records (ee http://www.cites.org/eng/com/sc/index.php.
83 SC59 Doc. 22 see http://www.cites.org/eng/com/sc/59/E59-22%20.pdf.
84 Ibid.
85 SC61 Summary Record see http://www.cites.org/eng/com/sc/61/sum/E61-SumRec.pdf.
86 Cooney et al. (2012) : *Trading timbers.*
87 Ferriss, S., (2014): *An Analysis of Trade in Five CITES-listed Taxa*, citing N. Bourland et al. (2012), 'Ecology and management of Pericopsis elata (Harms) Meeuwen (Fabaceae) populations: a review', *Biotechnologie, Agronomie, Société et Environnement*, 16(4), pp. 486–98.

forests are more extensive and logging of this species has been more recent. Legislative and administrative procedures are in place to manage the forests … *but problems of implementation and enforcement remain*' [emphasis added].[88] Following consideration of the report by the CITES Plants Committee, Afrormosia was identified as a 'species of possible concern' since it was unclear whether management of and trade in the species were conducive to its survival. The Plants Committee made a number of recommendations for Cameroon, the Central African Republic (CAR), the DRC and the RoC, largely focusing on the capacity of their CITES Scientific Authorities to make effective NDFs; at the same time, those recommendations specified that information 'could' be provided to the Secretariat on 'compliance and enforcement measures' related to the implementation of CITES Article IV (i.e. the provisions for regulating trade in species listed in CITES Appendix II rather than general forest law). The four countries were given six months (until March 2005) to take the necessary measures. Cameroon and the DRC subsequently responded to the recommendations but CAR and the RoC did not.

For the first time in the formal CITES process, attention was drawn to possible routes and means of illegal and/or unreported trade in Afrormosia – for example, the smuggling and shipping of consignments, possibly mislabelled as non-CITES species, from non-range state ports. A subsequent FFI in-country expert review of Cameroon, the DRC and the RoC concluded: 'The regulatory systems in the three range states are at different stages of development … But in all cases there is a problem of the institutional weakness – broadly understood – of the state bodies responsible for these regulatory systems.'[89] The same review pointed to the need for coordination between the African Forest Law, Enforcement and Governance (AFLEG) process[90] and CITES implementation.

In 2005, following an assessment of whether the recommendations had been implemented and having consulted the chair of the Plants Committee, the CITES Secretariat referred the cases of Cameroon, CAR, the DRC and the RoC to the Standing Committee and submitted reformulated recommendations on Afrormosia for each of those countries. It was the opinion of the Secretariat and the Plants Committee chair that inadequate action had been taken to ensure the survival of the species. The Standing Committee approved the new recommendations, which were to be met by the end of December 2005, and directed the Secretariat to issue a recommendation to parties that they should suspend trade in specimens of Afrormosia with CAR and the RoC if the two countries failed to respond before the end of the year. A suspension was duly recommended in January 2006 after both countries had failed to take the required action. Cameroon avoided suspension and was removed from the RST process after designating a CITES Scientific Authority and setting an export quota. In addition, it provided the Secretariat with information about concession policies and enforcement activities. The DRC avoided suspension, too, since it was anticipated the country would participate in the development of a regional management strategy under the collaborative project established by the CITES Secretariat and ITTO. The suspensions against CAR and Congo were lifted in 2006 after those countries had responded by providing the required information.

In 2008 the CITES Plants Committee once again included Afrormosia in the RST following a significant increase in reported trade. None of the range states responded in the first stage of the process, so all were retained in the review which proceeded to the second stage. In 2011 the Plants Committee reviewed the available information and decided on the following categorizations for Afrormosia: 'urgent concern' in Cote d'Ivoire; 'possible concern' in the DRC and the RoC; and 'least concern' in Cameroon, CAR, Ghana and Nigeria, all of which were removed from the review. The DRC and the RoC were recommended to set conservative quotas and provide information on NDFs within six months, while Cote d'Ivoire was directed to set a zero quota within three months. In 2012 the Standing Committee reviewed the situation and determined that the RoC had complied

88 CITES, (2004): CITES Plants Committee 14, Doc 9.2.2, Annex 3.

89 Dickson, B, et al. (2005) : *An assessment of the conservation status, management and regulation of the trade in Pericopsis elata*, Cambridge: Fauna & Flora International

90 The AFLEG process began with a ministerial conference in Yaounde in 2003, which resulted in the AFLEG Declaration and Action Plan. In the Declaration, governments expressed their intention to, *inter alia*, mobilize financial resources for FLEG, provide economic opportunities for forest-dependent communities to reduce illegal activities, promote cooperation between law-enforcement agencies within and among countries, involve stakeholders in decision making, raise awareness of FLEG issues and explore means of demonstrating the legality and sustainability of forest products. The process paved the way for discussions about the trade in forest products between Africa and the EU, which, in turn, led ultimately to the VPAs with African countries.

with the recommendations of the Plants Committee but that Cote d'Ivoire had not; for that reason, a recommendation was made to suspend trade in Afrormosia with Cote d'Ivoire. Meanwhile, the DRC was given until 31 May 2014 to comply since a full report was expected from the NDFs project under the ITTO-CITES programme; but at the same time, its export quota was halved pending the outcome of that project. There was no explicit reference in the Standing Committee documents to the issue of illegal harvesting in relation to any of the range states, despite the reports of civil-society and formally recognized independent observers detailing relatively widespread illegality in the forest sectors of Cameroon,[91] the DRC[92] and the RoC.[93]

Under the ITTO-CITES programme, considerable work has been undertaken on national strategies for the management of Afrormosia in Cameroon and RoC. However, progress has been slower than expected in the DRC owing to instability in areas where it is intended to undertake inventories etc. The planned country-led regional management strategy modelled on that for Bigleaf Mahogany has yet to materialize as range states have still to propose a structure, work programme and budget. The issue is likely to be revisited at a regional meeting planned to take place later in 2014.[94]

During the period 1992–2012 Cameroon, the DRC and the RoC exported to the EU a combined total of 261,217 m^3 of Afrormosia accompanied by CITES permits. CAR did not trade in Afrormosia with the EU during this period, although it exported significant volumes to non-EU parties.

Of the range states noted above, Cameroon, CAR and the RoC have now concluded VPA negotiations. As part of the VPA process, they have agreed national legality definitions that include compliance indicators and devised national wood tracking (chain of custody) systems that provide for a third-party audit of the entire process, including government functions. CITES-listed species will be included in those systems once they are operational; however, it is not yet clear exactly when that will be.

Since the entry into force of the EUTR (in March 2013), the DRC has been the subject of a number of investigations by EUTR enforcement authorities. Consignments of Afrormosia were seized in Antwerp following allegations by Greenpeace that they were illegal and that the certificates of origin accompanying them were fraudulent; however, it was eventually decided to release the cargo. Greenpeace criticized that decision, arguing that the information provided by the Congolese CITES Authorities did not offer proof of legality. The incident resulted in a formal acknowledgement by the Belgian Timber Trade Federation that in certain cases, the import of CITES species should be subject to due diligence even when permits are available.[95] In late 2013 further investigations and a tip-off by Greenpeace resulted in the seizure by the German authorities of Wenge (*Millettia laurentii*) from the DRC.[96] According to a report by the independent forest observer Resource Extraction Monitoring that had been approved by the DRC authorities, the Wenge had been logged in the DRC under an illegal concession contract and exported via Belgium.[97] While this species is not CITES listed, it appears that there continue to be major problems related to the exploitation of the DRC's forests, pointing to the need for increased scrutiny of the legality of any species exported from that country.

91 See http://www.observation-cameroun.info/
92 See http://www.observation-rdc.info/
93 See http://www.observation-congo.info/
94 Secretariat of the ITTO-CITES programme, personal communication,16 January 2014. For country activities, see http://www.itto.int/country_activities/
95 Filip Verbelen, Greenpeace Belgium. in litt.
96 See http://www.greenpeace.org/eu-unit/en/News/2013/Germany-seizes-Congolese-wood-in-strongest-EU-action-yet-against-illegal-timber-trade/ and http://www.greenpeace.org/belgium/nl/nieuws-blogs/nieuws/Illegaal-hout-uit-Congo-opgeeist/
97See REM, (2012): *Rapports de mission de terrain,* http://www.observation-rdc.info/documents/Rapport_REM_004_OIFLEG_RDC.pdf

CITES AND THE VERIFICATION OF LEGALITY

Arguably, the case studies above show CITES' capacity to control trade in commercial timber species both at its best and at its worst. Recently there appears to have been a step change in attitudes to legality verification and chain of custody, as evidenced by CITES documents related to Bigleaf Mahogany – particularly the recommendations of what is now the Working Group on Neo-tropical Tree Species and the work resulting from the Secretariat's partnership with the ITTO. But the sovereignty focus that characterizes any multilateral process remains intact. This creates a difficult environment in which to assert that government agencies need to demonstrate their credibility through rigorous independent oversight in those cases where illegality in the forest sector is widespread, capacity is lacking and corruption is endemic to many state institutions. What is clear is that in the context of significant national and international civil-society efforts and the cooperation of key importing states, the CITES compliance framework can provide appropriate technical assistance for the improvement of species and/or sectoral governance and consistent encouragement and peer oversight throughout the years of effort necessary to achieve real reform. What is less clear, particularly in the case of Afrormosia, is whether the CITES system can function effectively in the absence of a vocal and capable civil society.

For the purposes of this paper, a wider judgment about the effectiveness of the CITES system for commercially-traded timber will be set aside but there remains the question of how CITES and the EUTR can best work together for their mutual enhancement.

The EUTR states that a species, if imported in accordance with the EU Wildlife Trade Regulations, 'shall be considered to have been legally harvested'. However, a review of the CITES system (both its trade controls and its mechanisms and/or activities to address non-compliance) highlights a number of fundamental weaknesses with respect to the assessment of compliance with relevant legislation, which are summarized below.

CITES trade controls

- *Scope of legality* – The definition of legality within CITES is derived from the convention's focus on the survival of species. Thus the legal acquisition finding applies to laws 'for the protection of fauna and flora'. To date, this provision in the convention text has been interpreted relatively narrowly: even where effective validation of compliance is undertaken as part of a legal acquisition finding, it does not cover the payment of royalties or legal rights concerning land use and tenure that are affected by timber harvesting.
- *Lack of process/criteria for legal acquisition* – Beyond the aspirational text of the convention, there is no agreed process according to which a legal acquisition finding should be undertaken. The inevitable result of this is inconsistency in the level of rigour in meeting that requirement.
- *Lack of national wood control systems* – As noted in the CITES Secretariat's work on Bigleaf Mahogany, most fraudulent activity takes place before products reach their point of export. National law, on which CITES implementation depends, has not historically provided for controls that allow legal compliance to be monitored and supply chains to remain credible from point of harvest to point of export. However, this issue is being actively addressed and the challenge is diminishing as technology to trace timber through the supply chain becomes cheaper and more effective.[98]
- *Lack of third-party oversight/audit* – A crucial point is that government agencies are not expected to require third-party oversight or regular auditing, even in countries where rule of law is weak and institutional governance poor. Thus the credibility of the CITES system shrinks when compared with that of the VPA system (and its underlying

98 Examples of tracing technologies include bar coding, radio frequency identification, DNA sampling and isotopic sampling. See ITTO, (2012): *Tracking Sustainability: Review of Electronic and Semi-Electronic Timber Tracking Technologies,* Technical Series 40, Yokohama: ITTO

assumptions), and – judging by the earliest enforcement activities (seizures) in relation to Afrormosia from the DRC – with the implementation of the EUTR.

- *No data reconciliation between quotas and legal harvest levels or between quotas and real-time exports* – Because of resource constraints, reporting time lags and the voluntary nature of export quotas, there is no data reconciliation between quotas and legal harvest levels or between quotas and real-time exports. The use of either or both of these forms of data reconciliation would allow the system to react to apparent illegalities in a more timely manner.

CITES Compliance Processes

- *Focus on systemic effectiveness of relevant authorities* – The CITES compliance system is designed to tackle systemic problems and support broad governance improvements, including, where necessary, in law enforcement in relation to illegal harvesting and trade. It is not designed to – and cannot – address infractions of forest law by private operators.

- *Focus of Article II on species survival* – Trade is regulated 'in order to avoid utilization incompatible with [species'] survival'. This means that systemic failings of law enforcement can be a trigger for both the CITES institutions and the EU Wildlife Trade Committee to take measures to deal with non-compliance – but only if such measures are material to the survival of the species. Infractions by producers or government agents are extremely unlikely to trigger such measures unless there is an obvious irregularity at the EU border (e.g., mislabelling as a non-CITES species or fake documentation).

- *Quality of trade data* – The RST process, which can trigger non-compliance action in the case of systemic illegality, is based on trade data included in the parties' annual reports. The quality of data reported is questionable. Reconciling inconsistencies between volumes of trade reported by exporting countries and those reported by their importing partners is an ongoing challenge. Time lags, inconsistencies in reporting standards and human error all play a role, but it is likely that a relatively high level of illegal trade contributes to the gap between the two data sets. Work to harmonize reported data and improve capacity for reporting continues.

THE EUTR – NEW COMMERCIAL INCENTIVES AND RISKS

The exemption from EUTR requirements for products traded under CITES could provide a new incentive for CITES Authorities, exporters and importers to cheat. Whereas prior to the EUTR coming into force the incentive was to trade in listed species without a licence (wherever possible), there is now a commercial reason to trade as much as possible under a CITES export permit. This poses several risks that may create enforcement challenges for both CITES and EUTR implementing authorities:

- An increase in fake or illegally acquired (e.g., through corruption) export permits
- An increase in export quotas for the purpose of laundering of 'like' species
- An increase in export permits and/or re-export certificates from processing countries for products listed in the annotations to species listings
- The unilateral listing by high-risk countries of commercially traded timber species in CITES Appendix III
- CITES permits or certificates being presented (as proof of legality) for the import of processed products that are currently outside the scope of 'parts' in the annotation to the species listing[99]

AREAS FOR FURTHER CLARIFICATION

There are a number of areas and practical issues that are poorly understood. This section identifies where further guidance and/or clarification from the European Commission and CITES institutions would be valuable.

Cases involving re-export and third country processing

While the generic legal definition of 're-export' excludes any product that has been subject to significant transformation, there is still confusion among some EU government agencies about the documentation and/or information that should be requested for CITES-listed species processed in a third country; for example, in the case of logs from trees grown in the Amazon or Congo Basin that are processed into veneer or furniture parts in Asia and then exported to the EU, there is confusion over whether an export permit or re-export certificate is required. The issue is further complicated by annotations to the listings of some commonly traded CITES timber species that exclude finished products.

If third-country processing requires a second export permit rather than a re-export certificate, it would increase the credibility of the system if the Management Authority of the processing country were required to undertake a legal acquisition finding that traced the raw material back to acquisition in its country of origin. A re-export certificate requires only that the Management Authority confirm that the product was imported into the processing country in accordance with the terms of CITES. While theoretically the legality of the import requires the country of origin to undertake a legal acquisition finding, the duplication of this requirement would mean that source country documentation would automatically be provided to/considered by the ultimate import authority in the EU.

Exemptions for all populations of species listed in Annex C

The wording of the EUTR suggests that *all* populations of species listed in Annex C are considered legally harvested, rather than only those from the listing countries that require export permits. If this is not clarified, parties that have not listed their populations will be able to export legally to the EU using only a certificate of origin – which requires neither a scientific NDF nor a legal acquisition

99 For example, the listing of *Pericopsis elata* covers only logs, sawn wood and veneer. In the case of wood or veneer that has been processed into flooring and imported into the EU and for which permits may be available for export from the country of origin, such documents should not be considered evidence of the legality of the processed product in the context of EUTR compliance.

finding. Currently, six species are affected by this issue (see Table 2 above), of which Spanish Cedar (*Cedrela oderata*) is one. Table 7 shows reported trade in this species between 'non-regulated' parties and the EU in 2011–12. Reported volumes traded with regulated parties (Brazil, Bolivia, Guatemala, Costa Rica and Peru) were significantly larger; however, the risk remains if the apparent loophole in the EUTR is not closed through revision or clarification.

Table 7: Trade in Spanish Cedar between 'non-regulated' parties and EU member states, 2011–12

Year	Importer	Exporter	(Re-) Export quantity (m^3)	(Re-)Export term
2011	France	Mexico	40.488	sawn wood
2011	Denmark	Cote d'Ivoire	366.741	sawn wood
2011	UK	Cote d'Ivoire	84.375	sawn wood
2011	Romania	Cote d'Ivoire	17.184	sawn wood
2011	Denmark	Ghana	323.35	sawn wood
2012	Denmark	Cote d'Ivoire	313.919	sawn wood
2012	Denmark	Ghana	175.793	sawn wood
2012	France	Mexico	20.489	veneer
Total:			**1342.339**	

Source: CITES trade database, http://www.unep-wcmc-apps.org/citestrade/report.cfm

Exemptions for products not included in the annotation to the CITES listing

The current text of the EUTR appears to encompass all parts of any species listed in any Annex to the EU Wildlife Trade Regulation rather than following the parameters of the CITES Appendix listings. Clarification is required to ensure that CITES permits and/or certificates are not accepted as evidence of legality, particularly when the absence of a credible chain of custody system in complex supply chains makes the establishment of legality extremely challenging.[100] For example, EUTR officials could be presented with what is claimed to be a CITES re-export certificate for processed parts of a listed species, such as Afrormosia flooring; on the basis of the EUTR text stating that any species listed in the Annexes is *de facto* legal, those officials could assume the CITES certificate is evidence of legality. However, flooring is not included in the CITES annotation for Afrormosia and thus is not covered by CITES.

Scope of laws included in legal acquisition findings under CITES

A systematic review of the scope of the laws included in legal acquisition findings in key timber-exporting countries would provide for a clearer understanding of just how far products with correctly issued CITES paperwork fall short of the EUTR's scope of legality. Currently, even when a CITES legal acquisition finding has been undertaken properly, it covers only laws 'for the protection of fauna and flora', whereas in the case of non-CITES wood, the EUTR expects compliance with a broader spectrum of environmental, social and financial laws to be verified. Clarification about which laws are validated in which countries under CITES would help shed light on whether a 'lower level of legality' is being accepted in practice under the CITES exemption.

100 The term 'complex supply chain' generally refers to a supply chain of products that are made from a range of source materials originating in various forests and/or which pass through multiple processing facilities or transit countries.

RECOMMENDATIONS FOR IMPROVED SYNERGY

It is clear that CITES provides a unique institutional framework for better understanding global trade at the species level and encouraging systemic improvement in countries that face forest governance challenges but are unlikely to negotiate or implement a VPA. From this perspective, it is understandable that the EUTR was drafted in such a way as not to undermine the EU's commitment to the CITES process. However, neither current CITES trade controls, nor the compliance framework as it presently stands were designed to establish the legality of any individual forest product; thus, CITES undeniably creates a challenge for those concerned with the credibility of the EUTR. It is therefore imperative that the implementation, enforcement and development of each system be pursued with their synergies in mind. The efforts of CITES parties to protect vulnerable species from unsustainable commercial trade would thus benefit from a more rigorous assessment of legal compliance and traceability in the supply chains for such species. For the same reason, the aims of the broad FLEGT agenda should not stop at restricting the import of illegal wood into the EU. Rather, that agenda should extend to improving the governance of forests globally – something that is ultimately beyond the purview of European trade law.

Recommendations to EUTR competent authorities

- Establish effective intra-state communication mechanisms to ensure that the 'substantiated concerns' of civil society envisaged by the EUTR and other intelligence is passed in a timely manner to the appropriate border agencies and, crucially, CITES Scientific Authorities with a view to that information informing import inspections and being considered as part of assessments by the SRG at the EU level of 'non-detriment' with respect to imports of specific species from specific countries, leading to either positive or negative opinions
- Ensure that, in cases where a product has already been imported but questions have been raised by EUTR enforcement agencies about the validity of export permits or re-export certificates, CITES protocols for communicating with CITES Authorities in producer/processing countries are known and followed
- Ensure frontline staff are trained to assess the validity of CITES paperwork

Recommendations to EU Wildlife Trade Committee

- Standardize further information requests from the EU to producer country CITES Authorities in order to ascertain the scope of the relevant regulation or legislation, how compliance has been established/verified and whether there is a robust system for traceability from harvest to export; include a request for relevant information from any agency or company performing an independent oversight function, e.g., Independent Observers and FLEGT Independent Auditors (the latter in VPA countries only); consider relevant information in the NDF process
- Establish a list/ratings of timber-exporting countries where further investigation of the legality of CITES products or the validity of CITES paperwork is expected with a view to pursuing enforcement activities consistently across the EU; consider making this information public in order to inform the activities of both the private sector and enforcement agencies (however, the political implications of such an approach may be too challenging, in which case the information should be made available to all member state enforcement officials). Provide clear criteria for a country to be added to or removed from the list/ratings and review those criteria regularly
- Take into account intelligence on levels of illegality in producer country forest sectors in assessments by the SRG of non-detriment and formation of negative and positive opinions, including the reports of Independent Observers and EUTR substantiated concerns

- Consider amending the EU suspensions regulation to allow for the suspension of trade in all CITES species from a country where there is evidence of systemic fraud in relation to CITES-listed timber species (formal trade suspensions and NDFs not only have an impact on the private sector; they also result in commercial and diplomatic pressure on governments to improve the functioning of CITES Authorities – hence while they should not be used as a discriminatory punitive measure or contravene WTO rules, the credibility of the EUTR may require that they are used more frequently than they have been in the recent past)
- Participate in the review of the EUTR planned for 2014/15 with a view to highlighting evidence that any of the above-mentioned risks to CITES has materialized

Recommendations to the EU FLEGT Committee

- Amend the text of the EUTR to remove anomalous incentives in relation to Annex C and annotations
- Review the impact/effectiveness of including species listed in Annex C of the EU Wildlife Trade Regulation in the EUTR CITES exemption and consider whether Annex C-listed species should be excluded
- Consider in donor planning the fundamental importance of consistent, long-term support for the kind/scale of institutional change required in producer countries[101]
- Expand efforts to engage consumer and processing countries other than those in the EU that play a significant role in the supply chains of CITES-listed timber species (for example, more systematic efforts to engage with China and India, whose tropical timber imports and processing industries are growing rapidly, and leverage their support for implementing policies similar to the EU)

Recommendations to the CITES CoP and Standing Committee on CITES trade controls

- Establish legal criteria and process guidelines for the assessment of legal acquisition, including the payment of taxes and the social impact of harvest in relevant legislation (this would require broadening the interpretation of 'laws for the protection of fauna and flora' to include laws 'in support of' their protection)
- Establish principles for robust national wood tracking systems with a view to strongly encourage that they are followed in countries where illegal harvesting and trade remains an issue (such principles could be informed by those that underpin legality assurance in FLEGT VPA partner countries – the more consistently they are applied, the more credible CITES permits and certificates will be in relation to multi-country supply chains and processed products)
- Expand listings of timber species to include more processed products with a view to improving traceability

Recommendations to the CITES Plants Committee and Standing Committee on compliance and illegal trade

- Identify and monitor more systematically risks to 'like' species that may be subject to laundering (for example by examining export quotas and all available trade data and taking into account relevant market analysis); consider more active encouragement of listings where necessary

101 Project cycles of three to four years are insufficient to support the long-term effort required to achieve real reform, especially given the slowness of the CITES and EU decision-making processes.

- Direct the Secretariat (in collaboration with UNEP-WCMC) systematically to review legal harvest levels and check them against quotas with a view to addressing time lags in reporting and to speeding up data reconciliation of quotas and trade figures through the use of appropriate technology
- Provide guidance on how information about illegal trade published by independent forest observers should be handled in order to be useful as intelligence or evidence; establish a more formal role for civil-society representatives from countries in the RST process
- Ensure that the Standing Committee more systematically addresses the issues of non-compliance (other than failure to make NDFs) and illegal trade identified through the RST

ANNEX

The EU Wildlife Trade Regulations

These regulations currently comprise: Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Basic Regulation); Commission Regulation (EC) No 865/2006 (as amended by Commission Regulation [EC] No 100/2008, Commission Regulation [EU] No 791/2012 and Commission Implementing Regulation [EU] No 792/2012) laying down detailed rules for the implementation of Council Regulation (EC) No 338/97 (Implementing Regulation); and Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for by Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating the trade therein and amending Regulation (EC) No 865/2006 (Permit Regulation).

In addition, the suspensions regulation provides for suspending the introduction into the EU of specific species from specific countries. And the Commission Recommendation to Member States (Commission Recommendation No 2007/425/EC identifying a set of actions for the enforcement of Regulation [EC] No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, commonly referred to as the 'EU Enforcement Action Plan') specifies further the measures to be taken for enforcement of the EU Wildlife Trade Regulations.

Although the EU Wildlife Trade Regulations are directly applicable in all EU member states, provisions for enforcement must be made in national legislation and supplemented with other national laws. This is because enforcement remains under the sovereignty of the member state, which must ensure that infractions are 'punished in an appropriate manner'.

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