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Due diligence in the EU timber market

The EU's draft regulation

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Background

- EU FLEGT initiative, 2003–
- Key element: VPAs with high-risk countries (licensing system)
- Always recognised need for ‘additional options’ to exclude illegal imports from non-VPA countries
- European Commission consultation over options (including Lacey Act equivalent) 2006–07



Due diligence regulation

- Commission consultation ended with new option, 'due diligence'
- Draft regulation published October 2008
- Two-year implementation process once agreed
- Many details not yet clear
- Currently being debated by European Parliament
- Similar in principle to US Lacey Act, without underlying offence



Principles

- Timber operators required to use 'due diligence systems' to minimise risk of placing illegal timber on market
- Applies to all timber operators at point of first entry (production or import)
- Illegality defined in relation to laws of country where timber was harvested
- Exemptions: CITES, FLEGT-licensed products, energy products



Issues: due diligence systems

- Information requirements (4.1(a))
 - Country of harvest, volume/weight, details of supplier, information on compliance with legislation
 - Requirements for proof of legality not yet clear
- Risk management procedures (4.1(b))
 - Used (presumably) to determine level of proof of legality required
 - What sort of criteria? – countries, regions, species ...
 - Who applies them? authorities or company?



Issues: monitoring organisations

- Operators must use own systems or those of 'monitoring organisations': certification bodies, trade federations
- Monitoring organisation must:
 - Oblige operators to use its due diligence systems (5.1c)
 - Have monitoring mechanism to ensure is used (5.1d)
 - Take disciplinary measures against failure to comply (5.1e)
- Certification, legality verification: product identification schemes
 - (is certification adequate to guarantee legality?)
- Trade associations: capacity?



Issues: potential for variable application

- Enforcement split between EU and member states
- Member state responsibilities:
 - Recognition of monitoring organisations (5.1)
 - Monitoring monitoring organisations (5.3)
 - Monitoring operators (7, 8)
 - Setting penalties (13)
- Implementation bound to be variable
- System is only as strong as the weakest entry point –
 - Some EU countries already problems with illegal logging
 - Avoidance of countries with stronger enforcement
 - Competitiveness impacts



European Parliament amendments (1)

- European Parliament Environment Committee agreed amendments February 2009
- Creates general requirement for **all** operators to: ‘ensure that only legally harvested and timber and timber products are made available on the market’ (so similar to US Lacey Act)
- ‘First placers’ must have due diligence system; all others must be able to identify their suppliers
- More information required: forest of origin, where possible concession; who responsible for harvesting – documentary evidence needed for all information



European Parliament amendments (2)

- Provides definitions of 'high risk' for sources
- Adds labelling requirement (after two years) for all timber products for all information required for due diligence
- Removes exemption for energy products
- Clarifies monitoring organisations
- Tougher auditing procedures and penalties
- Speeds up implementation (one year, not two)
- Final outcome not yet known



Implications for Chinese exporters

- Exact implications not yet clear: regulation probably agreed by end 2009, but some details will come later
- Exporters should expect to need to provide proof of legality of products to importers
- Proof depends on perceived level of risk of products:
 - Chinese domestic timber: risk probably low
 - Products which contain imported timber from, e.g. Russia or PNG: risk probably high
- Evidence? Certification, legality verification, chain of custody documentation ...



More information

- Chatham House papers:
 - Analysis of draft regulation
 - Examination of due diligence systems in non-timber sectors (money laundering, chemicals, GM, etc.)
 - Assessment of likely impacts on UK timber industry
- All available on **www.illegal-logging.info** (FLEGT – Additional Options)
- Next Chatham House illegal logging update meeting: 23–24 June 2009

