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The EU FLEGT initiative

Improving governance; excluding illegal products

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First update meeting on illegal logging and associated trade
Forest Trends, Washington DC, 8 March 2007

EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan: history

- G8 Action Programme on Forests, 1998–2002
- East Asia Forest Law Enforcement and Governance (FLEG) ministerial meeting, September 2001
- UK–Indonesia Memorandum of Understanding, April 2002
- Brussels workshop, April 2002
- Action Plan published May 2003
- Approved by Council October 2003
- Recognises EU responsibility as consumer/importer



EU FLEGT Action Plan: Components

1. Licensing scheme for legal timber, implemented through voluntary partnership agreements (VPAs), including capacity-building support
2. Investigation of applicability of domestic legislation, e.g. on theft, money laundering, etc.
3. Consideration of options for wider prohibition on imports of illegal timber
4. Encouragement for government procurement policies
5. Encouragement for private sector initiatives
6. Encouragement for scrutiny of investment flows



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EU FLEGT timber licensing system

- Heart of the FLEGT Action Plan
- Voluntary partnership agreements (VPAs) negotiated between EU and partner countries
- New EU legislation needed: regulation approved December 2005; implementing regulation expected
- Many precedents: e.g. CITES, Montreal Protocol (ozone-depleting substances), Kimberley Process (conflict diamonds), fisheries conventions



Licensing system: operation (1)

1. The partner country will designate an accreditation body, empowered to appoint bodies to certify the legality of wood products
2. The partner country will designate an independent monitor and will set out a dispute settlement mechanism
3. The EU will confirm that proposed system is credible
4. Licenses will be issued for legally harvested timber, allowing customs authorities to clear legal shipments for export to the EU



Licensing system: operation (2)

5. The export license indicating legality will be produced at the EU border, and will be checked by customs authorities
6. Customs will *only* accept timber from partner countries for import into the EU when it is accompanied by the necessary legality license
7. Details of each voluntary partnership agreement will vary, but the principles of each will be the same



Voluntary Partnership Agreements (1)

- VPAs now under negotiation in Ghana, Indonesia, Malaysia – all hoped to be concluded end 2007
- Cameroon probably next
- Other informal discussions, expressions of interest, etc., with: Viet Nam, Liberia, Central African Republic, Côte d'Ivoire, Democratic Republic of Congo, Gabon, Liberia, Republic of Congo, Ecuador, Honduras, Nicaragua
- First VPAs in operation 2009?



Voluntary Partnership Agreements (2)

VPAs will need to specify –

- Scope of 'legality', and details of legality assurance scheme
- Capacity-building assistance from the EU
- Product coverage: initial coverage is logs, sawnwood, plywood, veneer, but should extend to other products (e.g. furniture, other processed products) as soon as feasible



Licensing system: possible problems

- The lack of a multilateral framework for the legality licensing scheme means it must come into operation through a series of bilateral agreements
- Some countries may not join the licensing scheme ...
- ... leading to the possibility of diversion of exports through non-partner countries – ‘circumvention’
- Also VPA countries may not be able to exclude illegal imports from non-VPA countries, which may then be re-exported to EU – ‘laundering’
- Problems are less the higher the number of VPAs



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Existing national legislation

- Criminal law (theft), civil law (conversion), money laundering
- 2005–06: studies of existing legislation in Estonia, Germany, Italy, Netherlands, Spain, UK
- Practical problems identified in national studies:
 - Lack of cooperation with foreign enforcement agencies
 - Continuity of evidence
 - Difficulties with showing intent
 - Definition of ‘illegal timber’
- So, interest in new legislation: ‘additional options’



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European Commission consultation

- Three main options:
- Requirement for proof of legality for all timber imports regardless of origin
- Requirement for proof of legality at point of sale
- Legislation to make it illegal to import / market / possess timber products produced illegally overseas
- Consultation period just ended; conclusions summer 2007?



Requirement for proof of legality

- Requirement for proof of legality for all timber imports regardless of origin (either at border or point of sale)
- Presumably would require certification, license or equivalent documentation (not existing papers)
- Additional requirement on bulk of timber imports: 85–90% not believed to be illegal
- WTO problems:
 - Discriminatory unless applied domestically
 - Disproportionate disruption to trade related to objective
- Key question: cost impact on existing trade



New national legislation

- Making foreign illegal products illegal domestically
- Similar principle as US Lacey Act:
 - Unlawful to 'import, export, transport, sell, receive, acquire or purchase in ... foreign commerce ... any fish or wildlife taken, possessed, transported or sold ... in violation of any foreign law'
- Frequently used in US; also used in other nations for illegal fish (note recommendation by HSTF)
- Does not require proof beyond reasonable doubt; effectively creates requirement for due diligence
- Problems with complicated supply chains



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Government procurement policy (1)

- Counterpart of excluding *illegal* products: building markets for *legal* products
- In EU, public sector accounts for 15–20% of purchases
- Belgium, Denmark, France, Germany, Netherlands, UK: requirements for legal *and* sustainable products for central government purchases
- Efforts to harmonise DK / NL / UK policies
- UK: evidence that legal and sustainable tropical hardwood now commands a price premium as a result



Government procurement policy (2)

- What evidence do procurement policies require of legal or sustainable production?
- Varies country to country, but in general most certification schemes OK
- UK: FSC, CSA, PEFC, SFI acceptable for sustainable production; MTCC for legal
- FLEGT license would provide proof of legal production
- Must allow possibility of 'equivalent documentation'



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Private sector action

- Many private companies throughout the EU are working to improve their supply chains, and to exclude illegal products – for example:
- Codes of conduct – UK, Spain ...
- UK Timber Trade Federation Indonesia Action Plan
- Timber Trade Action Plan – UK / Dutch / Belgian federations' project on supply chains in Indonesia, Malaysia, Cameroon, Gabon, Republic of Congo



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Scrutiny of investment flows

- Banks – note move to socially responsible investment; ‘due diligence’ requirements
- Export credit agencies: collectively largest source of financing for development projects, approx. \$100bn/year (roughly double ODA)
- Most export credit agencies have no criteria for assessing environmental and social impacts of funded projects
- Chatham House study 2005; little action since



More information

www.illegal-logging.info

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