



# CHATHAM HOUSE

## Due diligence in the EU timber market

Analysis of draft regulation

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Potomac Forum on Illegal Logging and Associated Trade  
Washington DC, 24 March 2009

## Background

- EU FLEGT initiative, 2003–
- Key element: VPAs with high-risk countries (licensing system)
- Need for ‘additional options’ to exclude illegal imports from non-VPA countries
- European Commission consultation over options (including Lacey Act equivalent) 2006–07
- Why not Lacey Act?
  - Expensive and difficult to enforce
  - Don’t like basing EU laws on other countries’ legal systems (but see money laundering ...)



## Due diligence regulation

- Commission consultation ended with new option, 'due diligence'
- Draft regulation published October 2008
- Like Lacey Act without underlying offence
- Difference between 'due care (Lacey Act) and 'due diligence **system**' (EU)



## Issues: due diligence systems

- All timber operators required to use 'due diligence systems' to minimise risk of placing illegal timber on market
- Information requirements (4.1(a))
  - Requirements for proof of legality
  - Examples? e.g. AHEC study?
- Risk management procedures (4.1(b))
  - What sort of criteria? – countries, regions, species ...
  - Who applies them? authorities or company?



## Issues: monitoring organisations

- Operators use own systems or those of ‘monitoring organisations’: certification, trade federations
- Monitoring organisation must:
  - Oblige operators to use its DD 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

- EP Environment Committee agreed amendments January 2009
- Places requirements on all operators in supply chain: 'ensure that they place on market only legally harvested timber and timber products on the market'
- Clarifies risk assessment: Commission 'shall make available a register of high risk sources'
- Clarifies monitoring organisations
- Tougher auditing procedures and penalties
- Speeds up implementation (one year, not two)
- Final outcome not yet known



## Lacey Act vs Due Diligence?

- Lacey Act:
  - Clear obligation, and framework of penalties
  - Possibility of sanction anywhere in supply chain
  - Up to operators what they do (no specification of systems)
  - For low-risk products, no/limited action
- Due diligence:
  - Framework of responsibilities without underlying obligation
  - Sanction only at first point of entry
  - Prescriptive requirements for operators (though some currently unclear)
  - Even for low-risk products, still some requirements





## 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](http://www.illegal-logging.info)** (FLEGT - Additional Options)
- Next Chatham House illegal logging update meeting: 23–24 June 2009

