



# EU “Timber” Regulation

***“Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market”***

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# PRESENTATION OUTLINE

- Context
- EU Timber Regulation
- Next steps



## CONTEXT: G8/ FLEG

- **1998 G8 Action Plan Forests**
- **2001 East Asia FLEG Conference (Bali)**
- **2003 Africa FLEG (Yaoundé)**
- **2005 Europe and North Asia FLEG (St Petersburg)**
  - close EU and US coordination
  - heightened political commitment



## **CONTEXT: KEY EU INITIATIVES**

- **2003 EU FLEGT Action Plan**
- **2005 FLEGT Regulation**
  - + mandate to negotiate FLEGT Voluntary Partnership Agreements (VPAs)
- **2010: EU “Timber” Regulation**



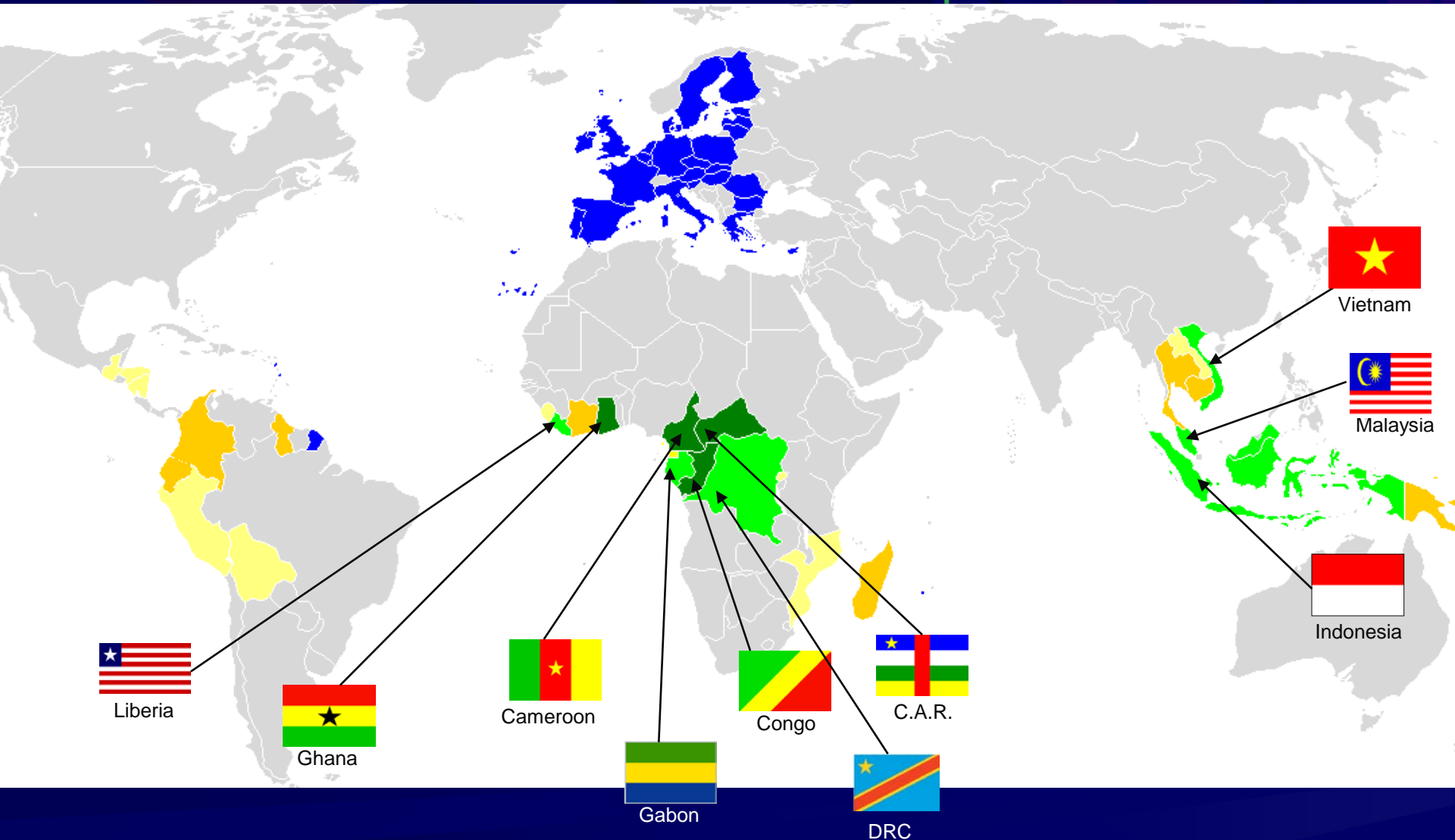
## FLEGT VPAs

- Bilateral partnership agreements between the EU and timber-producing countries:
  - Partner country agrees to only export to EU verified legal timber and timber products
  - Sets up control and licensing systems to provide guarantee of legality
  - Independent monitor
  - EU only accepts timber shipments accompanied by FLEGT Licence

# FLEGT VPA partner countries

April 2011

- FLEGT licenses (not yet)
- System development
- Formal negotiations
- Moving to negotiations
- Preparation, in-country consensus building
- Introduction to VPAs





# ADDITIONAL MEASURES

- FLEGT VPAs good but
  - Limited coverage
  - Possibility of shipping via a third country
  - Demands for overarching legislation to make it illegal to sell illegal timber in the EU



# **NEW EU “TIMBER” REGULATION**





## KEY OBLIGATIONS

1. Prohibition on the first placing of illegal timber and timber products on the EU market
2. Obligation of “due diligence” for the “operators” i.e. those first placing timber and timber products on the EU market – to take measures to minimise the risk of illegally harvested timber in their supply chain
3. Basic traceability for “traders” i.e. other than “operators” – to keep records on suppliers and customers



# KEY OBLIGATIONS

## ■ Compared to Lacey Act

- Prohibition: similar concept but only applies to “first placing” on market
- Due diligence: similar concept to “due care” in Lacey Act - but more elaborated
- Point of control for above – first placing on the market, for Lacey it can be at any point in the supply chain
- Basic traceability: not in Lacey Act - arguably implicit?
- No Customs Declaration



# DEFINITION OF LEGALITY

- Definition of legality
  - legislation applicable in country of harvest:
  - “legal rights to harvest; taxes and fees linked to harvesting; compliance with timber harvesting laws, including directly related environmental and forest legislation; respect for third parties tenure/use rights; relevant trade and customs rules”
- Underlined text overlaps with Lacey Act definition



## FLEGT and CITES Timber

- ➔ Timber or timber products with valid FLEGT licenses or CITES permits are considered in compliance with the Regulation



- ➔ Lacey Act: no comparable formal exemption



# PRODUCT SCOPE



- Timber and a wide range of timber products, listed using Customs codes in the Annex
  - ☞ recycled products are exempted
  - ☞ packaging materials exempted (when used as packaging) (similar to Lacey)
- Lacey Act prohibition applies to all products containing wood



# WHAT IS DUE DILIGENCE?

## ■ Elements:

- **Access to information**: country of harvest, species, quantity, legal compliance, etc.
  - **Risk assessment**: risk assessment criteria
  - **Risk mitigation**: adequate and proportionate measures and procedures to minimise the risk
- Operators can either use existing / set up their own systems or make use of the system of a “monitoring organisation”

Information



Risk criteria

Risk assessment

Negligible risk



Risk not negligible

Risk mitigation



# MONITORING ORGANIZATIONS

- Requirements:
  - legal personality & legal establishment within the EU
  - MO maintain and evaluate a **due diligence system**; grant operators the right to use it; ensure correct application
- Recognition by the European Commission
- An option for operators – especially small and medium enterprises. However the operator still has ultimate responsibility for meeting the Regulation's obligations





# PENALTIES

- EU Member States responsible for laying down “effective, proportionate and dissuasive” penalties
- Penalties may include: Fines (*proportionate to environmental damage, value of timber concerned, tax losses & economic detriment*); Seizure of products concerned; Immediate suspension of authorization to trade.
- Possibility to issue “notice of remedial action” for minor non-compliance



# ENTRY INTO FORCE AND APPLICATION

- The Regulation was published in the Official Journal of the EU and entered into force on 2<sup>nd</sup> December 2010
- It will become applicable as from **3 March 2013**
- Implementing legislation to be drafted in this period. Also Member States have to designate competent authorities, lay down penalties etc.



# NEXT STEPS



# NON-LEGISLATIVE ACTS

## ■ Delegated Acts

- ⌘ procedural rules for recognition of monitoring organisations - by 3 March 2012
- ⌘ amendment of product scope; further risk criteria

## ■ Detailed rules by 3 June 2012

- risk assessment & risk mitigation measures;
- frequency and nature of checks on Monitoring organisations



# CONSULTATION PROCESS FOR NON-LEGISLATIVE ACTS

- External study
  - (link at <http://www.efi.int>)
- Stakeholder meetings
- Consultation with EU Member State + European Parliament experts (delegated act); adoption with agreement of EU Member States (due diligence system detailed rules)



# REPORTING

- A progress report by the Commission every 2 years based on reports from MS
- Report on effectiveness (5 years after entry into force and every 6 years thereafter)
  - ✓ Prohibition
  - ✓ Product scope (printed papers Chapter 49)



# Conclusion

- Some differences between Lacey Act and EU Timber Regulation but many common concepts
- EU and US presentations of respective legislation in producer countries (eg China, SE Asia, Honduras)
- Need to maximise the opportunities for these market measures to encourage better forest governance



**Thank you!**

**European Commission**

**DG ENV.E.2 –**

**Environmental Agreements & Trade**

**Website:**

**[http://ec.europa.eu/environment/forests/illegal\\_logging.htm](http://ec.europa.eu/environment/forests/illegal_logging.htm)**