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<b>ASIA-PACIFIC FORESTRY COMMISSION</b>
<b>TWENTY-FIFTH SESSION</b>
<b>Rotorua, New Zealand, 5-8 November 2013</b>
<b>FOREST LAW ENFORCEMENT GOVERNANCE AND TRADE (FLEGT): EMERGING LEGALITY RESTRICTIONS AND RESPONSES</b>
<b>SECRETARIAT NOTE</b>

## Introduction

1. Issues related to Forest Law Enforcement, Governance and Trade (FLEGT) have been receiving increasing international attention during the past decade. Illegal logging and associated trade in illegally-sourced wood products are important causes of deforestation and forest degradation in many developing countries. Although the total forest area in the Asia-Pacific region has increased during the past decade, many countries in South and Southeast Asia continue to report high rates of forest degradation and net forest loss and illegal logging contribute significantly to this. Illegal logging undermines sustainable forest management (SFM), but also reduces government revenues, creates unfair competition, has a negative impact on the livelihoods of forest-dependent people and fosters corruption and conflict.

2. The Forest Law Enforcement and Governance East Asia Ministerial Conference, which took place in 2001 was an important benchmark and a catalytic event. Ministers from East Asia and the Pacific, Europe and North America issued the Bali Declaration with pledges to fight forest crime by strengthening bilateral, regional and multilateral collaboration. Following the Ministerial Conference, further commitments to tackle illegal logging and poor forest governance in Asia have been made in several fora. These include:

- EU-China Summit Statements in 2005 and 2006, adopted at Head of State level and mentioning forest governance;
- Asia Forest Partnership in 2002, launched by Japan and Indonesia;
- ASEAN Statement on Strengthening Forest Law Enforcement and Governance (FLEG), and the conclusions of the 29<sup>th</sup> Meeting of the ASEAN Ministers on Agriculture and Forestry (29<sup>th</sup> AMAF), held in November 2007.

## Actions taken by the European Union (EU)

3. In 2003, the European Commission issued the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan as a guideline for eliminating illegal logging and associated trade in global markets. The 2003 FLEGT Action Plan promotes SFM, good governance and transparency, and sets out a combination of supply and demand-side measures to address illegal production and trade of timber products. The two main tools of the Action Plan are the Voluntary Partnership Agreement

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(VPA) which was empowered through a regulation in 2007 and the European Union Timber Regulation (2010). In addition to these tools, the Action Plan promotes public and private procurement policies as a means to promote demand for legally-harvested timber (timber that is harvested in compliance with the laws of the country where it is harvested).

4. A VPA is a bilateral agreement between the European Union and a timber-producing country to ensure that timber and timber products from the partner country are from legal origin. The partner country controls and licenses the timber before export, in line with the agreement. In return, the EU agrees to only import licensed timber from these countries. A fully implemented VPA assures legality through a Legality Assurance System (LAS), which is independently audited and finally results in a FLEGT license that can be issued by the government. EU operators must apply due diligence until FLEGT licenses are available. Timber certified under the main forest certification schemes such as the Programme for Endorsement of Forest Certification (PEFC) and Forest Stewardship Council (FSC) is still subject to due diligence requirements. Five countries in Asia have initiated actions to develop VPAs: Indonesia, Malaysia, Viet Nam, Lao PDR and most recently Thailand. Indonesia, which concluded negotiations in May 2011, is due to sign its VPA soon, and is making significant progress towards implementation of the VPA requirements.

5. The EU Timber Regulation (EUTR), applicable since March 2013, requires operators in the European Union to exercise due diligence when placing timber products on the EU market. There are three key elements to the EUTR: (1) it prohibits the placing on the EU market of illegally-harvested timber and products derived from such timber; (2) it requires EU traders who place timber products on the EU market for the first time to exercise due diligence; and (3) other traders further down the supply chain must keep records of their suppliers and customers. The EUTR was designed as supporting legislation to the VPA. Timber with a FLEGT license will comply automatically with the EUTR due diligence requirements.

#### **Other demand-driven initiatives**

6. The United States and Australia have both adopted legislation similar to the EUTR, completing a significant demand-side incentive to enhance efforts to address illegal logging in supplier and processing countries. China, Japan and the Republic of Korea are contemplating the further development of policy instruments, including legal procedures, to curb the trade in illegal timber and timber products.

7. Amendments to the U.S. Lacey Act passed in May 2008 makes it an offence in the United States to trade in plant and plant products (e.g. furniture, paper or lumber) that are illegally sourced from any US state or any foreign country. The amendments are intended to protect forests worldwide from deforestation, and to prevent illegal wood products from entering the United States. The Act strongly implies, but does not require, that timber-trading companies in the United States implement management systems to minimize the risk of illegal wood entering their supply chains. The Act establishes penalties for its violation, including forfeiture of goods and vessels, fines and jail time, and has therefore increased the scrutiny applied by timber retailers on their overseas suppliers. Manufacturers exporting to the United States must provide declarations containing information on: (1) the scientific name of any species used; (2) the country of harvest; (3) the quantity and measure; and (4) the value. The most famous enforcement action to date under the Lacey Act was against Gibson Guitar Corporation, which was settled in 2012 by paying a US\$300 000 fine related to the importation of wood from India and Madagascar.

8. The Australian Illegal Logging Prohibition Act was approved in November 2012 and makes it a criminal offense to import timber and timber products composed of illegally-sourced timber or to process Australian raw logs that have been illegally logged. Similar to the U.S. Lacey Act, the Illegal Logging Prohibition Act carries potential jail time and fines ranging from A\$55 000 for individuals

and up to A\$275 000 for a corporation. The details of implementation of the law will be elaborated in regulations which are due for publication in 2014.

### **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

9. CITES is a global response to concern over trade in endangered species. CITES was enacted in 1975, and 160 countries have ratified the treaty. CITES regulates the trade in live animals, animal parts, ornamental plants, medicinal plant parts and timber species. It seeks to identify threatened species and create increasingly strong legal barriers to their harvest and trade, depending on their conservation status.

10. CITES lists threatened or endangered wood species under three classifications, known as the Appendices. The restrictions on trade within these appendices vary depending on the extent to which the species is threatened with extinction. A CITES listing generally means that trade of the raw wood, either in log, board or veneer form, is restricted. For some species, restrictions extend to finished products made of, or including, a protected wood. In these instances, it is illegal to take such items across international borders without proper export permits.

- Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.
- Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.
- Appendix III contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.

11. As of July 2013, some 60 tree species have been listed under CITES. Timber and timber products of an endangered tree species with an appropriate CITES permit/certificate will be considered to have been legally harvested for the purposes of the EU Timber Regulation.

12. One of the greatest challenge for CITES has been the proliferation of illegal trade in rosewood and other high-value timber species, which are often processed and exported to markets with weak governance and enforcement with respect to CITES licences.

### **Voluntary forest certification**

13. Third-party forest certification was pioneered in the early 1990s by the FSC, a coalition of environmental NGOs, forest product companies and social interests. Several other certification systems subsequently emerged in various locations. The two largest international forest certification programmes currently are those coordinated by the FSC and the PEFC.

14. Forest certification programmes typically require that forest management practices conform to existing laws. Basic requirements of credible forest certification programmes include:

- Protection of biodiversity, species at risk and wildlife habitat; sustainable harvest levels; protection of water quality; and prompt regeneration.
- Third-party certification audits performed by accredited certification bodies.
- Publicly available summaries of certification audits.
- Multistakeholder involvement in developing standards.
- A viable complaints and appeals process.

**Points for discussion and consideration**

15. APFC members are invited to exchange perspectives on the recent developments related to evolving legality requirements for forest commodities and products; consider the current and anticipated future impacts of these requirements; comment on the processes for meeting compliance expectations; and identify needs and priorities for addressing legality requirements.

16. The Commission may wish to consider and recommend:

- Regional information workshops to provide more detailed information about international demand-side timber legality requirements.
- Continued technical support to producers in undertaking actions to further strengthen and consolidate their responses to evolving market legality requirements and consumer demands.
- Options for assessing the impact of evolving legality requirements on smallholders and small- and medium-size enterprises and targeted support to assist these groups in meeting legality requirements.
- Approaches for strengthening partnerships and collaboration among FAO, CITES, the International Tropical Timber Organization and other relevant organizations in assisting member countries to assess and develop solutions to the challenges associated with the harvest, use and trade of high-value timber species.