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# Legal Acquisition of CITES Timber: Lessons from the Congo Basin

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### Introduction

Under threat from international trade, *Pericopsis elata* was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1992. Since then, there have been ongoing concerns about the implementation of harvesting and export controls in range states as well as regarding illegal logging across the region. The EU Timber Regulation (EUTR), which entered into force in 2013, established a new prohibition on illegal wood products being placed on the European market, as well as a requirement that importers carry out due diligence. Since 2007, five of the six range states have entered into voluntary partnership agreements (VPAs) under the Forest Law Enforcement, Governance and Trade (FLEGT) process, which commits them to addressing systemic forest governance challenges and exporting only demonstrably legal timber to the EU and other trade partners.

The systems underpinning these commitments are not yet up and running. None the less, the export of *Pericopsis elata* to the EU continues in relatively high volumes; and questions remain about the legality of harvesting and exporting this species, as well as with regard to the impact of the trade on its survival.

This workshop brought together representatives of governments, civil society and institutions that have been involved in pilot projects aimed at controlling the *Pericopsis elata* trade in the Congo Basin. The goal was to identify the potential for synergies between the enforcement of the EUTR, CITES and the VPAs in the region, and to draw lessons for enforcement officials and policy-makers at the local, national and global levels. The PowerPoint files used in the presentations summarized below can be found on [the Illegal Logging Portal](#).

### Session 1: Demand-side controls and *Pericopsis elata* imports

In his presentation on trade data for *Pericopsis elata* and trends in exports to the EU (based on data from China Customs, Eurostat and UN Comtrade, among other sources), James Hewitt showed that the primary destination of timber-sector products from the Congo Basin is the EU and, to a lesser extent, China. Estimates of the share of the trade that is illegal suggests that overall, such trade is declining, but not necessarily as a percentage of the total trade. China's share of illegal imports appears to be growing rapidly, whereas the EU's share has decreased somewhat. Cameroon and Gabon have been the main exporters, but the latter though Gabon has recently banned the trade so that it now exports much less. The original two main range states for *Pericopsis elata* are Cameroon and the Democratic Republic of the Congo (DRC). Italy used to be the main importer, but China and Belgium now receive the largest shares of imports.

The discussion that followed Hewitt's presentation centred on definitions and estimates of legality. On the one hand, working estimates of illegal trade are useful as a tool for identifying the problems of, and solutions to, illegal logging and trade in *Pericopsis elata* and for assessing due diligence under the EUTR. On the other hand, they can – in the absence of reliable statistics – lead to very significant trade figures that may or may not be accurate. In terms of enforcement, a clear definition is necessary in order for a case to go to trial.

Emmanuel Heuse, FLEGT facilitator in the DRC, gave a presentation on non-detriment findings (NDFs), quotas and legal acquisitions in Cameroon, the DRC and the Republic of the Congo (RoC). He began by emphasizing the fact that legality requires traceability. Sustainability and the NDFs under CITES, which requires knowing where trees are harvested, help to determine legality. Furthermore, in Cameroon, the DRC and the RoC, legality can be determined only a tree by tree basis. For this reason a system cannot accurately determine legality without a working traceability system in place. It is therefore not possible to

implement FLEGT without timber legality assurance systems (TLASs) and vice versa. Heuse also emphasized the fact that for the CITES system to be operational and respond to EUTR requirements, it is necessary to establish proper databases, although these will be disputed since they will not be comprehensive and will not cover all aspects of TLAS, such as for example the rights of local populations. Such requirements are more difficult to assess and quantify.

Gael de Rotalier, of the European Commission's Directorate-General for the Environment, gave a presentation on legality checks under the EU wildlife trade regulations and lessons learned from the import of *Pericopsis elata* from the DRC. CITES is implemented in the EU through the EU wildlife trade regulations, and CITES-listed timber complying with EU wildlife trade regulations is considered to have been legally harvested for the purposes of the EU Timber Regulation. The import into the EU of CITES-listed products requires an export permit issued by the exporting country and an import permit issued by an EU member state. In order to be able to issue import permits, a country's competent scientific authority must make a sustainability finding or an NDF, while a legal-acquisition finding must be made on the basis of the existence and validity of the export permit.

A number of challenges have been presented by the import of CITES-listed timber from Central Africa. In 2013 questions were raised about the legality of various shipments of *Pericopsis elata* from the DRC and other range states, despite the issuance of valid CITES export permits. It was challenging for the authorities of EU member states to obtain satisfactory answers from the authorities of the exporting country that under CITES are responsible for legal acquisition findings; moreover, no provision was made in CITES or the EUTR on the implementation of the legality requirement. For this reason, changes have been made to provide a clear legal basis on which EU member states can refuse to issue import permits if there is any doubt about legality; and guidance is under consideration to ensure a common interpretation of legality requirements and consistency with EUTR checks. In future, the EU will follow up on commitments made by the DRC on *Pericopsis elata* and provide support for in-country capacity-building; it will also take into account the legal acquisition discussions taking place as part of EU initiatives against wildlife trafficking and the FLEGT review. Within the CITES process it will seek to share information on NDFs and legal acquisition in the case of Central African timber and consider if guidance on legal acquisition would help parties comply with the convention.

Parul Patel and John Veremis, of the US Animal and Plant Health Inspection Service, gave a presentation on compliance with the Lacey Act in the US. Under that act, an import declaration on the implementation schedule is required for plants: in the case of a CITES-listed species, both CITES documents and a Lacey declaration are needed. Fulfilling the Lacey declaration requirements is the responsibility of the US importer of record, which, upon signing the Lacey declaration, is responsible for the paperwork and providing the relevant data. However, it is up to the government to prove illegality, and this is done based on data analysis and information from foreign governments, NGOs or private citizens. Partners are encouraged to have compliance standards, keep records and establish contact with local governments. They are advised on red flags such as unexpectedly low prices, cash-only transactions, suspect paperwork or the inability of the seller to provide standard information. A phone line has recently been set up on which information can be given. In addition, compliance is being encouraged through, among other things, outreach and education for local authorities as well as the provision of reporting templates to enable the identification of fake CITES documents.

Danielle van Oijen, of Greenpeace, gave a presentation on the organization's work on gathering evidence of illegality in CITES-listed exports to the EU. The DRC forest sector is characterized by corruption, a weak judicial system and vested interests of the army and politicians. There has been resistance to even basic transparency in the forest sector, the reform of which is to some extent a masquerade intended to

maintain the status quo and appease the donor community. For example, the current moratorium on the allocation of logging concessions is widely undermined by the misuse of artisanal logging permits. A Chatham House programme paper published in March 2013 suggested that no wood from the DRC could meet the legality standards of the EUTR. Reports by Resource Extraction Monitoring (REM), the independent monitor of the DRC forest sector, indicate that all industrial logging companies are involved in illegal activities at some level – whether out-of-boundary logging, overharvesting, sourcing from illegal third parties, incorrect marking of logs, tax evasion, fraudulent paperwork or logging without a permit. Case studies of DRC *Pericopsis elata* imports into Belgium show that while EU member state authorities acknowledge that problems exist, national CITES authorities are not yet making full use of the amended EU Wildlife Regulation to investigate legality in light of the DRC authorities' inability to guarantee legality. Furthermore, operators tend to hide behind NDFs and do not exercise due diligence. The result is that illegal *Pericopsis elata* continues to enter the EU. In order to change this situation, the European Commission will need to clarify the due diligence obligation for operators trading CITES-listed wood.

Jean-Marie Nkanda, of the DRC's Réseau Ressources Naturelles, gave a presentation about the civil-society perspective on importer due diligence. Apart from the documents required to show compliance with regulations on transport, taxation, trade and customs, DRC civil society proposes that DRC timber suppliers provide their customers with documents that show the right to exploitation and compliance with social obligations as well as the rights of local communities. Such documents include the forest concession contract and other relevant permits, the decree approving the forest management plan and relevant declarations related to staff and employment.

### Session 2: VPA regional status and legality definitions

Alain Penelon, of the European Forest Institute, gave a presentation on the VPA negotiation status in the region. Currently, 15 countries have a VPA, accounting for 25.2 per cent of global tropical forest cover and 71 per cent of EU imports of wood products from tropical countries. In Africa, Cameroon, the Central African Republic, Ghana, Liberia and the RoC are implementing those agreements, whereas VPAs are still being negotiated with Côte d'Ivoire, the DRC and Gabon. While the experience has differed markedly from country to country, the general picture is one of slow but steady progress. Bringing about broad and lasting change requires both time and a lasting political commitment, and challenges to such an achievement are presented both by political crises and by longer-term trends, such as developing markets in emerging economies and within Africa, that undermine the imperative to negotiate with the EU. All VPA-implementing countries are developing TLASs – Ghana is the furthest advanced in this respect. Developing and implementing a robust but simple TLAS has been a major challenge, as the system needs to reflect the complexity of the legal situation. It is likely that some countries will need to review some of the annexes to the agreement in order to improve the functionality of their systems.

Martin Mbongo, of the Cameroon CITES Management Authority, gave a presentation on TLASs and the verification of legality in CITES-listed acquisitions. The Cameroon TLAS involves verifying the legality of the forest entity, national monitoring and control over forest activities, as well as verifying supply-chain compliance, issuance of FLEGT licences and independent audits. It is managed by the Ministry of Forests and Wildlife (MINFOF) and the Forest Information Management System (SIGIF). SIGIF keeps records of titles, quotas and declarations of logging; and it issues operating permits, certificates of legality and FLEGT licences. CITES-listed species are validated through a system that generates logging permits that specify the volume of timber and number of trees, allowing SIGIF to audit compliance.

Clotilde Henriot, of ClientEarth, gave a presentation on VPA legality definitions in the CITES context. While the convention provides no definition of legality, it does stipulate that timber must be harvested in

compliance with national flora legislation. There are no criteria for such compliance, however; for that reason, each country adopts its own CITES timber criteria. VPAs, on the other hand, include a legality definition, arrived at through a multi-stakeholder process. That definition is often characterized by legality grids based on principles that cover the various aspects (environmental, social and economic) of legality and are complemented by legality criteria and indicators for verification of these. VPA legality definitions therefore tend to be broader than those under CITES. CITES-listed timber is exempt from the requirement for a FLEGT licence, but a TLAS established under a VPA covers all timber produced in the country in question, including CITES-listed timber. In future, it will be necessary to strengthen the legality definition and go beyond CITES. In 2014 FLEGT authorization was amended so that it could be reviewed at European Commission level. For their part, the European authorities have issued a communiqué calling for cooperation between the authorities responsible for implementing CITES and VPAs in exporting and importing countries.

### Session 3: CITES compliance and EU Wildlife Regulations – the main approaches to *Pericopsis elata* to date

Rosalind Reeve, of Chatham House, gave a presentation on *Pericopsis elata* and CITES compliance mechanisms. CITES has a well-developed system that provides incentives for compliance. The measures include both ‘carrots’, including support and capacity building, and sticks, such as sanctions. Compliance procedures are codified in a guide that sets out the role of CITES institutions and how to handle compliance matters. The CITES Secretariat monitors compliance, brings cases before the Standing Committee and makes recommendations. The Standing Committee assesses compliance and takes measures. The animal and plant committees play a scientific and technical advisory role and implement the Significant Trade Review (STR), which deals with heavily traded Appendix II-listed species.

In cases of non-compliance, parties are given an opportunity to change their behaviour; but if they fail to, the case is brought before the Standing Committee. That body has a range of options for responding, such as providing advice and capacity-building assistance to the country in question, issuing a written warning, notifying other CITES parties of the issue, requesting a compliance action plan and, ultimately, recommending the suspension of trade with the non-compliant country. The STR, whereby the Plant Committee makes recommendations to range states based on a review of potentially damaging levels of a trade in a given species, is an important tool in encouraging compliance. The EU Wildlife Regulations complements that review through the ‘Negative Opinion’ of the Scientific Review Group, which constitutes a de facto suspension until the species/country can be formally added to the suspensions list. Another important element is the programme of the International Tropical Timber Organization (ITTO) and CITES, which provides capacity-building assistance to both national CITES authorities and the private sector to meet requirements for managing and regulating trade in CITES-listed tree species.

Steve Johnson, of ITTO, gave a presentation on the ITTO–CITES programme, which has been running since 2007. ITTO carries out a number of activities intended to build capacity for CITES implementation, including designing resource inventories, developing management plans, making NDFs, developing cost-effective regulatory systems for threatened timber species and organizing CITES training workshops. In the case of Afrosmosia, ITTO has refined range estimates of *Pericopsis*, assisted African producer countries in establishing training and tracking systems to help control the trade in that species and helping states by making NDFs and setting quotas. The development of TLASs and robust definitions of legality in VPA countries will help CITES implementation, but CITES parties are unlikely to adopt the EU definition of legality outright. Phase 3 of the ITTO–CITES programme will strengthen assistance to

countries implementing legality assurance measures for CITES-listed species; for that reason, it is important to find synergies between the various systems and supporting measures.

Melissa Bluesky, of the Center for International Environmental Law (CIEL), gave a presentation on NDFs for the DRC. The most recent STR of Afrormosia in the DRC was launched in 2008 and led to the Secretariat recommending that trade with the DRC be suspended. The STR continued until 2014, when the DRC submitted an NDF; but in reality, that finding was aimed not at establishing the scientific basis for protecting the sustainability of Afrormosia in the DRC but at ensuring continued trade. Contrary to the guidelines for making NDFs, the DRC NDF rules out a scientific assessment of the sustainability of the trade in that species and does not attempt to estimate the volume of that trade. Furthermore, the enforcement measures it proposes, which are based on concession inventories and a database of exports, cannot guarantee traceability or legality. In order to address the problem, the NDF must include a scientific assessment of overall sustainability of Afrormosia based on the estimated total harvest. Furthermore, the CITES export quota should not include timber from concessions that do not have an approved management plan or in which illegalities have been uncovered. Finally, the CITES management authority in the DRC must verify legal compliance before issuing export permits and ensure the transparency of inventories and artisanal permits.

### Session 4: Policy implications for the EUTR review and CITES

Melissa Bluesky (CIEL) also gave a presentation outlining policy proposals for the EUTR and CITES. In the case of exporting countries, those proposals centred on ensuring that VPAs address the key issues of illegality and sustainability, as well as on interim steps towards a realistic assessment of illegal logging and export, traceability measures and transparency of permits and other documents. As regards importing countries, one proposal was to consistently use the available legislation, including the revised EU Wildlife Regulations, which require third-party verification when the legality of a CITES permit cannot be ensured by the exporting country and the publication of information on all permits for imported CITES-listed species. Bluesky argued that the CITES Secretariat should clarify its limited role and mandate related to the legality of species accompanied by CITES permits, while parties to the convention should issue guidance on Legal Acquisition Findings (LAFs), require that the Article XIII review be more transparent and improve the STR process for removal based on 'compliance'.

Louise Truslove, of the Environmental Investigation Agency, gave a presentation on the legal acquisition of rosewood. The presentation centred on the trade in rosewood to China, which is plagued by corrupt practices and falsified CITES permits in both producer and transit countries such as Laos, Vietnam and Thailand. Annotation 5, which restricts CITES listing to certain products, is a big loophole. Rudimentary processing is carried out in some producer countries to circumvent the listing, and Chinese traders sometimes lease factories in those countries. The annotation should be removed and a national ban on the import of illegally logged wood should be introduced in China.

Jonathan Barzdo, formerly of the CITES Secretariat, gave a presentation on opportunities and challenges in the CITES process. He emphasized the lack of an agreed interpretation of the requirements for LAFs among CITES parties. The CITES Secretariat has already held internal discussions on the need for guidelines. However, it would be best to have the guidelines from the Conference of the Parties (COP), ideally through a resolution since that is how an interpretation is usually provided. It may be useful to look at the experience of establishing guidelines for NDFs. That process started in 2007 under a proposal by Mexico and Canada and led to a workshop. At the COP in 2010, it was decided that the animal and plant committees should examine the results and draft a proposal for a COP resolution. At the 2013 COP, parties adopted a resolution for guidance on NDFs.

Thus, establishing guidelines was a long process, and what came out of that process is not universally satisfactory. There was resistance to detailed guidance by species, and room had to be made for national approaches. One approach for taking forward the idea of LAF guidelines would be to have a standing committee consider the issue and draft a proposal. The challenge would be to develop a proposal that would be specific enough to prove useful but did not go so far in its interpretation that it would be blocked at the COP. The guidelines would need to provide an interpretation of the convention on the question of LAFs and set out minimum requirements. They would also need to be flexible and proportionate to the risk involved, given that they would be applied to all CITES-listed species, not just timber.