



The role of CITES in the governance of transnational timber trade

Rosalind Reeve

OCCASIONAL PAPER 130

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Occasional Paper130

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ISBN 978-602-387-005-9
DOI: 10.17528/cifor/005668

Reeve R. 2015. *The role of CITES in the governance of transnational timber trade*. Occasional Paper 130. Bogor, Indonesia: CIFOR.

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People cutting down trees.

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We would like to thank all donors who supported this research through their contributions to the CGIAR Fund. For a list of Fund donors please see: <https://www.cgiarfund.org/FundDonors>

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Acknowledgments

I would like to thank colleagues at CIFOR for their support enabling the research and writing of this scoping paper, and for their understanding as the draft text grew and grew, rather like Jack's beanstalk! In particular I would like to thank Andrew Wardell, who conceived the idea after I bent his ear about developments with timber trade at the Bangkok CITES meeting, Jacob Phelps who thoroughly reviewed the text, Steve Lawry who helped me over the finishing line, and Rahayu Koesnadi, who was endlessly patient and helpful in the face of many requests for assistance. I would also like to extend thanks and appreciation to colleagues at Chatham House, in particular Jade Saunders, co-author of the predecessor to this paper, who was unfailingly responsive to my many emails and commented on early drafts, as well as Alison Hoare and Adelaide Glover. Thanks are also due to H el ene Perier, Steve Johnson and Jonathan Barzdo for their valuable contributions.

1 Aims and scope

This study aims to identify areas of potential research in which CIFOR could engage in relation to the governance of trade in tree species regulated by CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) and the exclusion of illegal timber from supply chains, which could contribute to positive change. Its ultimate aim is to strengthen the governance of transnational timber trade, and contribute to the survival of tree species traded illegally and unsustainably. The study identifies all tree species covered by CITES, but its primary focus is those that are exploited for trade in timber. It draws from and builds on a Chatham House/CIFOR briefing paper on “The EU Timber Regulation and CITES” by Jade Saunders and Rosalind Reeve (2014).

The study:

- outlines the CITES regulatory and compliance framework as it relates to tree species, expanding on the description in Saunders and Reeve (2014);
- describes stricter domestic measures developed by importing countries, including additional regulatory frameworks and measures designed to exclude illegal timber from supply chains;
- examines the effects of regional economic integration in light of experience with the European Union and trends in Asia;
- summarizes key findings from three case studies of CITES-listed timber species presented initially in Saunders and Reeve (2014), and provides additional updated information;
- identifies other potential case studies of listed species and countries which could generate informative lessons; and
- proposes priority areas for further in-depth research with detailed outlines of suggested approaches.

2 Introduction

In 1975, when CITES came into force, just 18 tree species were listed under the Convention and therefore subject to international trade controls. Interest in including timber species in the CITES Appendices began to increase at the beginning of the 1990s and by March 2013, when the last CITES Conference of the Parties (CoP16) was held in Bangkok, over 350 tree species had been listed, around 200 of which are used and traded for timber (CITES 2013a). Many of these, however, particularly ebonies and rosewoods, were listed in Appendix III, a unilateral listing for which trade controls are relatively minimal (see section 3.2 below). Before CoP16, proposals to list commercially traded timber species in the more stringent Appendix II often met resistance, particularly from range states. There was a common misconception that listing was equivalent to a trade ban; source countries were therefore concerned that it would result in prohibited or restricted use and consumption.¹ In 2007, at CoP14, this resistance from range states manifested itself in the defeat of all proposals to list timber species, which had been put forward by the EU. Only one proposal succeeded – the listing of Brazilwood (*Caesalpinia echinata*) in Appendix II, since a range state – Brazil – proposed it (SSN 2014).

Six years later, the Bangkok conference saw quite a different outcome. In what was considered a watershed moment for timber species under CITES, all the proposals that were put forward passed by consensus. Madagascar, Belize, Thailand and Vietnam had proposed the listing of nearly 300 ebonies (*Diospyros* spp.) and rosewoods (*Dalbergia* spp.) in Appendix II – three from Central America, one from Asia and the rest endemic to Madagascar (CITES 2013c). Meanwhile, Kenya had proposed listing East African sandalwood populations (*Osyris lanceolata*), also in Appendix II, which passed by consensus. The shift in attitude evident between 2007 and 2013 was coincident with the launch of a joint collaborative program under CITES and the ITTO (International Tropical Timber Organization) to support capacity building to strengthen implementation of the Convention for timber species (detailed in section 4.1 below). Most recently, three more commercially valuable timber species were added to Appendix III at the request of the Russian Federation and Nicaragua – Mongolian oak (*Quercus mongolica*), Manchurian ash (*Fraxinus mandshurica*) and Yucatan rosewood (*Dalbergia tucurensis*) (CITES 2014). Thus, the number of listed timber species continues to expand, with more listings expected to be proposed at CoP17 in September - October 2016.

¹ Resolution Conf. 10.13 (Rev. CoP15) on Implementation of the Convention for timber species, dating back to 1997, notes “there are misconceptions that inclusion of a species in Appendix II or III represents a ban on trade in that species”; and recognizes that “such misconceptions can have negative impacts including the prohibition of or restriction on the use of CITES-listed timber species by architects, engineers, commercial businesses and others, and reduced use of such items by consumers.”

3 CITES regulatory framework

3.1 What is CITES?

The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), also known as the Washington Convention since it was concluded at a conference in Washington DC, is one of the oldest multilateral environmental agreements with 180 country Parties and the European Union, which recently acceded to the Convention as a Party in its own right. Seen as the flagship wildlife agreement, its aim is to ensure that international trade in species of wild animals and plants does not threaten their survival.

Although CITES is legally binding, each Party must adopt legislation to implement the treaty at national level. Parties monitor and control trade by requiring all imports, exports and re-exports of specimens of species covered by the Convention to be authorized through a mandatory global licensing system. Trade is licensed with permits

and certificates – in effect passports – issued by trading countries in accordance with criteria laid down in the Convention. Each Party must record all trade in species listed under CITES and report it annually to the CITES Secretariat. This information is made publicly available through the online CITES trade database, managed by the UN Environment Programme World Conservation Monitoring Centre (UNEP-WCMC).

Parties must designate at least one management authority responsible for licensing and at least one scientific authority responsible for assessing the effects of proposed and actual trade on the status of the species. Scientific Authorities are supposed to be independent of management authorities, although this is not always the case (see section 4.2 below) (CITES 1997). The supreme decision-making body is the Conference of the Parties (CoP), which meets every three years and adopts guidance and recommendations on implementation of the Convention in the form of resolutions, as well as a ‘work programme’ between meetings of the CoP in the form of decisions

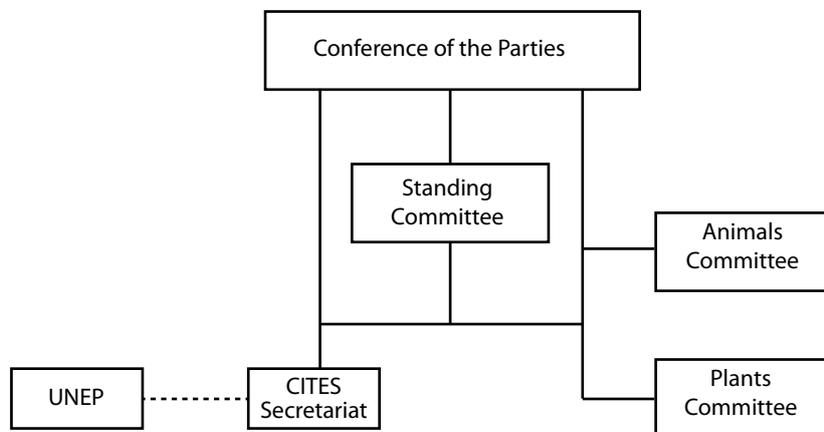


Figure 1. The CITES institutional framework.

Source: CITES Secretariat (n.d.)

directed to CITES institutions and Parties. (See institutional framework in Diagram 1.)

3.1.1 The CITES Appendices and tree species

CITES regulates trade in 55 species and 12 genera of trees listed in its three Appendices² as a result of exploitation for the timber, medicinal and/or horticultural trade (see Annex for a list of tree species covered by CITES).

Trade controls vary depending on the listing, with Appendix I being the most stringent and Appendix III the least. Decisions about the listing of species in Appendices I and II are taken by the CoP, while any state may unilaterally request the inclusion in Appendix III of a species for which it is a range state.

Appendix I lists “all species threatened with extinction which are or may be affected by trade.”³ In effect, this is a black list, from which trade for “primarily commercial purposes” is prohibited (see section 3.2 below for definition). Other trade should only be authorized in exceptional circumstances and is largely confined to specimens required for scientific and educational purposes and hunting trophies. Appendix I includes only a small proportion (3%) of the species regulated under CITES (Cooney et al. 2012). The majority of tree species listed in Appendix I are cycads; it includes just a few timber species, such as Brazilian rosewood (*Dalbergia nigra*) and Alerce or Patagonian cypress (*Fitzroya cupressoides*). No Party can import wild-harvested specimens of species listed in Appendix I for commercial purposes. However, plant specimens that are artificially propagated, which could include timber from plantations, are treated as being listed in Appendix II.

Appendix II includes “all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation.”⁴ In effect, it is a grey list of controlled species for which commercial trade is allowed subject to conditions.

Look-alike species are also listed, to prevent trade under the guise of non-threatened species. The majority of species listed in the CITES Appendices are in Appendix II (96%) (Cooney et al. 2012).

In contrast to Appendices I and II, Appendix III includes species listed unilaterally by Parties as being subject to regulation within their jurisdiction and for which international cooperation is needed to control trade.⁵ Appendix III contains about 1% of the species listed in the CITES Appendices (Cooney et al. 2012).

Commercially traded timber species are listed in Appendices II and III. However, some of the listings are limited in scope to certain products. These limitations are set out in an annotation; for example, the listing of bigleaf mahogany in Appendix II is restricted to logs, sawn wood, veneer sheets and plywood, as are the listings of three Latin American rosewood (*Dalbergia*) species, while the listings of Malagasy ebonies (*Dyospyros* spp.) and rosewoods (*Dalbergia* spp.), along with afrormosia and Siamese rosewood, are restricted to logs, sawn wood and veneer sheets (see Annex).

3.2 How CITES tracks shipments

3.2.1 The licensing system

Trade in specimens of Appendix I listed species is subject to the grant of both an import and an export permit (or a re-export certificate), only if the specimen is not to be used for primarily commercial purposes.⁶ Conditions for issuing permits include the grant of the import permit by the management authority of the state of import *before* the export permit (or re-export certificate) is granted by the state of export (or re-export); determination by the exporting state that the specimens were not illegally obtained (a legal acquisition finding); advice by scientific authorities in both the exporting and importing states that trade will “not be detrimental to the survival of that species” – the so-called non-detriment finding (NDF); and in the case of a live animal or plant, the scientific authority of the importing state must

2 Article II.

3 Article II (1).

4 Article II (2a).

5 Article II(3).

6 Article III.

Table 1. CITES requirements for licensing international trade in commercially traded tree species listed in Appendices II and III

Appendix II	Appendix III
An export permit or re-export certificate issued by the management authority of the state of export or re-export.	<i>In the case of a state that listed the species:</i>
An export permit is to be issued only if the specimen was legally obtained and if the export will not be detrimental to the survival of the species.	An export permit issued by the management authority of that state. This is to be issued only if the specimen was legally obtained.
A re-export certificate is to be issued only if the specimen was imported in accordance with the Convention.	A certificate of origin issued by the management authority.
Wood from plantations considered “artificially propagated” requires just a certificate to that effect from the management authority. ^a	<i>In the case of export from any other state:</i>
No import permit is required.	A certificate of origin issued by that state’s management authority.
	<i>In the case of re-export, a re-export certificate issued by the state of re-export.</i>
	No import permit or certificate is required.

Source: Saunders and Reeve (2014).

a See Article VII, paras 4–5 of the Convention and Resolution Conf. 11.11 (Rev CoP 15).

be satisfied that the proposed recipient is suitably equipped to house and care for it.

“Primarily commercial purposes”, and what falls within the scope of “commercial trade”, are not defined in the treaty, but they were subsequently defined by resolution (CITES 1985). Thus “commercial trade” is an activity whose “purpose is to obtain economic benefit, (whether in cash or otherwise), and is directed toward resale, exchange, provision of a service or any other form of economic use or benefit.” In deciding whether a transaction is for “primarily commercial purposes,” importing parties are to define it “as broadly as possible so that any transaction which is not wholly ‘non-commercial’ will be regarded as ‘commercial’.” The burden of proof for showing that the intended use of specimens of Appendix I species is non-commercial rests with the importer.

Appendix II trade requires the issue of an export permit (or re-export certificate) by the management authority of the exporting state and its presentation upon exit.⁷ Conditions for granting the permit include, *inter alia*, an NDF by the

scientific authority and a legal acquisition finding (see Table 1). No import permit is required.

Requirements for Appendix III trade are less straight forward than those for Appendix I or II trade since the documentation and conditions differ depending on whether exports originate in the listing country or in another range state (see Table 1). Generally, one or more countries list the entire taxon in Appendix III. In these cases, trade requires an export permit granted subject to a legal acquisition finding, to be presented on exit. In the case of other range states, trade is subject only to the grant of a certificate of origin.⁸ This certificate from non-listing Parties may help to prevent laundering of specimens from a listing country through mis-declaring them as originating elsewhere (Cooney et al. 2012). Re-exports of Appendix III listed timber (where the entire taxon is listed) require a certificate to be granted by the management authority of the re-exporting state indicating that the specimen was processed in or is being re-exported from that state.

In some cases countries have listed just their national populations in Appendix III. For example,

⁷ Article IV.

⁸ Article V.

Panama has listed only its national population of *Dalbergia dariensis*. In this case the CITES listing applies only to that national population. Exports from the listing state require the prior grant of an export permit from the national management authority, while exports from non-listing countries do not require CITES documentation. However, since the EU has implemented stricter domestic measures, it requires a certificate of origin to accompany the import of these specimens (EU stricter domestic measures are detailed further below in section 5.4.1) (Cooney et al. 2012).

There is no requirement for an NDF for trade in Appendix III-listed species, and the legal acquisition finding is only required for exports from states that listed the species. Certificates of origin require neither NDFs nor legal acquisition findings since those documents only identify the country of export as the country from which the specimen originated. They are not required to include sub-national origin (such as concession of harvest).

In summary, export permits for specimens of Appendix II listed species must be based on a scientific NDF *and* a legal acquisition finding. Export permits for specimens of Appendix III-listed species from states that listed the species need only legal acquisition findings, while certificates of origin for specimens of Appendix III-listed species from other range states require neither NDFs nor legal acquisition findings.

Plantation timber may qualify for a CITES exemption for specimens considered “artificially propagated”, in which case a certificate to that effect from the exporting country’s management authority can be accepted in lieu of any of the permits and certificates required for Appendix I-, II- or III-listed species.⁹

3.2.2 Quotas

There is no specific requirement in the text of the Convention to establish quotas to limit the trade in CITES-listed species. Nevertheless, quotas have become a commonly used tool. Voluntary national export quotas for specific taxa are generally set unilaterally by Parties, instead of making NDFs for each individual shipment of the same taxon.

However, the CoP may also set quotas. The quota and the quantity exported are typically indicated on the CITES permit accompanying shipments. Countries are required to report their export quotas to the CITES Secretariat, which makes them available on the CITES website. Management authorities typically check species identification and cross-reference volumes with CITES quotas to avoid exceeding quota limits; however there are a number of examples of quotas being substantially exceeded and non-reporting of both quotas and annual trade data remains an issue in a few key timber-producing states.

3.2.3 Electronic permitting and other tracking systems

Traditionally, CITES has used paper permits and certificates; countries are urged to print on security paper and affix a security stamp with a unique serial number, cancelled by a signature or seal to combat fraud. However, the system is gradually moving towards electronic permitting, with the CoP recommending that “all Parties consider the development and use of electronic permits and certificates,” and adopt standards recommended in the electronic permitting toolkit.¹⁰ This reflects the steady rise in the number of tracking systems moving away from paper-based systems towards semi-electronic or fully electronic systems. While the licensing system remains the primary means of tracking shipments of CITES-listed species, other electronic and semi-electronic systems are increasingly being used to track timber through the supply chain.

In October 2012, the CITES Secretariat and the ITTO published a report entitled: “Tracking sustainability: review of electronic and semi-electronic timber tracking technologies” (Seidel et al. 2012). This report was produced within the framework of the joint ITTO–CITES Programme for Implementing CITES Listing of Tropical Timber Species (detailed further in section 4.1 below). It reviews and summarizes all timber tracking systems currently in use and develops five case studies from the three tropical regions, concluding with recommendations for choosing a timber tracking system and supporting their development. With increasing legal requirements

⁹ Article VII(5).

¹⁰ Resolution Conf. 12.3 (Rev. CoP16), Permits and Certificates.

and market demands on the timber sector to be accountable throughout the whole of the supply chain, particularly in the United States, the EU and Australia (detailed further in section 5 below), tracking or chain of custody systems are expected to be able to track the flow of timber and timber products from the point of harvest throughout supply chains which are often highly complex.

Current timber tracking technologies vary in complexity. For example, a tracking system might be a simple database recording paint markings and represented in an Excel spreadsheet, or custom built software simulating complex international flows of timber, based on electronic or DNA sampling. Methods include the mass balance or inventory management method, which monitors batches of timber rather than individual products; physical tracking using paint markings, plastic tags, barcodes or radio frequency identification (RFID); and chemical identification using DNA and isotopic sampling. At each control point in the supply chain the product information (such as length, species, value, etc.) is recorded and transferred to the database. The ITTO–CITES report identifies advantages and limitations of tracking systems; for example, they can reduce the risk of fraud and theft, and decrease illegal logging but are limited by weak infrastructure and low governance capacity, among other constraints (Seidel et al. 2012).

Techniques available for timber identification (taxa and/or geographical origin) are evolving and becoming more accessible. They include wood anatomy, chemical analysis (based on the presence or absence of specific compounds), DNA analysis and isotope analysis (used for teak, mahogany and rosewood) (European Commission 2014). Additional tools being developed include a CITES timber identification directory and an online geo-referenced database which will enable identification of a timber species and the country of origin (European Commission 2014). The Global Timber Tracking Network (GTTN) was established in 2012 to bring together all stakeholders concerned by illegal logging and associated trade to promote the integrated use of DNA and stable isotopes with existing technologies for species identification and timber tracking. Coordinated by Bioversity International through the CGIAR Research Program on Forests, Trees and Agroforestry, the GTTN is developing a global online database with

geo-referenced DNA and stable isotope data for priority commercial timber species to facilitate accurate species identification for traded timber and to provide tangible proof of the declared origin of wood and wood products (see GTTN n.d.).

While CITES is encouraging the use of tracking systems to supplement its permitting system, they are not a requirement and their use is inconsistent. Moreover, some countries have been subject to more pressure to introduce them than others. For example, considerable pressure has been applied to Peru by the CITES Standing Committee in the context of illegal trade and laundering of bigleaf mahogany (*Swietenia macrophylla*) to install ‘a modern, effective information system’ that was operational (Saunders and Reeve 2014). This was considered an indication of real “on-the-ground” compliance as opposed to “paper compliance”. The focus on Peru raised concerns that issues related to compliance by other states exporting bigleaf mahogany were being neglected; the species was therefore entered into the Review of Significant Trade (RST), which examines trade from all range states, in 2008. This process focuses on the implementation of NDFs (see section 4.2 below) as opposed to tracking systems; however, the ITTO–CITES programme is reportedly now encouraging their development in other range states.

3.3 Conditions for Appendix I and II trade: NDFs and legal acquisition findings

Until recently, there were no criteria or guidelines for making NDFs. However, following a long process of workshops and consultations, at its last meeting in 2013, the CoP adopted a resolution recommending a number of “concepts and non-binding guiding principles” to inform the process by which an NDF is established.¹¹ For example, “in making a NDF, scientific authorities should consider the volume of legal and illegal trade (known, inferred, projected, estimated) relative to the vulnerability of the species (intrinsic and extrinsic factors that increase the risk of extinction of the species).”¹²

11 See Resolution Conf. 16.7, Non-detriment findings.

12 Resolution Conf. 16.7, Non-detriment findings, operational para (a) III.

No such criteria have been elaborated for legal acquisition findings, so each Party interprets the language of the Convention independently (or as a group in the case of the EU). This relatively minimal language states: “a management authority of the state of export is satisfied that the specimen was not obtained in contravention of the laws of that state for the protection of fauna and flora.”¹³ The definition of legality within CITES is derived from the Convention’s focus on the survival of species. To date, the legal acquisition finding has been interpreted quite narrowly; even where effective validation of compliance is undertaken as part of a legal acquisition finding, it does not cover the payment of royalties or the observance of legal rights concerning land use and tenure. In addition to its limited scope, there is no agreed process according to which a legal acquisition finding should be undertaken. The inevitable result of this is inconsistent implementation of the requirement.

Stakeholder discussions in CITES-related meetings have identified the necessity for a meaningful legal acquisition finding to consider whether harvest was authorized, noting that most forest codes in CITES timber-producing countries require the development and authorization of harvest management plans for each concession area (Cooney et al. 2012). Nevertheless, to date, the issue has not been taken up formally in CITES. It would be possible in theory, however, to develop a broader interpretation of “laws for the protection of fauna and flora” to include laws *in support of* their protection, bringing CITES more in line with other processes such as the EU’s Forest Law Enforcement, Governance and Trade (FLEGT) programme, and develop guidelines on how a legal acquisition finding should be undertaken. The process to develop criteria and guidelines on making NDFs provides a precedent.

13 Articles III.2(b) and IV.2(b).

4 CITES compliance and enforcement

CITES is unique among biodiversity-related conventions in having a well-developed system to incentivize compliance and enforcement.¹⁴ It is a convention with “teeth”, which have evolved over 40 years and include both “carrots” and “sticks”, i.e. measures to encourage and increase capacity for compliance and enforcement but also to sanction Parties that fail to take recommended action to resolve problems.¹⁵

4.1 ITTO-CITES programme

Capacity-building support for the management of listed timber species is provided under the programme jointly run by the ITTO and the CITES Secretariat and funded mainly by the EU, as well as the United States and private sector. In 2007, cooperation between the two organizations was strengthened and formalized as a result of a proposal by the United States and Phase 1 of the programme was launched (2007–2011). The specific objectives of the programme are to assist CITES national authorities and the private sector to meet the requirements for managing and regulating trade in CITES-listed tree species by providing capacity-building support; and to conduct specific studies where information is lacking so as to develop an enhanced global framework for the collection and analysis of information related to the biology and management of species and trade in tropical forest products (ITTO–CITES 2013a).

It supports various activities designed to improve management of CITES-listed timber species, including: making NDFs, undertaking forest

inventories, establishing management plans, training control officers in the use of CITES tools (e.g. identification manuals) and introducing supply chain traceability systems for CITES-listed timber species whose survival is significantly threatened by illegal harvest and trade.

Phase 1 focused on NDFs, and initially three species: *Swietenia macrophylla* (bigleaf mahogany) in Latin America, *Pericopsis elata* (afroormosia or African teak) in Africa and *Gonystylus* spp. (ramin) in Asia. Work has since expanded to other species, including *Prunus africana* (African cherry) and *Diospyros* spp. (ebonies) of Central Africa and Madagascar; *Cedrela odorata* (Spanish or red cedar) and other *Cedrela* spp. (cedro) in Latin America; *Dalbergia* spp. (rosewoods) in both Africa and Latin America; and *Aquilaria* spp./*Gyrinops* spp. (agarwood) in Southeast Asia (ITTO–CITES 2013a). Assistance, for example, was provided to Madagascar for research to support its proposals to list ebonies and rosewoods, and to implement the action plan approved to put the listings into effect (discussed further in section 8.4 below) (ITTO–CITES 2013b).

Following a positive review of Phase 1 by the EU, the programme is now in Phase 2 (2012–2015), and has three regional coordinators – one each in Africa, Asia and Latin America.¹⁶ In addition to its

¹⁴ For a history of the evolution of compliance and enforcement under CITES, see Reeve (2002).

¹⁵ See, in particular, CITES Resolution Conf 11.3 (Rev. CoP16) and Resolution Conf 14.3.

¹⁶ The programme has been subject to the results-oriented monitoring process of the EU, which took place in 2009–10 and involved visits to ITTO in Yokohama and to all three regions in which it operates. Another review was scheduled to begin in January 2014 to assess work currently on-going under Phase 2. The results of the first review were positive; the main criticism was the need to facilitate more inter-country and inter-regional communication and sharing of experiences, which has since been addressed. After the review, US\$10 million was approved for Phase 2. The ITTO, for its part, commissioned a separate mid-term evaluation of the programme in 2010, which helped identify priorities for assistance under Phase 2.

focus on NDFs, a priority for Phase 2 is assisting range states to develop robust tracking systems for establishing chains of custody for selected products; the report “Tracking Sustainability” was a first step to support this work. In this context, it was reported in October 2013 that discussions were underway with Double Helix in Singapore to put in place tracking systems based on DNA markers for timber from *Pericopsis elata* and bark from *Prunus africana* (ITTO–CITES 2013b). This followed concerns that were raised about possible illegal harvesting of *Prunus africana* bark from production sites in North Kivu in the Democratic Republic of Congo (DRC) and export of *Pericopsis elata* timber without NDFs from the Republic of Congo (RoC). Work under Phase 2 is also assisting range states to develop simpler tracking systems, and to implement management plans developed in Phase 1.

Following the inception of Phase 2, agreements were signed with institutions in Brazil, Cameroon, DRC, Indonesia, Madagascar, Malaysia, Peru and RoC. Activities range from law enforcement and management of *Pericopsis elata* in production forests in Cameroon, to the assessment of ramin plantation requirements and establishment of ramin genetic resources conservation gardens in Indonesia and assessment of regeneration of natural bigleaf mahogany and cedar populations in Peru (ITTO–CITES 2013b).

4.2 Compliance procedures

4.2.1 Overview of framework and response measures

The ITTO–CITES programme is complemented by compliance procedures that have evolved under CITES largely through practice. This compliance system is one of the most far reaching under any multilateral environmental agreement (MEA), providing ultimately for trade sanctions against countries that repeatedly fail to comply with CITES. The procedures were codified in 2007 in a guide contained in Resolution Conf. 14.3, which frames more detailed procedures set down in various resolutions. As well as setting out objectives, scope and general principles, the guide identifies the roles of CITES institutions, procedures for handling specific compliance matters, and reporting and review.

While the CoP provides overall policy guidance, the Standing Committee fulfills the role of a compliance committee and is tasked with: monitoring and assessing compliance with CITES obligations; advising and assisting Parties with compliance; verifying information; and taking compliance measures. In this context, it oversees the National Legislation Project (NLP), which is unique among MEAs. The Animals and Plants Committees have a scientific and technical advisory role, undertaking reviews, consultations, assessments and reporting. In particular, they implement the Review of Significant Trade (RST), which deals with heavily traded Appendix II listed species. The Secretariat, meanwhile, plays a supportive and advisory role, assessing and communicating information on compliance to Parties, advising and assisting Parties in complying with their obligations, making recommendations for achieving compliance, and monitoring implementation of compliance-related decisions. In practice, the Secretariat plays an unusually active role. This can be traced to its mandate in Article XII of the Convention, which tasks the Secretariat to make recommendations on implementation. This mandate affords it considerable power in determining priorities and shaping outcomes, including with respect to regulating trade in listed tree species.

Compliance is monitored largely through Parties’ annual reports on trade and biennial reports on implementation, as well as legislative texts, special reports, and responses to information requests, for example within the RST or the NLP. Written requests can concern information ranging from: the enactment of legislation, to the establishment or identification of appropriate institutions to carry out CITES functions, to information on law enforcement. Parties are given an opportunity to correct identified problems, but if they fail within a reasonable time, the matter is brought before the Standing Committee by the Secretariat. The Committee can decide to provide advice and capacity building; request a special report; issue a written caution and/or warning; conduct an in-country technical/verification mission and field visit; publicly notify Parties of the compliance issue; request a compliance action plan; and recommend that Parties suspend trade in individual species (“species-specific trade suspensions”) or in all CITES-listed species from

the non-compliant country (“country-specific trade suspensions”).¹⁷

Trade suspensions are considered a last resort. They can be triggered by, *inter alia*, the failure to introduce legislation necessary to implement CITES, the failure to provide annual reports on trade for three consecutive years or permitting volumes of trade in a given species that are considered detrimental to its survival. CITES trade suspensions are currently in effect for 31 countries. Of these, 25 have permitted trade in specific species at detrimental levels, three have failed to provide annual reports, three have failed to enact CITES legislation, two have failed to submit national ivory action plans, and one country – Guinea – is under a suspension for general failure to ensure compliance with CITES and enforcement of its provisions.¹⁸ At the Standing Committee meeting in July 2014, five Parties were identified for failing to provide their annual reports and faced trade suspensions if they did not comply within 60 days.¹⁹ All subsequently produced their reports.

4.2.2 Review of Significant Trade in Appendix II listed species

The Review of Significant Trade (RST) is a particularly relevant compliance process for Appendix II listed timber species. Its aim is to identify species that may be subject to unsustainable levels of international trade, and to identify problems and solutions concerning effective implementation of the Convention. In effect, it is a mechanism to try to bring international trade in heavily traded species within sustainable limits. After every CoP meeting, UNEP–WCMC identifies such species from an analysis of annual trade data. The Plants Committee (or Animals Committee in relation to fauna) then selects for further review those species of flora for which levels of trade are, or could be, detrimental to their survival. The review is undertaken in accordance with procedures laid down in Resolution Conf. 12.8 (Rev. CoP13) and

comprises several stages that include consultations with concerned Parties.²⁰ Although the focus of the RST is on compliance with CITES Article IV, and in particular NDFs, widespread illegality in a country/sector can be considered as one element of a review. Following the review, which is usually desk based but can involve in-country research, the Plants Committee formulates recommendations directed to individual range states considered of urgent or possible concern. If they fail to respond within a specified period, they are referred to the Standing Committee for recommendations on compliance measures. The Plants Committee might typically recommend conservative export quotas or in urgent cases a zero quota (in effect a trade ban), while the Standing Committee can recommend suspensions of trade in the species under review with non-compliant range states.

Among the tree species listed in Appendix II (see Annex), *Pericopsis elata* (afroormosia), *Prunus africana* (African cherry), *Swietenia macrophylla* (bigleaf mahogany), *Pterocarpus santalinus* (red sandalwood), *Bulnesia sarmientoi* (lignum vitae) and *Taxus cuspidata* (Japanese yew) are currently included at different stages in the RST, along with five species of palms and cycads (Zamiaceae and Cycadaceae) from Mozambique.²¹ At the Plants Committee meeting in May 2014, *Prunus africana* and *Pterocarpus santalinus* were entered into the review for the second time,²² while *Pericopsis elata* has also been selected twice (see case study in section 8.3 below).

The RST can be a slow process since it depends on retrospective trade data that are only reported annually. The questionable quality of data in Parties’ annual reports due to inconsistencies in reporting standards and human error means that reconciling differences between volumes of trade

17 For case studies, see Reeve (2002).

18 See CITES (2015). Suspensions for non-reporting, failing to enact legislation, failing to submit national ivory action plans, and generalized non-compliance apply to all listed species – roughly 5 600 species of animals and 30 000 species of plants.

19 SC65 Summary Record (7–11 July 2014).

20 See <http://www.cites.org/eng/res/12/12-08R13.php>.

21 PC21 Doc. 12.2, Overview of The Species-Based Review of Significant Trade (May 2014); PC21 WG2 Doc. 1, Review of Significant Trade of Appendix-II Species (May 2014); CITES Notification No. 2014/039, Implementation of Resolution Conf. 12.8 (Rev. CoP13) (Review of Significant Trade in specimens of Appendix-II species) Recommendations of the Standing Committee (12 August 2014). Trade suspensions are currently in place for *Pericopsis elata* from Cote d’Ivoire, *Prunus africana* from Equatorial Guinea and Tanzania, and Zamiaceae and Cycadaceae from Mozambique (see CITES Notification No. 2014/039).

22 PC21 WG2 Doc. 1, Review of Significant Trade of Appendix-II Species (May 2014).

reported by exporting and importing countries is an ongoing challenge. Efforts to harmonize reported data and improve capacity for reporting have been ongoing for some years. Meanwhile progress through the review is limited by the periodicity of Plants Committee meetings; it can take up to 2 years for concerns to result in the adoption of compliance measures for affected Parties. Trade suspensions are resorted to only after all other measures have been exhausted.

While the RST is mostly directed at individual Appendix II listed species, it is possible for a country to come under review. In 2001, the Animals Committee agreed to conduct its first country-based Review of Significant Trade in Appendix II species. This was in response to concern that some countries appeared to have problems implementing CITES across the board, with one species after another identified as being subject to potentially detrimental levels of trade. A country-specific approach was considered more appropriate and cost-effective than reviewing species after species. This resulted in the selection of Madagascar as a pilot case, and the expenditure of considerable effort to improve the country's implementation of CITES.

4.2.3 National legislation project

Parties may also be subjected to trade sanctions under the national legislation project (NLP). Initiated in 1992 amid concerns that the overwhelming majority of Parties did not have adequate national legislation to implement CITES, the aim of this project is to incentivize Parties to enact domestic implementing legislation. On the basis of systematic country-by-country reviews, Parties' national laws are rated in one of three categories depending on whether they meet all (category 1), some (category 2) or none (category 3) of four basic requirements:

1. Designation of at least one management authority and one scientific authority
2. Prohibition of trade in specimens in violation of the Convention
3. Penalization of such trade
4. Confiscation of illegally traded or possessed specimens.²³

²³ Resolution Conf. 8.4 (Rev. CoP15), National laws for implementation of the Convention.

Table 2. Countries with significant natural forests and/or potentially engaging in CITES-listed timber trade whose legislation does not comply with CITES*

Category 2 legislation	Category 3 legislation
Bolivia	Belize
Congo	Bhutan
Ecuador	Central African Republic
Gabon	Cote d'Ivoire
Guinea	Ghana
Guyana	Guinea-Bissau
India	Lao
Mozambique	Liberia
Paraguay	Myanmar
Sudan	Sierra Leone
Togo	Solomon Islands
Tanzania	Uganda
Venezuela	
Zambia	

* Countries have been selected on the basis of the author's generalized knowledge; an in-depth study would be needed to determine which non-compliant Parties are range states for CITES-listed tree species and the extent to which they are engaging in trade.

Parties falling under categories 2 or 3 (i.e. meeting some or none of the requirements to implement CITES) are requested to develop plans with timelines for developing and enacting legislation. The Secretariat provides technical assistance, including model laws, and if Parties persistently fail to demonstrate legislative progress, they can be subject to a trade suspension in CITES-listed species. Currently, however, only three Parties are subject to trade suspensions for lack of national legislation,²⁴ even though as of July 2014, 88 Parties (nearly 50%) fell into categories 2 or 3, including many timber-exporting countries and countries with significant natural forests (see Table 2).²⁵

While the proportion of non-compliant Parties has reduced compared with the first phase of

²⁴ Djibouti, Mauritania and Somalia. <http://www.cites.org/eng/resources/ref/suspend.php>

²⁵ SC65 Doc. 22 Annex, National laws for implementation of the Convention.

the project (1992–4) when 85% of the Parties reviewed had category 2 or 3 legislation, even taking into account the expansion in the number of Parties since then it demonstrates how slow progress has been over the project's 22 years. Having category 1 legislation is not necessarily a guarantee either that CITES is being implemented effectively. DRC's legislation is in category 1, for example, but implementation and enforcement are a persistent problem. In April 2014, the CITES Secretariat issued a notification warning Parties that a large number of fake or falsified permits apparently issued by the DRC management authority had come to light over the course of several months, and that hundreds of copies of CITES permits – whose numbers were annexed to the notification – had gone missing from the authority's files.²⁶ Requests from Parties to the DRC to verify the validity of permits had received irregular or contradictory responses, “in some cases from non-authorized persons.” Consequently, the DRC has undertaken to provide the Secretariat with copies of all CITES permits issued, and the Secretariat has recommended that Parties not accept any export permit or certificate issued by DRC unless its validity has been confirmed by the Secretariat.²⁷

4.2.4 Use of generalized trade sanctions and equity

A country can also be subject to scrutiny by the Standing Committee, and ultimately subject to trade sanctions for generalized non-compliance and/or enforcement problems. Guinea is the latest example. Similarly, high-profile species, such as bigleaf mahogany or ramin, can be treated as special cases and compliance measures recommended and reviewed by the Standing Committee until trade is no longer considered to be detrimental. Such action is invariably triggered by concerns raised by non-governmental organizations (NGOs).

Currently, all the countries subject to recommended trade suspensions are range states. Consumer countries are less likely to be subject to sanctions. A recent analysis by Peter Sand (the

first CITES Secretary General) found that trade suspensions have not been recommended against consumer countries for over 15 years, when first Italy (1992–5) then Greece (1998–9) were targeted – the only Northern countries ever to be subject to sanctions (Sand 2013). He found that more than 95% of the states subject to all-out trade embargoes were developing countries, but considered it likely that compliance failures are also occurring in importing countries. He recalled that the Secretariat's infractions reports – produced from 1979 to 1997 but discontinued after complaints from ‘shamed’ Parties – used to reveal implementation and enforcement problems in supplier and consumer countries alike.

Sand (2013) cites Japan as an example of the disproportionate application of compliance measures. CITES requires scientific authorities to be “independent of management authorities.”²⁸ Japan, however, whose legislation is rated category 1, does not meet this basic requirement since its scientific authority for marine species is directly subordinate to the head of the designated management authority for these species. Yet while Afghanistan and Rwanda were subject to recommended trade suspensions for persistent failure to designate appropriate scientific authorities (see Reeve 2002: 153), Japan never has been. Neither has Singapore, another Party whose legislation is in category 1 despite the Agri-Food and Veterinary Authority serving as both the designated management and scientific authority, as well as the focal point for enforcement.²⁹ Furthermore, despite persistent and serious non-compliance with CITES in the 1980s on the part of Japan (at the time the second most important importing country), repeated attempts by Latin American countries to raise the issue, particularly with respect to trade in sea turtles, failed to result in action. It was not until the United States certified Japan in 1991 under the Pelly Amendment for trade that threatened the survival of sea turtles and diminished the effectiveness of CITES that Japan finally responded, banning sea

26 <http://cites.org/sites/default/files/notif/E-Notif-2014-017.pdf>

27 Ibid.

28 Resolution Conf. 10.3, Designation and role of the Scientific Authorities.

29 <http://www.cites.org/eng/cms/index.php/component/cp/country/SG>

turtle imports and generally tightening import controls (Reeve 2002: 102).³⁰

4.2.5 Focus on systemic governance and species

In its analysis of the CITES compliance system, Saunders and Reeve (2014: 23) note the system's focus on the systemic effectiveness of implementing authorities, supporting broad

governance improvements as opposed to addressing infractions of forest law by private operators – which it is not designed to do. It also points out the focus on species survival, which means that systemic failings of law enforcement can be a trigger for both the CITES institutions and the EU Wildlife Trade Committee to take measures to deal with non-compliance – but only if such measures are material to the survival of listed species.

30 The Pelly Amendment refers to the 1971 amendment to the 1967 Fishermen's Protective Act (85 *Stat.* 786, 22 U.S.C.A. 1978). After Congressman T. M. Pelly's death in 1973, the provisions were extended to other fisheries and wildlife legislation.

5 Stricter domestic measures and illegal timber trade legislation: Australia, United States and the EU

5.1 Stricter domestic measures under CITES

Parties have the right under Article XIV to adopt stricter domestic measures than provided for in the Convention. Thus Parties can restrict or completely prohibit trade in listed and non-listed species.³¹ Many consumer and producer countries have made use of this provision to restrict imports and exports with a view to achieving conservation and animal welfare objectives. For example, the EU, Japan and the United States require import permits for trade in some or all Appendix II species, while Australia requires evidence of a management plan in exporting countries before it permits imports (this led, for example, to its refusal to allow the import of caviar; CITES 2006). Meanwhile, Brazil, India and Kenya are among exporting countries that have banned the export of wild animals for commercial purposes. Parties who adopt stricter measures for non-indigenous species, however, are expected to “make every reasonable effort to notify the range states of the species concerned at as early a stage as possible” prior to their adoption and consult with those that wish to do so.³²

Potential tension between CITES and the World Trade Organization (WTO), notably in relation to unilateral stricter domestic measures, has been a subject of debate (Hutton and Chitsike 1998; Dickson 2000; Hutton 2000; Reeve 2002: 298). If the measures were considered unilateral,

discriminatory, non-transparent or insufficiently based on science, they could potentially form the basis of a WTO dispute (CITES 2006). However, there has never been a challenge under the WTO of a CITES-related trade restriction, even a unilateral measure; in the opinion of legal commentators, the agreements do not conflict, but rather are mutually supportive (Brack and Gray 2003; Wold 2012). Moreover, the WTO Appellate Body has upheld unilateral measures for environmental reasons in high-profile disputes such as the Shrimp/Turtle case (Wold 2012), while the CITES Secretariat has built mutual supportiveness with the WTO into its operations, with the goal of ensuring the continuing recognition and acceptance of CITES measures (Brack and Gray 2003). As a result, the debate seems to have largely died down.

Unilateral stricter domestic measures are of particular importance in relation to the timber trade in light of restrictions adopted by importing countries since the G8 Summit in 2005 where countries recognized “the impacts that illegal logging, associated trade, and corruption have on environmental degradation, biodiversity loss and deforestation and hence climate systems,”³³ and committed to take steps to “halt the import and marketing of illegally logged timber.”³⁴ The EU, United States and Australia have all enacted legislation since the Summit designed to exclude illegal timber from their supply chains; this is in addition to CITES implementing legislation which already included stricter domestic measures. At the same time, however, markets for primary timber products have shifted to Asia, but as discussed

31 Article XIV.1 protects ‘the right of Parties to adopt: (a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or (b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III’.

32 Resolution Conf. 6.7, Interpretation of Article XIV, paragraph 1 of the Convention.

33 G8 (2005), The Gleneagles Communique, 2005, para. 36.

34 G8 (2005), Environment and Development Ministerial, 18 March, para. 10.

below in section 6, the Asian response has been less robust.

5.2 Australia

Australia requires an import permit for several species of Appendix II listed wildlife (all fauna), while ramin is a 'declared specimen'.³⁵ Declared specimens may only be imported commercially if they have been artificially propagated, captive bred, or sourced from an operation that has been approved as a commercial import programme. The only approved commercial import programme for ramin is from Peninsular Malaysia and Sarawak (see summarized case study on ramin in section 8.2 below).³⁶

In addition to stricter import measures for Appendix II listed species, Australia has adopted legislation designed to exclude illegal timber from its market. The Illegal Logging Prohibition Act (ILPA) came into effect in November 2012. The Act criminalises the importation into Australia of illegally logged timber and any product made from illegally logged timber as well as the processing of illegally sourced domestic raw logs. Violators risk a maximum penalty of 5 years imprisonment, or a fine, or both, plus forfeiture of the products and/or logs.³⁷ Australia has also adopted legislation requiring importers and processors to exercise due diligence. In May 2013, the Illegal Logging Prohibition Amendment Regulation 2013 was registered and took effect from 30 November 2014. This Regulation requires importers of regulated timber products (therefore including Appendix II listed tree species) and domestic processors of raw logs to have a due diligence system in place to minimise the risk of importing or processing illegally logged timber. The list of regulated timber products is extensive.³⁸ Under the Regulation,

35 <http://www.environment.gov.au/topics/biodiversity/wildlife-trade/internationally-endangered-plants-and-animals-cites/australias>

36 Ibid.

37 <http://www.illegallogging.com.au/>; individuals can be fined AU\$85 000 and a corporation AU\$425 000.

38 It includes all sawn timber, decking, mouldings, plywood, particleboard, MDF (medium density fibreboard), joinery items such as timber doors and windows, most pulp, paper and cardboard products as well as most timber and timber-framed furniture.

criminal and financial sanctions apply to importers of regulated timber products who are found to have imported illegally logged timber or a product containing it and to have been negligent. Financial penalties also apply to individuals and companies who fail to implement a due diligence system that complies with the Regulation.³⁹

In order to prepare exporting countries and industry for the new regulations, the Australian Government's Department of Agriculture engaged in outreach. Throughout 2013, information sessions were held within Australia and in Indonesia, Malaysia, New Zealand and Papua New Guinea about the Act and the Regulation.⁴⁰

5.3 The United States

The United States has enacted several pieces of legislation enshrining stricter domestic measures in US law. The two that are relevant to CITES-listed plants are the Endangered Species Act (ESA), which dates back to 1966, and the Lacey Act of 1900.

5.3.1 Endangered Species Act

The ESA (or more strictly, its predecessor, the Endangered Species Preservation Act) was amended in 1969 to provide protection to species in danger of "worldwide extinction" by prohibiting their importation and subsequent sale in the United States. Under the ESA, the United States commonly prohibits imports of CITES-listed wildlife that would otherwise be allowed under the Convention.⁴¹ However, of the more than 1800 animals and plants listed as endangered or threatened, of which 875 are plants, only three are "foreign" plant species, two of them trees, both of which are on CITES Appendix I – *Abies guatemalensis* (Guatemalan fir or pinabete) and *Fitzroya cupressoides* (Patagonian cypress or Chilean false larch).⁴² The two species are listed as threatened under the Act, so import, export,

39 <http://www.illegallogging.com.au>

40 <http://www.daff.gov.au/forestry/policies/illegal-logging>

41 The relevant section of the ESA is found at 16 USC 1539(a)(2). See <http://www.law.cornell.edu/uscode/text/16/1538>

42 http://ecos.fws.gov/tess_public/pub/listedPlants.jsp

interstate and foreign commerce are prohibited, subject to a few exceptions.⁴³

5.3.2 Lacey Act

The Lacey Act is a much more significant stricter domestic measure for CITES-listed plant species than the ESA since it applies to far more species. First enacted in 1900, it is the United States' oldest wildlife protection statute. It makes it illegal to import or export any wildlife specimen taken or traded in violation of US or foreign law, or engage in various aspects of their interstate or foreign commerce (CITES 2013b). Until 2008, the Act only applied in a limited way to native plants, but in May that year, it was expanded to protect a broader range of plants, including foreign plant and timber species. Considered landmark legislation, it is the world's first ban on trade in illegally sourced wood products. Thus with some limited exceptions, the Act now:

- prohibits all trade in plant and plant products (e.g. furniture, paper, or timber) that are illegally sourced from any US state or any foreign country – where “illegally sourced” is defined by the laws and regulations of the country of origin;
- requires US importers to declare the scientific name, value, quantity and country of harvest origin for some products;
- establishes penalties for violation of the Act, including forfeiture of goods and vessels, fines of up to US\$500 000 and prison terms of up to 5 years (penalties are higher for those who knew they were trading in illegally harvested materials); and
- makes it unlawful to submit any false record of a covered plant (EIA 2009; CITES 2013b; WRI n.d.).

The plant product amendments have attracted controversy and been criticized for not being supported by a clear framework of regulation that sets guidelines for importers, exporters

and traders.⁴⁴ They have been used in three enforcement cases to date, two high-profile cases involving Gibson Guitar Corporation and one involving a smaller company importing timber to Florida from Peru. In the Gibson Guitar cases the manufacturer was raided twice for importing illegally sourced ebony, first from Madagascar and later from India.⁴⁵ They were resolved through a criminal enforcement agreement with the US Department of Justice, reached in August 2012.⁴⁶ In exchange for the government not pursuing criminal charges, Gibson Guitars was required to pay a US\$300 000 fine as well as a US\$50 000 community service charge, forfeit seized wood, and implement a detailed compliance programme. The agreement sets precedents for the United States and global wood products industry and is considered to have implications for future implementation of the Lacey Act and forest legality regulations around the world. For example, it details specific elements of a compliance programme (or due diligence system) to ensure due care, i.e. the responsibility of each buyer to exercise a “degree of care that a reasonably prudent person would exercise under the same or similar circumstances” to minimize the risk of illegal wood entering supply chains.⁴⁷

5.4 The European Union

5.4.1 The EU Wildlife Trade Regulations

One of the incentives for applying stricter domestic measures on CITES implementation across the European Union was the move towards regional economic integration, initially with the establishment of a common market through the European Economic Community. The loss of systematic border controls within the Community (now the Union) meant that CITES provisions had to be implemented uniformly in all EU member states in order to ensure they met their obligations. Otherwise the level of implementation was only

43 Under the ESA, for endangered species, permits may be issued for scientific research, enhancement of propagation or survival, and taking that is incidental to an otherwise lawful activity; and for threatened species, permits also may be issued for zoological, horticultural, or botanical exhibition; educational use; and special purposes consistent with the ESA. See <https://www.fws.gov/endangered/permits/faq.html>

44 <http://www.rainforest-alliance.org/forestry/verification/lacey-act>

45 <http://online.wsj.com/news/articles/SB10001424053111903895904576542942027859286>

46 World Resources Institute <http://www.forestlegality.org/blog/gibson-guitar-logging-bust-demonstrates-lacey-act%E2%80%99s-effectiveness>

47 Ibid; <http://www.rainforest-alliance.org/forestry/verification/lacey-act>

Table 3. Species distribution in the Annexes to the EU Wildlife Trade Regulation

Annex A	Annex B	Annex C
All CITES Appendix I listed species, except those for which EU member states have entered a reservation. N.B. There are currently no reservations on Appendix I listed species.	All other CITES Appendix II listed species, except those for which EU member states have entered a reservation. N.B. There are currently no reservations on Appendix II listed species.	All other CITES Appendix III-listed species, except those for which EU member states have entered a reservation.
Some CITES Appendix II- and Appendix III-listed species, for which the EU has adopted stricter domestic measures and some non-CITES species. N.B. No species commercially traded for timber currently falls into these categories.	Some CITES Appendix III-listed species and some non-CITES species. N.B. No species commercially traded for timber currently falls into these categories.	

Source: Saunders and Reeve (2014).

as good as the weakest state, and in the early years after the Convention came into force, levels of implementation and compliance were highly variable across the Community. (The enforcement problems encountered with regional economic integration are discussed further in section 7.1 below.)

The first Regulation to implement CITES uniformly across the EU was concluded in 1982, entering into force in 1984 at a time when internal border controls were dissolving throughout the Community.⁴⁸ It was a precursor to the set of regulations which implement CITES today, known collectively as the EU Wildlife Trade Regulations, which are directly applicable in member states (see Saunders and Reeve 2014: 8).⁴⁹ Notable stricter measures in the 1982 Regulation included a requirement for an import permit for all CITES specimens listed in Appendix II, not just those in Appendix I (a requirement that was ‘borrowed’ from Denmark, Germany and the United Kingdom); an expanded list of species to be treated

as Appendix I; and a ban throughout the EU on display for commercial purposes as well as the sale and transport of species on an extended Appendix I list (see Reeve 2002: 112).

While the 1982 Regulation had the beneficial effect of requiring EU member states that had not acceded to CITES to impose equivalent, and in many ways stricter, measures, it attracted criticism for being unenforceable (Reeve 2002: 113). Apart from the challenge posed by highly variable implementation among member states, automatic mutual recognition of permits from other EU countries led to the recognition of even manifestly incorrect CITES documents, and statistical data on trade flows within the EU were lost. The loss of border controls meant that illegal trade was flooding in to the EU through its weakest entry points (see further discussion in section 7.1).

Under pressure from CITES, particularly by Latin American countries whose attempts to control CITES trade were being undermined by the EU’s lack of enforcement, the EU replaced the 1982 Regulation with the EU Wildlife Trade Regulation (Council Regulation (EC) 338/97), which came into force in June 1997. This core regulatory text, known as the “Basic Regulation”, was considered a significant improvement, and contained further stricter domestic measures, including increasing the possibility for import restrictions, tightening control of commercial activities with regard to Annex A species and enabling the listing of non-

48 Council Regulation (EC) 3626/82, on the Implementation in the Community of the Convention on International Trade in Endangered Species of Wild Fauna and Flora’, *Official Journal of the European Communities*, L 384/1 (1982).

49 Regulations are the most direct form of EU law – as soon as they are passed, they have binding legal force throughout every member state, on a par with national laws. National governments do not have to take action themselves to implement EU regulations.

Table 4. Trade requirements under the EU Wildlife Trade Regulations

Annex B	Annex C
CITES export permit issued by the management authority of the producer country.	In the case of states that have committed to controlling trade in the relevant species: CITES export permit issued by the management authority of the producer country. In the case of exports from producer countries that have not committed to controlling trade in the relevant species: CITES certificate of origin.
Import permit issued by the management authority of the EU member state.	Import notification by importing company or individual; to be submitted, along with CITES Appendix III documents from the (re-)exporting country, to the customs authority of the importing state.

Source: Saunders and Reeve (2014).

CITES species in Annexes A-D. Annexes A, B and C broadly correspond to CITES Appendices I, II and III, but each is an expanded list (see Table 3, and EU listings of CITES-listed tree species in the Annex). All listings of tree species in the EU Annexes correspond with their CITES listings, and all listed commercially traded timber species are in Annexes B and C.

The Regulation also imposed obligations to monitor and ensure compliance with its provisions, to instigate legal action in cases of infringements, and ensure the imposition of adequate penalties; empowered the European Commission so it could adopt measures on all aspects of implementation; and established a Scientific Review Group (SRG) composed of member state representatives and an Enforcement Group consisting of member state authorities responsible for implementation (in addition to the CITES Management Committee established by the 1982 Regulation) (Reeve 2002: 116). In effect the EU developed a system based on internal commerce controls within an external “wall”.

The most significant stricter domestic measures for CITES-listed timber species are the additional import requirements for Annex B and C listed species (see Table 4), as well as the ability to suspend imports considered detrimental to a species’ survival. Notably, the requirement for an import permit for Annex B species conditions imports on a scientific NDF (that the import would not have a harmful effect on the conservation status of the species or decrease the population concerned) as well as documentary

evidence that specimens were obtained in accordance with legislation on the protection of the species (legal acquisition finding); for CITES specimens, an export permit or re-export certificate, or a copy, is considered adequate.⁵⁰ Imports of Annex C listed species, meanwhile, require an import notification.⁵¹

The requirement for NDFs for Annex B species provides a basis for restricting imports to the EU of specific species from specific countries in the event of a negative finding, a process which provided a model for the now CITES-wide RST. The process can be triggered either by a scientific authority advising its management authority not to issue an import permit because it considers the conditions are not met, or by the SRG deciding this is the case after reviewing annual export quotas, trade volumes etc. at one of its meetings. Authorities in member states are immediately informed of the advice and suspend the issue of import permits until a restriction is established or not. The opinion of other EU scientific authorities is sought (if the case has not yet been discussed at an SRG meeting). If a NDF is made, the SRG forms a positive opinion and imports can be resumed. If the initial opinion is confirmed, however, the SRG forms a negative opinion. Since all member states

50 http://ec.europa.eu/environment/cites/pdf/differences_b_eu_and_cites.pdf

51 This is a declaration filled in by the importer, to be submitted together with CITES Appendix III documents from the (re-)exporting country to the customs office of introduction into the Community.

are required to take account of SRG opinions,⁵² this acts as a *de facto* suspension until the species/country can be formally added to the suspensions list.⁵³ For as long as a negative opinion is in place member states will normally reject all permit applications for the species/countries in question.

The Commission regularly consults affected range states to ask for any new biological and trade information on the species subject to an import restriction. If no new information is provided, or if the SRG considers it insufficient for a NDF (and therefore conversion into a positive opinion), the negative opinion will be formalized through publication of the import suspension in the Official Journal of the European Communities. The list of trade suspensions is updated annually. The case of ramin exports from Malaysia provides an example of a suspension that catalyzed positive behavior change (see the case study in section 8.2 below), in contrast with the case of exports of afrormosia from DRC, which appears to have been less effective (see section 8.3).

5.4.2 FLEGT and the EUTR

FLEGT

The EU's policy to fight illegal logging and trade was defined in 2003 in the FLEGT Action Plan.⁵⁴ The Plan recognized that the EU, as an importer of substantial quantities of timber products from countries with poor law enforcement and governance in the forest sector, had a responsibility to ensure that EU markets did not create incentives for illegal logging. Thus it identified a number of policy options for increasing market access for products verified as 'legal' and reducing demand from EU buyers for 'high-risk' products, not verified as such. The measures set out in the Plan focus on seven areas that address both supply and demand (European Commission 2007):

1. *Support to timber-producing countries*: this aims to improve governance structures, including through policy reform to engage stakeholders; developing reliable verification systems, including independent forest monitoring;

building capacity to implement new governance procedures; and supporting the development of community-based forest management and empowerment of communities to help prevent illegal logging.

2. *Activities to promote trade in legal timber*: this includes legislation to prevent illegal timber from entering the EU market (detailed below), and dialogue with other major timber importers, such as China, Japan and the United States, to promote cooperation in combating illegal logging and associated trade in countries where EU markets have less influence.
3. *Promoting public procurement policies*: EU member states are encouraged to implement policies favoring sustainable and verified legal timber in their procurement contracts.⁵⁵
4. *Support for private sector initiatives*: this includes support to improve standards of forest management, legal compliance and supply chain management, and adopt corporate social responsibility standards.⁵⁶
5. *Safeguards for financing and investment*: banks and financial institutions are encouraged to take long-term legal supply, as well as environmental and social factors into account when conducting due diligence assessments for their investments in the forest sector (i.e. to ensure investment does not encourage illegal logging).
6. *Use of existing legislative instruments or adoption of new legislation to support the plan*: investigation by the EU into using existing and new legislation to combat forest sector illegality included research on CITES implementation and examining the potential for including other timber species in the CITES Appendices (see section 2 above, which notes the failure of EU-sponsored listing proposals in 2007 and subsequent success in 2013 of range state proposals following implementation of the EU-supported ITTO-CITES programme).
7. *Addressing the problem of conflict timber*.

The key regions and countries targeted in the FLEGT Action Plan are Central Africa, Russia,

52 See Council Regulation (EC) No 338/97, Articles 4.1–4.2.

53 http://ec.europa.eu/environment/cites/srg_en.htm.

54 See http://ec.europa.eu/development/icenter/repository/FLEGT_en_final_en.pdf.

55 Member states implementing public procurement policies requiring timber and timber products to be from legal and sustainable sources include Belgium, Denmark, France, Germany, the Netherlands and the UK.

56 EU grants to support WWF's Global Forest Trade Network and TFT's Tropical Timber Action Plan are examples of this type of activity. See <http://gftn.panda.org/> and www.tft-forests.org/ttap/

Tropical South America and Southeast Asia, which together contain nearly 60% of the world's forest and supply a large proportion of internationally traded timber.⁵⁷ Coordination of policies under the FLEGT Action Plan at the EU level is undertaken by the EU FLEGT Committee, which comprises representatives of all member states, meets regularly in Brussels and is chaired by the European Commission.

Two key pieces of legislation have been enacted under the EU FLEGT Action Plan to prevent illegal timber from entering the EU market:

1. *The FLEGT Regulation* adopted in 2005,⁵⁸ allowing for the control of the entry of timber to the EU from countries entering into bilateral FLEGT Voluntary Partnership Agreements (VPA) with the EU; and
2. *The EU Timber Regulation* adopted in October 2010, as an overarching measure to prohibit placing of illegal timber and timber products on the internal market.⁵⁹

Partner countries with a VPA – which is a legally binding trade agreement – commit to establishing a timber legality assurance system (LAS) designed to ensure the legality of all timber exported to the EU.⁶⁰ Timber exported from these countries must be accompanied by a FLEGT license. Under the LAS, in order to issue a license, the licensing authority will need to have evidence to confirm that the timber was legally produced and that it can be traced through the supply chain back to its legal origin. This requires developing: (1) a published definition of legally produced timber, which describes the laws that must be complied with for a licence to be issued and the checks that need to be made to determine compliance;⁶¹ (2) a mechanism for control of the supply chain from point of harvest to point of export, i.e. national wood control system enabling wood to be traced through its chain of custody; and (3) a means for verifying that the requirements of the legality

definition and the supply chain control have been met so this information can be presented to the licensing authority to allow the license to be issued.

While the purpose of a VPA is to ensure that timber and timber products exported to the EU come from legal sources, the agreements also help timber-exporting countries to improve regulation and governance of the forest sector.⁶² Six countries have signed a VPA with the EU to date and are currently developing the systems required to control, verify and license legal timber (Cameroon, Central African Republic, Ghana, Indonesia, Liberia and the Republic of the Congo). Nine more countries are in negotiations with the EU (Cote d'Ivoire, DRC, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand and Vietnam), and a further 11 countries in Africa, Asia and Central and South America have expressed an interest in VPAs (Bolivia, Colombia, Ecuador, Guatemala, Peru, Philippines, Cambodia, Myanmar (Burma), Papua New Guinea, Solomon Islands, Sierra Leone).⁶³ All 26 countries are Parties to CITES.

Ghana was the first country to sign a VPA. Through a multistakeholder process involving national civil society organizations and generally considered to have reflected good practice in stakeholder engagement, a definition of legal timber was developed, framed around seven principle criteria (Thomas Pichet, personal communication to Jade Saunders, Oct 2013). For each principle criterion, indicators and verifiers have been identified in the VPA to demonstrate compliance – these include social, environmental and financial factors relevant to legal compliance. All criteria, indicators, and verifiers must be met for a shipment to be verified as legally compliant and for a FLEGT licence to be issued. Encompassing relevant social, financial and environment factors in the definition is reflective of an emerging consensus on the scope of legality and the importance of these issues for effective forest governance.

When they become operational, FLEGT licenses issued under the LAS of a VPA country will be underpinned not only by a legality definition and a national wood control system enabling wood products to be traced from harvesting to the point

57 See http://ec.europa.eu/environment/forests/illegal_logging.htm

58 See <http://ec.europa.eu/environment/forests/flegt.htm>

59 See http://ec.europa.eu/environment/forests/timber_regulation.htm

60 See <http://www.euflegt.efi.int/what-does-a-vpa-contain>

61 See FLEGT Briefing Note 02, What is Legal Timber? Accessed at <http://www.euflegt.efi.int/publications/-/document/28596>

62 See <http://www.euflegt.efi.int/vpa>

63 See <http://www.euflegt.efi.int/vpa-countries>

of export, but a system to verify legal compliance and to monitor independently implementation of the LAS. Legal compliance and supply chain control is verified by a body performing the regulatory role of government (which may be outsourced). The verifying body would typically conduct regular checks of forest management units and processing / transport facilities to ensure that: (1) timber is produced and/or processed in a way that meets the requirements of the definition of legal timber; and (2) that supply chain controls are implemented at each point where a product is shipped, received or transformed – such as sawmills and plywood mills – to check that no material that is unaccounted for has entered the process.⁶⁴ The six VPAs signed to date provide for some form of electronic tracking which could enable real-time supply chain reconciliation, with most considering manual/paper-based options as an alternative or a back-up (Thomas Pichet, personal communication to Jade Saunders, Oct 2013).

An independent auditor appointed by the VPA country government checks that all the LAS components have been implemented properly. Any non-compliance and system failures are identified and the findings reported to a Joint Implementation Committee (JIC), which is established for each VPA. The JIC is comprised of representatives of the VPA country's government, the European Commission and EU member states, and other relevant stakeholders by invitation. It facilitates and monitors the implementation of the VPA, assesses the ultimate credibility of the LAS, and resolves any conflicts and disputes. A summary of each audit report is made publicly available.

Optionally, independent observation may be used to complement the independent audit, and could be carried out by an organisation as part of a VPA country's control system, e.g. to monitor law enforcement by the ministry in charge of forests.⁶⁵ Stakeholders may also be involved, ensuring that the civil society and private sector groups involved in the VPA negotiation can also participate in VPA implementation. Ghana, for example, has set up

64 See FLEGT Briefing Note 05, Legality Assurance Systems: requirements for verification. Accessed at <http://www.euflegt.efi.int/publications/-/document/28547>

65 See FLEGT Briefing Note 07, Guidelines for Independent Monitoring. Accessed at <http://www.euflegt.efi.int/publications/-/document/28513>

the Timber Validation Council, while the Republic of the Congo has the Multistakeholder Technical Secretariat.⁶⁶ Only FLEGT-licensed timber will be allowed into the EU from VPA countries.

In the context of the FLEGT Action Plan, which is being reviewed in 2015, European development assistance is being used to support timber LAS development in VPA implementing countries (Jade Saunders, personal communication, May 2014); it will be relevant to further research on governance of the timber trade to follow the outcomes in these countries, as well as the review, and see if lessons are being learned and subsequently applied.

5.4.3 EUTR

The EU Timber Regulation (EUTR), which came into force in March 2013, complements the FLEGT Regulation. It prohibits the first placing of illegally harvested timber and products derived from such timber on the EU market and obliges operators and traders on the EU market to have systems in place that assure that the timber is from legal origin.⁶⁷ The definition of legal timber is based on the law of the country of harvest, and defines a legal product as having been produced in accordance with “all applicable legislation”, including:

- Rights to harvest timber within legally gazetted boundaries;
- Payments for harvest rights and timber, including duties related to timber harvesting;
- Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting;
- Third parties' legal rights concerning use and tenure that are affected by timber harvesting; and
- Trade and customs, in so far as the forest sector is concerned.⁶⁸

66 See <http://www.euflegt.efi.int/what-does-a-vpa-contain>

67 This description of the EUTR is summarized from Saunders and Reeve (2014); see p 3 of that paper for more details. See also 'International Development in Trade in Illegal Timber: All you need to know about the US Lacey Act, the EU Timber Regulation and the Australian Illegal Logging Prohibition Act' (2012).

68 Regulation (EU) No 995/2010 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:01:EN:HTML>.

The Regulation covers a large range of timber products, either imported or domestically produced.⁶⁹

Operators – those who place timber products on the EU market for the first time – are required to exercise ‘due diligence’ and be able to demonstrate that they have done so. Traders – those who buy or sell timber and timber products already placed on the EU market – are required to keep information about their suppliers and customers to make timber easily traceable throughout the European portion of relevant product supply chains. Due diligence to be performed by operators involves undertaking risk assessment and risk mitigation to minimise the risk of placing illegally harvested timber, or products containing such timber on the EU market.

The Regulation provides for recognized Monitoring Organizations that will provide EU operators with due diligence systems ready to use; or operators can develop their own system. The assessment of risk of illegal wood entering a supply chain should be based on information gathered about the product and supplier, country (and, in high-risk cases, concession) of harvest and compliance with applicable forestry legislation. The Regulation notes that risk mitigation should be ‘adequate and proportionate’ to the risk of illegal wood entering the product supply chain in question. It can include requiring suppliers to provide detailed information on the material source and chain of custody before the products are purchased or buying only products that have an independently audited guarantee of provenance and legality.

Each EU member state is required to designate a competent authority responsible for enforcing the Regulation and to determine the type and range of penalties for non-compliance. The Regulation suggests that civil society groups provide information – in the form of substantiated concerns – about companies they consider to be failing to undertake effective due diligence or consignments of wood they suspect are illegal. Such formal concerns are to be submitted to the competent authorities of relevant member states, but to date there are no standards or protocols

defining an acceptable level of substantiation or how a member state ought to respond.

Updates provided on the state of play concerning implementation of the EUTR at the Chatham House Illegal Logging Update and Stakeholder Consultation meeting in June 2014 indicated that progress has been slow and varied among member states. Few competent authorities had begun to exercise controls on a regular basis and few Monitoring Organizations were operational, while implementation models across the EU varied (Knoell 2014). Germany, for example, introduced administrative fines for failing to comply with the EUTR requirements, increasing the number of registered operators from 350 in 2013 to 2500 in 2014, along with criminal sanctions in cases of illegal imports (Hinrichs 2014). In comparison, the government response was less robust in Italy where an estimated 15 000 operators affected by the EUTR out of a total of 20 000 were ignoring its due diligence requirements in the absence of sanctions and the provision of information by the government (Hinrichs 2014).

5.4.4 CITES and the EUTR

Significantly, the EUTR provides for exemptions to the due diligence requirement for products imported in accordance with the EU Wildlife Trade Regulation implementing CITES in the EU. This “green lane” for CITES-certified timber is found in Article 3 of the EUTR which states that: “timber species listed in Annexes A, B or C to Regulation (EC) No 338/97 and which complies with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation”.

Similarly, products accompanied by FLEGT licenses issued under VPAs are given an exemption.⁷⁰ Thus, timber with CITES permits or licensed under FLEGT is considered risk free and requires no further due diligence measures from the importer. However, while FLEGT-licensed timber – when it finally comes onto the EU market – will be underpinned by a credible LAS enabling

⁶⁹ Timber products subject to the EUTR include furniture, pulp and paper, flooring, plywood, logs and sawn wood and are listed in an Annex to the Regulation.

⁷⁰ Note that no FLEGT licence has yet been issued for trade. For more information on the principles of legality assurance schemes underpinning credible licensing, see <http://www.euflegt.efi.int/documents/10180/28299/FLEGT+Briefing+Notes+3+-+A+timber+legality+assurance+system/e9ce3bcd-6243-4bb6-b702-d48e8843079c>.

Table 5. Concepts of legality of CITES and the EUTR/FLEGT

	CITES	EUTR/FLEGT
Scope	Laws for the protection of fauna and flora	All 'applicable legislation'
Definition of legality	None	Expectation that both due diligence and enforcement will be based on knowledge of all 'applicable legislation' and, where available, national 'legality definitions' developed as a result of VPAs
Defined process of credible validation	None	Expectation of systematic checks and regular third-party (independent) audits

Source: Saunders and Reeve (2014).

the wood to be traced to known legal origins, this is not currently the case with CITES where the implementation of legal acquisition findings is questionable at best and the implementation of tracking systems, which is not a requirement, is inconsistent (see section 3.2 above).

As discussed in Saunders and Reeve (2014) and above, no guidance has been developed by CITES on how a legal acquisition finding – required for exports of Appendix I and II listed species, and exports of Appendix III listed species by the listing state - should be made and validated. Moreover, as also pointed out, the scope of the laws refers only to the protection of fauna and flora (see Table 5), which has been narrowly interpreted by the EU as legislation on the protection of the species concerned.⁷¹ A CITES export permit or re-export certificate is considered to provide documentary evidence of legality.⁷² In contrast, as detailed above, a FLEGT license requires that compliance with relevant laws be based on a published legality standard and systematically checked and that each national licensing system be subject to regular third-party audits, while the EUTR defines a legal product as having been produced in accordance with “all applicable legislation.”

Saunders and Reeve (2014) identify other weaknesses in the CITES control system which could undermine implementation of the EUTR, including the lack of: national wood control systems, third-party oversight/audit, and data reconciliation between quotas and legal harvest levels or between quotas and real-time

exports. Although CITES does not mandate the development of national wood control systems, this issue is being actively addressed under the ITTO-CITES programme (see section 4.1 above) since cases like bigleaf mahogany, summarized below (section 8.1), have shown that most fraudulent activity takes place before products reach their point of export. Third-party oversight of government agencies by an independent auditor, however, is difficult to address in a multilateral system like CITES which is comprised of sovereign Parties. The verification role played by the Secretariat, and the scrutiny applied through the RST and other compliance processes provide a form of oversight, and although this does not compare with the system incorporated under VPAs, it is a relatively robust system compared with those under other multilateral agreements related to biodiversity.⁷³ Improvements could be made, however, and in light of the EUTR exemption, it is vital that the CITES compliance system is as robust as possible and capable of effective oversight of CITES-listed timber trade. One improvement, for example would be data reconciliation between quotas and legal harvest levels and between quotas and real-time exports. These would allow the system to react to apparent illegalities in a more timely manner. The case studies summarized below (section 8) raise other issues that would benefit from further research, such as the efficacy of the RST (see section 10.2.2).

Saunders and Reeve (2014) point out that not only do the concepts of legality differ between CITES and the provisions under FLEGT and the EUTR,

71 http://ec.europa.eu/environment/cites/pdf/differences_b_eu_and_cites.pdf

72 Ibid

73 For example, the Convention on Biological Diversity, the World Heritage Convention, the Ramsar Convention and Convention on Migratory Species.

but new commercial incentives and risks have been generated by the CITES ‘exemption’ enshrined in the EUTR. Whereas prior to the EUTR coming into force the incentive was to trade in listed species without a license (wherever possible), there is now a commercial reason to trade as much as possible under a CITES export permit. This somewhat perverse incentive poses several risks that may create enforcement challenges for both CITES and EUTR implementing authorities, including: an increase in fake or illegally acquired (e.g. through corruption) export permits; an increase in export quotas for the purpose of laundering of ‘like’ species; an increase in export permits and/or re-export certificates from processing countries for products listed in the annotations to species listings; the unilateral listing by high-risk countries of commercially traded timber species in CITES Appendix III; and CITES permits or certificates being presented (as proof of legality) for the import of processed products that are currently outside the scope of parts in the annotation to the species listing.⁷⁴

In summary, there are a number of areas and practical issues that are poorly understood, and which would benefit from further guidance and/or clarification from the European Union and CITES institutions, in a way that realizes synergies without undermining one or the other. These are identified in Saunders and Reeve (2014) as :

- *Scope of laws included in legal acquisition findings:* It is counter-intuitive that compliance with a broader spectrum of environmental, social and financial laws is required for non-CITES wood than for CITES-listed timber.
- *Cases involving re-export and third-country processing:* Confusion exists among some EU government agencies about the documentation and/or information that should be requested for CITES-listed species processed in a third-country; e.g. whether an export permit (requiring a legal acquisition finding) or re-export certificate (not explicitly requiring a legal acquisition finding) is required in the case of logs from trees grown in the Amazon or Congo Basin that are processed into veneer or furniture parts in Asia and then exported to the EU. The issue is further complicated by annotations to

the listings of some commonly traded CITES timber species that exclude finished products. Lesser requirements for re-exports could also lead to laundering of illegally sourced wood into the supply chain.

- *Exemptions for products not included in the annotation to the CITES listing:* This is closely related to the issue of re-exports. The text of the EUTR appears to encompass all parts of any species listed in any Annex to the EU Wildlife Trade Regulation. Thus EUTR officials could be presented with what is claimed to be a CITES re-export certificate for processed parts of a listed species, such as afrormosia flooring (which is not listed in the annotation) and assume it as evidence of legality. Clarification is required to ensure that CITES permits and/or certificates are not accepted in such cases. It also illustrates the challenges of establishing legality in the absence of a credible chain of custody system in complex supply chains.⁷⁵
- *Exemptions for all populations of species listed in Annex C:* The wording of the EUTR suggests that *all* populations of species listed in Annex C are considered legally harvested, rather than only those from the listing countries requiring export permits. Thus Parties that have not listed their populations will be able to export legally to the EU using only a certificate of origin – which requires neither a scientific NDF nor a legal acquisition finding.⁷⁶ Although this issue is strictly relevant to the EUTR, it illustrates the wider issue of difficulties presented by the implementation of Appendix III listings.

Some of these issues are under discussion in the EU, and guidance is being finalized on steps to be taken by EU member states in the case of doubts as to the legality of CITES-listed timber species imported to the EU (European Commission 2014). It recommends exchange between CITES management authorities and FLEGT/EUTR competent authorities of information on applicable

⁷⁴ For example, the listing of *Pericopsis elata* covers only logs, sawn wood and veneer. Thus permits which may be presented for flooring should not be considered evidence of the product’s legality in the context of EUTR compliance.

⁷⁵ The term ‘complex supply chain’ generally refers to a supply chain of products that are made from a range of source materials originating in various forests and/or which pass through multiple processing facilities or transit countries.

⁷⁶ This issue affects six Appendix III listed timber species exported to the EU in significant volumes: *Cedrela odorata* (Spanish cedar), *Dalbergia stevensonii* (Honduras rosewood), *Dalbergia retusa* (Cocobolo), *Dipteryx panamensis* (Almendro), *Cedrela fissilis* and *Podocarpus neriifolius* (Black pine podocarp). See Saunders and Reeve (2014: Tables 2 and 7).

legislation in exporting countries, cooperation when doubts arise about the legality of timber shipments, and a check-list with questions to ask the exporting country when the legality of a permit is in doubt (European Commission 2014). This guidance, however, is only intended to deal with exceptional cases; it does not provide guidelines to be applied systematically to all imports of CITES-listed timber. While it will undoubtedly be useful given the current uncertainties, it is unlikely to solve all the implementation problems concerning the coherence of CITES and the EUTR with respect to legality. Since the EUTR came into force, the legality of CITES-listed timber imports to the EU has become a recurring issue for the EU Committee on Trade in Wild Fauna and Flora.

Many of the issues raised here and in Saunders and Reeve (2014) were recognized at a joint CITES-FLEGT/EUTR Committee meeting held for the first time in September 2014. At that meeting, the Commission pointed out that the EU Wildlife Trade Regulation does not provide a solid legal basis for member states to refuse import

applications in the absence of evidence that the products were of legal origin. They announced a proposal to introduce a sentence in the Implementing Regulation enabling member states 'to refuse an import application when there are serious doubts as to the legality of timber products concerned' (European Commission 2014). It was further proposed that some of the loopholes arising from the CITES exemption, e.g. relating to Annex C species, could be addressed through the review of the EUTR, being undertaken in 2015 in conjunction with an evaluation of the FLEGT Action Plan. The review will be preceded by consultations with stakeholders inside and outside the EU and may lead to amendments of the Regulation. Other developments reported on by TRAFFIC included a communication platform called Timber-net; a feasibility study is being conducted to assess options and recommendations for a communication system for EUTR competent authorities and US Lacey Act officials, based on the EU-TWIX model, a centralized database established to support enforcement to combat illegal wildlife trade (see section 7.1 below).

6 Asian importing countries and illegal timber trade

6.1 The rise of China and India

Recognizing that consumer and processing countries other than those in the EU play a highly significant role in the supply chains of CITES-listed timber species, Saunders and Reeve (2014) recommend that the EU should expand its efforts under the FLEGT action plan to engage these countries in combatting illegal logging and associated trade. The paper cites, for example, the need for more systematic efforts to engage with China and India, whose tropical timber imports and processing industries are growing rapidly, and leverage their support for implementing policies similar to the EU on illegal timber trade.

According to the ITTO's 2012 annual review of timber trade, "China and India have continued to strengthen their positions as the dominant tropical log importers, with both accounting for more than 86 percent of the total tropical roundwood imports by ITTO members in 2011, compared with 22 percent in 1995 (when Japan dominated the trade), and 46 percent in 2000" (ITTO 2012). The review also noted a slump in EU imports of primary wood products, with sawnwood imports diverted to China from the EU. It reported further a shift in tropical plywood production away from Malaysia and Indonesia and towards China, which was more cost competitive, and that China had maintained its growth in wooden furniture and parts exports, which were China's largest wood product export item. Meanwhile, India's tropical log imports continued on an upward trend in 2012 with Japan also maintaining a robust demand. The review also noted that the United States, Japan, and EU countries (Germany, France and the UK) remained the main importers of secondary wood processed products.

Under pressure to introduce measures to curb trade in illegal timber and associated products, other

major importing countries in Asia have introduced, or are proposing to introduce, regulatory and/or voluntary measures. None of them, however, provides for a legislative prohibition similar to the United States, the EU and Australia.

6.2 China

Over the last two decades, China has emerged as a global leader in the international timber trade. Since 2006, China has been the world's biggest importer of unprocessed tropical timber (Chatham House 2012), followed by India, Japan, Taiwan and South Korea (ITTO 2012). China has also become the world's major wood processing centre, and is the largest exporter of furniture and other processed wood products (Chatham House 2012; ITTO 2012). Its main markets are reported as the United States and the EU (40%) followed by Japan (Environmental Audit Committee 2006; Yong and Lam 2010). According to Chatham House, China remains the world's largest importer of illegal wood in terms of volume, with 20% of overall imports estimated as illegally sourced, although this percentage has fallen since 2004 (Chatham House 2012). As a result, China has come under intense scrutiny by NGOs working to expose the main players in the illegal timber trade and clean up supply chains. Several NGO reports suggest Chinese demand is fuelling illegal logging in many countries around the world, including Indonesia, Myanmar, Mozambique, the Russian Far East, Thailand and Madagascar (Global Witness 2009; EIA 2012a, 2013; WWF 2013a).

China's dramatic increase in its role in the global timber trade dates back to 1998 when strict logging controls were imposed following extensive floods exacerbated by deforestation (EIA 2012a; WWF 2013b). Following the change in policy, domestic forests could not meet the growth in demand leading to a deficit, which increasingly

is being met by imports. Of the Chinese market, 30% is supplied by imports (Chatham House 2012), and according to the Environmental Investigation Agency (EIA), imports of wood products increased over threefold between 1997 and 2009 – from 35 million cubic meters to 113 million cubic meters – with demand expected to grow at about 8% a year (EIA 2012a). In effect, as the EIA pointed out, China has exported its deforestation.

In light of the prohibition on imports of illegally sourced products under the Lacey Act in the United States and the adoption of the EUTR, China has come under pressure from governments as well as NGOs to curb its illegal trade. It has held formal discussions with the EU and the United States, and concluded a series of bilateral Memoranda of Understanding (MoUs) with Indonesia (2002), Myanmar (2006), the United States (2008) and in 2009, the EU–China Bilateral Coordination Mechanism on Forest Law Enforcement & Governance (Chatham House 2012; EIA 2012a). The EIA reports these have had some limited success, such as a drop in cross-border trade with Myanmar, but describes them as forums for discussion rather than action (EIA 2012a).

China has resisted calls for legislation to exclude illegally logged timber from its supply chains. Instead it has developed a national certification scheme for domestically produced timber under the China Forest Certification Council, whose standards were recently endorsed by the PEFC (Programme for the Endorsement of Forest Certification), and is pursuing a Timber Legality Verification Scheme; this focuses on government-to-government bilateral agreements with timber supplying countries (for which Papua New Guinea is a pilot) and voluntary trade association-led procurement codes of conduct for Chinese businesses abroad (EIA 2012b; Dong 2013). To date, a legally binding prohibition on illegal timber trade has been ruled out.

Recent events, however, indicate an increased awareness on the part of the Chinese authorities of the need to address the illegal trade in timber. The State Forest Administration (SFA) and Chinese Academy of Forests (CAF) are establishing new *Guidelines for Overseas Sustainable Forest Products Trade and Investment by Chinese Enterprises*, i.e.

for Chinese companies operating or sourcing from overseas (Forest Trends 2013). The draft *Guidelines* include among the requirements for importation compliance with “CITES and requirements of the country of origin on animal and plant trade” (Forest Trends 2013), but the guideline on how to comply in relation to CITES-listed imports is brief and unclear, and the provisions on excluding illegal timber from supply chains are ambiguous (Global Witness 2014).

These are the third such *Guidelines*, the first two having been issued in 2007 and 2009, apparently with little impact (EIA 2014a). The engagement of international NGOs and experts in the consultative process for the new guidelines may result in improvements, although expectations are not high; EIA believes they will have little effect on illegal imports.⁷⁷ Meanwhile, in February 2014, the Chinese government held its first conference at Suifenhe, Heilongjiang Province, on ways to tackle international flows of illegal timber in which the Chinese and Russian governments participated along with representatives from companies and civil society organisations.⁷⁸ This was followed in March 2014 by an international workshop on promoting legal and sustainable trade and investment in forest products.⁷⁹

At the Suifenhe conference, Russian officials from the Ministry of Natural Resources and Ecology are reported to have made a direct appeal to the Chinese government and Chinese companies to support their implementation of the ‘Roundwood Act’ passed by the Russian legislature on 30 December 2013. This law requires more rigorous inventorying and tracking of timber, as well as the creation of an online database displaying supply chain documentation.⁸⁰ Notably, investigations by WWF and the EIA in the Russian Far East (adjacent to Heilongjiang Province where the Suifenhe conference was held) found that much of the Russian wood entering China is harvested

77 <http://news.mongabay.com/2014/0812-china-eia-logging-guidelines.html>; <http://oneworld.org/2014/08/11/chinas-guidelines-wont-stop-timber-smugglers-say-activists/>

78 <http://www.globalwitness.org/blog/combating-the-global-trade-in-illegal-timber-what-action-will-china-take/>

79 See <http://www.forest-trends.org/event.php?id=926>

80 <http://www.globalwitness.org/blog/combating-the-global-trade-in-illegal-timber-what-action-will-china-take/>

illegally (EIA 2013; WWF 2013a). WWF calculated that at least half of the Mongolian oak exported to China in 2010 was from illegal sources. (As noted above and in the Annex, in 2014 Mongolian oak was listed on CITES Appendix III by the Russian Federation along with Manchurian ash.⁸¹)

6.3 Japan

Although Japan has diminished in relative importance compared with China, it remains one of the world's largest importers of tropical timber and its market continues to grow.⁸² The timber is sourced largely from neighbouring countries in East Asia. According to Chatham House, Japanese demand also plays an important role in the global trade in illegal timber, although imports of illegally sourced wood products have fallen further than those of other consumer countries studied, with a 43% reduction since their peak in 2004 (Chatham House 2010). Japanese civil society began campaigning in the 1980s against Japan's unsustainable consumption of tropical timber (Friends of the Earth 2013), but although international NGOs have maintained some pressure on Japan particularly in relation to imports from Sarawak in Malaysia (EIA 2011; Global Witness 2013), there currently seems to be less of a spotlight trained on Japan compared with China.

In response to pressure, the Japanese Government established a formal coordination body including relevant government departments in 2002, but this was disbanded in 2009 following a change of government. Although Japan signed an MoU with Indonesia in 2003 to work together to tackle illegal imports, there are no formal cooperative trade arrangements in place with any producer countries. Neither does Japan have legislation prohibiting import and sale of illegally sourced wood (Chatham House 2010). However, in 2006, Japan established a public procurement policy to address the legality and sustainability of its timber imports within its Green Purchasing Act framework. The Act was amended to require the

procurement of timber products verified as legal and to give preference to sustainable products. Thus only legality is a mandatory requirement. Guidelines (the *Goho Wood Guidelines*) were developed, which state that timber “should be harvested in a legal manner, consistent with procedures in the forest laws of timber-producing countries and areas,” and recognize three methods of verifying legal wood, also known as Goho-wood (Yasui 2012; Global Witness 2013):

- Use of existing forest certification systems (FSC, PEFC, or SGEC, etc.⁸³);
- Training and licensing members of goho wood registered associations to conduct goho wood verification;
- Self-verification (i.e. by independent systems developed by individual companies; this is for large companies only, mainly paper mills).

This system, however, is only binding on the public sector and the private sector supplying public contracts. Private businesses and citizens are encouraged, but not required, to purchase legal timber products under Japanese law. Moreover, the policy is considered less robust than those in place in the UK, France and the Netherlands (Chatham House 2010). In a report released in 2013 on timber trade between Sarawak and Japan, Global Witness points out a number of weaknesses in the Japanese system for verification; for example, purchasers are not obliged to carry out due diligence on their supply chains to ensure the timber products they import from high-risk sources are legal, and plywood used for concrete molding during building construction, a common use of tropical plywood, is excluded from the regulation. Moreover, government agencies account for less than 5% of Japan's total consumption of timber products (Ministry of Japan 2006 quoted in Global Witness 2013). Some Japanese legislators are considering EUTR-like legislation, but the idea is still embryonic (Jade Saunders, personal communication, October 2014).

6.4 India and South Korea

India and South Korea have received far less attention than either Japan or China. However, in

81 CITES Notification to the Parties No. 2014/014, Amendments to Appendix III, accessed at <http://cites.org/sites/default/files/notif/E-Notif-2014-014.pdf>

82 <http://www.illegal-logging.info/regions/japan>

83 FSC refers to the Forest Stewardship Council, PEFC to the Programme for the Endorsement of Forest Certification and SGEC to the Sustainable Green Ecosystem Council.

April 2014, Chatham House published a report on illegal wood imports and re-exports in India, South Korea and Thailand, and the response of the three countries to the problem (Lawson 2014). The information presented here is summarized from that report.

South Korea is heavily dependent on imports to supply domestic demand for wood and paper, with around 90% of its wood needs supplied by imports. It is also assessed by Chatham House as the world's fifth largest consumer of illegally sourced wood (after China, Japan, the United States and the EU), importing timber from such high-risk countries as Indonesia, Malaysia (Sarawak), Papua New Guinea and the Russian Far East. Despite this, there has been almost no domestic or international attention paid to South Korea by NGOs and the media, either domestically or internationally.

South Korea adopted new legislation on sustainable use of timber in May 2012. Its provisions are broad and somewhat vague and do not constitute an import prohibition or a procurement policy, but it is considered an important first step. The legislation requires national and local governments to "carry out measures against the distribution and/or use of illegally logged timber domestically and internationally" while the Korea Forest Service is directed to "guide and advocate the public not to distribute or use illegal timber," in collaboration with timber companies and local governments.⁸⁴ The effectiveness of the legislation, however, will depend on how the government chooses to interpret it.

South Korea has MoUs on forestry with a number of countries, but only one is with a high-risk timber-producing country. In 2003, an MoU was signed with Indonesia on combating illegal logging, but did not commit South Korea to any specific action, stating only that the country will 'support Indonesia' in efforts to combat illegal logging and associated trade (Ministry of Forestry 2003). Lawson comments that the MoU, like that signed by Indonesia with China a year earlier, does not appear to have led to any significant practical measures. In this context, it is interesting to note

that an Indonesian delegation of government officials, activists and corporate leaders visited Seoul at the end of 2013 to ask South Korean firms and timber importers to assist them to combat illegal logging.⁸⁵

In comparison, no action appears to have been taken in India, even though India's imports of illegally sourced wood are rising rapidly. The focus instead has been on domestic illegal logging. Citing a WWF report, Lawson notes that as consumption has risen domestic supply has remained static with imports growing to fill the gap. India's wood imports are trebling every 10 years, with the proportion of India's wood consumption supplied by imports increasing dramatically; in 1994 just 2% of consumption was from imports but by 2006 the figure had risen to 17% (Manoharan 2011), while Chatham House estimates that the current figure may now be higher than 30%.⁸⁶ About 17% of imports to India are estimated to be of illegal origin, its consumption of illegal wood rising more rapidly than that of any other country surveyed by Chatham House. India's imports of illegally sourced timber and wood products more than trebled between 2002 and 2011, increasing by 30% in 2011 alone. The vast majority of the estimated imports are logs from Sarawak and Burma, plywood, furniture and paper from China, and pulp and paper from Indonesia. India is the largest destination for high-risk tropical log exports from Burma and Sarawak. To date, however, NGOs have focused on China (for Burma) and Japan (for Sarawak). But given the EU and the United States both import Indian wood products, India is likely to come under increasing pressure to clean up its supply chains.

Lawson examined CITES trade data for ramin, afrormosia and mahogany (*Swietenia* spp.) and concluded that the implementation of CITES listings for timber species in both India and South Korea is poor. He found that while several countries have reported exports or re-exports of CITES-listed timber and wood products to South Korea and India between 2009 and 2011, the two

84 Republic of Korea, (2012), Article 34, Law No. 11429, Act on Sustainable Use of Timber, enacted 23 May 2012, effective 24 May 2013, Article 34; unofficial translation by Chatham House partners.

85 http://www.koreatimes.co.kr/www/news/nation/2014/03/176_147213.html

86 Chatham House estimate based on past trends, import data from Indian customs and production data from FAOSTAT.

countries invariably did not record the imports.⁸⁷ Although South Korea's national legislation to implement CITES is classed as category 1, South Korean officials have apparently recognized that they have problems with implementing CITES timber listings and have put new systems in place in an effort to address these. India's national CITES implementing legislation on the other

hand, is in category 2 (see Table 2). Lawson also found that neither India nor South Korea appeared to have made any seizures of CITES-listed wood, and compared this record with the United States and the UK where a number of such seizures are made every year. He considered the lack of seizures indicates relatively little effort being made to enforce CITES controls on timber imports.

⁸⁷ Trade data reports accessed via the UNEP-WCMC CITES trade database.

7 Regional economic integration and CITES enforcement

7.1 The European Union

Regional economic integration and the dissolution of national borders has profound implications for CITES given that trade controls rest on a permitting system implemented by national management authorities, dependent for its enforcement on effective controls at national borders. The European Union has been dealing with the impacts of economic integration on CITES implementation and enforcement for over 30 years, and is still addressing challenges with illegal trade and enforcement caused by a common market with no internal border controls. Its experiences provide many lessons for other regions currently moving towards greater integration, notably in Asia.

The move towards a boundary-free internal market among European countries in 1984 meant that enforcement of CITES as a whole depended on the level of control in those member states with the weakest enforcement policy. National border controls were being dismantled, but they were not replaced by EU-wide control and inspection services and effective mechanisms for cooperative enforcement. As a result, illegal trade was flooding in through the weakest entry points.⁸⁸ One was the overseas territories of member states, such as French Guyana, through which significant quantities of illegal CITES specimens were entering the EU (Vandeputte 1990; Sand 1997). Another was Italy where traffickers were exploiting the country's lack of implementation and compliance with CITES to gain access to the EU and to obtain legal documents for specimens of illegal origin. A large volume of trade, particularly in reptile skins and Appendix I listed

live animals, was being laundered through Italy, seriously compromising the implementation of CITES in Europe and presenting, according to the CITES Secretariat, an “undeniable risk to the implementation of the Convention worldwide.”⁸⁹

In 1992, concerns about the EU's lack of controls were raised at CoP8 by Latin American range states, notably Paraguay, whose attempts to control trade in their CITES-listed species were being undermined by lack of enforcement by non-compliant EU Parties. Furthermore, recommendations made at CoP6 in 1987 to establish an EU-wide inspectorate and monitor trade between states had not been implemented. The CoP urged the EU to develop further CITES implementing legislation and to increase resources for enforcement. It also mandated the Secretariat to evaluate EU implementation. The evaluation found that although the EU was implementing CITES as a single state, 12 years after the 1982 Regulation was adopted implementation was still highly variable among the member states with its management authorities virtually independent of each other.⁹⁰ The EU strenuously, and successfully, resisted an attempt to agree further CoP recommendations based on the evaluation but, as detailed above, it did eventually improve its implementation of CITES and adopt a number of stricter domestic measures through the 1997 EU Wildlife Trade Regulation (which have subsequently been applied to suspend imports of CITES-listed timber species from countries believed not to be conducting NDFs – see

⁸⁸ CITES Doc. 5.8.1, ‘International Compliance Control’, prepared by the Secretariat for COP5 (Apr/May 1985).

⁸⁹ CITES Doc. SC. 24.7, ‘Implementation of the Convention in Italy’, prepared by the Secretariat for SC24 (Jan 1992); SC23: Summary Report (April 1991), p. 10.

⁹⁰ CITES Doc. 9.23, ‘Implementation of the Convention Within the European Union’, by the Secretariat for COP9 (Nov 1994).

case studies below on ramin and afrormosia in section 8).

In parallel with the CoP process, the case of Italy's non-compliance was taken up in the Standing Committee, resulting in a trade suspension in CITES-listed species with Italy in June 1992. Italy ultimately responded to the sanctions, which were lifted in 1995, as later on did Greece, the only other European country to be subject to a trade suspension for lack of implementation and enforcement (from 1998–9).⁹¹

Although the 1997 Wildlife Trade Regulation led to significant improvements in CITES implementation in the EU, there was still no EU-wide system of inspection and cooperative enforcement. The ability of the EU to enforce CITES as a whole was therefore still dependent on the weakest member states. This was particularly significant in light of the EU's expansion eastwards.

In 2007, the Commission adopted a series of recommendations for strengthening the enforcement of EU wildlife trade rules in the member states.⁹² These recommendations include adopting national action plans for enforcement, imposing sufficiently high penalties for wildlife trade offences and using risk and intelligence assessments to detect illegal and smuggled wildlife products. The recommendations also address the need for increased public awareness about the negative impacts of illegal wildlife trade and for greater cooperation and exchange of information within and between member states as well as with third countries and relevant international organizations (e.g. INTERPOL and the World Customs Organization).⁹³ They stopped short, however, of establishing an EU-wide system for enforcing CITES. Instead, member states cooperate in a somewhat piecemeal way through several different mechanisms, including the Enforcement Group (seen by NGOs as little more than as a talk

shop⁹⁴), Europol (the EU law enforcement agency handling criminal intelligence), and Eurojust, which deals with judicial cooperation in criminal matters. A centralized database, known as EU-TWIX, has also been set up to assist enforcement agencies, including management authorities and prosecutors to detect, analyze and monitor illegal activities related to trade in wildlife listed in the Annexes of the EU Wildlife Trade Regulation.⁹⁵ Despite these mechanisms, a survey of opinions among EU enforcement officers found that they consider cooperation and coordination between enforcement agencies in different member states (and within member states) is still inadequate (IFAW 2014), and unable to meet the challenge of the dramatic surge in poaching and illegal trafficking of wildlife in recent years.

In response to the current crisis, in February 2014 the European Commission launched a stakeholder consultation on the future EU approach to wildlife trafficking.⁹⁶ Based on the results of the online consultation and the outcome of an expert conference held on 10 April 2014, the Commission is reviewing the existing policies and measures at EU level so as to enable the EU to react more effectively to the current crisis.⁹⁷ Improved cooperation and harmonization are among the issues raised. Although the review was precipitated by the escalation of trafficking in wild fauna, notably elephant ivory and rhino horn, measures to improve enforcement cooperation will inevitably have an impact on illegal timber trade.

7.2 The Gaborone Amendment to CITES

On 29 November 2013, the Gaborone Amendment to the Convention entered into force – 30 years after it was approved in 1983 – allowing regional economic integration organizations (REIOs) to accede to CITES and therefore paving the way for the EU to join as a Party in its own

91 See case studies on Italy and Greece in Reeve (2002:120–5).

92 Commission Recommendation of 13 June 2007, Identifying a Set of Actions for the Enforcement of Council Regulation (EC) No 338/97 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein, *Official Journal of the European Union*, L 159/45 (2007).

93 http://ec.europa.eu/environment/cites/trafficking_en.htm

94 Personal communication, EU representative of Species Survival network, 2014.

95 <http://www.eutwix.org/>

96 http://ec.europa.eu/environment/cites/trafficking_en.htm.

97 Ibid.

right.⁹⁸ The potential impacts of this significant development are as yet unknown. However, concerns have apparently been expressed by CITES officials in member states that the EU's accession, which entered into force in July 2015, could lead to the concession of yet more power to Brussels in CITES matters. So far the only REIO that qualifies is the EU since there is no other region where governments have transferred competence over CITES matters to a regional entity. But increasing trends towards economic integration in other regions, spurred by the global economic crisis and imperative to protect economies from external shocks, is bound to impact CITES implementation and enforcement sooner or later.

7.3 Asia

In light of Asia's key role as both a supplier and importer of primary timber products and its enormous and expanding markets for wildlife products of all kinds, accelerating progress within the region towards economic integration, albeit at different speeds among the sub-regions, gives cause for concern. This is intensified by the extensive governance and enforcement challenges across the region, and highly variable capacity to implement CITES. If the issue is not pre-empted and addressed sooner rather than later, CITES could become virtually unenforceable in the region, undermining the Convention worldwide.

The speed and extent of economic integration varies depending on the sub-region. The most advanced is the recently established Eurasian Customs Union (ECU), a vast area comprising Belarus, Kazakhstan and Russia, extending from China in the East to the EU in the West. TRAFFIC and the CITES Secretariat have published reports warning that the removal of internal border controls could result in free and undeclared movements within the ECU of wildlife, including species listed under the Convention, and negatively impact the survival of Central Asia's wildlife.⁹⁹

98 The delay in entry into force was because two-thirds of Parties need to agree an amendment to the Convention. See http://www.cites.org/eng/news/pr/2013/20131003_gaborone.php

99 Reports released 1 July 2014, accessed at <http://www.traffic.org/home/2014/7/1/central-asian-border-controls-lifted-wildlife-trade-under-th.html>

South East Asia has also taken significant strides towards formalizing its region as a single market through the Association of Southeast Asian Nations (ASEAN) Economic Community Blueprint for 2015. An ASEAN economic community operating as a single entity would rank as the sixth largest economy in the world, behind the United States, China, India, Japan and Germany. The 10 member states include several major timber-exporting, -processing and -transit countries,¹⁰⁰ thus the removal of internal border controls could have serious impacts on the ability of CITES to control and track timber trade in the region. ASEAN has also been strengthening its links with regional trading partners through the development of free trade areas, notably with China. China's position as a central driver in Asia's economy has been facilitated by political consultation mechanisms in what has come to be known as the ASEAN+3 (the ASEAN 10 plus China, Japan and South Korea).¹⁰¹ The ASEAN–China Free Trade Area came into effect on 1 January 2010 and is the largest free trade area in terms of population and third largest in terms of nominal GDP (Coates 2009; Ten Kate 2010).

North East Asian economic integration is lagging behind in comparison with ECU and ASEAN, but China, Japan and South Korea have slowly been working towards creating a free trade area, driven largely by market forces. South Asia, on the other hand, dominated by India but beset by conflict, has made less progress, and remains one of the least integrated regions in the world.¹⁰² However, trade links have been expanding between India and China, and were given a boost with a trade and economic development pact signed in September 2014.¹⁰³ China will invest US\$20 billion in India over 5 years, while the two countries have agreed to work together to prevent trans-border economic offences through information sharing and customs

100 ASEAN was formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Since then its membership has expanded to include Brunei, Cambodia, Laos, Myanmar (Burma) and Vietnam.

101 <http://www.eastasiaforum.org/2011/08/28/india-china-and-asian-economic-integration/>

102 <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/0,,contentMDK:1495427~pagePK:146736~piPK:146830~theSitePK:223547,00.html>

103 <http://www.ibtimes.com/china-invest-20b-india-over-next-5-years-1691057>

cooperation,¹⁰⁴ which could be to the benefit of CITES if the combined political will exists to enhance its implementation and enforcement.

Overall, however, the pace towards regional economic integration and the prospect of diminishing border controls holds more risks for CITES than opportunities. Further study and analysis of intra-regional trade trends and the impact of economic integration on CITES, as well as prospective mechanisms and measures that will be critical to enable implementation and enforcement is an imperative. Experience in the EU indicates that strong cooperative enforcement, backed by effective legislation and stricter domestic measures, will be necessary to ensure CITES can be implemented as economic integration progresses.

Over the last 10 years, wildlife enforcement networks have been established in South East Asia and South Asia, providing a basis for strengthening cooperation going forward. Although their focus has largely been illegal trade in high-profile endangered species (elephants, tigers, rhinos, etc.), they provide potentially valuable mechanisms to strengthen enforcement of CITES more broadly and to combat the illegal timber trade. The ASEAN Wildlife Enforcement Network (ASEAN-WEN), an intergovernmental initiative established to combat wildlife crime in 2005 following CITES CoP13 held in Bangkok, is the most advanced.¹⁰⁵ It aims to improve wildlife trade legislation and law enforcement networking, and enable more science-based decision-making and information sharing through national and regional cooperation among enforcement agencies, including police and customs, in the ASEAN region.¹⁰⁶ Its long-term aims are to encourage more prosecutions, to increase awareness among the public and law enforcement officers and to maintain political support. The network's Programme Coordination Unit is based in Bangkok, Thailand and links with National Task Forces, which carry out cooperative enforcement operations.

ASEAN-WEN is strongly backed by the NGOs TRAFFIC and Freeland, as well as USAID. It has led to several high-profile seizures of CITES-listed species, conducted training for enforcement officers and raised awareness of the gravity of

wildlife crime among the judiciary in the ASEAN region. It has external links with enforcement agencies in China, United States, the EU and Australia, with the Secretariats of ASEAN, CITES, INTERPOL, and the World Customs Organization (WCO) including WCO's Regional Intelligence Liaison Office, and with the Lusaka Agreement Task Force (LATF), an African intergovernmental wildlife law enforcement agency based in Nairobi, Kenya.¹⁰⁷ Established in 1999, LATF facilitates cooperative enforcement operations among national wildlife law enforcement agencies (National Bureaus) in its seven Party countries; it was the first regional cooperative wildlife law enforcement initiative to be established and a forerunner of ASEAN-WEN (Reeve 2002, 232).¹⁰⁸

Following in the footsteps of LATF and ASEAN-WEN, eight South Asian countries¹⁰⁹ established the South Asia Wildlife Enforcement Network (SAWEN) after a meeting of the Governing Council of the South Asia Cooperative Environment Programme (SACEP) in 2008 in Jaipur, India.¹¹⁰ SAWEN was formally launched in Bhutan in 2011 at a meeting of the South Asia Experts Group on Illegal Wildlife Trade, also initiated at the Jaipur meeting.

As regional economic integration progresses, these cooperative law enforcement mechanisms are likely to become an increasingly important tool to prevent illegal trade in CITES-listed species. Their main focus to date has been trade in high-profile endangered fauna, but there is growing awareness, notably through INTERPOL's Project Leaf, of the need to step up cooperative enforcement to combat the illegal timber trade.¹¹¹ Shining a spotlight on this through further research, particularly in the context of regional economic integration, may help to boost efforts and focus more attention on listed timber species.

107 <http://lusakaagreement.org/>

108 LATF was established under a formal agreement, The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, signed in 1994. It has seven Parties: The Republic of Congo, Kenya, Liberia, Tanzania, Uganda, Zambia and the Kingdom of Lesotho. The Republic of South Africa, Ethiopia and the Kingdom of Swaziland are signatories.

109 Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka

110 <http://www.sawen.org/home/>

111 <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Leaf>

104 Ibid.

105 <http://www.asean-wen.org/>

106 <http://www.traffic.org/asean-wen/>

8 Case studies on CITES-listed timber species

Saunders and Reeve (2014) present three case studies of CITES-listed timber species: bigleaf mahogany from Latin America, ramin from South East Asia and afrormosia from West and Central Africa. The cases were selected to illustrate the approaches taken by CITES to improve regulation of timber trade in the different regions and implementation of the Convention. These three species were also chosen as priorities to address under the first phase of the ITTO-CITES programme. Summary findings and conclusions are presented here, along with additional and updated information on actions taken under the EU SRG and by the Standing Committee in relation to afrormosia from DRC (for more details of the case studies, please refer to Saunders and Reeve 2014: 14–21). Other potential case studies are also identified.

8.1 Bigleaf mahogany

Bigleaf mahogany (*Swietenia macrophylla*) is a high-profile species; following the launch of a campaign by NGOs to protect it in the early 1990s, it became a symbol in the campaign against deforestation in the Amazon. Following failed attempts to list it on Appendix II of CITES, Costa Rica listed it on Appendix III in 1995, and in 1997 a Bigleaf Mahogany Working Group was established, which included range and importing states as well as international organizations and WWF (this has since been expanded to cover other neo-tropical tree species). Bolivia, Brazil and Mexico subsequently listed their populations, followed by Colombia and Peru in 2001. The Working Group reported problems with implementing the Appendix III listing, including confusion over export permits and certificates of origin. It appears to have acted as a bridge, however, facilitating the listing of bigleaf mahogany in Appendix II, which was

finally achieved in 2002 following a proposal by Guatemala and Nicaragua, backed by a strong NGO campaign. The listing was limited to logs, sawn timber, veneer and plywood, and excluded secondary processed products.

Following the listing, an ITTO workshop in Peru drew attention to the extent of illegal trade and involvement of organized crime syndicates, considering Brazil, Bolivia and Peru a priority. Peru was subsequently singled out for attention by CITES as urgently needing international support to combat illegal trade, although it was concluded that all range states needed to improve their management of mahogany.

Following a mission to Peru in 2006, the CITES Secretariat reported flagrant violations of the Convention, and recommended a trade suspension to the Standing Committee. Legal and illegal timber could not be distinguished, and timber was being laundered from neighboring countries and exported with fraudulent CITES permits. A suspension was not implemented but the Committee continued to focus attention on illegal trade from Peru and in 2007, following another Secretariat mission, developed targeted recommendations. By 2010, although Peru had achieved paper compliance it had not, in the Secretariat's view, achieved real on-the-ground compliance. The Committee gave Peru six months to meet the standards set by three benchmark indicators of real compliance, including an operational and modern effective information system (i.e. national wood control system), or face a postal decision to suspend trade in bigleaf mahogany. (A notable innovation, however, was an agreement that the approved concession of harvest would be made clear on Peru's CITES permits.) In the event, the suspension was not implemented; a series of bilateral consultations led to a decision that the indicators had been met, although Peru

was still required to report on the information system. This requirement was dropped in 2012 when the Standing Committee advised that Peru no longer needed to report.

That same year, the EIA, however, released a report on the trade in bigleaf mahogany and Appendix III listed Spanish cedar (*Cedrela odorata*) from Peru, providing compelling evidence of extensive illegal trade to the United States in violation of the US Lacey Act with fraudulent documents. Information from EIA in 2014 indicated that problems persisted. They reported that legal origin could not be guaranteed, since the new digital timber control system was not yet in place, while concessionaires with CITES permits were able to launder illegal timber cut outside the concessions since harvest permits were granted independently of forest inventories which were not verified. Peruvian authorities were reported to be conducting field trips to verify forest inventories for bigleaf mahogany. Another weakness pointed out by the EIA was that since CITES requires permits only for partly processed products, exports of finished products are handled by the customs authorities, which apparently have little knowledge of and limited interest in the timber trade.

CITES has not been the only driver of change in Peru; the Lacey Act and the Trade Promotion Agreement (TPA) with the United States, signed in April 2006, have also served to incentivize change. Notably, the TPA includes an Annex on Forest Sector Governance, which includes a provision for improving the governance and monitoring of CITES-listed species, obliging Peru to verify the legality of shipments upon written request from the United States through paying on-site visits and examining documents related to compliance with Peru's laws.

The focus on Peru has led to a reduction in recorded exports of bigleaf mahogany, while concerns have been expressed that Spanish cedar was replacing them. But since Spanish cedar is only on Appendix III (a proposal to list it on Appendix II failed in 2007), it has received much less attention and data are patchy. Concern was also expressed that compliance issues in other range states were being neglected. The EU SRG had discussed bigleaf mahogany several times and decided in 2005 that all import applications from range states would be referred to the SRG and

assessed on a case-by-case basis (Helene Perier, European Commission, personal communication, 2013). This decision was reconfirmed in 2014.¹¹² In 2007, the CITES CoP agreed an action plan for the control of international trade in bigleaf mahogany, which committed all range states to various management actions, including the development of a regional strategy with timelines to address NDFs, legal origin, and compliance and enforcement issues.¹¹³ Range states were obligated to provide progress reports to the Plants Committee, and the Plants Committee was tasked with analyzing them and reviewing whether bigleaf mahogany should be entered into the RST (previous attempts to enter the species had been resisted by range states).

Bigleaf mahogany was finally entered into the RST in 2008, once objections from range states were overcome. The review gradually narrowed the states of concern to Bolivia (urgent concern), and Belize, Ecuador, Honduras and Nicaragua (possible concern). The SRG, meanwhile, formed a positive opinion for Guatemala and Mexico as of 12 March 2009, and a negative opinion for Bolivia as of 3 August 2010 (Helene Perier, European Commission, personal communication, 2013). In 2013, the Secretariat reported that Belize, Ecuador and Nicaragua had complied with the RST recommendations and were removed from the review.¹¹⁴ At the CITES Plants Committee meeting held in Mexico in May 2014, it was reported that the review was ongoing with action still required from Parties (assumed to be Bolivia and Honduras).¹¹⁵ Meanwhile, work is being conducted under the ITTO-CITES programme to improve management in range states other than Peru, with a strong focus on better reporting, capacity building and encouraging the development of electronic tracking systems.

112 Summary of Conclusions, 68th Meeting of the Committee on Trade in Wild Fauna and Flora, Brussels, 4 Sept 2014.

113 Decision 14.145, Annex 3.

114 SC63 Doc. 14, Review of Significant Trade (March 2013).

115 PC21 Doc. 12.2, Overview of the species-based review of significant trade (May 2014).

8.2 Ramin

The case of ramin (*Gonystylus* spp.) shares similarities with bigleaf mahogany, most notably in the role played by NGOs. Attention to the trade was brought by the launch of a campaign by EIA and Telapak Indonesia in 1999. However, the case was somewhat simpler than bigleaf mahogany with range states limited to Indonesia, Malaysia and Singapore. The campaign resulted in Indonesia listing the species in Appendix III in 2001 with a zero export quota, and placing a moratorium on the cutting and trading of ramin (except for registered stocks) until the end of that year. Malaysia, however, which had overtaken Indonesia as the lead producer of ramin logs and implemented policies encouraging processing, entered a reservation to the listing for all products except sawn timber and logs. This meant that Malaysia was, in effect, a non-party to CITES for trade in ramin processed products.

Although the Appendix III listing was considered to have helped to reduce illegal logging and made trade from Indonesia more difficult, its implementation was problematic. In 2004, the NGO TRAFFIC (which enjoys a special status under CITES in a support role to the Secretariat) released an extensive report stating there was strong evidence that illegally logged ramin from Indonesia was being laundered through Malaysia and Singapore where authorities were issuing it with CITES permits. This was supported by evidence presented in a report that same year by EIA and Telapak. Unlike bigleaf mahogany, which was mostly exported to the United States, the EU (mainly the Netherlands, Italy and Germany) was a major importer of ramin, and raised the issue of illegal trade in the CITES Standing Committee. That same year a proposal to list ramin in Appendix II was proposed by Indonesia and succeeded; notably, the listing does not exclude processed products. A tri-national workshop on ramin was organized by TRAFFIC between Indonesia, Malaysia and Singapore. Recommendations were agreed for improving the regulation of trade and law enforcement coordination between the three countries, including the establishment of a tri-national task force on ramin.

The Standing Committee, meanwhile, placed reporting requirements on range and consumer states, and in 2007 concerns about Malaysia's

harvest and export volumes (for both Sarawak and Peninsular Malaysia - Sabah) and ability to conduct NDFs led to a negative opinion by the EU SRG under which all EU ramin imports from Malaysia were suspended, while Australia also acted to suspend imports of ramin products from Malaysia. Within less than a year, Malaysian CITES authorities provided the SRG and Standing Committee with a comprehensive justification of the basis of its harvest quotas as well as details of the controls in place, and the EU suspension was lifted (initially for Sarawak and later for Peninsular Malaysia and Sabah), followed later by Australia. The ITTO-CITES programme also began in 2008 to provide financial and technical assistance to improve the management and conservation of ramin in range states. However, the Standing Committee continued to impose reporting requirements until 2011 when it decided they were no longer needed.

8.3 Afrormosia

The case of afrormosia (*Pericopsis elata*), also known as African teak, differs markedly from the other two. There has been little NGO involvement in driving change, and while bigleaf mahogany and ramin were first listed on Appendix III by range states then transferred to Appendix II, also on range state proposals, afrormosia was listed directly on Appendix II in 1992, on the basis of a proposal by non-range states, Denmark and the UK. No follow-up action on the listing appears to have been taken until after plants were included in the RST in 2000. In 2001, a negative opinion by the SRG led to the suspension of trade by the EU with Cameroon and the Republic of the Congo (RoC) for a year, and in 2002, afrormosia was included in the RST by the Plants Committee, the first time a timber species was included in the process. Fauna and Flora International (FFI) conducted a desk-based review in 2004, followed by an in-country review in Cameroon, RoC and DRC where significant stocks of afrormosia remained. They concluded that while regulatory systems in the three range states were at different stages of development, not surprisingly institutions responsible for their implementation were weak.

The Plants Committee classified afrormosia as a species of 'possible concern' and made a number of recommendations for Cameroon, the DRC and the RoC, as well as the Central African Republic

(CAR). These largely concerned the capacity of the CITES scientific authorities to make effective NDFs under CITES Article IV, but concern was also expressed about regulation of harvesting and legality of exports. Range states were given until March 2005 to comply. Cameroon and the DRC replied, but CAR and RoC did not. Following an in-country review by FFI in Cameroon, the DRC and RoC, the Plants Committee reformulated its recommendations, and the case was referred to the Standing Committee.

Although the Plants Committee recommendations also specified that information could be provided to the Secretariat on “compliance and enforcement measures” related to regulating Appendix II trade, and attention was drawn to possible routes and means of illegal and/or unreported trade in afrormosia (e.g. the smuggling and shipping of consignments, possibly mislabelled as non-CITES species, from non-range state ports), there was no apparent follow-up on illegal trade in the Standing Committee. The Committee did, however, agree that trade in afrormosia should be suspended with the four range states if recommendations were not met by the end of 2005. In January 2006, a suspension came into effect with RoC and CAR, and was then lifted later that year when the two countries provided the information requested. Cameroon avoided a suspension after designating a CITES scientific authority and setting an export quota; DRC also avoided it since it was anticipated it would participate in the development of a regional management strategy under the ITTO–CITES programme.

The SRG’s positive opinion of Cameroon was maintained following assessments in 2005, 2006 and 2009 on the basis that information was available to support a proper NDF, advanced forestry policy and land use planning were in place (including clear harvesting rules), and 22% of range had been designated as protected areas. Concerns about management effectiveness and enforcement capacity, as well as somewhat high levels of exports to the EU, led to two projects under the ITTO–CITES programme in relation to management of afrormosia with a view to addressing those issues (Helene Perier, European Commission, personal communication, 2013).

In 2008, the Plants Committee once again included afrormosia in the RST following a significant increase in reported trade from the

DRC. Subsequently, in March 2009, the SRG formed a negative opinion regarding afrormosia from DRC on the basis of doubts regarding effective forest management, absence of reliable inventory data on which to base export quotas, no formally adopted or approved management plans, as well as increasing levels of exports to the EU (Helene Perier, European Commission, personal communication, 2013). This was subsequently lifted in November 2009 on the basis of documents provided by the DRC clarifying productivity of the species in various regions of the country, results from inventories, management of concessions as well as management of the species generally (Helene Perier, European Commission, personal communication, 2013). This also led the EU to support implementation of a project under the ITTO–CITES programme to enhance implementation of CITES for afrormosia in DRC.

In 2011, 3 years after afrormosia was re-entered into the RST, the Plants Committee categorized Cote d’Ivoire as ‘urgent concern’, and the DRC and the RoC as ‘possible concern’, indicating problems persisted despite the first review. Cameroon and CAR, however, were considered of ‘least concern’ and removed from the review. The DRC and the RoC were recommended to set conservative quotas and provide information on NDFs, while Cote d’Ivoire was directed to set a zero quota. In 2012, the Standing Committee considered (for the second time) that the RoC had complied, but a trade suspension in afrormosia was recommended with Cote d’Ivoire, which is still in place. The Secretariat recommended that Parties also suspend trade in afrormosia with DRC until CITES Article IV (NDFs and export quotas) was complied with and full information provided demonstrating that the Plants Committee recommendations had been met. However, the Standing Committee gave the DRC additional time to comply (until the end of May 2014) since a full report was expected from the NDFs project under the ITTO–CITES programme, although its export quota was halved to 25 000 m³ pending the outcome of the project.

In June 2014, following receipt by the Secretariat of an NDF from the DRC (Ministère de l’Environnement n.d.), it was decided to eliminate afrormosia in DRC from the RST. This move was strongly criticized by NGOs in a letter to Parties distributed at the CITES Standing Committee meeting (SC65) in July 2014, where the afrormosia

trade from DRC was finally discussed (CIEL, EIA and Greenpeace 2014).

In their letter, NGOs call for “a Country-wide RST for the DRC, or a comprehensive review of both plants and animals by the respective Committees to be undertaken, and trade in CITES-listed species from the DRC [to] be suspended, until compliance with CITES and sustainability of DRC’s Appendix II species can be guaranteed” (CIEL, EIA and Greenpeace 2014). They cite widespread corruption and illegality concerning trade in timber and animals, as well as the lack of will in DRC to confront the situation. According to the final 2013 report by the former independent monitor, REM, about 90% of the timber harvested in DRC is thought to be illegal or informal, and actual log harvests are estimated at eight times the official harvest (CIEL, EIA and Greenpeace 2014). The NGOs consider no significant action has been taken under the RST; they go on to detail specific failures in the DRC’s management of afrormosia, noting it is the world’s biggest supplier by a large margin, and provide evidence substantiating concerns that the NDF submitted in May is inadequate. This includes illegalities documented by the current independent monitor at one of the concessions inventoried for the NDF; completion of inventories for only six of the 23 logging titles with afrormosia (which were not independently verified); lack of a current list of logging titles on the ministry website; and no information on a harvest quota. They further report the authorization of cutting permits through May 2014 for over double the volume allowed under the 2014 export quota, and question the credibility and independence of the French consultancy firm, Forêt Ressources Management (FRM), which carried out inventories. They also call for an external audit of the ITTO–CITES project, stating that the outcomes other than the NDF and a few inventories are unclear (CIEL, EIA and Greenpeace 2014). According to the ITTO Secretariat, progress has been slower than expected owing to instability in areas where it is intended to undertake inventories (Secretariat of the ITTO–CITES programme, personal communication, 16 January 2014).

The outcome of the discussion at SC65 on afrormosia from DRC disappointed NGOs. The Committee merely encouraged DRC to communicate to the Secretariat its annual export

quota for 2015, based on inventory management reports, by the end of November 2014, and to present its NDF process at the next Plants Committee meeting in October 2015.¹¹⁶ However, a parallel process is underway which may result in measures being taken for generalized non-compliance by DRC. Under Article XIII of the Convention the Secretariat is reviewing DRC’s implementation of CITES, along with that of Lao. The process is being conducted confidentially, with only an oral report by the Secretariat at SC65, but could result ultimately in a trade suspension affecting all CITES-listed species such as the one currently in place with Guinea. The European Commission and SRG, meanwhile, are closely following the status of afrormosia in DRC (Helene Perier, European Commission, personal communication, 2013). The DRC has been the subject of investigations by EUTR enforcement authorities since March 2013; consignments of afrormosia were seized in Antwerp following allegations by Greenpeace that they were illegal and that the certificates accompanying them were fraudulent, but the cargo was released even though Greenpeace argued that the information provided by the DRC CITES authorities was not proof of legality.

Although the Secretariat has notified Parties of problems in DRC with fraudulent permits and copies of permits going missing from the files (see section 4.2 above), the apparent inability to date of CITES, and the EU, to take effective action gives cause for concern. Reports by civil society and formally recognized independent monitors detailing widespread illegality in the DRC forest sector appear not to have been used to inform the RST or decisions of the Standing Committee; similarly for Cameroon and the RoC. The elimination of afrormosia in DRC from the RST brings the efficacy of the process into question. Given the ‘green lane’ for imports into the EU accompanied by CITES permits, it also undermines the credibility of the EUTR and, as the NGOs point out, exposes EU regulators to risks of forged CITES permits, and facilitates illegal exports of afrormosia and disguised non-afrormosia exports into the EU (CIEL, EIA and Greenpeace 2014).

116 SC65 Summary Record (7-11 July 2014).

Cameroon, CAR and the RoC have concluded VPAs with the EU (see section 5.4 above), while the DRC is in negotiations, but it is not clear when the provisions, including national wood tracking systems that provide for third-party audit, will be operational. Under the ITTO–CITES programme, considerable work has been undertaken on national strategies for the management of afrormosia in Cameroon and RoC, and, as noted above, there have been discussions on putting in place tracking systems based on DNA markers for timber from afrormosia. However, the instability in DRC and CAR is likely to hold up progress. The planned country-led regional management strategy modeled on that for bigleaf mahogany has yet to materialize, waiting for range states to propose a structure, work programme and budget. The issue was to be revisited at a regional meeting planned to take place in 2014.

Had NGOs placed a spotlight earlier on trade in afrormosia, as they did with bigleaf mahogany and ramin, CITES may have acted earlier and more effectively in response to DRC's non-compliance, while faster progress may have been achieved in other range states. The initiative by CIEL, EIA and Greenpeace on afrormosia is a significant development despite the disappointing outcome to date, and could finally lead to more effective action.

8.4 Other potential case studies

The three case studies examined to date provide some insight into the global norms that have developed – and are still developing – with respect to the governance of tree species listed under CITES. They are relatively superficial, however, warranting a deeper analysis. Moreover, trade controls and management actions taken in relation to other listed tree species whose products are valuable, and / or countries which present challenges and are or have been the focus of compliance measures, will likely provide further insights and a deeper understanding of the system and its efficacy. This section therefore examines other possible case studies, selected for their potential to yield lessons rather than on the basis of systematic criteria.

Tree species that have been listed for some years and been subject to compliance measures include

Prunus africana (African cherry), *Pterocarpus santalinus* (red sandalwood) and agarwood producing species. *Prunus africana*, which is exploited primarily for medicinal purposes but also for timber, has been listed in Appendix II since 1995, on the basis of a proposal by Kenya, a range state. It was recently selected for a second review under the RST and may yield some parallel lessons with those from afrormosia, which was also reviewed twice. The two species have range states in common, two of which were the subject of recommendations drawn up under the RST (Cameroon and DRC). The EU SRG has been discussing *Prunus africana* regularly since 1998 and formed a negative opinion with respect to imports from Cameroon in 2007, which was lifted in 2011 in light of efforts under the ITTO–CITES programme to support NDFs and a traceability system. Cameroon might therefore provide an interesting case study, examining drivers of change in the governance of the exploitation of both afrormosia and *Prunus africana*. (In this context, it is useful to note that two scientists from CIFOR gave a presentation to the EU SRG on the management of *Prunus africana* in Cameroon, which was considered potentially “interesting for assessing future applications and quota proposals for this species/country combination.”¹¹⁷) DRC could provide a comparative study; the generalized institutional weaknesses and profound governance challenges, hampered by security issues, evident in the attempts to manage afrormosia are also likely to impact the management of *Prunus africana*.

Red sandalwood, found in India and valued for its use in furniture in China as well as cosmetics and medicines, was also listed in Appendix II in 1995, on a proposal by India. Illegal trade is a persistent problem, and like *Prunus africana* the species was entered into the RST for a second review. The EU SRG also agreed a negative opinion for *Pterocarpus santalinus* from India.¹¹⁸ As an Asian species, the experience under the RST could provide some useful complementary lessons.

Agarwood producing species have been a subject of considerable discussion under CITES since, on a proposal from India in the face of objections

117 Summary of Conclusions, 68th Meeting of the Committee on Trade in Wild Fauna and Flora, Brussels, 4 Sept 2014.

118 Ibid.

from other range states, *Aquilaria malaccensis* was included in Appendix II in 1994 (entering into effect in 1995). Agarwood is a resinous, aromatic heartwood produced primarily by trees in the genus *Aquilaria*, native to Asia, but also trees in the genera *Gyrinops*, *Aetoxylon* and *Gonocarpus*, when they become infected with a type of mould. Top quality agarwood, used to produce incense, perfume and oils, is one of the most expensive natural raw materials in the world. *Aquilaria malaccensis* was among the first plant species selected for review under the RST, together with *Prunus africana* and afrormosia, when it was extended to include flora. The review led to Plants Committee recommendations for Malaysia (considered of urgent concern), as well as Indonesia and India (considered of possible concern).¹¹⁹ One of the outcomes of the process was a recommendation to the Secretariat to liaise with Indonesia to review the need to prepare proposals to list all four agarwood producing genera in Appendix II.¹²⁰ This led to the successful listing in 2004 of all *Aquilaria* and *Gyrinops* species in Appendix II on a proposal by Indonesia; for reasons unknown *Aetoxylon* and *Gonocarpus* species were not included. Soaring demand for agarwood in the Middle and Far East has led to overexploitation of old-growth trees, diminishing stocks and a persistent illegal trade. Ongoing concerns about sustainability of the trade culminated in the CoP adopting a resolution dedicated to implementation of the Convention with respect to *Aquilaria* species in Bangkok in 2013. Trade in agarwood clearly presents a challenge to CITES, and its 20-year history of attempting to control it is likely to contain many lessons.

The listing in Appendix II of all Malagasy rosewoods (*Dalbergia* spp.) and ebonies (*Diospyros* spp.) as well as three Latin American rosewoods (*D. grenadillo*, *D. stevensonii* and *D. retuso*) by Belize, and Siamese rosewood (*D. cochinchinensis*) by Thailand and Vietnam at CoP16 in 2013 presents CITES with another serious implementation and enforcement challenge

119 PC14 Doc. 9.2.2 Annex 2, Review of Significant Trade, *Aquilaria malaccensis*, (Nov 2003); PC14 WG 3.2 Doc. 1, Review of information and confirmation of categorisation by the Plants Committee – Recommendations of the Significant Trade working group (Feb 2004).

120 PC15 Doc. 10.1.1 (Rev. 1), Species Based Review of Significant Trade (May 2005).

given the extent of illegal logging and rapidly rising demand in China and other end markets for these “precious woods”. Although the listings are recent, it would still be worth examining their history and beginning to track and analyse the trade and efficacy of international controls, particularly the ability of CITES to react to a crisis where demand is escalating and driving large-scale illegal trade.

Rosewoods are highly sought after and produce valuable timber used for making furniture, musical instruments and so forth. The first rosewood species to be listed under CITES was *Dalbergia nigra* (Brazilian rosewood). A highly valuable timber species, *D. nigra* was listed in Appendix I in 1992, banning commercial trade. However, according to a report by TRAFFIC, illegal trade, claiming the wood as “pre-Convention” and therefore exempt from CITES controls, appears to persist and may be significant (Taylor et al. 2012).¹²¹ In 2007 at CoP14, as mentioned in the introduction, the EU attempted to list *D. retuso*, *D. grenadillo* and *D. stevensonii*, along with *Cedrela odorata*, in Appendix II, but met opposition from Latin American range states. Instead, an action plan was adopted to gather and assess information on status and trade in the four species (even though they were not listed) and to access technical and capacity-building support for range states. Guatemala subsequently listed *D. stevensonii* and *D. retuso* in Appendix III in 2008, and Panama listed *D. dariensis* and *D. retuso* in Appendix III 2011, but the listings were restricted to their own populations, so of limited benefit to the species as a whole.

Following up on the Appendix II listings in 2013, the EIA has released a series of reports and briefings on rosewood trade. These include a short report documenting illegal logging of rosewood in Belize and imports to China despite a moratorium on the harvest and export of rosewood enacted by Belize in March 2012 (EIA 2014b). Rosewood harvesting in Belize was reported to have increased exponentially since 2010 in direct response to the growing demand in China, fueled by a wealthy elite consuming luxury Ming and Qing dynasty

121 The “pre-Convention” exemption under Article VII.2 is a commonly used loophole to facilitate illegal trade. If the specimen was acquired before the Convention applied to it, it is exempt from CITES trade controls, requiring only a certificate to that effect from the relevant management authority in order to be traded.

reproduction furniture made from rosewood species, known as ‘hong mu’ or literally ‘red wood’.

A second EIA report documents the exploitation of Siamese, or Thai, rosewood (*D. cochinchinensis*) in the Mekong, which is under intense pressure from illegal logging and trade (EIA 2014d). Although all range states have log export bans as well as harvesting restrictions in place the trafficking has continued (Johnson 2014). The report warns that populations have all but gone and that attention is now being focused on replacement species such as Burmese rosewood (*Dalbergia bariensis*), implying that CITES is somewhat late to the game; it cites the only remaining rich source of *D. cochinchinensis* as a protected area near the Thai border with Cambodia. The report tracks the routes of the illegal trade from Thailand and southern Laos (where the species is apparently almost commercially extinct) to China, via Vietnam which acts as a transit hub, and documents Thailand’s losing battle to combat illegal loggers encroaching from Cambodia. Forest rangers and loggers are losing their lives in a situation more akin to the fight against elephant poaching in Africa; according to EIA, from 2009 to July 2013, over 40 Thai rangers died, and in 2012 and 2013, 114 Cambodian loggers were killed (Johnson 2014). The EIA presents some evidence that the CITES listing is suppressing illegal trade – China has made efforts to enforce it resulting in a series of seizures in Guangzhou. But the listing is reportedly being undermined by corruption and poor governance in range states and China, while lack of CITES enforcement in Hong Kong has enabled its use as a gateway to mainland China. Moreover, the CITES listing – which is restricted to logs, sawn wood and veneer sheets - is apparently being evaded through an increasing trade in semi-finished products. The move towards economic integration in the ASEAN region will make CITES implementation and enforcement even more difficult. More concerted action on the part of CITES is warranted, but whether it rises to the challenge is yet to be seen. To date, the only overt action has been to issue a notification in July 2014 requesting Parties to check timber shipments and communicate information on seizures of Siamese rosewood to the Secretariat and the Thai management authority.¹²²

In contrast, the illegal trade in rosewoods and ebonies from Madagascar has become a focus of attention under CITES. As already mentioned, poor CITES implementation and enforcement has presented a problem for many years leading to the selection of Madagascar as a pilot country under the RST. How effective that process was is open to question and could be explored further, particularly in light of Madagascar’s persistent failure to combat serious illegal logging and trade despite concerted efforts by the international community. Since 2006, when a ban was imposed on harvesting, Madagascar has adopted various legislative measures on rosewoods and ebonies to little effect. Despite the 2006 logging ban, timber traders – part of what EIA describes in its recent briefing as a “rosewood mafia” – were allowed to export stocks of seized illegally harvested ebony and rosewood, the majority of which went to China (EIA 2014c). Logging has continued in Madagascar’s national parks despite intervention under the World Heritage Convention. It remains to be seen if CITES can make an impact where others appear to have failed.

In 2007, the World Heritage Committee listed the Rainforests of the Atsinanana as a World Heritage site. These six national parks of relict forests, which contain globally significant biodiversity, are spread down the eastern side of Madagascar. Following the military coup in 2009, illegal loggers invaded two of the parks in the north east, targeting valuable rosewoods and ebonies. Under mounting international pressure the Madagascar National Parks Authority, with backing from the Ministry of the Environment and Forests, contracted Global Witness and EIA to investigate and monitor the trade from in and around the parks in the north east (Global Witness and EIA 2010). In 2010, the World Heritage Committee inscribed the Rainforests of the Atsinanana on the List of World Heritage in Danger, and Madagascar banned transport, harvest and export of rosewood and ebony, seized logs and requested operators to declare their stocks. In 2011, Madagascar listed 5 *Dalbergia* species and 84 *Diospyros* species in CITES Appendix III, as a precursor to the Appendix II listing of all Malagasy species from both genera in 2013, opening the way for more stringent action under CITES.

The Appendix II listing was accompanied by a detailed action plan designed to establish an

¹²² Notification to the Parties No. 2014/032, Trade in Siamese rosewood (*Dalbergia cochinchinensis*) from Thailand, 4 July 2014.

effective management regime for Malagasy ebonies and rosewoods.¹²³ It enables technical support, and commits Madagascar to several actions, including an embargo on exports of stocks until the Standing Committee has approved results of an audit and use plan to determine how much is legal and can be exported.¹²⁴ The World Heritage Committee, meanwhile, has recommended liquidation of stocks.¹²⁵ Following the listing, Madagascar established a zero export quota for rosewoods and ebonies and, working with the World Bank, set up a multistakeholder committee to oversee management and re-structuring of the industry.¹²⁶ But according to the EIA, illegal logging increased in the latter part of 2013 reportedly to fund the election campaign, and has spread to other source areas down the eastern coast (EIA 2014c). The logs are smuggled out in containers or via small boats to large vessels offshore. Although direct imports to China stopped after August 2012, smuggled rosewood from Madagascar still enters the country, trans-shipped through other countries. Seizures have included marked logs from registered government stocks, and in advance of the elections at the end of 2013 the transitional President tried to push through a sale of remaining stocks, despite the zero export quota, to fund the military (EIA 2014c).

Meetings of the CITES Plants and Standing Committees in 2014 reviewed Madagascar's progress. It was reported that the scale of the illegal

rosewood trade is massive; more than 4000 tons of rosewood suspected to have been illegally exported from Madagascar were seized by authorities in various transit and destination countries between November 2013 and April 2014.¹²⁷ The Standing Committee recommended a trade suspension in Malagasy ebonies and rosewoods if Madagascar did not communicate by 10 August 2014 an extension of its zero export quota to SC66;¹²⁸ this embargo was first extended until 10 August 2015 and most recently to 15 January 2016, the last day of SC66.¹²⁹ The Committee further requested Madagascar to consider urgently an offer from the International Consortium on Combating Wildlife Crime (ICWC), a partnership of international wildlife law enforcement agencies,¹³⁰ to deploy a Wildlife Incident Support Team (WIST) led by INTERPOL.¹³¹ Further compliance measures will be considered at the next CITES Standing Committee meeting in 2016 if significant progress has not been made.

Species listed in Appendix III could also provide potentially informative case studies to examine the use and effectiveness, or otherwise, of an Appendix III listing. The listings that could be studied include Spanish cedar (*Cedrela odorata*) and Yucatan rosewood (*Dalbergia tucurensis*) listed recently by Nicaragua, as well as Russia's listing of Mongolian oak (*Quercus mongolica*) and Manchurian ash (*Fraxinus mandshurica*) along with moves to regulate trade and clean up supply chains.

123 Decision 16.152 and Annex 3, Decisions of the Conference of the Parties in effect after its 16th meeting

124 Ibid, Annex 3

125 PC21 Doc. 18.3.1

126 SC65 Doc. 48.2, Action Plan of Madagascar on Malagasy ebonies (*Diospyros* spp.) and Malagasy rosewoods (*Dalbergia* spp.), prepared for Standing Committee meeting, July 2014.

127 SC65 Doc. 48.1, Secretariat report on Malagasy ebonies (*Diospyros* spp.) and Malagasy rosewoods (*Dalbergia* spp.), prepared April 2014.

128 SC65 Summary Record (7-11 July 2014).

129 CITES Notification to the Parties No. 2015/029 (21 May 2015), Madagascar: Trade in *Dalbergia* spp. and *Diospyros* spp.: zero export quota. Accessed 28 July 2015. <https://cites.org/sites/default/files/notif/E-Notif-2015-029.pdf>

130 ICCWC is collaboration between five inter-governmental organizations to bring coordinated support to national wildlife law enforcement agencies and to sub-regional and regional networks dedicated to wildlife law enforcement. The ICCWC partners are the CITES Secretariat, INTERPOL, the UN Office on Drugs and Crime, the World Bank and the World Customs Organization.

131 SC65 Doc. 48.1, Secretariat report on Malagasy ebonies (*Diospyros* spp.) and Malagasy rosewoods (*Dalbergia* spp.), prepared April 2014; SC65 Summary Record (7-11 July 2014).

9 Conclusions

CITES is an increasingly important tool in the governance of transnational timber trade, as well as in-country management of listed species. Its role in the past has been limited by the relatively small number of species listed, but that is changing as more and more timber-producing species are added to the CITES Appendices and the ITTO–CITES capacity-building programme expands its reach. Well over a decade ago, NGOs recognized the Convention’s potential to curb trade in high-profile species, and catalyzed action on bigleaf mahogany and ramin. These cases indicate that, in the context of concerted efforts by national and international NGOs and the cooperation of key importing states, the CITES framework can drive change in cases of non-compliance using a combination of technical assistance to improve species and/or sectoral governance backed by threatened or imposed trade sanctions (i.e. carrots and sticks). The system also has the potential to provide the consistent input and oversight necessary to achieve real governance reform over the long-term, as well as catalyzing cooperation among range states. The case of bigleaf mahogany illustrates the role CITES can play in developing regional management strategies among range states, and the case of ramin its role in catalyzing cooperation on enforcement through the Tri-National Task Force. Both cases were characterized by active civil society engagement, however. The case of afrormosia, and the apparent reluctance to agree trade sanctions for DRC, begs the question whether the CITES system can function as effectively in the absence of an active civil society placing a spotlight on species in trouble and on weak or recalcitrant countries. The intervention on afrormosia initiated by NGOs at the 2014 Standing Committee meeting is welcome, if long overdue. Given the extent of the governance challenges posed by the main exporting country DRC, how much impact it will have remains to be seen, but if CITES pursues an intervention under Article XIII for generalized

non-compliance, which could lead to a trade suspension in all CITES-listed species, it may provide the stimulus necessary to drive governance reform, at least in the national CITES institutions.

The CITES compliance system is a powerful tool. Its ability to apply trade sanctions equips it with a robust lever for stimulating change, and in a Convention suffering from lack of resources where the budget is not keeping pace with a rapidly expanding remit, the ITTO–CITES programme is a unique asset for capacity building. The three case studies are not comprehensive; a wealth of information is available, both on these species, and on how CITES has approached control of transnational trade in valuable products of other listed tree species. The studies do, however, provide some insight into different ways in which timber species came to be listed under CITES and were then handled under the compliance system, and how effective the interventions were. Even though there were implementation problems, the listing of bigleaf mahogany and ramin first in Appendix III served as a useful stepping-stone to listing in the more stringent Appendix II, and a means to overcome considerable range state resistance and build consensus through the Bigleaf Mahogany Working Group. In contrast, the listing of afrormosia in Appendix II by non-range states from the EU without any evident consensus building – and therefore political buy-in – may have contributed to the listing’s poor record, in addition to the extensive governance challenges in the range states. Compliance and enforcement problems with ramin trade were handled directly by the Standing Committee, and bigleaf mahogany by both the Standing Committee and through the RST, both processes achieving positive results. Moreover, the Standing Committee handled them as stand-alone agenda items. This again contrasts with afrormosia, which until recently was handled only through the RST.

The RST is the flagship compliance mechanism under CITES to bring trade in Appendix II listed species within sustainable limits, and an important governance tool for timber-producing species since the majority are listed in Appendix II. Its remit, however, is restricted to implementation of controls governing Appendix II trade, particularly NDFs; issues with illegal trade identified through the reviews are referred to the Standing Committee but are not always taken up as *afroformosa* illustrates. This calls into question the efficacy of the RST in the absence of more concerted effort by the Standing Committee to tackle broader governance challenges, backed by active civil society engagement and intervention. Moreover, the slowness of the process and its reliance on retrospective data limits the usefulness of the RST in cases of rapidly escalating trade, while the need to review *afroformosa* twice calls into question the ability of the mechanism to produce sustained results that can be trusted, especially in countries with profound governance problems such as DRC and other *afroformosa* range states. One case study from Africa where the main exporting range state is politically unstable and faces severe challenges is not enough, however, to draw conclusions about the effectiveness of the RST to achieve sustainable trade in products from tree species. Since several tree species have been through the review over the last 14 years, or are at different stages, including two others selected twice – *Prunus africana* and *Pterocarpus santalinus* (red sandalwood) – a broader evaluation of the effectiveness of this governance tool, and its ability to achieve actual rather than paper outcomes, is warranted.

The cases of Peru and Malaysia demonstrate that threatened or actual import suspensions can be an effective driver to incentivize change. Even though the suspensions may affect only one species, they can catalyze systemic reforms, especially if supported by capacity building under the ITTO–CITES programme and bilateral agreements such as the Peru–US TPA. Suspensions and reduced quotas can lead to changing trade patterns, however, increasing pressure on other species as traders replace the listed species with other sources, e.g. the increase in trade in Spanish cedar from Peru. Thus systemic improvement is essential to prevent overexploitation simply being displaced. The extent to which improvements reported under CITES translate into actual improvements on the ground can be hard to assess, particularly in a

case like *afroformosa* where until recently there was little civil society monitoring of the situation, and reports produced by official independent monitors do not appear to have been taken into account under the RST. If they had been, the outcomes of the decision-making process and recommendations agreed may have been different.

With its focus on systemic improvement, sustainability and survival of species, the CITES compliance system has devoted far more attention to the making of NDFs than it has to legal acquisition findings. This is particularly important in light of the international drive to exclude illegally logged timber from supply chains and end markets, and especially the exemption for CITES-certified timber under the EUTR. The lack of an agreed process for undertaking legal acquisition findings means they are implemented inconsistently at best, if indeed they are implemented at all. Moreover, the narrow scope of laws considered, which has never been defined beyond the text of the Convention, does not cover issues such as payment of royalties or observance of land use and tenure rights, as would be included in developing definitions of legality under FLEGT, or the EUTR's definition of a legal product.

Meaningful and consistent legal acquisition findings to determine whether timber from CITES-listed species has been harvested in compliance with all relevant, or applicable, legislation are essential, not only for the integrity of CITES but also the effectiveness of legislation enacted in the EU, the United States and Australia to exclude imports of illegally logged timber and require importers to undertake due diligence. The inadequacy of legality verification under CITES is a conspicuous weakness that clearly needs to be addressed. Another significant problem concerning legality is the high proportion of Parties (nearly 50%) that do not have fully compliant national CITES implementing legislation, many of which are range states for timber-producing listed species. It means that CITES-certified timber from Parties without adequate implementing legislation could be allowed into the EU and exempted from due diligence requirements.

Perhaps not surprisingly, CITES seems less capable of taking action against powerful consumer countries than against range states, which are the main focus of the compliance system. This is borne

out by the reluctance in the past to take action against the EU and Japan for non-compliance, and the disproportionate application of trade embargoes. More focus on importing country compliance, particularly in Asia, is warranted, as the example of Siamese rosewood demonstrates. Although China has responded to the rosewood listings with a crackdown on illegal imports, there still appear to be outstanding compliance issues, including lack of enforcement in Hong Kong and other transit countries, which calls for a cooperative approach similar to that applied for ramin. As a partner in ICCWC, CITES is in a unique position to catalyze such an approach.

The enactment of stricter domestic measures by importing countries, particularly the EU, the United States and Australia, has raised the bar both for CITES import controls and preventing imports of illegally logged timber more broadly. Their respective legislation to exclude, ban and/or criminalize imports of illegally sourced wood products and require due diligence is far reaching, while the requirement for NDFs for imports to the EU of Appendix II listed species is a valuable tool to prevent imports where the sustainability of harvest is questionable.

A conspicuous difference is evident between the stricter systems to govern CITES imports and exclude illegal timber in the EU, the United States and Australia and the systems in place or under development in the major timber consuming countries in Asia – now the main markets for primary timber – which are far less robust. The recent step-change in China's awareness of its role in the illegal timber trade and attempts to crack down on imports, for example of rosewoods, is welcome, but the seriousness of the situation in range states unable (or unwilling) to control illegal exports demands more concerted action not only by China but also by other major Asian markets, including India, Japan and South Korea.

Teething problems are evident in the implementation of the EUTR and the United States Lacey Act. Significantly, the introduction of an exemption for CITES-certified timber from the due diligence requirements of the EUTR has added a new dimension – and a perverse incentive – to listings of timber-producing species and their trade that has the potential to discredit both CITES and the EUTR depending on how it is implemented.

The green lane for timber with CITES permits assumes it is risk free. However, even a relatively superficial examination of CITES controls and their implementation with respect to trade in listed timber species shows that this is not the case. The CITES framework was not designed to establish the legality of individual forest products. Inconsistency in implementing legal acquisition findings and tracking systems under CITES and the lack of independent oversight, along with issues concerning re-exports/third-country processing, exemptions for processed products for many listings of timber species, and the exemption of all species listed in the EU's Annex C (Appendix III equivalent), all undermine the assumption that imports with CITES permits are risk free. Moreover, as already noted, several range states are or maybe exporting CITES-listed timber without fully compliant national implementing legislation (see Table 2).

The green lane therefore exposes EU regulators to the risk of forged CITES permits, exploitation of CITES exemptions and confusion over permitting requirements, facilitating illegal imports into the EU of listed timber species, as well as non-CITES species disguised as listed. Although CITES has started work on traceability systems under Phase 2 of the ITTO-CITES programme, their implementation is uneven and in its infancy. Overall, the patchy legality verification behind CITES-certified wood means the system falls far short of the credible LAS being developed under VPAs to back FLEGT-licensed wood, which are independently audited. The narrow definition of legality for legal acquisition findings under CITES also falls short of the emerging consensus on a definition of legality that incorporates social, environmental and financial factors relevant to legal compliance, and is reflected in definitions developed under VPAs by countries such as Ghana. This lack of coherence between CITES and FLEGT, and the higher standards and broader legality definition under the latter, means that countries implementing VPAs are carrying a greater burden with respect to legality assurance and traceability. The lack of provision for independent oversight under CITES makes the compliance mechanisms all the more important as a means for overseeing and incentivizing compliance with controls on trade in listed timber species. A rigorous evaluation of legal compliance and traceability in supply chains of CITES-listed

species is warranted, as well as assessments of the efficacy of the compliance mechanisms and weaknesses, loopholes and uncertainties in CITES trade controls for listed timber species that could undermine the EUTR, and the implementation of listings of timber-producing species more broadly.

Perversely, the CITES green lane could encourage Parties to list species on Appendix III in order to evade the due diligence provisions under the EUTR. It may also serve to discourage NGOs from advocating for further listings. This would be unfortunate given the powerful compliance tools and unique institutional framework available under CITES for tackling unsustainable trade multilaterally and encouraging systemic improvement in countries with forest governance challenges that are unlikely to negotiate or implement a VPA. Thus, it is imperative that the implementation, enforcement and development of each system be pursued coherently and synergistically. In this context, the first joint meeting of EU CITES and FLEGT/EUTR authorities is a welcome development, while the guidance on steps to be taken where doubts exist about the legality of imported CITES timber species should be useful to member states in cases similar to the seizure by Belgium of afrormosia from DRC. However, it falls short of guidelines to be applied systematically to all imports of CITES-listed timber, which arguably are warranted given the extent of uncertainties and loopholes surrounding the CITES exemption under the EUTR, and the assumption made by EU management authorities that a CITES export permit or re-export certificate is adequate proof of legality.

Another risk that threatens the integrity and effectiveness of CITES is evident in the trends

towards regional economic integration, notably in Asia where the major markets for primary timber products are now located along with significant exporting, processing and transit countries for timber trade. The progressive loss of border controls in a region where many countries present serious governance challenges with CITES implementation and enforcement varying enormously, and where wildlife markets are massive and expanding rapidly, means that CITES could become virtually unenforceable. The EU experience with implementing CITES uniformly in a single borderless market over the last 20 years is a salutary one from which lessons must be learned. Enormous problems were encountered, which are barely touched on in this scoping study, and which are still being ironed out. Although European integration has enabled the implementation of uniform stricter measures such as conditioning imports of Appendix II listed species on an NDF, which has provided the basis for EU-wide import suspensions, variable enforcement of CITES among member states is still a challenge 30 years after the borders came down. The level of enforcement throughout the EU is only ever as good as the weakest state, which has changed as the Union expands eastwards, while mechanisms for enforcement cooperation are still considered insufficient. Developments in Asia, with the ECU, the ASEAN economic community planned by end of 2015, North East Asia slowly following, and strengthened trade links between and with China and India, are particularly important to track and analyze in light of CITES implementation and enforcement, the changing patterns in timber trade and expanding markets for timber products in China and India, the extent of illegal trafficking of wood in the region and the ability of law enforcement agencies and regional networks to combat such trafficking.

10 Potential areas for further research

This scoping study has revealed many issues and areas that could be researched further in a deeper exploration and analysis of the governance of trade in timber-producing species regulated by CITES. This section does not attempt to provide a comprehensive list of all possible research topics. Rather it identifies priority areas warranting further research and suggests how each could be approached. The topics have been chosen on the basis that further research and analysis could contribute towards catalyzing positive change to strengthen the governance of transnational timber trade, and ultimately towards the survival of tree species traded illegally and unsustainably.

10.1 Country case studies: identifying drivers of change

- An analysis of countries subject to compliance measures under CITES and stricter domestic measures by importing countries for unsustainable trade in timber-producing species to identify drivers of positive change and reasons for failing to induce such change.

Suggested approach: Paying attention to regional balance, select examples of countries subject to compliance measures under CITES and stricter domestic measures by importing countries for failing to control trade in CITES-listed timber species. Examine the governance issues behind the failure, the measures taken under CITES to address them, including any measures to address displacement of exploitation to other species and/or countries, and the impacts of stricter domestic measures taken by importing countries. Identify the main drivers of positive change, and if applicable reasons for failure to induce such change, and draw conclusions on how to maximize conditions for an optimal outcome to improve systemic governance.

Suggested examples from which to select in-depth case studies include:

- Peru with respect to trade in bigleaf mahogany and Spanish cedar, comparing it with a second range state which has not experienced the same degree of intervention from CITES but which has been identified as having significant trade in bigleaf mahogany and compliance issues under the RST;
- Malaysia and Indonesia with respect to trade in ramin and *Aquilaria malaccensis* (agarwood);
- Cameroon and DRC with respect to trade in afrormosia and *Prunus africana*; and
- Madagascar with respect to rosewoods and ebonies, including an assessment of the effectiveness of the response to the country RST.

10.2 CITES compliance mechanisms: how effective are they for listed tree species?

- An assessment of the effectiveness of the CITES compliance mechanisms to stem unsustainable trade in valuable products from listed tree species.

Suggested approach: Two strands of research are proposed: (1) species case studies as a means to evaluate the efficacy of the compliance mechanisms overall, and (2) a more specific assessment of the effectiveness of the RST for Appendix II listed tree species as a key compliance process. The two strands overlap, and could be stand-alone studies. Preferably though, they would be conducted as complementary parts of a comprehensive assessment, noting that there is a considerable amount of research material so the suggested terms of reference may need to be narrowed.

10.2.1 Species case studies

Identify all listed tree species that are or have been subject to compliance measures, or other special measures, under CITES (excluding palms, cycads and tree ferns). Drawing on the case studies described in section 8, and with attention to regional balance, select for deeper analysis a representative set of species illustrating different approaches to non-compliance and their evolution over time, with a focus on species with valuable timber and non-timber products that are or have been subject to unsustainable and/or illegal trade. Analyze the basis for their selection, the governance issues identified in the trade chain, the different processes, institutions and tools accessed to address them, the responses of non-compliant states and, where possible, the outcomes of compliance measures. Identify strengths and weaknesses of the compliance mechanisms under CITES with respect to listed tree species, draw conclusions on the effectiveness of the processes and measures recommended, and the outcomes and responses of range states, and make recommendations for improvements in the processes.

Suggested examples for in-depth species studies include:

- bigleaf mahogany, *Swietenia macrophylla* (Latin America)
- ramin, *Gonystylus* species (Asia)
- afrormosia, *Pericopsis elata* (Africa)
- African cherry, *Prunus africana* (Africa)
- red sandalwood, *Pterocarpus santalinus* (Asia)
- agarwood, *Aquilaria* species (Asia)
- rosewoods, *Dalbergia* species (all three regions)

10.2.2 An assessment of the RST as a key compliance process for Appendix II listed tree species

Identify all tree species that have been subject to the review since it was extended to Appendix II listed plant species in 2000 (excluding palms, cycads and tree ferns). Conduct an overview of the process for each species, i.e. assess the length of time for each stage and for the whole process from selection to recommendations/compliance measures, whether in-country or desk-based reviews were conducted etc. Examine

the governance weaknesses identified, particularly in range states of urgent or possible concern, recommendations made by the Plants Committee and other measures taken, and the responses from states, as well as reasons for eliminating other range states from the review. Identify which countries were considered to have complied, which did not, the action taken by the Standing Committee for non-compliance (and on other governance issues facilitating illegal trade) and whether it induced responses. Analyze why *Prunus africana* and *Pterocarpus santalinus* have been selected twice and what this means for the effectiveness of the review. Where possible, assess the extent of actual compliance on the ground using information from independent monitors, NGOs, and any other independent sources. Draw conclusions on the effectiveness of the review and make recommendation for its improvement.

10.3 Legality, traceability and national legislation under CITES: coherence with FLEGT and the EUTR

- Studies to: (1) compare legality verification and national wood control/traceability systems under CITES with those under FLEGT VPAs, with a view to achieving coherence between the two systems; and (2) assess legal compliance concerning national CITES implementing legislation in range states exporting CITES-listed timber to the EU.

Suggested approach: Three research strands are proposed: (1) an assessment of legal acquisition findings (scope and process) under CITES and comparison with legality assurance under FLEGT, resulting in recommendations on how to ensure the effective and consistent implementation of legal acquisition findings under CITES and coherence with legality assurance under FLEGT VPAs; (2) a comparison of national wood control / traceability systems for CITES-listed timber species with systems being developed under FLEGT VPAs with a view to aligning approaches; and (3) a determination of which countries exporting CITES-listed timber species to the EU do not have fully compliant national CITES implementing legislation, and assessment of the effectiveness of the NLP to address their non-compliance.

10.3.1 Legality

Compare the requirements for legality verification under CITES and the EU Wildlife Trade Regulation, with those under FLEGT and the EUTR, including the scope of laws and processes followed. Identify range states exporting CITES-listed timber species to the EU, as well as countries being supported by the EU to implement FLEGT VPAs. In as many of these countries as practically possible (and at least the main exporting states), assess: (1) the scope of the laws included in legal acquisition findings under CITES and the processes followed, and (2) the scope of laws included in definitions of legality under FLEGT (where applicable) and the processes followed. Analyze the results in light of the broader spectrum of laws to be verified under the EUTR and definitions of legality developed under VPAs in the FLEGT implementing countries. Assess, to the extent possible, whether and how range states undertake legal acquisition findings, and any cases where the EU “looked behind” the CITES permits (e.g. the 2013 case of afrormosia imported from DRC to Belgium). Ascertain whether legal acquisition findings have been raised before under CITES, in what circumstances and with what outcome. Examine the process that was followed by CITES to develop guiding principles for making NDFs and its usefulness as a model for developing a more consistent approach to legal acquisition findings. Make recommendations on what approach could be taken to ensure the effective and consistent implementation of legal acquisition findings under CITES and coherence with legality assurance under FLEGT VPAs.

10.3.2 National wood control/traceability systems

Assess the extent to which national wood control / traceability systems have been developed and implemented for CITES-listed timber species and in which countries, and, to the extent possible, the efficacy of the systems and their ability to verify legal origin and chain of custody, and to enable data reconciliation between quotas and legal harvest levels and between quotas and real-time exports. Compare them with systems being developed under FLEGT VPAs. Develop

recommendations for aligning approaches to national wood control and traceability, taking into account differing national circumstances.

10.3.3 Legal compliance: national implementing legislation in countries exporting CITES-listed timber species to the EU

Determine which range states exporting CITES-listed timber to the EU have national implementing legislation that does not comply with CITES (i.e. is in category 2 or 3 under the NLP) and the extent of trade with the EU in those species. Assess the effectiveness of the NLP to address their legal non-compliance.

10.4 Implementation and enforcement issues with CITES-listed timber-producing species

- A study to identify issues undermining the effective implementation and enforcement of listings of timber-producing species under CITES and propose approaches to address them, both in the context of CITES as a whole and the EUTR’s exemption for CITES-certified timber.

Suggested approach: Building on Saunders and Reeve (2014) and species case studies undertaken to date, identify issues, uncertainties and loopholes undermining the implementation and enforcement of CITES timber listings (other than inconsistent legal acquisition findings) and changing trade patterns illustrating their exploitation by traders. Develop recommendations on changes needed to address these issues and uncertainties and to close any loopholes, (1) under CITES as a whole, e.g. to enhance licensing and tracking systems, and (2) in the EU to inform the EUTR review and amendments to implementation of the EU Wildlife Trade Regulation.

Suggested issues to be examined include, *inter alia*:

- Exemptions for semi-processed and processed products not included in annotations to the listings of certain timber-producing tree species, and the extent to which these influence, or could start to influence supply/value chains.

- Requirements for control of trade in CITES-listed timber species processed in third countries and re-exported.
- Implementation problems with Appendix III listings, examining experiences with listings of, *inter alia*, bigleaf mahogany, ramin, Spanish cedar (*Cedrela odorata*), almendro (*Dipteryx panamensis*), *Cedrela fissilis*, *Podocarpus neriifolius* (black pine podocarp), and rosewoods (*Dalbergia* spp.) and ebonies (*Diospyros* spp.).
- Governance of trade in plantation timber. Given the CITES exemption for specimens considered artificially propagated, examine the extent to which this is a loophole through which wild-harvested timber could be laundered.

10.5 Regional economic integration in Asia: its impact on CITES implementation and enforcement using the Mekong as a case study

- An analysis to assess the extent and impacts of regional economic integration in Asia on the ability of CITES to control trade in listed timber species and to identify legislative and institutional measures that could be taken, including on cooperative enforcement, drawing on relevant lessons from the EU experience, a case study of rosewood trade in the Mekong, and an analysis of existing mechanisms for cooperation.

Suggested approach: Analyze CITES-listed timber trade flows in the Asia region (legal and illegal), identifying major importing, exporting, processing and transit countries, and countries with weak CITES implementation and enforcement. Focus in on a case study of the trade in Siamese rosewood (*D. cochinchinensis*) in the Mekong, as well as trade in replacement species such as Burmese rosewood (*Dalbergia bariensis*), the enforcement efforts to control the trade and the effects of listing Siamese rosewood in CITES Appendix II. Analyze the extent and trends of regional economic integration in Asia, and any discussions concerning its effect on CITES and/or efforts to mitigate it. Examine the EU experience with CITES implementation and enforcement as a result of economic integration, including the role of stricter domestic measures and cooperative enforcement. Assess the potential impact of economic integration and loss of border controls on the ability to control

trade in CITES-listed timber species in Asia (with a focus on ASEAN + 3), using rosewood trade in the Mekong as an example, and appraise existing mechanisms to facilitate cooperation on implementation and enforcement. On the basis of lessons learned from the EU experience, and any other relevant experience, and measures taken or proposed, as well as the Mekong / rosewood case study, identify legislative and institutional measures that could be taken in Asia (focusing on ASEAN + 3), including on cooperative enforcement.

10.6 CITES implementation and enforcement, and measures to prevent illegal timber trade in China (including Hong Kong), India, Japan and South Korea

- A study to assess the effectiveness in China (including Hong Kong), India, Japan and South Korea of (1) means to implement and enforce CITES, and (2) measures to prevent imports of illegal timber and exclude it from markets

Suggested approach: Conduct a trade analysis to determine the main CITES-listed timber species imported by the identified countries, the percentage of global trade and trends in imports, and the main source countries. Building on research by Chatham House, and other reliable sources, in the countries identified examine: (1) CITES implementing legislation to assess its compliance with the Convention, with a particular focus on measures related to control of CITES-listed timber trade, identifying any stricter domestic measures; (2) to the extent possible, the effectiveness of implementation and enforcement of CITES with respect to listed timber species, examining issues such as reporting (on trade and implementation), institutional arrangements, cooperative enforcement, seizures, etc.; (3) the effectiveness of any legislative and voluntary measures, MoUs etc. designed to prevent the import and marketing of illegal timber; and (4) with respect to Hong Kong, examine its role as a gateway to China for illegal timber, weaknesses in its means of CITES implementation and enforcement that are facilitating this role, and any measures being taken to address this. On the basis of the findings, propose recommendations for improvements to enhance implementation and enforcement of CITES, and exclude illegal timber from supply chains. If necessary, the

focus countries could be limited to China (including Hong Kong), and India as the main, expanding markets.

10.7 Practical notes

The suggested approaches and terms of reference are framed for best outcomes, but will need to be narrowed if considered too ambitious. Much of the proposed research can be desk based. However, in-country research would be beneficial for some of the proposed areas since responses from range states and importing countries will likely prove difficult to obtain without some form of in-country presence. For at least research areas 10.1 and 10.2 (proposed country and species case studies), 10.3 (legality verification and traceability), 10.5 (Asian economic integration) and 10.6 (implementation

and enforcement in Asian importing countries), some in-country research or ability to follow-up external enquiries would be advisable to enhance the veracity of the results. The proposed research on legality verification, for example, would benefit from input by locally based researchers with some legal knowledge. The potential to draw on existing CIFOR expertise and knowledge in regional offices, depending on interest and capacity, could be explored.

Possible funding opportunities are yet to be examined. However, given the importance attached to enhancing the governance of commodity supply chains and excluding illegal timber from markets, and the rising significance of CITES as a powerful tool to govern transnational timber trade, the proposed research areas could fall within the sphere of interest of a number of potential donors.

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Annex: CITES-listed trees^a

Sources: UNEP-WCMC¹³² (updated with the EC Annex listings, published 29 July 2013¹³³); US Fish and Wildlife Service; CITES I-II-III Timber Species Manual (US Department of Agriculture); CITES Notification to the Parties No. 2014/014 on Amendments to Appendix III, 26 March 2014; CITES PC19 Doc. 11.5 Annex 1: List of tree species included in Appendices II and III that are or may be used as timber

Species that are or may be exploited for timber are marked in **bold**

RST – Species in the Review of Significant Trade

Family	Species/Genus +	Common Name	CITES Appendix	EC Annex
AGAVACEAE	<i>Yucca queretaroensis</i>		II	B
ANACARDIACEAE	<i>Operculicarya decaryi</i>		II	B
ARAUCARIACEAE	<i>Araucaria araucana</i>	monkey puzzle	I	A
CARYOCARACEAE	<i>Caryocar costaricense</i> #4	costus	II	B
CUPRESSACEAE	<i>Fitzroya cupressoides</i>	alerce, Patagonian cypress	I	A
	<i>Pilgerodendron uviferum</i>	ciprès	I	A
CYATHEACEAE	<i>Cyathea spp.</i> #4	tree ferns	II	B
CYCADACEAE	CYCADACEAE spp. #4 (Except the species included in Appendix I) (RST)	cycads	II	B
	<i>Cycas beddomei</i>	cycad	I	A
EBENACEAE	<i>Diospyros spp.</i> #5 (populations of Madagascar)	Malagasy ebonies	II	B
FABACEAE	<i>Senna meridionalis</i>	taraby	II	B
FAGACEAE	<i>Quercus mongolica</i> #5 (Russian Federation)	Mongolian oak	III	C
JUGLANDACEAE	<i>Oreomunnea pterocarpa</i> #4	gavilán	II	B
LAURACEAE	<i>Aniba rosaedora</i> #12	Brazilian rosewood	II	B

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^a The table includes cycads, tree ferns and palms but excludes woody succulents.

¹³² http://www.unep-wcmc.org/cites-listed-trees_501.html

¹³³ Commission Regulation (EU) No 750/2013 of 29 July 2013. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:212:0001:0092:EN:PDF>

Family	Species/Genus +	Common Name	CITES Appendix	EC Annex
LEGUMINOSAE	<i>Caesalpinia echinata</i> #10	brasilieto, Brazilwood	II	B
	<i>Dalbergia</i> spp.#5 (populations of Madagascar)	Malagasy rosewoods	II	B
	<i>Dalbergia cochinchinensis</i> #5	Thailand or Siamese rosewood	II	B
	<i>Dalbergia dariensis</i> #2 (population of Panama)	Indian rosewood	III	C
	<i>Dalbergia granadillo</i> #6	granadillo rosewood	II	B
	<i>Dalbergia nigra</i>	Brazilian rosewood	I	A
	<i>Dalbergia retusa</i> #6	cocobolo, black rosewood	II	B
	<i>Dalbergia stevensonii</i> #6	Honduras rosewood	II	B
	<i>Dalbergia tucurensis</i> #6 (Nicaragua)	Yucatan /Panama/ Nicaraguan rosewood	III	C
	<i>Dipteryx panamensis</i> (Costa Rica, Nicaragua)	almendro	III	C
	<i>Pericopsis elata</i> #5 (RST)	African teak, afrormosia	II	B
	<i>Platymiscium pleiostachyum</i> #4	cristóbal	II	B
	<i>Pterocarpus santalinus</i> #7(RST)	red sandalwood	II	B
	MAGNOLIACEAE	<i>Magnolia liliifera</i> var. <i>obovata</i> #1 (Nepal)	magnolia	III
MELIACEAE	<i>Cedrela odorata</i> #5 (Brazil and the Plurinational State of Bolivia. In addition, the following countries have listed their national populations: Colombia, Guatemala and Peru)	Spanish cedar, red cedar	III	C
	<i>Cedrela fissilis</i> #5 (Plurinational State of Bolivia)		III	C
	<i>Cedrela lilloi</i> #5 (Plurinational State of Bolivia)		III	C
	<i>Swietenia humilis</i> #4	Mexican mahogany	II	B
	<i>Swietenia macrophylla</i> #6 (Populations of the Neotropics)	bigleaf Mahogany	II	B
	(RST)			
	<i>Swietenia mahagoni</i> #5	Caribbean or American mahogany	II	B
OLEACEAE	<i>Fraxinus mandshurica</i> #5 (Russian Federation)	Manchurian ash	III	C
PALMAE	<i>Becariophoenix</i> <i>madagascariensis</i> #4	manarano palm	II	B
	<i>Chrysalidocarpus decipiens</i>	butterfly palm	II	B
	<i>Lemurophoenix halleuxii</i> (RST)	red-lemur palm	II	B
	<i>Lodoicea maldivica</i> #13 (Seychelles)		III	C
	<i>Marojejya darianii</i> (RST)	ravimbe palm	II	B
	<i>Neodypsis decaryi</i> #4	feather palm	II	B
	<i>Ravenea louvelii</i>	lakamarefo palm	II	B
	<i>Ravenia rivularis</i> (RST)	gora palm	II	B
	<i>Satranala decussilvae</i> (RST)	satranabe palm	II	B
	<i>Voanioala gerardii</i> (RST)	voanioala palm	II	B

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Family	Species/Genus +	Common Name	CITES Appendix	EC Annex
PINACEAE	<i>Abies guatemalensis</i>	Guatemalan fir, pinabete	I	A
	<i>Pinus koraiensis</i> #5 (Russian Federation)	Korean pine	III	C
PODOCARPACEAE	<i>Podocarpus neriifolius</i> #1 (Nepal)	black pine podocarp	III	C
	<i>Podocarpus parlatorei</i>	Parlatore's podocarp	I	A
ROSACEAE	<i>Prunus africana</i> #4 (RST)	African cherry, pygeum	II	B
RUBIACEAE	<i>Balmea stormiae</i>	ayuque	I	A
SANTALACEAE	<i>Osyris lanceolata</i> (Populations of Burundi, Ethiopia, Kenya, Rwanda, Uganda and the United Republic of Tanzania.)	African sandalwood	II	B
TAXACEAE	<i>Taxus chinensis</i> and infraspecific taxa of this species #2	Chinese yew	II	B
	<i>Taxus cuspidata</i> and infraspecific taxa of this species 9 #2 (RST)	Japanese yew	II	B
	<i>Taxus fuana</i> and infraspecific taxa of this species #2	Tibetan yew	II	B
	<i>Taxus sumatrana</i> and infraspecific taxa of this species #2	Sumatran yew	II	B
	<i>Taxus wallichiana</i> and infraspecific taxa of this species #2	Himalayan yew	II	B
THYMELEACEAE	<i>Aquilaria</i> spp. #14	agarwood	II	B
	<i>Gonystylus</i> spp. #4	ramin	II	B
	<i>Gyrinops</i> spp. #14	agarwood	II	B
TROCHENDRACEAE	<i>Tetracentron sinense</i> #1 (Nepal)	tetracentron	III	C
ZAMIACEAE	ZAMIACEAE spp.#4 (Except the species included in Appendix I) (RST)	cycads	II	B
	<i>Ceratozamia</i> spp.	cycads	I	A
	<i>Chigua</i> spp.	cycads	I	A
	<i>Encephalartos</i> spp.	cycads	I	A
	<i>Microcycas calocoma</i>	cycad	I	A
ZYGOPHYLLACEAE	<i>Bulnesia sarmientoi</i> #11 (RST)	palo santo (holy wood), lignum vitae	II	B
	<i>Guaiacum</i> spp. #2	gaiacwood, (true) lignum vitae	II	B

Notes

When a species is included in one of the CITES Appendices, all parts and derivatives of the species are also included unless the listing is annotated with a footnote to indicate that only specific parts and derivatives are included. The numbering below follows the system used by CITES.

9 Artificially propagated hybrids and cultivars of *Taxus cuspidata*, live, in pots or other small

containers, each consignment being accompanied by a label or document stating the name of the taxon or taxa and the text “artificially propagated”, are not subject to the provisions of the Convention.

#1 All parts and derivatives, except:

- (a) seeds, spores and pollen (including pollinia);
- (b) seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;

- (c) cut flowers of artificially propagated plants; and
- (d) fruits, and parts and derivatives thereof, of artificially propagated plants of the genus *Vanilla*.

#2 All parts and derivatives except:

- (a) seeds and pollen; and
- (b) finished products packaged and ready for retail trade.

#4 All parts and derivatives except:

- (a) seeds (including seedpods of Orchidaceae), spores and pollen (including pollinia). The exemption does not apply to seeds from Cactaceae spp. exported from Mexico, and to seeds from *Beccariophoenix madagascariensis* and *Neodypsis decaryi* exported from Madagascar;
- (b) seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;
- (c) cut flowers of artificially propagated plants;
- (d) fruits, and parts and derivatives thereof, of naturalized or artificially propagated plants of the genus *Vanilla* (Orchidaceae) and of the family Cactaceae;
- (e) stems, flowers, and parts and derivatives thereof, of naturalized or artificially propagated plants of the genera *Opuntia* subgenus *Opuntia* and *Selenicereus* (Cactaceae); and
- (f) finished products of *Euphorbia antisyphilitica* packaged and ready for retail trade.

#5 Logs, sawn wood and veneer sheets.

#6 Logs, sawn wood, veneer sheets and plywood.

#7 Logs, wood-chips, powder and extracts.

#10 Logs, sawn wood, veneer sheets, including unfinished wood articles used for the fabrication of bows for stringed musical instruments.

#11 Logs, sawn wood, veneer sheets, plywood, powder and extracts.

#12 Logs, sawn wood, veneer sheets, plywood and extracts. Finished products containing such extracts as ingredients, including fragrances, are not considered to be covered by this annotation.

#13 The kernel (also known as 'endosperm', 'pulp' or 'copra') and any derivative thereof.

#14 All parts and derivatives except:

- (a) seeds and pollen;
- (b) seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;
- (c) fruits;
- (d) leaves;
- (e) exhausted agarwood powder, including compressed powder in all shapes; and
- (f) finished products packaged and ready for retail trade, this exemption does not apply to beads, prayer beads and carvings.

CIFOR Occasional Papers contain research results that are significant to tropical forest issues. This content has been peer reviewed internally and externally.

This scoping paper analyzes the governance of trade in timber-producing species regulated by CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) in light of the Convention's increasing relevance as a tool to control transnational timber trade. The CITES regulatory framework is outlined as it relates to tree species, along with the compliance mechanisms developed to build range state capacity for implementing trade controls in relation to tropical timber species and to apply sanctions to countries that fail to take recommended action to resolve implementation problems. The study describes stricter domestic measures developed by consumer countries, most notably the EU, to control imports of CITES-listed species, including trees, as well as additional regulatory frameworks designed by importing countries to exclude illegal timber from their markets. It also examines the implications for CITES of regional economic integration given the Convention's dependence on national border controls, with a focus on experience in the EU and trends in Asia. Key findings from three case studies of how CITES has approached governance of trade in valuable timber-producing species – ramin (*Gonystylus* spp.) from Asia, afrormosia (*Pericopsis elata*) from Central and West Africa and bigleaf mahogany (*Swietenia macrophylla*) from Latin America – are presented and other potential case studies identified. The study concludes by identifying priority areas where further research could contribute towards catalyzing positive change to strengthen the governance of transnational timber trade, and ultimately towards the survival of tree species traded illegally and unsustainably.



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This research was carried out by CIFOR as part of the CGIAR Research Program on Forests, Trees and Agroforestry (CRP-FTA). This collaborative program aims to enhance the management and use of forests, agroforestry and tree genetic resources across the landscape from forests to farms. CIFOR leads CRP-FTA in partnership with Bioversity International, CATIE, CIRAD, the International Center for Tropical Agriculture and the World Agroforestry Centre.

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