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## BRIEFING

### Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreements (VPAs)

#### 1. Illegal logging – the issue and the EU response

*"There is a growing consensus that the traditional concession-based industrial logging model does not generate the desired economic, social and environmental benefits."* **Baroness Amos, UK Government House of Lords spokesperson on international development, 25 July 2006**

In many timber-producing countries, decades of large-scale industrial logging have failed to deliver ecologically and socially responsible forest management, poverty alleviation or sustainable development. These problems are exacerbated in countries where institutional capacity is low, the regulatory systems weak or non-existent, and corruption endemic.

The impacts of illegal logging on an industrial scale are well documented and can be disastrous for people, for the environment and for the economy of the country concerned. In addition, cheap timber from destructive and/or illegal sources on the world market results in unfair competition for those companies that are behaving responsibly and are ready to play by the rules.

As one of the main consumers and importers of timber and timber products, the EU bears part of the responsibility for the current situation, but it could also be part of the solution. The Voluntary Partnership Agreements (VPAs), to be developed as part of the EU FLEGT Action Plan, could play a substantial role, not only in combating illegal logging but also in supporting pro-poor forest policy reform in partner countries. However, there are potential pitfalls in the FLEGT approach, which the EU must be aware of and avoid if the VPAs are to be part of the solution. This briefing document highlights our concerns and proposes ways forward.

#### 2. VPAs must be part of the overall EU commitments

The EU must meet its international and domestic obligations to reduce biodiversity loss, alleviate poverty and counter climate change. Forests play a major role in all these areas. VPAs are no panacea, the EU must therefore also work towards:

- Minimising the environmental impact of the timber and wood products trade and reducing Europe's ecological footprint, especially with regards to pulp and paper consumption. Greater efficiencies and product innovation could play a role here;
- Establishing a fair and sustainable trade regime for timber and timber products and opposing further trade liberalisation in the forestry sector, unless proven that no negative impacts on forests will occur;
- Strengthening civil society in timber producer countries and in Europe, such that it can play an effective role in holding governments to account, playing its part in forest policymaking and forest management;
- The implementation of the CBD programme of work on protected areas in order to protect forests of high ecological value and restore biodiversity while fully respecting indigenous peoples' rights;
- Promoting alternatives to industrial logging, and develop innovative funding mechanisms for community forest management and forest conservation;
- Supporting moratoria on logging concessions in those countries where the conditions for conservation and sustainable use are not in place;

### 3. VPAs and the Pitfalls to Avoid

#### Pitfall 1: Focus on trade facilitation rather than good governance

We believe that for VPAs to be effective improved governance must be at their heart. We support the opinion of the Council which would like the VPAs to be instruments to

*“strengthen land tenure and access rights especially for marginalised communities, strengthen effective participation of all stakeholders, notably of non state actors and indigenous peoples in policy making, increase transparency and reduce corruption”.*

It is essential that potential partner countries are demonstrably committed to the equitable, transparent and sustainable management of forests and that this commitment is, or will be, reflected in the national legislative framework. It is equally important that the EU ensures that VPA negotiations and further reforms are based on meaningful public consultation including local and indigenous communities. VPAs that are not widely supported by civil society groups are doomed to fail.

However, current pre-negotiations for VPAs do not seem to focus on governance or legal reform but rather on legitimising current trade flows. The EU's choice to approach the problem of illegality via the VPAs will only be effective as long as the VPAs will strengthen participatory processes, and lead to the enforcement of fair laws, which respect indigenous rights, and deliver true sustainable forest management. Such an approach will require a comprehensive legal review and, potentially, legislative reform.

#### Pitfall 2: Four serious loopholes in the VPAs and licensing schemes

**1. Reach.** A legality-licensing scheme lies at the heart of the proposed VPAs. This is a system designed to identify legal timber and timber products and to license them for export to Europe. Unlicensed timber from partner countries will be denied entry into Europe and those involved in the illicit trade will be liable for prosecution. Such a system will only have a significant impact on the level of illegal logging in partner countries if it is rolled out across the entire country, to include all exports and the domestic timber trade.

**2. Laundering.** If the partner country has no national legislation prohibiting the importation of illegally logged timber and timber products, timber logged illegally in a non-partner country could enter Europe legally via the partner country, accompanied by a valid legality licence. Importation into Europe would be legal, despite the timber's illegal origins. Effectively, the timber would have been laundered. In order to close this loophole, either the partner countries should amend domestic legislation to prohibit the importation of illegally logged timber and timber products or the regulation itself should be amended so that the FLEGT licensing scheme is limited to timber harvested in the partner country concerned. Option 1 is our preferred option.

**3. Circumvention.** The issue of circumvention has been discussed at length, but remains unresolved. VPAs will only cover direct trade between the VPA country and the EU Member States. Timber and wood products imported via a third party country such as China are not addressed. This is a serious omission of the current VPA system.

**4. Product coverage.** Finally and of great concern to our organisations is the fact that the current VPA proposal does not address the imports of pulp, paper and furniture. When negotiating a VPA the EU should ensure all forest products will be included.

#### Pitfall 3: Proliferation of non-credible certificates on the European market.

In order to implement a responsible timber procurement policy, some EU member states have accepted, forest certification schemes as proof of legality and sustainability. The European Commission has declared that private forest certification schemes could be used as the basis for a future FLEGT licensing system and could serve as satisfactory proof of legality.

We believe that many of the operating systems behind these schemes are weak and cannot guarantee independent monitoring of forest management practices, third party verification of legality throughout the supply chain, or the engagement of civil society. In addition, they have low ecological performance levels and in many cases generate social conflict and ignore the rights of indigenous peoples. Schemes of particular concern are the MTCC (Malaysian Timber Certification Council), SFI (the US' Sustainable Forestry Initiative) and certain national schemes recognised under the Pan European Forest Council (PEFC) umbrella. We strongly oppose an EU or national procurement policy, which does contribute to environmentally and socially destructive forestry practices.

### Malaysia & MTCC

Malaysia is the world's biggest exporter of tropical timber and timber products, and has for years logged its forests far beyond what is sustainable. To improve access to Europe's market Malaysia created a forest certification scheme: the MTCC scheme. This scheme does not guarantee legal or sustainable forest management and is rejected by the majority of Malaysian NGOs. Some of the major shortcomings are:

- MTCC does not recognise, inter alia, the native and civil court judgements and hence does not respect customary tenure and user rights of indigenous peoples;
- MTCC criteria and indicators were adopted without social NGOs acceptance because they fail to adequately safeguard social values;
- MTCC Chain of Custody procedures and standards allow uncertified wood and fibre products entering the system, without any checks on its origin, thus the MTCC labelled products could easily be intermixed with illegally sourced wood.

## 4. Key Principles for VPAs.

We believe that the role of the EU and partner countries in the VPA negotiations is to ensure that legality, sustainability and social justice go hand in hand. Therefore, before official negotiations begin, it is essential that the European Commission clarifies the minimum requirements for the signing of a VPA and the implementation of a licensing system.

### We believe that the VPAs must:

- Involve civil society in law-making and in participatory forest management with the aim of improving forest governance, enforcement mechanisms, and tackling corruption; stimulate forest law reform and ensure that truly sustainable forest management is in place.
- Establish a sustainable and fair trade regime, including the implementation of a credible licensing system guaranteeing consumers that wood products sold in the European market are coming from legal and sustainable sources.

### To achieve these objectives, we call on the EU and partner countries to fully comply with the following principles for each partnership agreement:

- The use of Articles 175 and 179 (environment) of the EC Treaty, rather than Article 133 (commercial policy) as the legal basis for the VPA negotiation;
- Incorporate partnership principles committing producer countries to a time-bound action programme which will deliver socially and ecologically responsible forest management, halt forest biodiversity loss, promote social equity and contribute to poverty alleviation. These principles should include:
  - A clear process that will ensure effective and meaningful participation of civil society, including local communities and Indigenous Peoples' Organisations, consisting of democratically elected representatives of these groups in the negotiation and implementation of the VPAs ;
  - A review of all forest-related laws to identify weaknesses and social and environmental injustices and, where necessary, encourage legislative and policy reform to strengthen environmental and social standards, and to rebalance forest management so it contributes to poverty alleviation and local people's needs;
  - The establishment of participatory land use planning/zoning to ensure effective management and sustainable use of natural resources based on: strengthening land tenure and access rights especially for marginalized, rural communities and indigenous peoples; protecting sites of high ecological, cultural and social value; and transparent and open allocation of forest concessions
  - Strengthening judicial and administrative authorities, and the fight against corruption, inter alia through supporting civil society oversight mechanisms such as Independent Forest Monitoring, which are indispensable for ensuring public credibility at local and international levels;
- Integrate sustainable forest management and FLEGT into the planning and implementation of the next round of EU Country Strategy Papers and provide adequate funds to build capacity and support the implementation of key reforms.
- Use the VPAs as a means of enhancing the implementation of the work programme of the Convention on Biological Diversity and contributing to the achievement of the UN Millennium Development Goal;

## 5. Immediate actions to optimise the impact of the VPAs

The EU must create the conditions for VPAs to deliver the maximum benefit, be legitimate in the eyes of civil society, and ensure producer countries are equal partners in the process.

To this end, the EU must commit to:

- adopting environmental legislation which makes it illegal to import illegally sourced timber and wood products into the European market place and obliges all companies selling timber and wood products within the EU market to prove the legal and sustainable sources of the raw material.
- allocating sufficient financial and human resources to the VPAs, and provide the pre-requisite transfer of technology, capacity building and know how, so that partner countries can rapidly implement the requirements of the partnership agreements and meet the expectations of the European marketplace.
- creating a democratic, transparent and open process that involves and empowers civil society, including local communities and Indigenous Peoples' Organisations in the negotiation and implementation of partnership agreements.

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### CONTACT PERSONS :

**Greenpeace** - Sebastien Risso, European Policy Director, Forest & Trade, Tel: + 32 2 274 19 01, E-mail: [sebastien.risso@diala.greenpeace.org](mailto:sebastien.risso@diala.greenpeace.org)

**FERN** - Saskia Ozinga, Coordinator, Tel: +44-1608-652895/+ 44-7810447401; E-mail : [saskia@fern.org](mailto:saskia@fern.org),

**Global Witness** – Jon Buckrell, Tel: + 44 207 561 6367, E-mail : [jbuckrell@globalwitness.org](mailto:jbuckrell@globalwitness.org).