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Constructing a Transnational Timber Legality Assurance Regime: Architecture, Accomplishments, Challenges

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Abstract

The emerging transnational timber legality assurance regime comprises a set of interrelated policy instruments, both public and private, aimed at controlling trade in illegally logged wood and wood products. The potentially productive interactions among these instruments in the emerging forestry regime create prospects for engendering learning, stimulating cross-fertilization, and enhancing accountability. In this article, we analyze the EU's Forest Law Enforcement Governance and Trade (FLEGT) initiative, interacting with public legal timber regulations and private legality verification and sustainability certification schemes, as the core of an emerging transnational experimentalist regime. An experimentalist regime of this type may provide a promising approach to addressing contentious transnational environmental issues like forest governance where there is no global hegemon to impose a single set of rules. However, experience with FLEGT implementation suggests that there are also a number of outstanding challenges to constructing an effective timber legality assurance regime, which if unresolved could undermine its promise. The argument proceeds in three steps, based on an extensive analysis of recent developments. First, we outline the architecture and promise of the emerging timber legality assurance regime. Then, we review key accomplishments to date. Finally, we examine the ongoing challenges facing this innovative regime as it moves forward, and consider how they might be overcome through the adoption of a more consistently experimentalist approach.

1. Introduction

The transnational timber legality assurance regime comprises a set of interrelated policy instruments, both public and private, aimed at promoting sustainable forestry and controlling trade in illegally logged wood products. The potentially productive interactions among these instruments in the emerging forestry regime create prospects for engendering learning through positive and negative demonstration effects, stimulating cross-fertilization, and enhancing accountability. In this article, we analyze the EU's Forest Law Enforcement Governance and Trade (FLEGT) initiative, interacting with public legal timber regulations and private legality verification and sustainability certification schemes, as the core of an emerging transnational

experimentalist regime. Building an experimentalist regime of this type may provide a promising approach to addressing contentious transnational environmental issues like forest governance where there is no global hegemon to impose a single set of rules (Overdevest and Zeitlin 2012). However, recent experience with FLEGT implementation suggests that there are also a number of outstanding challenges to constructing an effective timber legality assurance regime, which if unresolved could undermine its promise.

Defined in general terms, experimentalist governance is a recursive process of provisional goal-setting and revision based on learning from comparison of alternative approaches to advancing these goals in different contexts. Experimentalist governance regimes in their most developed form involve a multi-level architecture, whose four elements are linked in an iterative cycle. First, broad framework goals (such as 'sustainable forests' or 'legally harvested timber') and metrics for gauging their achievement are provisionally established by some combination of 'central' and 'local' units, in consultation with relevant stakeholders. Second, local units are given broad discretion to pursue these goals in their own way. These 'local' units can be public, private, or hybrid partnerships. But, third, as a condition of this autonomy, these units must report regularly on their performance and participate in a peer review in which their results are compared with those of others employing different means to the same ends. Where they are not making good progress against the agreed indicators, the local units are expected to show that they are taking appropriate corrective measures, informed by the experience of their peers. Finally, the goals, metrics, and decision-making procedures themselves are periodically revised by a widening circle of actors in response to the problems and possibilities revealed by the review process, and the cycle repeats. Experimentalist governance regimes are often underpinned by 'penalty default' mechanisms that induce reluctant parties to cooperate by threatening to impose sufficiently unattractive alternatives (Sabel and Zeitlin 2012; de Búrca et al. 2013-2014).

Experimentalist governance architectures of this type have become pervasively institutionalized across the European Union and the United States, covering a broad array of policy domains, including risk regulation, public service provision, and protection of fundamental rights (Sabel and Zeitlin 2012). Transnational experimentalist regimes likewise appear to be emerging across a number of major

issue-areas, such as disability rights, data privacy, food safety, and environmental sustainability (Sabel and Zeitlin 2011; de Búrca et al. 2013-2014).

Experimentalist governance architectures have a number of salient virtues. First, they accommodate diversity in adapting general goals to varied local contexts, rather than imposing uniform, one-size-fits all solutions. Second, they provide a mechanism for coordinated learning from local experimentation through disciplined comparison of different approaches to advancing broad common goals. Third, both the goals themselves and the means for achieving them are explicitly conceived as provisional and subject to revision in the light of experience, so that problems identified in one phase of implementation can be corrected in the next. For each of these reasons, such governance architectures have emerged as a widespread response to turbulent, polyarchic environments, where strategic uncertainty means that effective solutions to problems can only be determined in the course of pursuing them, while a multi-polar distribution of power means that no single hegemonic actor can impose her own preferred solution without taking into account the views of others.

Experimentalism appears particularly well-suited to transnational domains, where there is no overarching sovereign with authority to set common goals even in theory, and where the diversity of local conditions and practices makes adoption and enforcement of uniform fixed rules even less feasible than in domestic settings. Yet the very polyarchy and diversity that make experimentalist governance attractive under such conditions can also make it difficult to get a transnational regime off the ground. Thus, too many participants with sharply different perspectives may make it hard to reach an initial agreement on common framework goals. Conversely, a single powerful player may be able to veto other proposed solutions even if he cannot impose his own. Hence some kind of penalty default may be required to induce reluctant parties to cooperate in the construction of a transnational experimentalist regime.

One such penalty default is for a large jurisdiction like the EU (or the US) to impose unilateral regulations on transnational supply chains as a condition of market access. An obvious danger, however, is that such unilateral extension of experimentalist regulation will produce resentment and resistance by regulatory addressees in other countries, unless they are given a voice in shaping the standards they are expected to

meet. Such one-sided extension may also denature experimentalism itself by cutting out the feedback loop between local learning from rule application to rule revision. Hence some further mechanism may be required to unblock this impasse by opening up such unilateral regulatory initiatives to joint governance by affected parties in other countries.

Here the disciplines of the world trading system can prove helpful. World Trade Organization (WTO) rules permit member states to restrict imports in order to protect public health and the environment. But they also require states wishing to restrict imports on these grounds to ensure that their proposed measures are non-discriminatory and proportional to the intended goals, take account of relevant international standards, and consult with their trading partners to minimize the impact on affected third parties (Brack 2013). These disciplines, when they permit such extensions at all, can thus provide a potential mechanism for transforming unilateral regulatory initiatives by developed countries like the EU into a joint governance system with stakeholders from the developing world, if not a fully multilateral experimentalist regime (Sabel and Zeitlin 2011; Overdevest and Zeitlin 2012).

The body of this article is organized as follows. First, we outline the experimentalist architecture and promise of the emerging timber legality assurance regime. Then, we review key accomplishments to date, such as the negotiation of FLEGT voluntary partnership agreements (VPAs) between the EU and developing countries, strengthening of civil society participation in forest governance, reform of existing domestic legislation, introduction of formal transparency requirements, diffusion of prohibitions against imports of illegally logged wood, and stimulation of the use of private third-party verified supply-chain tracking systems under public oversight. Finally, we examine the ongoing challenges facing this innovative regime as it moves forward, notably the practical difficulties and delays experienced by FLEGT VPA countries in developing Timber Legality Assurance Systems (TLASs) capable of meeting the EU's licensing requirements, and consider how they might be overcome through the adoption of a more consistently experimentalist approach. More specifically, we argue that rather than imposing an 'all-or-nothing' bar on the issuance of FLEGT export licenses, the EU should support continuous learning from success and failure by monitoring and rewarding incremental performance improvements at both national and firm levels through graduated market access. The analysis is based

on an exhaustive review of recent policy documents, reports, academic studies, and presentations to international stakeholder fora, together with personal interviews with European Commission officials, NGOs, and staff from the European Forestry Institute (EFI) FLEGT Support Unit.

2. Architecture

Over the past decade, the European Union (EU) has created a novel architecture for transnational forest governance by advancing a combination of policy measures aimed at promoting sustainable forestry and discouraging trade in illegal wood and timber products. The ambitious vision behind this architecture, laid out originally in the 2003 Forest Law Enforcement Governance and Trade (FLEGT) Action Plan (European Commission 2003), includes: 1) negotiating bilateral agreements with producer countries to achieve broad stakeholder participation in building institutions to promote sustainable forestry and assure the export of 'legal' timber; 2) supporting private industry and civil society initiatives to promote sustainable forestry and timber legality in developing countries; and 3) introducing legislation that makes it an offense to place illegal timber on the EU market and obliges trading firms to demonstrate 'due diligence' that they have not done so.[1]

This mix of demand and supply measures, public and private initiatives, and coordination between developed and developing countries set the stage for the creation of a transnational forest governance regime with a number of innovative features. A number of these innovations concern the centerpiece of the legality regime, the bilateral Voluntary Partnership Agreements (VPAs) negotiated between the EU and timber-producing developing countries. Others concern the way this ensemble of policy measures may stimulate the stepwise construction of a transnational forest governance regime through interactions between its individual components (the FLEGT VPAs and the EU Timber Regulation), private certification and legality verification schemes, and public legal timber requirements in third countries. Together, they constitute the core of an emergent experimentalist governance architecture, based on extensive participation by civil society stakeholders in the establishment and revision of open-ended framework goals (VPAs aimed at promoting sustainable forestry and controlling illegal logging) and metrics for

assessing progress towards them (legality standards and indicators) through continuous monitoring and regular review of decentralized implementation by countries and firms, underpinned by a penalty default mechanism (the EU Timber Regulation).

2.1 The FLEGT Voluntary Partnership Agreements

At the heart of the FLEGT Action Plan are the VPAs. The FLEGT Action Plan invites developing countries to negotiate bilateral agreements with the EU in order to gain access to a 'green lane' for legal timber imports into the European market. The Action Plan sets out several basic requirements for partner countries to conclude such a VPA. First, partner countries commit to undertake a review of existing domestic law, including international agreements to which they are a party (such as CITES and the Convention on Biodiversity), in order to identify gaps and inconsistencies, whose outcome becomes the basis for defining legal timber. These reviews cover not only fiscal, forestry, and environmental regulation (including requirements for sustainable forest management plans in most VPA countries), but also labor law, worker health and safety, and the rights of indigenous communities. EU requirements for the completion of these legality reviews include broad participation by domestic civil society stakeholders (European Commission 2007), which as Bartley (forthcoming: 14) notes creates a domestic standard-setting arena conducive to 'the kind of long-term contentious politics that can lead to significant legal reform'. Once agreed, the legality definitions are converted into a grid or matrix, which includes principles of law, fulfillment criteria, and indicators for verifying compliance (European Commission 2007; Hobley and Buchy 2011). These legality matrices serve as auditable performance standards, making clear what evidence is required to demonstrate compliance with the FLEGT license, and are field-tested to ensure their implementability. Providing jointly agreed auditable standards allows public and private stakeholders to track progress, thereby rewarding good performance as well as enabling negative pressure to be brought to bear on poorer performers, an important experimentalist feature. The legality definitions themselves, moreover, are explicitly subject to periodic review and revision in light of new developments and experience with their implementation.

The FLEGT Action Plan recognizes, however, that opening governance spaces for stakeholder deliberation and political contestation is insufficient to establish a successful transnational legality assurance regime. The VPAs therefore include extensive monitoring systems and provisions for information pooling, review and revision, which can serve as experimentalist platforms for recursive learning and accountability as well as democratic participation. Thus, a second major requirement of the EU is that partner countries develop a national timber-tracking and licensing system, overseen by an independently accredited auditor, to ensure that domestic wood is legally harvested, transported, and exported.[2] In a number of countries, these Timber Legality Assurance Systems (TLASs) include separate independent monitors in addition to the auditor (FERN 2013a: 34-5). The role of the independent monitor in this context is "not just to find infractions as they occur, but to investigate the root causes of the infraction by analyzing information channeled from various sources in a systematic manner and to document governance problems" (DG DEVCO 2011: 28; Resource Extraction Monitoring 2010). In some cases, civil society groups are also directly involved in timber tracking, operating as formal monitoring agents expected to report on the system performance to the dispute resolution forums (FERN 2013a; Hasyim 2013; Hobley and Buchy 2011; Speechly and Van Helden 2012). In other cases they are expected to function as informal watchdogs, using government commitments to name and shame companies and public officials who violate the agreed legality standards. Generally, these monitoring systems take the form of national supply-chain traceability systems. These systems include plans for uploading information from harvest to transport to processing and export into a national timber-tracking database. This database is intended to allow for monitoring fraud (e.g. illegal labels) and collection of fees and taxes, as well as providing the information needed for production data reconciliation, thereby creating the basis for improved forest sector accountability (Gyimah 2012).

Third, the VPAs establish a Joint Implementation Committee (JIC) composed of officials from the European Commission (EC) and partner country governments, which is charged with resolving disputes; monitoring and reviewing implementation of the agreement; assessing its broader social, economic, and environmental impacts; and recommending any necessary changes, including further capacity-building measures. These JICs, which operate by consensus but may refer unresolved disputes

to arbitration, are constituted as deliberative problem-solving bodies responsible for sustaining the agreement through regular review of implementation experience, drawing on information provided by the independent auditor and monitor (where the latter exists), as well as by domestic civil society interlocutors, to detect and correct flaws in the system's operation.

Fourth, the VPAs are subject to renewal and revision every five years, creating institutionalized spaces for evaluation and adjustment. In return, the EU provides financial support for capacity building and implementation as well as facilitating access for FLEGT licensed timber to the European market. FLEGT has funneled significant EU and member state development aid and other major donor resources, directly aiding developing countries in developing national supply chain monitoring systems to implement jointly agreed legality standards (FAO, 2012).

Although FLEGT VPAs are becoming increasingly standardized, they differ from one another in several areas, reflecting both specificities of the local setting, and the sequence in which they were negotiated (for a comprehensive review, see FERN 2013a). Thus for example the Republic of Congo (RoC) is creating two separate legality grids, one for forest timber and the other for commercial plantations, while Cameroon, which is a major processor of imported wood, has led the way in developing a traceability and chain-of-custody system to prevent illegal timber from neighboring countries entering its supply chain. Although the TLAS in each VPA applies to all wood exports, not just those to the EU, countries vary in how they are integrating production for the domestic market into these systems in order to avoid creating a double standard of legality. Institutional arrangements for participation of civil society actors in implementing and monitoring the VPAs likewise vary cross-nationally, becoming progressively more extensive and specific in later agreements. Negotiating FLEGT VPAs has thus been a "learning-by-doing process", with transfer of knowledge and experience not only between countries, but also across regions (e.g. between Cameroon and Vietnam, which is a major processor of imported timber from the Mekong Basin). This adaptive learning and knowledge transfer process has been supported by the development of a rich and variegated expert community of research and policy institutions, consultancies, and NGOs.

The FLEGT Action Plan's emphasis on legality assurance is also innovative in the sense that rather than imposing 'northern' environmental and social production standards on the Global South, the EU's new regulatory approach respects territorial rights and WTO non-discrimination rules, while sidestepping politically sensitive sovereignty issues and increasing the likelihood of developing country participation in the emerging transnational forestry regime. The VPAs were explicitly designed to win the active cooperation of developing country stakeholders by promoting 'equitable and just solutions' for all concerned interests, engaging local communities and NGOs in forest sector governance reform, and providing capacity-building support for civil society and the private sector as well as for public fiscal, law enforcement, and forestry authorities (European Commission 2003). By involving a broad range of stakeholders in voluntarily negotiated agreements, FLEGT VPAs induce developing countries to engage in an ongoing dialogue about good forest governance—again sidestepping questions of unilateral imposition. In this way, as discussed in section 3 below, the legality regime creates a path to building a transnational consensus around what constitutes illegality and how to control it, encompassing both timber-producing countries and other large importers such as the US, Australia, and China.

2.2 The EU Timber Regulation and the US Lacey Act

A second major component of the emerging transnational legality assurance regime is the EU Timber Regulation (EU 995/2010), which prohibits operators from placing illegal wood or wood products on the EU market and obliges those who do so from whatever source (domestic or foreign) to exercise 'due diligence' that these were not illegally harvested.[3] Exercising due diligence includes securing key information describing the timber products (including country of harvest, species, details of the supplier and information on compliance with national legislation), undertaking a risk assessment, and creating and implementing a risk mitigation plan.

There are three possible pathways to demonstrating due diligence laid down by the EUTR. The first is possession of a valid FLEGT VPA license. Second, operators can develop their own due diligence system, with full risk assessment, risk mitigation, and regular evaluation procedures. Third, they can use a turnkey system developed by a third-party 'monitoring organization' (MO) recognized by the EC. The MOs'

functions are to create, evaluate, and improve systems for information gathering, risk assessment, and risk mitigation; verify their proper use by participating operators; and take corrective action in case of improper use.[4] The EUTR provisions for the recognition of MOs state that these will be subject to scrutiny by both the EC and the national competent authorities responsible for administering the EUTR in the member states. The MOs will be subject to audit by the EC at least every two years, and will experience additional scrutiny if the 'operational due diligence systems' they provide to operators fail to exclude illegal material.[5] In addition, civil society organizations are expected to play a watchdog role, as the EUTR requires competent authorities to investigate substantiated complaints by third parties.[6]

Although these monitoring organizations will not directly audit operators' suppliers as part of their 'turnkey' systems, they are expected to stimulate the use of private third-party verified supply-chain tracking systems. The EUTR has already spurred significant institutional development by private actors in creating legality verification and certification schemes (Donovan 2010). The implementing regulation specifically encourages the adoption of private certification and legality verification schemes as tools for achieving due diligence, as long as the systems are publicly available, meet the requirements of the legislation and include 'appropriate checks, such as field-visits, at regular intervals, no longer than 12 months' (European Commission Implementing Regulation No. 607/2012, Art. 4; cf., Hinrichs and Van Helden 2012; Donovan 2010). The EUTR thus places private certification and legality verification schemes under a measure of public oversight, thereby integrating them into the broader transnational legality assurance regime. But legal liability for effectively excluding illegal timber from the market remains with the operator, not the scheme.[7]

Like the FLEGT VPAs, the EUTR is specifically designed to be WTO-compliant, as it does not discriminate between domestic and imported wood, and imposes identical due diligence requirements on all operators. The EUTR is clearly intended to serve as a backstop to encourage countries to sign VPAs as a preferred option. In fact, the impetus for the passage of the EUTR regulation came when countries developing VPAs communicated to the EU that additional regulation was needed to prevent signatories from being undercut by trade diversion to competitors (Speechly and Van Helden 2012). However, the 2003 FLEGT Action Plan explicitly envisaged the eventual possibility of 'legislation to control imports of illegally harvested timber into

the EU…in the absence of effective multilateral progress' in this field (European Commission 2003: 1).

The EUTR can be understood as a penalty default underpinning the new legality regime. A penalty default, as discussed earlier, is a regulatory measure that is perceived to be so unattractive by the addressees that it induces them to cooperate in developing more palatable alternatives. In the case of illegal logging, the EUTR was seen as a way to address potentially regime-undermining issues of leakage and circumvention, because it threatens to impose substantial additional costs on firms from non-VPA countries, thereby enhancing the attractiveness of negotiating a partnership agreement with the EU. As Othman et al. (2012:110) report: 'For the first time there are potentially real consequences for not demonstrating legality when trading in timber.' As we will see in section 4, however, important questions remain about how effective the EUTR will prove as a penalty default.

The emergent transnational legality assurance regime is not limited to these new EU measures, but links up with those in other major consuming countries, notably the US. In 2008, in response to the momentum on illegal timber regulation spurred by the FLEGT Action Plan, the US expanded the scope of the Lacey Act, making it a criminal offense to import, trade, or otherwise handle any timber product harvested in violation of the laws applicable in the country of origin. Penalties, which can include imprisonment, fines, and confiscation of goods, depend on the level of intent of the violator, and the extent to which 'due care' was exercised to avoid foreseeable risks of trafficking in illegal products. To facilitate detection of illegal timber, importers are obliged to submit customs declarations with information on the scientific name of the species, the value and quantity of the shipment, and the country in which it was harvested (Brack and Buckrell 2011).

Despite the inspiration of the Lacey Act, the EUTR differs from it in important ways. In particular, the EUTR concept of due diligence requires operators to be proactive in risk assessment and risk mitigation. The EU's role in monitoring due diligence is also much stronger than in the Lacey Act, where operators' systems for supply-chain tracking come under scrutiny only if a case is brought by the Justice Department. The Lacey Act follows a traditional law enforcement approach based on inspection and the demonstration effect of high-profile prosecutions. Unlike the EUTR, Lacey does not

explicitly encourage external actors to provide due diligence systems, although participation in private certification schemes may be adduced as evidence of 'due care' in avoiding illegally logged wood, and some US NGOs such as the Forest Legality Alliance are entrepreneurially taking on this role by creating online declaration and risk assessment tools (**http://declaration.forestlegality.org/**; **http://risk.forestlegality.org/**). The EUTR is thus much richer than Lacey in terms of the institutional development it requires along the supply chain. Because it is likely to generate more performance-based and risk information, the EUTR contributes to a more sustained experimentalist architecture than the US Lacey Act, even if it we raise questions about its operation to date.

3. Accomplishments

3.1 FLEGT VPAs

As of May 2013, six countries have signed VPAs with the EU (Ghana, Cameroon, Republic of Congo, Central African Republic [CAR], Liberia, Indonesia), while negotiations are underway with eight more in Africa, Asia, and Latin America (Democratic Republic of Congo [DRC], Gabon, Côte d'Ivoire, Malaysia, Thailand, Vietnam, Guyana, Honduras).[8] Seven of these countries have completed participatory, multi-stakeholder reviews of forest law and have begun pilot-testing national timber-tracking systems. Several are in the process of appointing independent auditors and monitors for their TLASs.

A recent analysis of the impact of FLEGT VPAs by FERN, an EU-based NGO which has played a key role in supporting domestic civil society participation in their negotiation, found that all partner countries had developed an agreed set of legality definitions through stakeholder consultation, but that the agreements varied in the extent of legal reforms required (FERN 2013a). FERN identified two main types of reforms, those which required immediate action in order to implement the TLASs (e.g. authorizing independent auditing and monitoring, setting up traceability systems, requiring transparency) and those which would require longer-term action to complete

(integrating the domestic market into the licensing system, addressing tree tenure [Ghana] and customary rights [CAR, RoC]; see also Faure and Lesniewska 2012).

A number of observers and participants report quite favorably on the inclusion of civil society in the legality review process and how this has led to the incorporation of a broader set of issues, including workers' rights and other social regulations (Beeko and Arts 2010, Hobley and Buchy 2012, Lartey et al. 2012; Othman et al. 2012; Ozinga 2012). This civil society influence was at times hard fought. For example, in Ghana, the legality review process initially sidelined civil society groups (Ansah 2010). In response, local and European NGOs coordinated an effective accountability campaign, threatening legal action, using the media, and pointing to the EU's own statements about the importance of stakeholder participation, which successfully pressured the Ghanaian government into opening up the process to greater civil society input. Increased NGO participation in turn broadened the governance discussion from timber to socio-economic issues, leading to the adoption of new rules focusing on multiple uses, benefits, and impacts of forests. FERN reports that civil society now considers that 'the Ghanaian VPA provides a reasonable platform for strengthening community rights, sustaining biodiversity, supporting rural livelihoods, fighting official corruption, and fulfilling national revenue objectives' (FERN, 2013a: 15; cf. Beeko and Arts 2010: 221, 224; Lartey et al. 2012: 40-41).

Similarly, both in Cameroon and RoC, where there was no history of cooperation with civil society, the government tried to hand pick which groups would participate, but after protests grassroots NGOs were allowed into the process. In Cameroon, as a result, the scope of legality definitions was extended to incorporate social issues, including local community rights and negative effects of logging on their livelihoods (Hobley and Buchy 2011: 60, 67). The civil society platform in the RoC won passage of a new Indigenous People's Law, which 'ensure(s) access to education, health and social services for indigenous people' as well as 'access and benefit-sharing mechanisms, recognizes indigenous peoples' cultural, spiritual and traditional lands, and has clear guidelines on socio-economic development projects' (FERN 2013a:30). In Liberia, there has been a progressive revision of forest law, backed by civil society groups, legalizing small-scale logging practices, thus providing a livelihood for small operators whose activities had been criminalized after the state rescinded their

customary forest rights and transferred them to commercial logging operations (Ozinga 2012; cf. Cerutti and Tacconi 2008).

A second key accomplishment of the VPAs reported by observers and participants is a significant improvement in the strength, capacity, and coherence of domestic civil society and its relationships with European NGOs (Hobley and Buchy 2011:9). According to FERN (2013a: 38), local NGOs have gained skill in 'advocacy, lobbying and strategic position' by participating in VPA negotiations and working with European NGO support groups. Hobley and Buchy (2011: 9) similarly report that the VPA processes have led to 'increase in knowledge of participants, improved capabilities to negotiate, a thickening of alliances and network[s] from local to national levels.' In a number of countries, such as Cameroon and RoC, participation in the FLEGT VPAs has spawned the creation of new independent civil society platforms, whose influence in the negotiation process local NGOs describe as 'unprecedented' (FERN 2013a: 23).

At the same time, however, other observers draw attention to the limited representation of forest communities within civil society platforms. In Ghana, for example, Lartey et al. (2012: 40-41) write that 'civil society representation has been erroneously skewed toward NGOs and in effect other important interest groups such as forest communities have been swallowed up during the process.' Similarly, Mensah (2012) argues that the NGOs who had the capacity to participate were Accra-based, leaving rural communities and other less formally organized groups out of the negotiation process.

Another key accomplishment of FLEGT is improvements in transparency, which are required by all VPAs (Faure and Lesniewska 2012). In Cameroon, Liberia, CAR, Indonesia, and DRC, the VPAs include a transparency annex listing information which should be made available, including pre-qualification and bid evaluation reports; logging contracts with information on the rights and responsibilities of contractors, management plans and social agreements with affected communities; production and revenue reports; and compliance monitoring reports, documenting incidents and corrective actions triggered by the chain-of-custody system. In Indonesia and Liberia, a freedom of information law was also established during the VPA negotiations (FERN 2013a: 32).[9]

FLEGT VPAs have generated four new types of platform for monitoring and pooling of information about the performance of the legality regime. First, as discussed in section 2.2 above, all FLEGT partner countries have agreed to establish Joint Implementation Committees, which meet twice per year to review the independent auditor's reports and take account of information provided by civil society interlocutors, as well to address specific complaints and disputes. Some countries, such as Cameroon, CAR and RoC have allowed civil society representatives to sit in on these meetings as observers (FERN 2013a:33). Second, each country has agreed to contract with an independent auditor, appointed by the government but approved by the JIC, who will check the operation of the TLAS, by conducting periodic audits, expected to occur 2-3 times a year. In some cases, additional monitoring initiatives have been incorporated into the TLAS. For instance, Cameroon, RoC and Indonesia all include provisions for independent monitoring of supply chains via third-party auditing, while Liberia, Cameroon, RoC and Indonesia also provide for separate civil society monitoring (FERN 2013a; Hobley and Buchy 2011:46-7). Third, most countries have created informal committees, comprising civil society, industry and government officials, which will meet to review audit reports and prepare input for the JIC meetings. In Liberia the National Multi-Stakeholder Monitoring Committee performs this function, while Ghana has established a National Multi-Stakeholder Implementation Committee, CAR a National Implementation Committee, and RoC a National Secretariat (FERN 2013a: 33).

Finally self-mandated monitoring groups are also forming. VPAs in Cameroon, CAR, Indonesia, Liberia and RoC all mention that self-mandated civil society or community monitoring could play an important role in the operation of the TLASs. Pilot tests with self-mandated monitoring by civil society groups are underway in Liberia and Cameroon and are expected in RoC and CAR (FERN 2013a; Young et al. 2012). Although these efforts are formally occurring outside the scope of the VPAs, FERN believes that 'there is a real possibility in each country that the "self-mandated" nature will progress into some form of agreement with the government to ensure (i) access to concessions and other facilities; (ii) a validation and reporting mechanisms so the reports are professional, legally robust, and acknowledged (by the JIC as well as the independent auditors); and, above all, (iii) acted upon to make appropriate changes at relevant level to the VPA' (FERN 2013a: 51).

The Indonesian VPA stands out in terms of its extensive provisions for civil society monitoring. Indonesia has two types of independent monitoring. First, a multi-stakeholder monitoring group will oversee the functioning of the Indonesian TLAS, review findings of the independent auditor, and provide suggestions for improvement, similar to the other multi-stakeholder fora described above which convene in preparation for JIC meetings (European Forest Institute 2011). Second, the Indonesian VPA creates the opportunity for extensive civil society participation in monitoring (Speechly and van Helden 2012). The *Jarningan Pemantaue Independent Kehutanan* (JPIK) is a civil society monitoring network organized in response to the VPA. Founded in 2009 by 29 Indonesian NGOs and indigenous groups representing 21 provinces, JPIK has since expanded to 41 NGOs and indigenous groups operating in 24 provinces, and has developed its own code of conduct and monitoring standards (Hasyim, 2013). The network is training NGOs and indigenous peoples to monitor implementation of the supply-chain tracking required by the Indonesian VPA. Its members are thus preparing to provide civil society input to official accreditation bodies, the independent auditor, and the JIC about the quality of implementation in legal timber verification. The network's role—as outlined in the VPA—is also to propose revisions aimed at improving the system's operation based on its monitoring activities. Given these official responsibilities, JPIK sees itself as critical to ensuring the credibility of the national legality verification system (SVLK, *Sistem Verifikasi Legalitas Kayu*). In fact, they have already questioned the allocation of SVLK certificates in the Indonesian TLAS.[10]

In all VPA countries, the EU has encouraged domestic civil society organizations to send it copies of complaints raised through these formal and informal monitoring bodies, and follows up with partner governments on the issues raised in the JIC meetings. In fact, two civil society challenges to the integrity of the VPAs have been addressed in this manner to date. Thus civil society organizations raised concerns about Ghana's issuance of salvage permits and Liberia's issuance of extensive private-use permits (PUPs) for forest exploitation, both of which were subsequently tackled with varying degrees of success through EU pressure on partner governments and ongoing publicity campaigns by international NGOs (FERN 2013a: 34; Beeko and Arts 2010: 225; Global Witness 2013). [11]

3.2 EUTR and US Lacey

The EUTR and the US Lacey Act together appear to have spurred VPA adoption, with a significant uptick in countries entering negotiations with the EU during the 2008-2010 period when these measures were being debated and enacted. However, both have been slow to take effect. First, the EU provided a two-and-a-half year period (October 2010-March 2013) to allow operators sufficient time to prepare for the regulation. In the interim, the EU promised to adopt more detailed rules clarifying requirements for implementing key aspects of the EUTR but these were not put in place until mid-2012. Consequently, member states, whose responsibility it is to monitor compliance with the EUTR, have been slow to create institutions to ensure compliance. Thus a survey of member state competent authorities, conducted in October 2012, found that they were not yet ready to implement the regulation (Saunders 2013). A majority of countries reported that they needed additional expertise to meet EUTR responsibilities, including in controlling forest product importation and trade and risk assessment. Just under half of those contacted needed additional expertise in auditing and tropical forestry. Of 20 member states contacted, 18 reported they had no protocol in place for evaluating operators' due diligence systems, while 17 had not yet established criteria for 'substantiation' of concerns about companies' due diligence systems. A majority also reported the need for more coordination between member states in building the capacity of competent authorities and developing risk assessment tools, document authenticity validation processes, and inter-state communication procedures. These findings described member-state readiness just six months before the EUTR was set to become operational, although recent activity suggests progress in preparing for its implementation since then.[12] Furthermore, while recognized monitoring organizations are expected to offer important services to operators subject to the EUTR, none have been approved by the EU to date, although as many as fifteen applicants are under evaluation.

The Lacey Act has experienced similar problems and delays in implementation. The US Department of Agriculture Information Service (APHIS), the agency responsible for processing declaration forms, reports that it lacks the funds to develop software to enter the information into a database, and to conduct sensitivity analyses which might help it identify high-risk imports. The Justice Department has pursued two cases under Lacey, both against Gibson Guitars, which were settled successfully in August

2012. But these cases relied heavily on tip-offs from competitors with unusual inside knowledge, while the Gibson prosecutions provoked a hostile hearing in the US House of Representatives, which threatened to enact new legislation gutting the enforcement provisions of the Act (Bewley 2012). These developments raise questions about the law enforcement model for Lacey, which compared to FLEGT has fewer institutional means for ensuring risk assessment and detection.

3.3 Stimulating Public and Private Action

Even if their own penalty default measures are inadequately resourced, the EU and US have been 'gospelling' the virtues of legality verification models both jointly and separately, encouraging other countries to create similar regulations excluding illegal imports in order to buttress the broader timber legality regime (personal interview, EFI FLEGT support staff 1). These efforts have achieved some significant successes. Most notably, Australia adopted its own Illegal Logging Prohibition Act, which entered into force in November 2012, making it a criminal offense to place illegally sourced timber on the national market. Like the EUTR, this law requires Australian importers to exercise due diligence in avoiding illegally sourced timber. Currently, the government is developing regulations that will detail these requirements, which are expected to be in place by November 2014.[13] China, the world's largest wood importer and exporter, has accepted the principle of combating illegal logging, and has signed bilateral cooperation agreements and memoranda of understanding on the subject with a number of countries, including the US, the EU, and Australia (Overdevest and Zeitlin 2012: 22). To improve its image and comply with international requirements, China has created its own national forest certification scheme, which is now recognized by the PEFC, and is also developing its own legality verification system, which will including chain-of-custody tracking within the country (Bartley forthcoming; Sun and Canby 2010; Cashore and Stone 2013). In addition, the Trans-Pacific Trade Partnership currently being negotiated between the US and other Pacific rim countries (including Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) incorporates provisions for developing Lacey-style legislation that would prohibit illegal timber imports (Congressional Research Service 2013).

The EU has also been seeking to reduce trade in illegally logged wood through cooperation with private industry federations. The Timber Trade Action Plan (TTAP), introduced in 2005, trains companies to verify the legality of their tropical timber supplies and helps them to establish timber tracking systems. Participating timber trade federations and their members identify specific high-risk supply chains anchored in high-risk countries, and conduct a gap assessment in order to establish what producers in those countries would need to become 'verified' legal. Then an action plan is developed to help actors within that supply chain become legally verified, a process which entails developing a third-party audited chain-of-custody system (**http://www.tft-forests.org/ttap/pages/?p=6215**). The European Timber Trade Federation (ETTF), which participates in the TTAP, is developing a generic EUTR-compliant due diligence system for adaptation by its national affiliates, several of which have themselves applied to become recognized monitoring organizations. The ETTF has also employed the consultancy Proforest to assess the compliance with the EUTR of various private forest certification and legality verification schemes on behalf of its members. The Proforest study showed that none of the existing private schemes were fully compatible with the EUTR and FLEGT VPAs, though there were clear differences between them. Many of these schemes, including both the FSC and PEFC, are currently revising their standards and indicators to meet the EU's legality verification requirements (Butler 2013; Sloth 2013; Proforest 2012; Donovan 2010).

4. Challenges

The biggest immediate challenge to the emerging legality regime concerns the difficulties and delays experienced by VPA countries in developing TLASs capable of reliably meeting the EU's standards for delivery of FLEGT licensed timber. The EUTR came into effect in March 2013, but no country has yet been permitted to deliver FLEGT export licenses. Indonesia, which has been developing its own national TLAS, the SVLK, for more than ten years, has pilot-tested shipments of verified timber in collaboration with EU member state authorities. But as noted earlier, questions have been raised by JPIK NGOs about the SVLK's effectiveness in excluding illegally harvested timber from the supply chain, and the system is currently undergoing joint evaluation for FLEGT licensing by the EU and the Indonesian authorities. Ghana, which signed the first VPA in 2008, hopes to be able to deliver

FLEGT licensed timber by the end of 2013, though it is unclear whether the country will reach this target. Liberia, which had already developed a timber-tracking and chain-of-custody system with international assistance as part of the process of lifting UN sanctions on wood exports in 2006, is also reported by knowledgeable observers to be well-positioned to meet FLEGT requirements. TLAS development in the other African VPA signatory countries, Cameroon, RoC, and CAR (where the government has been recently overthrown by a rebel coup) continues to proceed slowly, and issuing of FLEGT export licenses is not expected for several years (personal interview, FLEGT EFI support staff 3).

The proximate cause of these delays in the African VPA countries was the failure of the initial design of the TLAS systems by a third-party contractor. In each of the signatory countries, a private international supply-chain management company was hired to build a pilot for the national TLAS. This software platform was intended to provide an electronic barcode-based system for tracking timber (including geographic location and timber metrics, such as species, volume, and size) from the forest to the point of export. Field personnel entered the information into hand-held computers and wirelessly transmitted it to a central database. The central databases were configured to generate reports and perform data reconciliation along the supply chain, which if nonconformities were found could lead to 'management decisions' about whether to approve the timber as legal. In addition to timber flows, the database also captured information on financial flows (for Ghana, see Gyimah 2012). Unfortunately, these systems experienced a series of problems including overcentralization, design inflexibility, and excessive costs, as well as glitches with internet access in remote locations and lack of training for local forestry field personnel. Foresters, smaller private businesses, and civil society groups were insufficiently involved in their design and pilot testing, while the contractor expressed frustration in setting up traceability systems in contexts where the public actors were not as cooperative as their typical industrial clients. Due to these failures, the original contractor has not been retained to complete the national systems in any of the pilot countries. Instead, tendering for new systems to be built by a variety of providers is underway, with emphasis on achieving lower-cost and more implementable solutions through better integration of the players on the ground, including both private firms and public authorities. The resulting hitch is expected to delay operational timber tracking in

most VPA countries for two to three years while new systems are developed and then undergo a lengthy evaluation process between the partner government and the EU (de Francqueville 2013; Kana and Fomete 2013; personal interview FLEGT EFI support staff 2&3).

Behind these teething troubles in developing working TLASs lie deeper and more difficult challenges. In many developing countries, established forest governance arrangements are based on entrenched patronage relationships among local political and economic actors which give rise to widespread but sometimes hard-to-detect forms of corruption. Such corruption includes informal payments and kickbacks, as well as legally questionable allocation of logging permits and concessions. Cerutti et al. (2008) for instance estimate informal payments to 'officials at over 9 million Euros a year' in Cameroon, where bribes are required to receive legal documents (cf. Carodenuto 2012). Timber concessions in Ghana and elsewhere are allocated in return for political patronage (Lund et al. 2012), while 'shadow permitting' outside legal rules remains an endemic problem in African VPA countries such as DRC, Cameroon, Liberia, and Ghana (Global Witness 2013). In many developing countries, local officials, customs officers, police and judiciary are routinely bribed to overlook illegalities, while smuggling networks in illegal timber can be better paid and resourced than law enforcement and border control agencies (Elliot 2013; Benneker 2012). Often members of forest communities themselves benefit from such corruption through informal payments from illegal chainsaw loggers who are 'integrated into criminal networks through patron-client relationships' and employment by black market operators (Lund et al. 2012; Elliott 2013: 9).

In principle, the FLEGT VPAs provide powerful tools which can be used by civil society and other reform-oriented actors to expose such corruption and challenge entrenched patronage relations in the forestry sector. These include the transparency commitments described in section 3.1 above, which oblige governments to make public extensive information on the allocation of concessions and permits, as well as the arrangements for independent auditing, civil society monitoring, and joint review of implementation. The traceability and data reconciliation procedures of the TLASs, with their focus on 'critical control points' where illegal timber can enter the supply chain, can themselves be expected to make routine forms of corruption more risky and difficult to conceal (personal interview FLEGT EFI support staff 2 & 3; Kana and

Fomete 2013; FERN 2013a). But the effectiveness of these tools in exposing and combating corruption depends in turn on the establishment of functioning TLASs capable of delivering FLEGT licenses, whose operations can be audited, monitored, reviewed, and revised. Without the ongoing performance information generated by operational supply-chain tracking systems, moreover, the improvements in forest governance triggered by negotiation of the FLEGT VPAs are unlikely to be sustained in the longer term.

Operational TLASs could also contribute to disrupting established patronage networks and expanding support for forest governance reform by enhancing the profitability of participating producers through improvements in supply-chain management. Many developed country retailers are realizing the gains that can come from the introduction of effective supply-chain tracking systems (Dauvergne and Lister 2012). In forestry, the introduction of barcode systems to track timber from forest to mill to export required by TLASs also provides information useful for monitoring production flows and controlling inventories, capacities necessary in turn for moving away from cut-and-run to sustainable yield management (Gyimah 2012; Sandjon 2013). According to a recent report by Global Wood (2013), moreover, 'the EU buys less (sic) logs and more added-value forest products than most other large consuming markets and therefore remains central to efforts by tropical countries to move up the value chain.'

Conversely, however, there is a serious risk that the continuing failure to deliver FLEGT licenses, coupled with the onset of the EUTR legality verification requirements, will lead to an unraveling of the coalitions supporting the VPAs in a number of countries (cf. Cashore and Stone 2013). As discussed above, the EUTR and the VPAs were designed to be complementary, with the former serving as a penalty default inducing countries to negotiate and implement the latter in order to obtain a less onerous 'green lane' for FLEGT licensed timber into the European market. But with the delivery of FLEGT licenses still some years off in many VPA countries, the incentives may flow in the reverse direction, inducing local producers and European buyers to pursue private solutions such as certification to meet the due diligence requirements of the EUTR, while draining off support for the implementation of the national timber legality assurance regime. Such developments are likely to penalize domestic forestry firms which participated actively in the VPA multi-stakeholder processes for creating agreed legality definitions and verification

matrices in the expectation that these would lead to a preferential flow of FLEGT licensed timber to the EU, rather than investing in private international certification (Bitar 2013; Cardenuto 2012). And they may drive smaller local producers who cannot afford the costs of private certification to direct their sales towards less exigent even if also less remunerative Asian markets.

Part of the problem here, ironically, is the EU's understandable insistence on defining FLEGT licenses as a 'gold standard' guarantee of timber legality. This in turn creates an 'all-or-nothing' bar, which does not reward VPA countries for incremental improvements in forest governance – such as those documented in section 3.1 above – until they are able to implement a fully operational and robustly functioning TLAS. From an experimentalist perspective, however, it is crucial for the timber legality regime to support step-by-step learning from failures as well as successes, since effective legality assurance systems in complex supply chains cannot easily be 'designed right' from scratch. Similarly, entrenched governance problems like corruption and clientelism cannot be eradicated overnight, but require instead a long-term commitment to incremental reform. While the international focus on timber legality assurance has proved beneficial by sidestepping thorny controversies about sovereignty and engaging developing countries in joint efforts to improve forest governance, as we suggest in section 2, it could become a barrier to sustainable reform if the emergent legality regime does not recognize and reward incremental progress at both national and company level.

Analogous problems were encountered in the construction of private forest certification schemes in developing countries. The productive response in that case was to provide credit to firms for incremental advances towards sustainable management standards. Thus large buyers such as IKEA and NGOs like the Tropical Forest Trust and the WWF Global Forest and Trade Network, created stepwise pathways to certification. In return for achieving specific steps towards certification, developing country producers receive a measure of market access, whose level increases the closer they come to full certification. The conformance assessments underlying the private certification model likewise reject an 'all-or-nothing' bar, as auditors can certify operators who meet many but not all elements of the standard, with continuing status typically dependent on subsequent corrective action. This model creates opportunities and incentives for incremental improvement which can

help producers to progress along a realistic path towards sustainable forest management (Master et al. 2010; Moore et al. 2012). A study by the ISEAL Alliance, which reviewed stepwise approaches to scaling up private certification of voluntary standards across a number of sectors including forestry concluded that the most promising schemes were those which linked graduated market access incentives to structured guidance on key improvement goals, capacity-building assistance, and ongoing performance tracking and assessment (ISEAL Alliance 2011: 24-5).

Similarly, transnational regulations in other domains, such as food safety regulation, depend on a continuous improvement model rather than an 'all-or-nothing' approach. In EU food safety regulation, whose due diligence and traceability requirements for operators placing goods on the market anticipated those of the EUTR, the inspection regime for imported products is carefully calibrated to the capacity—which it seeks to improve over time—of national administrations in exporting countries themselves to detect and prevent health risks. Thus the European Food and Veterinary Office (FVO) regularly assesses the adequacy of national food safety systems in exporting countries, makes detailed recommendations on necessary changes, and provides training and technical assistance in meeting EU regulations. The level of inspection at the border is dependent on the current assessment of food safety regulation in the exporting country, which can vary across product types (e.g. between shrimp and chicken in Thailand) (Vos and Weimer forthcoming; Rakpong 2011).

A more consistently experimentalist approach to timber legality assurance would thus emphasize monitoring and rewarding performance improvements at both national and firm level, rather than imposing an 'all-or-nothing' bar on the issuing of FLEGT licenses. Instead of a single 'green lane' for FLEGT licensed timber, the level of scrutiny by EU competent authorities could depend on assessment of national progress towards VPA implementation, including the functioning of the TLAS, analogously to import inspections in food safety. Companies in VPA countries with good records of compliance with national legality standards could also receive lower levels of scrutiny, while imports from persistent violators could be barred altogether until there was evidence of sustained improvement. Although both national and firm-level supply-chain oversight mechanisms are ultimately required for the functioning of a robust TLAS, it is perhaps no accident that the first VPA country to deliver FLEGT licensed timber is likely to be Indonesia, whose system is built on third-party

certification and verification of legality compliance by individual companies, thereby creating more differentiated opportunities and incentives for improvement.

5. Conclusions

This article has highlighted the key architectural elements and accomplishments of the emerging timber legality assurance regime from an experimentalist perspective. Based on an in-depth review of recent developments, we show that there is broad agreement among informed observers that FLEGT VPAs have resulted in significant improvements in forest governance in signatory countries. Most notably, VPA negotiations have substantially enhanced the capacity of domestic civil society organizations to participate in forest governance, initiated far-reaching processes of legal reform, introduced extensive transparency requirements, and created an impressive array of institutional mechanisms for auditing, monitoring and reviewing the operations of the national timber legality assurance regime.

At the same time, however, we argue that the limited success to date of creating operational TLASs capable of meeting the EU's requirements for the issuing of FLEGT export licenses represents a serious threat to the sustainability of these governance improvements. As the due diligence requirements of the EUTR kick in without VPA countries being able to issue FLEGT licenses as a 'green lane' into the European market, those producers best prepared to demonstrate legality through private certification may disinvest in the process, causing the domestic coalition behind the agreements to collapse. At that point governments in a number of VPA countries may be only too glad to abandon their commitment to politically and administratively difficult reforms in forest governance.

The proximate reasons for these delays in the implementation of the FLEGT VPAs stem from the practical challenges of designing and operating high-tech timber supply-chain tracking systems under developing country conditions. But the deeper reasons are rooted in the social and political challenges of overcoming deeply entrenched patterns of corruption and patronage relations in domestic forest governance. We argue that the provisions of the VPAs for transparency, traceability, auditing, monitoring, and review of the timber legality assurance regime provide potentially powerful tools which civil society organizations can use to expose corruption and challenge established patronage relations. But these tools can only

work effectively in the context of up-and-running TLASs whose operations can be monitored, reviewed and revised on the basis of performance information generated through ongoing supply-chain tracking.

Here, however, we argue that the EU's insistence on defining FLEGT licenses as a 'gold standard' of timber legality may prove a barrier to further progress by failing to reward VPA countries for incremental improvements in forest governance until they are able to establish a robustly functioning TLAS. Given the intrinsic difficulties of designing effective legality assurance systems in transnational supply chains, and the experience in analogous cases such as food safety and private forest certification, an experimentalist perspective therefore suggests that rather than imposing an 'all-or-nothing' bar for the issuance of FLEGT licenses, the EU would do better support continuous learning from success and failure by monitoring and rewarding incremental performance improvements at both national and firm levels through graduated market access.

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References

Ansah B.K., 2010 A civil society counter-brief on the Republic of Ghana-EU VPA. http://www.FERN.org/sites/FERN.org/files/Ghana%20VPA%20counter%20brief_0.pdf (accessed 6/3/13).

Bartley, T. forthcoming. Legality, sustainability and the future of transnational forest governance. Regulation & Governance.

Beeko, C., Arts, B., 2010. The EU-Ghana VPA: a comprehensive policy analysis of its design. International Forestry Review 12, 221 - 230.

Benneker, C., 2012. Forest governance in Democratic Republic of Congo: artisanal logging, in: Broekhoven, G., Savenije, H., and von Scheliha, S. (Eds.). Moving Forward with Forest Governance. Tropenbos International. Wageningen, the Netherlands, pp. 29-35.

Bewley, E., 2012. House panel considers Lacey Act changes. USA Today. May 8, 2012. http://usatoday30.usatoday.com/news/washington/story/2012-05-08/lacey-act-house/54845078/1 (accessed 6/13/13).

Bitar, G., 2013. What different approaches are being taken to the LAS? Presented at Illegal Logging Update and Stakeholder Consultation meeting, no. 21, February 7-8, 2013, Chatham House, London, UK.

Brack, D., 2008. Controlling illegal logging using public procurement policy. Briefing Paper, Chatham House, London.

Brack D., 2013. Combating illegal logging: interaction with WTO rules. Briefing Paper, Chatham House, London.

Brack D., Buckrell J., 2011. Controlling illegal logging: consumer-country measures. Briefing Paper, Chatham House, London.

Butler, R., 2013. Certification & Legality Verification. Presented at 'Preparing for EUTR Implementation: Workshop One'. http://www.illegal-logging.info/item_single.php?it_id=593&it=presentation (accessed 6/13/13).

Carodenuto, S., 2012. Private sector motivation for and perceived barriers to VPA implementation in Cameroon, in: FAO. Compendium on Experiences From the Voluntary Partnership Agreements (VPAs) Process in West and Central African Countries. 23-25 October 2012, FAO, Accra, Ghana, pp. 10-20.

Cashore B., Stone 2013. Can legality verification promote "good forest governance?": Lessons from Indonesia, Malaysia, and Brazil. Presented at the International Studies Association Annual Meeting, April, 2013. San Francisco.

Cerutti, P., Tacconi, L., 2008. Forests, illegality and livelihoods: the case of Cameroon. Society & Natural Resources, 21, 845-853.

Cerutti, P., Nasi, R., Tacconi, L., 2008. Sustainable forest management in Cameroon needs more than approved forest management plans. Ecology and Society 13, art. 36.

Congressional Research Service, 2013. The Trans-Pacific Partnership negotiations and issues for Congress. April 15, 2013, CRS Report for Congress R42694, Washington, DC.

Dauvergne, P., Lister, J., 2012. Eco-business: A Big-Brand Takeover of Sustainability. MIT Press, Cambridge, MA.

de Búrca, G., Keohane, R.O., Sabel, C., 2013-2014. New modes of pluralist global governance. NYU Journal of International Law and Politics, forthcoming.

de Francqueville, T. 2013. VPA legality assurance systems: emerging challenges in implementation. Presented at Illegal Logging Update and Stakeholder Consultation

meeting, no. 21, February 7-8, 2013, Chatham House, London, UK. http://www.illegal-logging.info/uploads/Francqueville080213.pdf (accessed 6/3/13).

DG DEVCO, European Commission (2011) *FLEGT 6th Annual Coordination Meeting 12-14 January Final Report*, http://www.euflegt.efi.int/portal/documents/?did=240.

Donovan, R.Z., 2010. Private sector forest legality initiatives as a complement to public action. March 2012. Rainforest Alliance. Richmond, VT (accessed 6/2/13). http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Frainforest-alliance.org%2Fsites%2Fdefault%2Ffiles%2Fpublication%2Fpdf%2Fforest_products_legality_by_r_donovan_march_2010.pdf&ei=NMa4UYqoK4LU9ASt54HgBg&usg=AFQjCNGA06tJvSMkuTeLL8Xz_MvpTqHV0A&sig2=TSmOycuTJg7L1deUQ04o3g&bvm=bv.47810305,d.eWU

Elliott, L., 2012. Transnational organized crime: fighting transnational environmental crime. Journal of International Affairs 66, 87-104.

European Commission, 2003. Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan. COM (2003) 251 final, Brussels, 21 May. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003DC0251:EN:HTML (accessed 6/13/13).

European Commission, 2007. What is Legal Timber. FLEGT Briefing Note No. 2. http://ec.europa.eu/development/icenter/repository/B2_Flegt_BR2_2007final_en.pdf (accessed 6/13/13).

European Commission, 2012. Implementing Regulation No. 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and

nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

European Forest Institute 2011. FLEGT voluntary partnership agreement between Indonesia and the European Union. May, Briefing Note, EFI, Jakarta, Indonesia. http://www.efi.int/files/attachments/euflegt/briefing_note_indonesia__en_.pdf (accessed 6/15/13).

Faure N., Lesniewska, F., 2012. Implementing VPAs: outlining approaches for civil society's participation in VPA-related law reforms, in: FAO. Compendium on Experiences From the Voluntary Partnership Agreements (VPAs) Process in West and Central African Countries. 23-25 October 2012, FAO, Accra, Ghana, pp. 82-96.

FERN, 2013a. Improving forest governance: a comparison of FLEGT VPAs and their impact. February 2013, FERN, Brussels.

FERN, 2013b, Forest Watch Special – VPA Update. May 2013. FERN, Brussels. http://www.FERN.org/sites/FERN.org/files/VPA%20Update%20May%202013_0.pdf (accessed 6/13/13).

FAO, 2012. Compendium on experiences from the voluntary partnership agreements (VPAs) process in West and Central African countries. 23-25 October 2012. FAO, Accra, Ghana.

Global Witness, 2013. Logging in the shadows: how vested interests abuse shadow permits to evade forest sector reforms. April, Global Witness, London, UK.

Global Wood, 2013. Report from Europe. May 13. http://www.globalwood.org/market/timber_prices_2013/aaw20130502e.htm (accessed 6/17/13).

Gyimah, R., 2012. In search of a workable wood tracking systems for Ghana's FLEGT/VPA: informed lessons from a pilot project, in: FAO. Compendium on Experiences From the Voluntary Partnership Agreements (VPAs) Process in West and Central African Countries. 23-25 October 2012, FAO, Accra, Ghana, pp. 21-37.

Hasyim, Z. 2013. Experiences from Indonesia: the independent forest monitoring network. Presented at Illegal Logging Update and Stakeholder Consultation meeting Number 21, February 7-8, 2013, Chatham House, London, UK. http://www.illegal-logging.info/item_single.php?it_id=606&it=presentation (accessed 6/12/13).

Hinrichs A., Van Helden, F., 2012. Can the FLEGT action plan and voluntary forest certification reinforce each other? in: Broekhoven, G., Savenije, H., and von Scheliha, S. (Eds.). Moving Forward with Forest Governance. Tropenbos International. Wageningen, the Netherlands, pp. 186-193.

Hobley, M., Buchy, M., 2011. FLEGT and poverty alleviation: the role of VPAs. European Forestry Institute. Joenssu, Finland.

ISEAL Alliance, 2011. Stepwise approaches as a strategy for scaling up. Background report – April 2011. ISEAL Alliance. London, UK. http://www.isealalliance.org/sites/default/files/Stepwise_Approaches_Background_Report_April2011.pdf (accessed 9/2/13).

Kana, R., Fomete, T., 2013. 6th forum sur la gouvernance forestière en Afrique. April 2-3. Yaoundé, Cameroon. http://www.illegal-logging.info/uploads/IDLConference2013.pdf (accessed 6/15/13).

Kearney, M., 2013. Transcription of the presentation from UK competent authority for the EU Timber Regulation, in: Kana, R., Fomete, T., (Eds.) 6th forum sur la

gouvernance forestière en Afrique. April 2-3. Yaoundé, Cameroon. http://www.illegal-logging.info/uploads/IDLConference2013.pdf (accessed 6/15/13).

Lartely, E., Kwesi, T., Kwesi, E., Lartey, H., 2012. Forest law, enforcement, governance and trade processes in Ghana: strengthening the weak elements of community participation, in: FAO. Compendium on Experiences From the Voluntary Partnership Agreements (VPAs) Process in West and Central African Countries. 23-25 October 2012, FAO, Accra, Ghana, pp. 38-49.

Lund, J.F., Carlsen, K., Hansen, C.P., Treue, T., 2012. The political economy of timber governance in Ghana, in: Broekhoven, G., Savenije, H., and von Scheliha, S. (Eds.). Moving Forward with Forest Governance. Tropenbos International, Wageningen, the Netherlands, pp. 117-126.

Masters, M., Tikina, A., Larson, B., 2010. Forest certification audit results as potential changes in forest management in Canada. The Forestry Chronicle, 86, 455-460

Mensah, K., 2012. Over-centralization and over-concentration of the voluntary partnership agreement process in Ghana, in: FAO. Compendium on Experiences From the Voluntary Partnership Agreements (VPAs) Process in West and Central African Countries. 23-25 October 2012, FAO, Accra, Ghana, pp. 50-62.

Moore, S. E., Cubbage, F., Eicheldinger, C., 2012. Impacts of forest stewardship council (FSC) and sustainable forestry initiative (SFI) forest certification in North America. Journal of Forestry, 110, 79-88.

Othman, M., Leal, I., Devers, D., Turunen, L., 2012. FLEGT voluntary partnership agreements, in: Broekhoven, G., Savenije, H., and von Scheliha, S. (Eds.). Moving

Forward with Forest Governance. Tropenbos International, Wageningen, the Netherlands, pp. 109-116.

Overdevest, C., Zeitlin. J., 2012. Assembling an experimentalist regime: transnational governance interactions in the forest sector. Regulation & Governance Advance online. 29 MAR 2012 DOI: 10.1111/j.1748-5991.2012.01133.x

Overdevest, C., Zeitlin, J., forthcoming. Forest Law Enforcement Governance and Trade (FLEGT): Transnational Dynamics of an EU Experimentalist Regime, in: Zeitlin, J. (ed.). Extending experimentalist governance? The EU and transnational regulation.

Ozinga, S., 2012. The impact of REDD on forest governance, in: Broekhoven, G., Savenije, H., and von Scheliha, S. (Eds.). Moving Forward with Forest Governance. Tropenbos International, Wageningen, the Netherlands, pp. 141-148

Proforest (2010) FLEGT Licensed Timber and EU Member State Procurement Policies, http://www.proforest.net/publication/results?tag=8455ca0687aa85008263b3163a1193df (accessed 9/2/13).

Proforest 2012 Assessment of certification and legality verification schemes: for the European Timber Trade Federation (ETTF). December 6, 2012. Proforest, Oxford, UK.

Rakpong, J., 2011. Regulatory aspects of EU-Thai trade relations in the area of food safety. Unpublished Phd thesis, University College London, London. Last accessed June 12, 2013. http://discovery.ucl.ac.uk/1348547/1/1348547.pdf

Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operations who place timber and timber products on the market". Official Journal of the European Union, L 295/23, 12.11.2010.

Resource Extraction Management (2010) Independent Monitoring of Forest Law Enforcement and Governance & Timber Legality Verification Systems within VPAs. www.rem.org (accessed 9/2/13).

Sabel, C.F., Zeitlin, J., 2011. Experimentalism in transnational governance: emergent pathways and diffusion mechanisms. GR:EEN Working Paper No. 3. http://www2.warwick.ac.uk/fac/soc/csgr/green/papers/workingpapers/no._3_sabel_and_zeitlin.pdf (accessed 6/14/13).

Sabel, C.F., Zeitlin, J., 2012. Experimentalist governance, in: Levi-Faur, D. (ed)., The Oxford Handbook of Governance. Oxford University Press, Oxford, pp. 169-83.

Sandjon, F., 2013. Système de traçabilité du bois au Cameroun (STBC). Presentation to Forest Governance Forum, Yaoundé, Cameroon, April 2-3. http://forestgovernanceforum.com/wp-content/uploads/2013/04/Day-1_Session-3_4SANDJON.pdf (accessed 6/12/13).

Saunders, J., 2013. EUTR survey paper. January 2013, Chatham House, London. http://illegal-logging.info/uploads/EUTRSurveyPaperJadeSaunders.pdf (accessed 5/2/13).

Sloth, C., 2013. Interpretation & implementation of the EUTR. Presented at the 21st Illegal Logging Stakeholder Update Meeting. 7th-8th February, 2013. Chatham House London, UK. http://www.illegal-logging.info/uploads/Butler080213.pdf (accessed 6/15/13).

Speechly, H., Van Helden, F., 2012. Forest governance in Southeast Asia, in: Broekhoven, G., Savenije, H., and von Scheliha, S. (Eds.). Moving Forward with Forest Governance. Tropenbos International, Wageningen, the Netherlands, pp. 101-108.

Sun, X., Canby, K., 2011. Baseline study 1, China: overview of forest governance, markets and trade. June 2011. Forest Trends for FLEGT Asia Regional Programme, Kuala Lumpur, Indonesia.

Vos, E., and Weimer, M., 2013. The role of the EU in transnational regulation of food safety: extending experimentalist governance?* GR:EEN Working Paper No. 35. http://www2.warwick.ac.uk/fac/soc/csgr/green/papers/workingpapers/no._35_vos_and_weimer.pdf. (accessed 6/13/13).

Young, D., Siakor, S., and Nguiffo, S., 2012. Why aren't governments more open? Civil society oversight tools to improve transparency and accountability in the forest sector, in: FAO. Compendium on Experiences From the Voluntary Partnership Agreements (VPAs) Process in West and Central African Countries. 23-25 October 2012, FAO, Accra, Ghana, pp. 124-141.

[1] The EU FLEGT Action Plan also encourages member state public procurement policies to require evidence of legality. National green procurement policies have contributed significantly to the development of the timber legality regime, but space constraints do not permit us to analyze them further in this article. For the emergence and development of the FLEGT Action Plan, which was driven by a coalition of environmental NGOs, think tank researchers, national governments, European Commission officials, members of the European Parliament, and timber trade organizations, see Overdevest and Zeitlin (2012; forthcoming).

[2] All VPAs signed to date cover all wood exports (including reprocessed imports) to all destinations, not just the EU, and all except that with the Central African Republic also cover wood sold on the domestic market.

[3] The regulation excludes printed papers, such as books, magazines and newspapers, as well as recycled products.

[4] See Commission Delegated Regulation (EU 363/2012) on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations; "Guidance Document for the EU Timber

Regulation", March 3, 2013. http://ec.europa.eu/environment/forests/pdf/Final%20Guidance%20document.pdf; http://www.legal-timber.info/en/flegt-eutr/dd/12-menu-anglais/43-due-diligence-mo.html (accessed 5/13/13).

[5] http://www.ettf.info/eutr-implementing-regulation-puts-pressure-monitoring-organisations (accessed 5/13/13).

[6] Regulation (EU) 995/2010, Arts. 10(1) & 10(2). See also Client Earth http://www.illegal-logging.info/uploads/1_DueDiligenceintheEUTR.pdf (accessed 5/13/13).

[7] Analysts disagree as to whether the EUTR and the FLEGT VPAs (which also contain provisions for recognition of private certification schemes in their export licensing systems) can be expected to stimulate demand for private sustainable forest certification schemes like that of the FSC (Proforest 2010; Overdevest and Zeitlin 2012), or only for less costly private legality verification systems provided by organizations such as the Rainforest Alliance (Bartley, forthcoming).

[8] A further dozen countries in Latin America, Asia, Oceania, and Africa have also expressed interest in entering into VPA negotiations: see http://www.euflegt.efi.int/portal/home/vpa_countries/ (accessed 5/13/13); FERN 2013b.

[9] For NGO assessments of the public availability of information required by the VPAs in Liberia, Cameroon, and Ghana, see Young et al. (2012). In each case, most of the applicable framework documents are readily available, but there are still 'major deficiencies in information indicators', with Liberia displaying the highest level of public availability and Cameroon the lowest.

[10] See press release: http://www.risiinfo.com/techchannels/environment/EOF-Independent-Forestry-Monitoring-Network-questions-APP-and-APRIL-timber-certificates-in-Indonesia.html (accessed 5/13/13).

[11] In Liberia, following an official report by a Special Independent Investigating Body, President Johnson-Sirleaf issued an executive order in January 2013 imposing a moratorium on logging operations and exports by existing PUPs, establishing a special prosecution team, and dissolving the Forest Development Authority Board. But in June 2013, Global Witness reported that no PUPs had yet been revoked or criminal charges filed: see "Flouting the law: Global Witness urges Liberia to curb wave of illegal logging deals", Front Page Africa Online 10/06/2013, http://fr.africatime.com/liberia/articles/flouting-law-global-witness-urges-liberia-curb-wave-illegal-logging-deals (accessed 9/2/13). In Ghana, following civil society complaints to the VPA Joint Monitoring and Review Mechanism in 2011, the Forestry Commission (FC) announced that the issuance of large numbers of salvage permits had been stopped, and promised to make all such permits publicly available on its website. But Forest Watch Ghana and Global Witness report that significant numbers of salvage permits continued to be issued in 2011-12, while a list of valid forest titles published by the FC in March 2013 included no such permits (Global Witness 2013: 14-15). For the Ghana Forestry Commission's response, see Kwame Mensah, "Forestry Commission clears salvage permit irregularities", *Business & Financial Times* 15/14/13, http://www.spyghana.com/forestry-commission-clears-salvage-permit-irregularities/ (accessed 9/2/13); Forestry Commission of Ghana, "Forestry Commission ravishes Global Witness report", 6/3/13, http://www.fcghana.org/news.php?news=67 (accessed 9/2/13).

[12] Papers and discussion at Chatham House workshops, 17 January and 7-8 February, 2013. http://www.illegal-logging.info/item_single.php?it_id=299&it=event; http://www.illegal-logging.info/item_single.php?it_id=286&it=event (accessed 5/13/13); Kearney (2013).

[13] http://www.daff.gov.au/forestry/policies/illegal-logging; http://www.iges.or.jp/en/news/press/12_12_19.html (accessed 5/13/13).