

**VAN DEN BIESEN
ADVOCATEN**

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EU

CIVIL SOCIETY

INITIATIVE

for a

EU REGULATION

**concerning
sustainable forest management
and the
trade in illegally harvested timber and related products**

Initiators:

**FERN
Greenpeace
WWF**

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12 November 2004

INDEX

<u>A.</u>	5
<u>EXPLANATORY MEMORANDUM</u>	5
<u>Introduction</u>	5
<u>Background of the proposal</u>	6
<u>WTO-debate</u>	7
<u>Sanctions</u>	12
<u>Various legal issues</u>	13
<u>The system of the proposed Regulation</u>	14
<u>The envisaged timeline</u>	15
<u>B.</u>	17
<u>REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</u>	17
<u>CHAPTER I</u>	24
<u>OBJECT AND DEFINITIONS</u>	24
<u>Article 1</u>	24
<u>Article 2</u>	24
<u>CHAPTER II</u>	25
<u>SCOPE</u>	25
<u>Article 3</u>	25
<u>Article 4</u>	26
<u>CHAPTER III</u>	26
<u>ORIGIN AND LEGALITY</u>	26
<u>FLEGT-LICENCE AND FLEGT II LICENCE</u>	26
<u>Article 5</u>	26
<u>Article 6</u>	26
<u>Article 7</u>	26
<u>Article 8</u>	26
<u>Article 9</u>	27
<u>CHAPTER IV</u>	28
<u>MONITORING</u>	28
<u>Article 10</u>	28
<u>CHAPTER V</u>	28
<u>SANCTIONS</u>	28
<u>Article 11</u>	28
<u>Article 12</u>	29
<u>CHAPTER VI</u>	30
<u>COMMUNICATION</u>	30
<u>Article 13</u>	30
<u>CHAPTER VII</u>	31
<u>AUTHORITIES</u>	31
<u>Article 14</u>	31
<u>Article 15</u>	31
<u>Article 16</u>	31
<u>CHAPTER VIII</u>	31
<u>PUBLIC ACCESS AND PUBLIC AWARENESS</u>	31
<u>Article 17</u>	31
<u>Article 18</u>	32

<u>Article 19</u>	32
<u>CHAPTER IX</u>	32
<u>COMMITTEE AND MULTI-STAKEHOLDER FORUM</u>	32
<u>Article 20</u>	32
<u>Article 21</u>	32
<u>Article 22</u>	33
<u>CHAPTER X</u>	33
<u>GENERAL PROVISIONS</u>	33
<u>Article 23</u>	33
<u>Article 24</u>	33
<u>Article 25</u>	34
<u>Article 26</u>	34
<u>CHAPTER XI</u>	34
<u>ENTRY INTO FORCE AND APPLICATION</u>	34
<u>Article 27</u>	34
<u>ANNEX I</u>	36
<u>ANNEX II</u>	37
<u>ANNEX III</u>	39
<u>C</u>	40
<u>REGULATION INCLUDING SOURCE REFERENCES</u>	40
<u>CHAPTER I</u>	48
<u>OBJECT AND DEFINITIONS</u>	48
<u>Article 1</u>	48
<u>Article 2</u>	48
<u>CHAPTER II</u>	50
<u>SCOPE</u>	50
<u>Article 3</u>	50
<u>Article 4</u>	51
<u>CHAPTER III</u>	51
<u>ORIGIN AND LEGALITY</u>	51
<u>FLEGT-LICENCE AND FLEGT II LICENCE</u>	51
<u>Article 5</u>	51
<u>Article 6</u>	51
<u>Article 7</u>	51
<u>Article 8</u>	52
<u>Article 9</u>	52
<u>CHAPTER IV</u>	53
<u>MONITORING</u>	53
<u>Article 10</u>	53
<u>CHAPTER V</u>	53
<u>SANCTIONS</u>	53
<u>Article 11</u>	53
<u>Article 12</u>	54
<u>CHAPTER VI</u>	55
<u>COMMUNICATION</u>	55
<u>Article 13</u>	56
<u>CHAPTER VII</u>	56
<u>AUTHORITIES</u>	56

<u>Article 14</u>	57
<u>Article 15</u>	57
<u>Article 16</u>	57
<u>CHAPTER VIII</u>	57
<u>PUBLIC ACCESS AND PUBLIC AWARENESS</u>	57
<u>Article 17</u>	57
<u>Article 18</u>	58
<u>Article 19</u>	58
<u>CHAPTER IX</u>	58
<u>COMMITTEE AND MULTI-STAKEHOLDER FORUM</u>	58
<u>Article 20</u>	58
<u>Article 21</u>	59
<u>Article 22</u>	59
<u>CHAPTER X</u>	59
<u>GENERAL PROVISIONS</u>	59
<u>Article 23</u>	59
<u>Article 24</u>	60
<u>Article 25</u>	60
<u>Article 26</u>	61
<u>CHAPTER XI</u>	61
<u>ENTRY INTO FORCE AND APPLICATION</u>	61
<u>Article 27</u>	61

A.

EXPLANATORY MEMORANDUM

Introduction

1. Illegal logging is a pervasive problem with destructive effects on forests, local communities and the economies of producer countries. It contributes to deforestation and loss of biodiversity, fuels civil wars (Liberia, DRC), threatens international security through bribery, organised crime and human rights abuses, while it undermines legitimate business and cuts tax revenue of producer countries. The World Bank estimates that illegal logging costs timber-producing countries between 10 and 15 billion euros per year. Some estimates suggest that the illegal timber trade is worth more than \$150 billion per year and that more than half of all logging activities in particularly vulnerable regions such as the Amazon Basin, Central Africa, Southeast Asia, the Russian Federation and some of the Eastern European countries is illegal. In Indonesia, the percentage of illegal activities is suggested to reach 88%, while in Brazil it is estimated at 80%, mainly involving the trade of mahogany, known as 'green gold', which can fetch over \$1,600/m³.
2. Commitments to tackle the problem of illegal and destructive logging have been made in a number of international fora. At EU level, the European Commission adopted an Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT), which recognised the seriousness of the issue as well as the EU's responsibility to provide effective solutions. It is noted that the EU, despite being one of the largest importers of timber and forest products, as of now disposes of no legal means to halt the import of those illegally-sourced with the exception of CITES (and the related EC Regulation 338/1997), which is only applicable if it concerns CITES species.
3. Three Civil Society Organizations, FERN, Greenpeace and WWF (further: the Initiators) commissioned the present study on the feasibility and best options for EU legislation to outlaw the import in the EU of illegally sourced forest products. The main goal of this assignment was to draft a proposed legal text, which could be relatively easy to implement.
4. The Initiative presented here is the result of this assignment. The draft legislation proposed in this study is up to the legal standards for EU legislation and is expected to be "WTO-proof". Obviously the European Commission's legislators will need to go through the proposed Regulation in detail. At the same time VAN DEN BIESEN

ADVOCATEN is convinced that this proposed Regulation could be adopted at short notice by the EU.

5. This Explanatory Memorandum deals with some of the main aspects of the Initiative. Wherever possible, the language used in this Regulation leans on similar language used in existing EU legislation, covering related topics. Section C. of this study contains the proposed Regulation together with references to legislative sources, from which the particular proposed provision was derived. Thus, it is clear that the proposed Regulation is – from a legislative perspective – not a revolutionary piece of work, but rather fits perfectly well within the EU legislative tradition. In other words: the proposed Regulation is ready to go!

Background of the proposal

6. In its press release re FLEGT of 20 July 2004 the European Commission stated among other things:

“illegal logging and the associated trade in illegal timber are responsible for vast environmental damage in developing and transition countries. Illegal logging is linked intimately with corruption and bad governance, and robs governments in affected developing countries of an estimated €10-15bn every year in lost revenue. It also impoverishes rural communities in developing countries who depend on forest products for a living.”
(IP/04/980, Brussels, 20 July 2004)

The Initiators fully agree with this observation. During the World Summit on Sustainable Development in Johannesburg (2002) the problem of *illegal* logging was identified as extremely urgent and as one of the main obstacles in moving the logging industry towards sustainable logging. During the CBD (COP8) meeting in Kuala Lumpur (2004), a Protected Area Decision was decided upon which urged concerned Parties, individually and collectively, to take further steps in curbing the illegal exploitation and trade of resources, particularly from existing protected areas and from areas of ecological importance for biodiversity conservation.

7. Given global recognition of the urgency of this problem and from the Johannesburg- and CBD-perspective the FLEGT Council Regulation as proposed by the Commission is not only disappointing, but also and more importantly inadequate. Obviously, one should not object to the EU’s trying to reach bilateral agreements with timber producing States in order to create a sophisticated and effective mechanism for verification and certification of timber and timber products. At the same time, it is clear that this will be a long-term negotiating process in which the Third States involved will be able to influence the time-table as much as the EU

itself. If there would be no other option available to the EU, this should be accepted as inevitable. However, other options are, indeed, available.

8. The Initiators observe that there seems to be worldwide consensus about the important negative impact of *illegal* logging. In the context of the current Initiative “illegal” means “harvested in violation of the laws applying in the country of origin”. This implies that the “countries of origin” are the first ones to be opposed against illegal logging, since these States have themselves adopted legislation declaring certain forms of logging illegal. The EU should, therefore, utilize the existing legislation in timber producing countries in the common struggle against illegal harvesting. The EU should not miss this opportunity and should support and strengthen the mentioned national legislative regimes by introducing an immediate prohibition of the import of illegally harvested timber into the European Union.
9. However, the goal of sustainable forest management is not altogether reached through the prohibition of illegally harvested timber only. This observation relates to another deficiency in the FLEGT Regulation as proposed by the Commission: the Commission has failed to put its proposed Regulation into a context of the badly needed long-term effort towards sustainable forest management. Because of this it has become rather unclear if and when the EU will begin to fulfil its Johannesburg (and related) commitments.
10. The Initiators therefore, are convinced that any legislation relating to illegal logging needs to be framed within the context of sustainable forest management. As such the essence of the present Initiative is as follows:
 - a. *the first immediate step*: putting in place a prohibition on the import of illegally harvested timber;
 - b. *the second step*: this could very well be the Commission’s Draft FLEGT Regulation for a voluntary licensing scheme, if amended as proposed by the Initiators, including a mechanism of monitoring, verification and licensing;
 - c. *the third step*: creating a licensing mechanism, based on bilateral –better: multilateral- Agreements, which mechanism (“FLEGT II”) certifies that imported timber and timber products are produced in a sustainable manner and clarifies that Sustainable Forest Management is the end goal.

WTO-debate

11. Any proposal aimed at some level of regulation of import, export and trade of timber and timber products, obviously, raises questions with respect to WTO-compatibility.

These questions need to be taken seriously and studied carefully. At the same time there is no need to consider WTO off hand as a blockade against any type of effective regulation.

12. In the first place *sustainable development* is among the primary goals of WTO. The preamble of the WTO-Agreement states in the opening paragraph:

“Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, **while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.**” (emphasis added,

http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

This is definitely not meant as an empty phrase, since this particular goal also forms one of the grounds, which may justify an exception to the general approach of WTO, which approach –in short- prohibits the creation of legal or factual obstacles, which may hinder international trade. The exception reads as follows:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

[...]

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

[...]" (Article XX (g) of GATT 1994)

13. It is important to note that the WTO Appellate Body has adopted a rather wide interpretation of the “exhaustible natural resources” language of Art. XX (g). Also the Appellate Body practiced a dynamic interpretation of this particular provision connecting this to the “sustainable development”-language of the preamble of the WTO-Agreement:

"129 The words of Article XX (g), "exhaustible natural resources", were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment. While Article XX was not modified in the Uruguay Round, the preamble attached to the *WTO Agreement* shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy. The preamble of the *WTO Agreement* -- which informs not only the GATT 1994, but also the other covered agreements -- explicitly acknowledges "the objective of *sustainable development*."

(...)

130 From the perspective embodied in the preamble of the *WTO Agreement*, we note that the generic term "natural resources" in Article XX (g) is not "static" in its content or reference but is rather "by definition, evolutionary".

(...)

131 Given the recent acknowledgement by the international community of the importance of concerted bilateral or multilateral action to protect living natural resources, and recalling the explicit recognition by WTO Members of the objective of sustainable development in the preamble of the *WTO Agreement*, we believe it is too late in the day to suppose that Article XX (g) of the GATT 1994 may be read as referring only to the conservation of exhaustible mineral or other non-living natural resources. Moreover, two adopted GATT 1947 panel reports previously found fish to be an "exhaustible natural resource" within the meaning of Article XX (g). We hold that, in line with the principle of effectiveness in treaty interpretation, measures to conserve exhaustible natural resources, whether *living* or *non-living*, may fall within Article XX (g)." (Report of the Appellate Body, 12 October 1998 in *United States – Import Prohibition of Certain Shrimp and Shrimp products*, WT/DS58/AB/R)

14. Thus, it is clear that sustainable development as such is not contradictory to the principles of the World Trade Organisation, while 'exhaustible natural resources' is, in WTO case law, interpreted widely and surely could be relevant for the topic covered by the present Initiative. Given the fact that the urgency of the protection of forests across the world as well as the urgency of a transition towards sustainable forest management is accepted worldwide by the vast majority of States including the timber producing States the object of the proposed Regulation squarely falls within the WTO legal framework, i.e. within the exception foreseen in Article XX (g).
15. Besides that, the present Initiative, i.e. the proposed Regulation, focuses on a prohibition of the import of timber and timber products originating from illegal harvesting, i.e. harvesting which is *illegal under the laws of the exporting country*. In other words, such a prohibition does not introduce, let alone impose a legal concept which interferes with the very concept adopted in the exporting State. WTO purports to protect fairness and equity in international trade and cannot be assumed to aim to protect trade in illegally harvested or produced goods. In other words, it is not possible for such a prohibition to be contrary to WTO rules.
16. The case law of the WTO panels and the WTO Appellate Body on the very question of the acceptability of –in short- trade restrictions motivated by environmental considerations is not extensive. The tendency seems to be not to allow such restrictions too easily and at the same time not to exclude them altogether.

17. The WTO panels which condemned the US measures, which were at stake in the US-Tuna-Dolphin-cases (Panel Reports DS 21R, 3 September 1991 and DS 29R, 16 June 1994) and in the US-Shrimp-Turtle-case (Panel Report WT/DS58/R, 15 May 1998) did so because they ruled that these measures were actually making imports conditional on the exporting States adopting certain policies; this, according to the panels, would create unacceptable obstacles within the international trade system. The Appellate Body did not agree with this very restrictive interpretation of the WTO system and noted that it is to be expected that in most cases where Art. XX justifications are at stake, a certain influence on policies of other, i.e. exporting States is at stake:

"121 [...] It appears to us, however, that conditioning access to a Member's domestic market on whether exporting Members comply with, or adopt, a policy or policies unilaterally prescribed by the importing Member may, to some degree, be a common aspect of measures falling within the scope of one or another of the exceptions (a) to (j) of Article XX. Paragraphs (a) to (j) comprise measures that are recognized as exceptions to substantive obligations established in the GATT 1994, because the domestic policies embodied in such measures have been recognized as important and legitimate in character. It is not necessary to assume that requiring from exporting countries compliance with, or adoption of, certain policies (although covered in principle by one or another of the exceptions) prescribed by the importing country, renders a measure *a priori* incapable of justification under Article XX. Such an interpretation renders most, if not all, of the specific exceptions of Article XX inutile, a result abhorrent to the principles of interpretation we are bound to apply." (Report of the Appellate Body, 12 October 1998 in *United States – Import Prohibition of Certain Shrimp and Shrimp products*, WT/DS58/AB/R)

18. As mentioned above, the proposed Regulation prohibits the import of timber and timber products originating from harvesting which is *illegal under the laws of the exporting country*. It is clear that this does not require the adoption of new policies by the exporting States at all but, on the contrary, this is entirely in line with already adopted policies by the exporting States. Therefore, the proposed Regulation –if WTO sensitive at all- not only squarely falls within the terms of Article XX (g), but on top of that does not create the need for any new policy to be adopted by the exporting States.
19. If one has to assume that the proposed Regulation may be WTO sensitive and if one at the same time accepts that the exception of Article XX (g) occurs, then the *chapeau* of Article XX becomes relevant:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:"

According to the case law of the WTO Appellate Body the language used in this *chapeau* basically refers to the good faith principle within international law:

“158 The chapeau of Article XX is, in fact, but one expression of the principle of good faith. This principle, at once a general principle of law and a general principle of international law, controls the exercise of rights by states. One application of this general principle, the application widely known as the doctrine of *abus de droit*, prohibits the abusive exercise of a state's rights and enjoins that whenever the assertion of a right "impinges on the field covered by [a] treaty obligation, it must be exercised bona fide, that is to say, reasonably." An abusive exercise by a Member of its own treaty right thus results in a breach of the treaty rights of the other Members and, as well, a violation of the treaty obligation of the Member so acting. Having said this, our task here is to interpret the language of the chapeau, seeking additional interpretative guidance, as appropriate, from the general principles of international law.

159 The task of interpreting and applying the chapeau is, hence, essentially the delicate one of locating and marking out a line of equilibrium between the right of a Member to invoke an exception under Article XX and the rights of the other Members under varying substantive provisions (e.g., Article XI) of the GATT 1994, so that neither of the competing rights will cancel out the other and thereby distort and nullify or impair the balance of rights and obligations constructed by the Members themselves in that Agreement. The location of the line of equilibrium, as expressed in the chapeau, is not fixed and unchanging; the line moves as the kind and the shape of the measures at stake vary and as the facts making up specific cases differ.” (Report of the Appellate Body, 12 October 1998 in *United States – Import Prohibition of Certain Shrimp and Shrimp products*, WT/DS58/AB/R)

20. It is difficult to perceive why requesting a timber-importing person or legal entity to produce evidence demonstrating that the timber or timber products originate from legal harvesting –‘legal’ according to the laws applying in the country of origin– would be violating the good faith principle, or for that matter, the proportionality requirements.
21. To conclude the WTO debate the following may be added. With respect to the permissibility of unilateral measures the WTO Appellate Body has deemed it relevant –after it had established that the measures in question fell within the Article XX exceptions- that efforts were being made to conclude a multi-lateral treaty with respect to the issues at stake. In the Shrimp II-case the Appellate Body accepted an import prohibition on shrimps harvested with commercial fishing technology which may adversely affect sea turtles, because of the fact that it became clear that this specific measure was anticipating a possible outcome of negotiations on a multilateral Treaty, in which these issues were to be regulated:

“152 For all these reasons, we uphold the finding of the Panel, in paragraph 6.1 of the Panel Report, that "Section 609 of Public Law 101-162, as implemented by the Revised Guidelines of 8 July 1999 and as applied so far by the [United States] authorities, is justified under Article XX of the GATT 1994 as long as the conditions stated in the findings of this Report, in particular the ongoing serious, good faith efforts to reach a multilateral agreement, remain satisfied" (Report of the Appellate Body, 22 October 2001, WT/DS58/AB/RW)

As has been pointed out the long-term perspective explicitly includes the long-term perspective and requires that the EU, i.e. the Commission, undertake to come to the conclusion of a multilateral treaty on relatively short notice: the third step (FLEGT II) provides the legal basis for this purpose.

Sanctions

22. The key provision of the proposed Regulation is to be found in Article 5 which reads as follows:

“The import into and export from the Community of timber and timber products listed in Annex I that have been harvested or manufactured in violation of the laws applying in the country of origin, is prohibited”.

Article 12 provides that the Member States are to include legislation to this end in their national legal order, including relevant and effective sections.

23. As a consequence of the prohibition, upon import of timber and timber products into the EU the importing party is required to demonstrate the legality of its origin. This may be done through any sort of relevant documentation, as long as the documents provided are *valid* and *verifiable*. This requirement is laid down in Article 6, which also provides that the documentation should clarify the country of origin as well as the region of origin. In any event the documentation should prove in a verifiable manner that the origin of the timber and the timber products is legal. The provision with respect to these documents is another cornerstone of the proposed Regulation: Article 12 provides for sanctions in case an importing party would be – one way or another – manipulating the documents in question. These provisions (Article 12 (3)) are not new within the EU: they are almost identical to the relevant language laid down in Article 16 of the CITES Regulation (Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, *Official Journal L 061* , 03/03/1997).
24. Accordingly, the primary responsibility for the legality of the timber and timber products rests with the importing party. The importing party will be liable under the national legislation, including penal legislation, of the Member States. It is to be expected that this will provide for the strongest incentive to eradicate illegal logging at relatively short notice.
25. It is clear that the Commission could play an important role in facilitating this process. The proposed Regulation will provide for a strong support for these efforts.

Various legal issues

26. A few more issues deserve specific attention within this explanatory memorandum. In the first place some observations will be made with respect to the principle of non-discrimination. Then, the nature of the evidence required upon timber import will be discussed. Finally attention will be given to the importance of public access to the information available with respect to timber trade in and out of the EU.
27. One criterion which is essential for any EU legislation is that it should not bring European timber producing Member States in a better position than non-EU States. For that reason the proposed Regulation stipulates that in cases of movement of timber and timber products within the Community, the person responsible must be able, where applicable, to provide proof of the legal origin of the timber or timber products in question. Besides that the export of timber and timber products from the EU is subject to the same requirements re origin and legality as the import. Thus, the principle of non-discrimination is protected.
28. The evidence re origin and legality requested by the proposed Regulation obviously would have to include evidence of the actual origin of the timber involved; otherwise it would not be possible to check against the applicable national legislation. Such evidence needs to be laid down in *valid and verifiable* documentation; the proposed Regulation does not require the use of a specific, prescribed format. In principle any type of document could be used, as long as it is verifiable and valid in every sense of this word.
29. At the same time it is clear that the processing of such documentation would be very much helped if the importing party would make use of a standardized format. Therefore, the Regulation requires that the Commission adopt a specific form to this end. If in certain countries specific documents, containing the required information as to origin and to legality, are currently used those may be treated the same way as the standardized format adopted by the Commission. For this to be the case the Commission needs to verify the used formats in advance to assess whether they do meet the standards set to verify origin and legality.
30. Another important aspect of the proposed Regulation relates to the issue of transparency. The effectiveness of the proposed Regulation will not only depend on the various EU and Member States authorities; it is to be expected that civil society – within the EU as well as within the timber producing States- will play an important

role in support of monitoring activities. Therefore, a specific Chapter on Public access and Public Awareness is included in this proposal.

The system of the proposed Regulation

31. As mentioned above the very concept of this proposed Regulation is based on a three-step approach: the Regulation provides for a basis of all of these three steps:
 - a. *the first immediate step*: putting in place a prohibition on the import of illegally harvested timber;
 - b. *the second step*: this could very well be the Commission's Draft FLEGT Regulation for a voluntary licensing scheme, if amended as proposed by the Initiators, including a mechanism of monitoring, verification and licensing;
 - c. *the third step*: creating a licensing mechanism, based on bilateral –better: multilateral- Agreements, which mechanism (“FLEGT II”) certifies that imported timber and timber products are produced in a sustainable manner and clarifies that Sustainable Forest Management is the end goal.

32. The proposed Regulation contains the substantive provisions necessary for the implementation of the first immediate step. It contains a prohibition of the import of illegally harvested timber. It also contains the obligation for the Member States to pass national legislation in order to implement this very first step. Next to that the proposed Regulation also provides for minimum requirements for the FLEGT Regulation (Article 8 (3)) and the same for the FLEGT II licensing scheme (Article 9 (3)).

33. A separate Regulation will have to be adopted in support of the second step. This second step will add a mechanism of independent monitoring, verification and licensing. Obviously, to realize independent monitoring and verification on the territory of Third States, bilateral agreements with these States are indispensable. The FLEGT proposal submitted by the Commission could, if amended in conformity with the suggestions of the Initiators (FERN, Greenpeace and WWF comments on the draft Council Regulation concerning the establishment of a voluntary FLEGT licensing scheme for imports of timber into the European Community; October 2004; available at www.fern.org). In other words, the EU should continue its present FLEGT efforts. Ideally, this second regulation, i.e. the FLEGT Regulation, could be adopted on the very same date as the Regulation proposed under this Initiative. At the same time, the Initiators do not see the need for a long delay of the adoption of their, the present, Initiative. In other words, if the proposed FLEGT Regulation

would not be ready for adoption soon, the Initiative should be dealt with separately and at very short notice.

34. The third step -which the Initiators have named FLEGT II- should be realised as soon as possible, although it is accepted that this is a more complicated process, since this entails further bilateral, and when and where possible multilateral, Agreements.
35. The importance of defining all three of these steps already in the proposed Regulation relates to the commitment this creates. In so doing, the EU clearly and visibly stipulates the policy goals it is required to realise in this *dossier*. This sends a clear signal to all of the parties present in Johannesburg in August 2002 at the World Summit on Sustainable Development; it also sends a clear signal to the timber producing States, the EU institutions as well as to the EU consumers and, not in the last place, to persons and legal entities whose business is the importing of timber and timber products into the EU.
36. The Initiators are aware of the complexity of defining “timber” and “timber products”. This is the reason that the proposed first step will be limited to timber and timber products as defined in Annex I. As soon as this would be technically feasible, Annex I may be expanded with additional products.
37. Given the fact that the basis for the FLEGT Regulation eventually is to be found in bilateral agreements, the range of products covered by this Regulation may be substantially greater than the products listed in Annex I. Therefore, the proposed Regulation stipulates the minimum listing of products covered by the FLEGT Regulation in Annex II.
38. Annex III provides a model format for documents which may be used to prove origin and legality. These documents will be obligatory within the EU and also for exporting purposes from within the EU. The same format may be used by Third States on a voluntary basis. It goes without saying that a general use of this particular format will facilitate the processing of documents in accordance with Article 6 by the EU Customs Authorities.

The envisaged timeline

39. As mentioned before the proposed Regulation is ready for adoption. After that, some time will be needed to allow Member States to adopt the necessary national

legislation. Given the fact that -for example- the CITES Regulation has been in force for quite some time and has led to the necessary national legislation as well, this is not something completely new to the Member States. Therefore, it seems to be realistic to stipulate that the Regulation will be effective as of six months after its adoption.

B.
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

**concerning sustainable forest management and the trade in illegally harvested timber
and related products**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 175(1) and 133 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty.

Whereas:

- (1) The primary objective of the present Regulation is protection of the environment and the legal basis is therefore Article 175(1) of the EC Treaty. Since the provisions of Chapter III also contain rules on international trade, the legal basis as regards these specific provisions is Article 133 of the EC Treaty.
- (2) Illegal logging and associated trade undermines the competitiveness of legitimate forest operations in both exporting and importing countries, limiting industry's ability to foster sustainable forest management and sustainable development generally; whereas illegal logging causes enormous environmental damage and loss of biodiversity and has a long term negative impact on the livelihoods of forest-dependent people, many of whom are amongst the world's poorest and most marginalised people; whereas it deprives governments of billions of dollars in lost revenue;

- (3) The European Community recognises that forests have a major value for nature conservation, and play an important role in preserving the environment¹; whereas it has also been recognised that many resources, such as water, land and soil, biodiversity, forest and fish stocks are already being exploited at or beyond their limits, causing serious damage to the environment²;
- (4) The Council and Parliament acknowledge the fact that forest law enforcement, governance and trade need to be addressed within the framework of sustainable development, sustainable forest management and poverty reduction, as well as social equity and national sovereignty; whereas it stresses the importance of strengthened governance in the forest sector, and the positive impact this has on reducing poverty³;
- (5) The United Nations Forum on Forests, in which all EU Member States are represented, has adopted Resolution 4/2 on Social and Cultural Aspects of forests in which it highlights that (a) social and cultural aspects of forest are important and contribute to the implementation of sustainable forest management, that (b) the role of forests in poverty eradication and sustainable development as recognized in internationally agreed development goals contributes to sustainable forest management, and that (c) effective participation of all relevant stakeholders within countries could enhance the implementation of sustainable forest management;
- (6) Article 6 of the Treaty establishing the European Community requires that environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of the Treaty, in particular with a view to promoting sustainable development;
- (7) The European Community is a party to the Convention on Biological Diversity which states that States are responsible for the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources;
- (8) During the sixth meeting of the Conference of the Parties to the Convention on Biological Diversity in 2002 the Parties agreed to a Forest Biological Diversity Decision and adopted an Expanded Programme of Work on Forest Biological Diversity in which they were called upon to, amongst other things, (b) evaluate and

¹ Regulation (EC) No 2152/2003 of the European Parliament and of the Council concerning monitoring of forests and environmental interactions in the Community (Forest Focus), (2003) OJ L 324/1

² Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions – Towards a global partnership for sustainable development (COM(2002) 82 final.

³ Final Council Conclusions Forest Law Enforcement, Governance and Trade (FLEGT).

- reform, as required, legislation to include clear definition of illegal activities and to establish effective deterrents; (c) to develop methods and build capacity for effective law enforcement; (d) to develop codes of conduct for sustainable forest practices in logging companies and the wood-processing sector to improve biodiversity conservation; (e) to encourage and support the development and implementation of tracking and chain-of-custody systems for forest products to seek to ensure that these products are legally harvested;
- (9) During the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity in 2004 a Protected Area Decision was decided upon which urged concerned Parties, individually and collectively, to take further steps in curbing the illegal exploitation and trade of resources, particularly from existing protected areas and from areas of ecological importance for biodiversity conservation;
- (10) The European Community has endorsed the Rio Declaration on Environment and Development and has recognised the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests as agreed upon during the 1992 UN Conference on Environment and Development; whereas the Statement acknowledges that all types of forests embody complex and unique ecological processes which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values, and as such their sound management and conservation is of concern to the Governments of the countries to which they belong and are of value to local communities and to the environment as a whole; whereas one of the principles mentioned in the Statement is that forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations;
- (11) Agenda 21, also agreed upon during the 1992 UN Conference on Environment and Development and endorsed by the European Community, recognises that trade and environmental agreements should be mutually supportive with a view to achieving sustainable development;
- (12) The European Community has signed and ratified the Convention on the Conservation of European Wildlife and Natural Habitats; whereas this Convention states the essential role played by wild flora and fauna in maintaining biological balances;
- (13) The European Community has provisionally applied the Convention on International Trade in Endangered Species of Wild Fauna and Flora which recognises that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the

- natural systems of the earth which must be protected for this and the generations to come;
- (14) The European Commission and a number of EU Member States have provided strong support to the ministerial processes for Forest Law Enforcement and Governance (FLEG) in Africa (AFLEG) and Asia, both through political support and financial contributions; whereas the Ministerial Declaration adopted during the FLEG East Asia Ministerial Conference recognises that illegal logging and associated illegal trade directly threaten ecosystems and biodiversity in forests throughout Asia and the rest of the world; whereas the AFLEG Ministerial Declaration emphasizes the fundamental role of governments to eliminate illegal logging, associated trade and corruption in the forest sector;
- (15) The Commission has reaffirmed that the EU for its part must live up to its commitments and must fulfil the ambitions so forcefully stated at Johannesburg⁴ during the 2002 World Summit on Sustainable Development; whereas the Johannesburg Plan of Implementation states that sustainable forest management of both natural and planted forests and for timber is essential to achieving sustainable development as well as a critical means to eradicate poverty, significantly reduce deforestation, halt the loss of forest biodiversity and land and resource degradation and improve food security and access to safe drinking water and affordable energy; in addition, it highlights the multiple benefits of both natural and planted forests and trees and contributes to the well-being of the planet and humanity;
- (16) The Johannesburg Plan of Implementation calls for immediate action on domestic forest law enforcement and illegal international trade in forest products, including in forest biological resources, with the support of the international community, and provide human and institutional capacity-building related to the enforcement of national legislation in those areas;
- (17) The decision of the European Parliament and the Council laying down the Sixth Environment Action Programme⁵ has identified as a priority activity the examination of the possibilities to take active measures to prevent and combat trade of illegally harvested wood and the continuation of the active participation of the Community and of Member States in the implementation of global and regional resolutions and in discussions and negotiations on forest-related issues;

⁴ Communication from the Commission to the Council and the European Parliament – The World Summit on Sustainable Development one year on: implementing our commitments (COM(2003) 829 final).

⁵ Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme, (2002) OJ L 242/1.

- (18) In order to fulfil and achieve the obligations, objectives and targets formulated in international and European (legal) instruments, a continued effort on the part of the European Community is required, especially since increasing amounts of illegally harvested timber and timber products enter the Community;
- (19) A substantial contribution to the achievement of sustainable forest management and the prevention of illegal logging can be made by the establishment of an overall framework which addresses both illegality and sustainability; whereas such a framework would provide incentives for (partner) States to progress towards sustainable forest management, including forest law reform;
- (20) The first step is to tackle the urgent issue of illegal logging and associated trade by an immediate prohibition of import into and export from the Community of timber, and timber products originating thereof, harvested in violation of the laws applying in the country of origin; whereas this prohibition is laid down in the present Regulation;
- (21) The establishment of the FLEGT licensing scheme, which focuses on the issue of illegality but also incorporates requirements for sustainable forest management, can be seen as a second step; whereas the Commission has already made a proposal for a Council Regulation establishing this scheme;
- (22) A further step is the adoption of a Regulation establishing a FLEGT II licensing scheme which will address in more detail the issue of sustainability; whereas the present Regulation formulates minimum requirements which must be adhered to in the FLEGT II Regulation;
- (23) Finally, the ultimate aim is to incorporate the above import prohibition and the FLEGT and FLEGT II licensing schemes in a multilateral treaty;
- (24) The import prohibition as formulated by the present Regulation entails first of all the establishment of a system of checks and controls seeking to guarantee the legality of the imported and exported products;
- (25) Moreover, well-founded doubts as to the true origin of (certain) timber and timber products require the introduction of verifiable documentation of origin to avoid deflections of trade; whereas moreover consignments of timber should be traced back to the country where it was originally harvested;

- (26) The abolition of controls at internal borders resulting from the Single Market necessitates the adoption of stricter trade control measures at the Community's external borders, with documents and goods being checked at the customs offices at the border where they are introduced;
- (27) The documentation of origin requested by the present regulation may be based either on existing schemes or on a Community form to be adopted by the Commission;
- (28) There is a need, in order to ensure the broadest possible protection for products covered by the present Regulation, to lay down provisions for controlling trade and movement of timber and timber products within the Community;
- (29) The monitoring of levels of trade in timber and timber products is of crucial importance for assessing the effects of the provisions of the present Regulation; whereas detailed annual reports should be drawn up;
- (30) In order to guarantee compliance with the present Regulation, it is important that Member States impose sanctions for infringements in a manner which is both sufficient and appropriate to the nature and gravity of the infringement;
- (31) In order to ensure effective enforcement of the present Regulation, Member States should closely monitor compliance with its provisions and, to that end, cooperate closely with the Commission; whereas this requires the communication of information relating to the implementation of the present Regulation and of the legislative, regulatory and administrative measures taken to enforce the present Regulation; whereas detailed annual reports should be drawn up.
- (32) Informing the public and making them aware of the provisions and the functioning of the present Regulation, particularly at border crossing points, is likely to encourage compliance with these provisions;
- (33) Moreover, the European Union recognises, by signing and implementing the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Århus Convention), that increased public access to environmental information and the dissemination of such information contributes to a greater awareness of environmental matters, more effective participation by the public in environmental decision-making, and, eventually, to a better environment;

- (34) In order to promote civil participation, a Multi-stakeholder forum should be established to discuss and evaluate the working of the present Regulation, this Multi-stakeholder forum should be able to make recommendations to the Commission;
- (35) The basic parameters for the FLEGT and FLEGT II licensing scheme will be laid down in the present Regulation;
- (36) States participating in the FLEGT and FLEGT II licensing scheme need to determine whether timber and timber products imported into or exported from their territories comply with the requirements set forth under the scheme; whereas these requirements entail a certificate of origin and a certificate of legality for the FLEGT licensing scheme and a certificate of origin, a certificate of legality, a certificate of sustainable forest management, chain of custody documentation, the interim and the ultimate destination of the timber or timber products for the FLEGT II licensing scheme;
- (37) The Regulations establishing the FLEGT and FLEGT II licensing scheme should at a minimum provide for independent monitoring and verification;
- (38) Moreover, it is essential to lay down the requirement that the Regulation establishing the FLEGT II licensing scheme is to be adopted within a reasonable time period;
- (39) The measures necessary for the implementation of the present Regulation are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission⁶;
- (40) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the promotion of sustainable forest management and the prevention of trade in illegally harvested timber, and timber products originating thereof, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects thereof, be better achieved by the Community; whereas the present regulation confines itself to the minimum required in order to achieve the above objectives and does not go beyond what is necessary for that purpose.

HAVE ADOPTED THIS REGULATION:

⁶ OJ (1999) L184/23.

CHAPTER I
OBJECT AND DEFINITIONS

Article 1

1. The object of the present regulation is to establish a set of rules to prevent the import into and export from the Community of certain illegally harvested timber and timber products originating thereof.
2. The present regulation will also provide a basis for the establishment of the FLEGT and FLEGT II licensing schemes.
3. Until bilateral or multilateral agreements, ensuring a prohibition in trade of illegally harvested timber and timber products originating thereof and providing for the sustainable management of forests, are concluded, the present Regulation, together with the Regulations establishing the FLEGT and FLEGT II licensing schemes will serve in support of achieving these goals.

Article 2

For the purposes of the present Regulation the following definitions shall apply:

- (a) *Competent authorities* means the competent authorities designated by the Member State in accordance with Article 16 of the present regulation.
- (b) *Country of origin* means with regard to timber the country where the timber was originally harvested and with regard to timber products the country where the products originates according to the Community provisions concerning non-preferential origin;
- (c) *Illegally harvested timber* means timber, and timber products originating thereof, harvested in violation of the laws applying in the country of origin;
- (d) *Import* means the introduction into the Community of timber and timber products subject to the provisions of the present regulation;
- (e) *Independent monitoring* means a system of monitoring by an independent body of the operation of the licensing scheme for the purpose of detecting and reporting failures in the systems established by partner countries.

- (f) *Independent verification* means verification by an appropriately, qualified and independent organisation that harvesting and subsequent processing and transport of relevant timber products have been carried out in compliance with relevant legislation.
- (g) *Forest Law Enforcement, Governance and Trade licensing scheme* (hereinafter FLEGT Licensing Scheme) means the licensing scheme for trade in timber and timber products negotiated with partner countries and regions;
- (h) *Forest Law Enforcement, Governance and Trade II licensing scheme* (hereinafter FLEGT II licensing scheme) means the licensing scheme for trade in timber and timber products negotiated with FLEGT partner countries and regions and other States wherein minimum criteria for the trade in timber and timber products from sustainable managed forests are listed;
- (i) *FLEGT licence* means a document of a standard format which is to be forgery-resistant and tamper proof, verifiable, and which refers to a shipment of timber or timber products as being in compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by a partner country or region's competent authority;
- (j) *Partner country or region* means any State or regional organisation for which the FLEGT Licensing Scheme is effective;
- (k) *Timber* means all timber as specified in Annex I to the present Regulation;
- (l) *Timber products* means all timber products as specified in Annex I to the present Regulation;

CHAPTER II

SCOPE

Article 3

1. The present regulation is to establish various procedures and control regimes to achieve the objective laid down in Article 1 (1).
2. The present regulation shall only apply to timber and timber products insofar as they are listed in Annex I to the present regulation.

3. In cases of movement of timber and timber products originating thereof within the Community, the person responsible must be able, where applicable, to provide proof of the legal origin of the timber or timber products in question.

Article 4

With respect to timber and timber products of species listed under Annexes A, B and C of Council Regulation (EC) No 338/97 of December 1996 on the protection of species of wild fauna and flora by regulating trade therein, this Regulation applies without prejudice to the mentioned Council Regulation.

CHAPTER III
ORIGIN AND LEGALITY
FLEGT-LICENCE AND FLEGT II LICENCE

Article 5

The import into and export from the Community of timber and timber products listed in Annex I that have been harvested or manufactured in violation of the laws applying in the country of origin, is prohibited.

Article 6

The trade in timber and timber products listed in Annex I shall be subject to the presentation of valid and verifiable documents manifesting the country of origin as well as the region of origin within that country and demonstrating in a verifiable manner that the timber in question, and the products originating thereof, has not been logged in violation of the laws of the country of origin.

Article 7

The valid documents requested in Art. 6 shall be substituted by:

- (a) a FLEGT licence when the country of origin is a partner country or region;
- (b) a FLEGT II licence when the country of origin participates in the FLEGT II licensing scheme.

Article 8

1. The FLEGT Licensing scheme will at least include the criteria laid down in the following two paragraphs.
2. The release for free circulation into the Community of timber and timber products originating in FLEGT States shall be prohibited unless the consignment of timber and timber products is accompanied by a valid FLEGT licence issued by the competent authority of the FLEGT State.
3. The FLEGT licensing scheme will at least include:
 - (a) certification of origin;
 - (b) certification of legality;
 - (c) independent monitoring and independent verification.
4. The FLEGT licensing scheme will at least apply to the timber and timber products as listed in Annex II.

Article 9

1. With the conclusion of the first FLEGT partnership agreements, the Commission will present recommendations for a negotiating mandate for a FLEGT II licensing scheme. The FLEGT countries or FLEGT regions will be invited to take part in these negotiations as well as other (timber producing) States which have indicated a willingness to reach the goals served by the FLEGT II licensing scheme.
2. The release for free circulation into the Community of timber and timber products originating in FLEGT II States shall be prohibited unless the consignment of timber and timber products is accompanied by a valid FLEGT II licence issued by the competent authority of the FLEGT II State.
3. The FLEGT II licensing scheme will include:
 - (a) certification of origin;
 - (b) certification of legality;
 - (c) certification of sustainable forest management;
 - (d) chain of custody documentation;
 - (e) interim destination of the timber or timber products;
 - (f) ultimate destination of the timber or timber products;
 - (g) independent monitoring and independent verification.

CHAPTER IV

MONITORING

Article 10

1. (a) The competent authorities of the Member States shall monitor compliance with the provisions of the present regulation.
(b) If, at any time, the competent authorities have reason to believe that these provisions are being infringed, they shall take the appropriate steps to ensure compliance or to instigate legal action.
(c) Member States shall inform the Commission of any steps taken by the competent authorities in relation to significant infringements of the present regulation, including seizures and confiscations.
2. The Commission shall draw the attention of the competent authorities of the Member States to matters whose investigation it considers necessary under the present regulation.
3. Member States shall collect detailed data on imports into and exports and re-exports from their territory of the timber and timber products specified in Annex I. They shall report on these data in line with Article 13.

CHAPTER V

SANCTIONS

Article 11

1. If a customs authority establishes that the conditions of Article 5 and 6 are not fulfilled, it shall detain and impound the shipment, immediately inform customs and police authorities of the other Member States with the relevant details, and proceed in accordance with national legislation in force.
2. If a customs authority finds that the failure to present the documents required by Article 6 is not done knowingly or intentionally, it may proceed with release of the shipment if there is sufficient evidence that the required valid documents do exist. These valid documents have to be presented to the competent customs authority within the delays laid down in Article 256 of Commission Regulation No. 2454/1993.

3. If after importation, a customs authority or any legal person establishes that the conditions of Article 5 and 6 have been breached, they shall be allowed to take judicial action or to participate as third parties in such actions when taken by other interested parties.
4. The provisions with regard to breaches of Articles 9 and 10 shall be laid down in respectively Council Regulation (EC) 2005/??/ and the Regulation establishing the FLEGT II licensing scheme. These provisions shall at least include the sanctions laid down in this Chapter.

Article 12

1. Each Member State shall determine the sanctions to be imposed where the provisions of Article 5 and 6 are infringed. Such sanctions shall be effective, proportionate and dissuasive and shall be capable of preventing those responsible for the infringement from obtaining any economic benefit from their action. Member States shall also determine how to deal with timber and timber products seized when the provisions of Article 5 and 6 are infringed.
2. Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of Article 5 and 6 are infringed shall, where relevant, be those which have been determined by the Member States in order to give effect to Article 5 of Regulation (EC) No. 303/2002.
3. The infringements of Article 6 to be sanctioned in accordance with the previous two paragraphs shall at least include:
 - (a) introduction into, or export or re-export from, the Community of timber and timber products without the appropriate document or with a false, falsified or invalid document or one altered without authorization by the issuing authority;
 - (b) failure to comply with the stipulations specified on a document issued in accordance with the present regulation;
 - (c) making a false declaration or knowingly providing false information in order to obtain a document;
 - (d) making no import notification or a false import notification;
 - (e) shipment of timber and timber products into or out of or in transit through the territory of the Community without the appropriate documents issued in accordance with the present regulation or without satisfactory proof of the existence of such certificate or licence;
 - (f) use of a document for any timber and timber products other than one for which it was issued;

- (g) falsification or alteration of any document issued in accordance with the present regulation;
 - (h) failure to disclose rejection of import into or export from the Community by a Member State customs authority in according with the provisions of this Regulation.
4. The provisions with regard to breaches of Articles 9 and 10 shall be laid down in respectively Council Regulation (EC) 2005/??/ and the Regulation establishing the FLEGT II licensing scheme. These provisions shall at least include the sanctions laid down in this Chapter.

CHAPTER VI

COMMUNICATION

Article 13

1. The Member States shall communicate to the Commission before 15 June each year the data referred to in Article 10 (3) of Chapter IV relating to the preceding year. On the basis of this information, the Commission shall publish before 31 October each year a statistical report on the trade in timber and timber products.
2. Each Member State shall prepare and communicate to the Commission before 15 June each year a report on the legislative, regulatory and administrative measures taken to enforce the provisions of the present regulation. This report shall include the following information:
 - (a) the provisions which it has adopted specifically for the implementation of the present regulation and of all the legal instruments used and measures taken for its implementation and enforcement;
 - (b) the number of seizures and the volume and value of timber and timber products seized;
 - (c) the progress with legal proceedings instigated to enforce the present regulation.On the basis of this information the Commission shall draw up before 31 October each year a report on the implementation and enforcement of the present regulation, which will include an assessment of the effectiveness of the present regulation and its environmental and social impact.

CHAPTER VII

AUTHORITIES

Article 14

Member States shall provide all customs authorities of the other Member States' customs authorities with relevant information received in respect of the documents required by the present regulation.

Article 15

Member States shall designate the competent authority or authorities for the implementation of the present regulation.

Article 16

1. Member States and the Commission shall each designate at least one correspondent responsible for informing or advising persons or undertakings who or which make enquiries. The Commission shall forward to the correspondents of the Member States any questions put to him which concern the latter, and vice versa.
2. The Commission shall, if requested by Member States or if otherwise appropriate, periodically hold a meeting of the correspondents to examine with them the questions raised by the implementation of the present regulation.

CHAPTER VIII

PUBLIC ACCESS AND PUBLIC AWARENESS

Article 17

1. The provisions of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents shall apply until the Regulation on the application of the provisions of the Århus Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters to EC Institutions and Bodies has been adopted. From the day of its entry into force the principles of the latter Regulation shall apply likewise to all issues related to and to all data required by the present Regulation.

2. The provisions of directive 2003/4/EC on public access to environmental information shall apply likewise.

Article 18

The Member States and the Commission shall ensure that the necessary steps are taken to make the public aware and inform it of the provisions regarding implementation of the present Regulation and of the latter's implementing measures.

Article 19

The Member States shall:

- a) promote and encourage understanding of the importance of sustainable forest management and the measures to further develop sustainable forest management, including those required for the prevention of trade in illegally harvested timber and timber products originating thereof; and
- b) cooperate, as appropriate, with other Member States in developing educational and public awareness programmes, with respect to conservation and sustainable use of forest biological diversity.

CHAPTER IX
COMMITTEE AND MULTI-STAKEHOLDER FORUM

Article 20

1. In the performance of its duties, the Commission shall be assisted by a Committee (referred to as 'the Committee' in the present Regulation) composed of the representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 4(3) of Decision 1999/486/EC shall be set at ten working days.
3. The Committee shall establish its rules of procedure.

Article 21

1. A multi-stakeholder forum shall meet periodically to discuss the functioning and the effectiveness of the prohibitions and requirements as laid down in Articles 5 and 6. The forum shall be required to make recommendations to the European Community.
2. The Commission shall determine the format and the mandate of this multi-stakeholder forum.

Article 22

The Committee referred to in Article 20 and the multi-stakeholder forum referred to in Article 21 may examine any question concerning the application of the present Regulation and make recommendations to the Commissions.

CHAPTER X
GENERAL PROVISIONS

Article 23

1. The valid documentation requested in Article 6 may in any case be provided by new or existing schemes that verify the origin and legality of the timber and timber products. This would be on the condition that the format of these schemes has been assessed and approved to agreed requirements in accordance with the procedure laid down in Article 20(2) of the present Regulation.
2. The requirements as referred to in the previous paragraph shall entail at a minimum the criteria as listed in Article 24 (3). The format should also provide for:
 - (a) transparency;
 - (b) consistency in definitions of legality;
3. The Commission shall annually publish a list of approved formats.

Article 24

1. Without prejudice to the approved schemes as mentioned in Article 23, the Commission shall decide upon a form in accordance with Annex III which may be used within the Community to provide the information requested by Art. 6.
2. The form may, upon request, also be used by third States.
3. The form shall stipulate at least:

- (a) the country of origin, including the region of origin within that country,
- (b) certification of legality,
- (c) the species of timber contained in the shipment,
- (d) the volume of the shipment,
- (e) the HS code(s).

Article 25

1. In accordance with the procedure laid down in Article 22, the Commission shall:
 - (a) lay down uniform conditions concerning the issuing, validity and use of the document referred to in Article 24 of the present Regulation;
 - (b) present a Regulation setting up the FLEGT II licensing scheme;
 - (c) annually review and when necessary expand the annexes to the present Regulation.
2. The Commission shall exercise its implementing powers as mentioned in the previous paragraph under (a) within one year after the entry into force of the present Regulation and shall present a proposal for the Regulation mentioned under (b) within three years after the entry into force of the present Regulation.

Article 26

The present Regulation shall apply:

- (a) within the Community territory.
- (b) to any national of a Member State, and to any legal person, entity, or body which is incorporated or constituted under Community Law or under the law of a Member State.

CHAPTER XI
ENTRY INTO FORCE AND APPLICATION

Article 27

1. The present Regulation shall enter into force on the day following the date of its publication in the *Official Journal of the European Communities*.
2. It shall apply six months after publication.
3. The present Regulation shall be binding in its entirety and will be directly applicable in all Member States.

Done at Brussels, xx xxxxx 2005

For the Parliament
The President

For the Council
The President

ANNEX I

Timber to which the Regulation applies (article 5 and 6)

HS – Heading	Description
4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.
4406	Railway or tramway sleepers (cross-ties) of wood.
4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.

Timber products to which the Regulation applies (article 5 and 6)

HS – Heading	Description
4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm.
4412	Plywood, veneered panels and similar laminated wood.

ANNEX II

Timber and timber products to which the FLEGT licence applies

HS – Heading	Description
4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
4402	Wood charcoal (including shell or nut charcoal), whether or not agglomerated
4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.
4404	Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking-sticks, umbrellas, tool handles or the like; chipwood and the like
4405	Wood wool; wood flour
4406	Railway or tramway sleepers (cross-ties) of wood.
4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.
4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm.
4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-joined, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planned, sanded or end-jointed
4410	Particle board and similar board of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances
4411	Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances
4412	Plywood, veneered panels and similar laminated wood.

4413	Densified wood, in blocks, plates, strips, or profile shapes
4414	Wooden frames for paintings, photographs, mirrors or similar objects
4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable- drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood
4416	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves
4417	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood
4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled parquet panels, shingles and shakes
4419	Tableware and kitchenware, of wood
4420	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94
4421	Other articles of wood
47	Pulps of fibres derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material.
48	Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape: other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres

ANNEX III

Description of the form mentioned in Article 25
(still needs to be drafted; below by way of example, Annex I to the CITES Regulation)

EUROPEAN COMMUNITY		ANNEX I													
ORIGINAL	1	1. Exporter/re-exporter	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">PERMIT/CERTIFICATE</td> <td style="width: 40%;">No</td> </tr> <tr> <td><input type="checkbox"/> IMPORT</td> <td></td> </tr> <tr> <td><input type="checkbox"/> EXPORT</td> <td></td> </tr> <tr> <td><input type="checkbox"/> RE-EXPORT</td> <td></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: right;">2. Last day of validity</td> </tr> </table>	PERMIT/CERTIFICATE	No	<input type="checkbox"/> IMPORT		<input type="checkbox"/> EXPORT		<input type="checkbox"/> RE-EXPORT				2. Last day of validity	
	PERMIT/CERTIFICATE	No													
	<input type="checkbox"/> IMPORT														
	<input type="checkbox"/> EXPORT														
<input type="checkbox"/> RE-EXPORT															
		2. Last day of validity													
	3. Importer	Convention on International Trade in Endangered Species of Wild Fauna and Flora													
	5. Authorised location for live wild-taken specimens of Annex A species	4. Country of (re-)export	5. Country of import												
1		7. Issuing management authority													
	8. Description of specimens (including marks, sex, date of birth for live animals)	9. Net mass (kg)	10. Quantity												
		11. CITES-Appendix	12. EC Annex												
		13. Source	14. Purpose												
		15. Country of origin													
		16. Permit No	17. Date of issue												
		18. Country of last re-export													
		19. Certificate No	20. Date of issue												
	21. Scientific name of species														
	22. Common name of species														
	23. Special conditions														
	<p>This permit/certificate is only valid if live animals are transported in compliance with the CITES guidelines for the transport and preparation for shipment of live wild animals or, in the case of air transport, the live animals regulations published by the International Air Transport Association (IATA)</p>														
	24. The (re-)export documentation from the country of (re-)export <input type="checkbox"/> has been surrendered to the issuing authority <input type="checkbox"/> has to be surrendered to the border customs office of introduction <div style="border: 1px solid black; height: 40px; width: 100%; margin-top: 5px;"></div>	25. The <input type="checkbox"/> importation <input type="checkbox"/> exportation <input type="checkbox"/> re-exportation of the goods described above is hereby permitted. Signature and official stamp: Name of issuing official: Place and date of issue: Signature and official stamp:													
	26. Bill of lading/Air waybill No														
	27. For customs use only														
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Quantity/net mass (kg) actually imported</td> <td style="width: 30%;">Number of animals dead on arrival</td> <td style="width: 40%;">Customs document</td> </tr> <tr> <td></td> <td></td> <td>Type:</td> </tr> <tr> <td></td> <td></td> <td>Number:</td> </tr> <tr> <td></td> <td></td> <td>Date:</td> </tr> </table>	Quantity/net mass (kg) actually imported	Number of animals dead on arrival	Customs document			Type:			Number:			Date:		
Quantity/net mass (kg) actually imported	Number of animals dead on arrival	Customs document													
		Type:													
		Number:													
		Date:													

C.

REGULATION INCLUDING SOURCE REFERENCES

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 175(1) and 133 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty.

Whereas:

- (1) The primary objective of the present Regulation is protection of the environment and the legal basis is therefore Article 175(1) of the EC Treaty. Since the provisions of Chapter III also contain rules on international trade, the legal basis as regards these specific provisions is Article 133 of the EC Treaty.

language taken from:

Preamble (1) Proposal for a Regulation on Shipments of Waste

- (2) Illegal logging and associated trade undermines the competitiveness of legitimate forest operations in both exporting and importing countries, limiting industry's ability to foster sustainable forest management and sustainable development generally; whereas illegal logging causes enormous environmental damage and loss of biodiversity and has a long term negative impact on the livelihoods of forest-dependent people, many of whom are amongst the world's poorest and most marginalised people; whereas it deprives governments of billions of dollars in lost revenue;

language taken from:

Communication FLEGT (p. 4)

- (3) The European Community recognises that forests have a major value for nature conservation, and play an important role in preserving the environment⁷; whereas it has also been recognised that many resources, such as water, land and soil, biodiversity, forest and fish stocks are already being exploited at or beyond their limits, causing serious damage to the environment⁸;

language taken from:

Reg. 2152/2003 Forest Focus & Communication Sustainable Development

- (4) The Council and Parliament acknowledge the fact that forest law enforcement, governance and trade need to be addressed within the framework of sustainable development, sustainable forest management and poverty reduction, as well as social equity and national sovereignty; whereas it stresses the importance of strengthened governance in the forest sector, and the positive impact this has on reducing poverty⁹;

language taken from:

Final Council Conclusions FLEGT

- (5) The United Nations Forum on Forests, in which all EU Member States are represented, has adopted Resolution 4/2 on Social and Cultural Aspects of forests in which it highlights that (a) social and cultural aspects of forest are important and contribute to the implementation of sustainable forest management, that (b) the role of forests in poverty eradication and sustainable development as recognized in internationally agreed development goals contributes to sustainable forest management, and that (c) effective participation of all relevant stakeholders within countries could enhance the implementation of sustainable forest management;

language taken from:

UNFF Resolution 4/2

- (6) Article 6 of the Treaty establishing the European Community requires that environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of the Treaty, in particular with a view to promoting sustainable development;

language taken from:

Art. 6 EC Treaty

⁷ Regulation (EC) No 2152/2003 of the European Parliament and of the Council concerning monitoring of forests and environmental interactions in the Community (Forest Focus), (2003) OJ L 324/1

⁸ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions – Towards a global partnership for sustainable development (COM(2002) 82 final.

⁹ Final Council Conclusions Forest Law Enforcement, Governance and Trade (FLEGT).

- (7) The European Community is a party to the Convention on Biological Diversity which states that States are responsible for the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources;

language taken from:

CBD

- (8) During the sixth meeting of the Conference of the Parties to the Convention on Biological Diversity in 2002 the Parties agreed to a Forest Biological Diversity Decision and adopted an Expanded Programme of Work on Forest Biological Diversity in which they were called upon to, amongst other things, (b) evaluate and reform, as required, legislation to include clear definition of illegal activities and to establish effective deterrents; (c) to develop methods and build capacity for effective law enforcement; (d) to develop codes of conduct for sustainable forest practices in logging companies and the wood-processing sector to improve biodiversity conservation; (e) to encourage and support the development and implementation of tracking and chain-of-custody systems for forest products to seek to ensure that these products are legally harvested;

language taken from:

CoP 6 CBD

- (9) During the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity in 2004 a Protected Area Decision was decided upon which urged concerned Parties, individually and collectively, to take further steps in curbing the illegal exploitation and trade of resources, particularly from existing protected areas and from areas of ecological importance for biodiversity conservation;

language taken from:

CoP 7 CBD

- (10) The European Community has endorsed the Rio Declaration on Environment and Development and has recognised the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests as agreed upon during the 1992 UN Conference on Environment and Development; whereas the Statement acknowledges that all types of forests embody complex and unique ecological processes which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values, and as such their sound management and conservation is of concern to the Governments of the countries to which they belong and are of value to local communities and to the environment as a whole; whereas one of the principles

mentioned in the Statement is that forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations;

language taken from:

Statement of Principles on Management, Conservation, Development of Forests

- (11) Agenda 21, also agreed upon during the 1992 UN Conference on Environment and Development and endorsed by the European Community, recognises that trade and environmental agreements should be mutually supportive with a view to achieving sustainable development;

language taken from:

Agenda 21

- (12) The European Community has signed and ratified the Convention on the Conservation of European Wildlife and Natural Habitats; whereas this Convention states the essential role played by wild flora and fauna in maintaining biological balances;

language taken from:

Convention on Eur. Wildlife and Habitats

- (13) The European Community has provisionally applied the Convention on International Trade in Endangered Species of Wild Fauna and Flora which recognises that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

language taken from:

CITES

- (14) The European Commission and a number of EU Member States have provided strong support to the ministerial processes for Forest Law Enforcement and Governance (FLEG) in Africa (AFLEG) and Asia, both through political support and financial contributions; whereas the Ministerial Declaration adopted during the FLEG East Asia Ministerial Conference recognises that illegal logging and associated illegal trade directly threaten ecosystems and biodiversity in forests throughout Asia and the rest of the world; whereas the AFLEG Ministerial Declaration emphasizes the fundamental role of governments to eliminate illegal logging, associated trade and corruption in the forest sector;

language taken from:

Ministerial Declarations FLEGT & AFLEG

- (15) The Commission has reaffirmed that the EU for its part must live up to its commitments and must fulfil the ambitions so forcefully stated at Johannesburg¹⁰ during the 2002 World Summit on Sustainable Development; whereas the Johannesburg Plan of Implementation states that sustainable forest management of both natural and planted forests and for timber is essential to achieving sustainable development as well as a critical means to eradicate poverty, significantly reduce deforestation, halt the loss of forest biodiversity and land and resource degradation and improve food security and access to safe drinking water and affordable energy; in addition, it highlights the multiple benefits of both natural and planted forests and trees and contributes to the well-being of the planet and humanity;

language taken from:

Johannesburg Plan of Implementation WSSD

- (16) The Johannesburg Plan of Implementation calls for immediate action on domestic forest law enforcement and illegal international trade in forest products, including in forest biological resources, with the support of the international community, and provide human and institutional capacity-building related to the enforcement of national legislation in those areas;

language taken from:

Johannesburg Plan of Implementation WSSD

- (17) The decision of the European Parliament and the Council laying down the Sixth Environment Action Programme¹¹ has identified as a priority activity the examination of the possibilities to take active measures to prevent and combat trade of illegally harvested wood and the continuation of the active participation of the Community and of Member States in the implementation of global and regional resolutions and in discussions and negotiations on forest-related issues;

language taken from:

6th European Environment Action Plan

- (18) In order to fulfil and achieve the obligations, objectives and targets formulated in international and European (legal) instruments, a continued effort on the part of the European Community is required, especially since increasing amounts of illegally harvested timber and timber products enter the Community;

language taken from:

6th European Environmental Action Plan

¹⁰ Communication from the Commission to the Council and the European Parliament – The World Summit on Sustainable Development one year on: implementing our commitments (COM(2003) 829 final).

¹¹ Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme, (2002) OJ L 242/1.

- (19) A substantial contribution to the achievement of sustainable forest management and the prevention of illegal logging can be made by the establishment of an overall framework which addresses both illegality and sustainability; whereas such a framework would provide incentives for (partner) States to progress towards sustainable forest management, including forest law reform;
- (20) The first step is to tackle the urgent issue of illegal logging and associated trade by an immediate prohibition of import into and export from the Community of timber, and timber products originating thereof, harvested in violation of the laws applying in the country of origin; whereas this prohibition is laid down in the present Regulation;
- (21) The establishment of the FLEGT licensing scheme, which focuses on the issue of illegality but also incorporates requirements for sustainable forest management, can be seen as a second step; whereas the Commission has already made a proposal for a Council Regulation establishing this scheme;
- (22) A further step is the adoption of a Regulation establishing a FLEGT II licensing scheme which will address in more detail the issue of sustainability; whereas the present Regulation formulates minimum requirements which must be adhered to in the FLEGT II Regulation;
- (23) Finally, the ultimate aim is to incorporate the above import prohibition and the FLEGT and FLEGT II licensing schemes in a multilateral treaty;
- (24) The import prohibition as formulated by the present Regulation entails first of all the establishment of a system of checks and controls seeking to guarantee the legality of the imported and exported products;
- (25) Moreover, well-founded doubts as to the true origin of (certain) timber and timber products require the introduction of verifiable documentation of origin to avoid deflections of trade; whereas moreover consignments of timber should be traced back to the country where it was originally harvested;
- language taken from:*
Preamble Reg. 1084/95 Certificate of Origin for Taiwan Garlic
- (26) The abolition of controls at internal borders resulting from the Single Market necessitates the adoption of stricter trade control measures at the Community's

external borders, with documents and goods being checked at the customs offices at the border where they are introduced;

language taken from:

Preamble (2) Reg. 338/97 CITES

(27) The documentation of origin requested by the present regulation may be based either on existing schemes or on a Community form to be adopted by the Commission;

(28) There is a need, in order to ensure the broadest possible protection for products covered by the present Regulation, to lay down provisions for controlling trade and movement of timber and timber products within the Community;

language taken from:

Preamble (10) Reg. 338/97 CITES

(29) The monitoring of levels of trade in timber and timber products is of crucial importance for assessing the effects of the provisions of the present Regulation; whereas detailed annual reports should be drawn up;

language taken from:

Preamble (16) Reg. 338/97 CITES

(30) In order to guarantee compliance with the present Regulation, it is important that Member States impose sanctions for infringements in a manner which is both sufficient and appropriate to the nature and gravity of the infringement;

language taken from:

Preamble (17) Reg. 338/97 CITES

(31) In order to ensure effective enforcement of the present Regulation, Member States should closely monitor compliance with its provisions and, to that end, cooperate closely with the Commission; whereas this requires the communication of information relating to the implementation of the present Regulation and of the legislative, regulatory and administrative measures taken to enforce the present Regulation; whereas detailed annual reports should be drawn up.

(32) Informing the public and making them aware of the provisions and the functioning of the present Regulation, particularly at border crossing points, is likely to encourage compliance with these provisions;

language taken from:

Preamble (14) Reg. 338/97 CITES

- (33) Moreover, the European Union recognises, by signing and implementing the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Århus Convention), that increased public access to environmental information and the dissemination of such information contributes to a greater awareness of environmental matters, more effective participation by the public in environmental decision-making, and, eventually, to a better environment;
- (34) In order to promote civil participation, a Multi-stakeholder forum should be established to discuss and evaluate the working of the present Regulation, this Multi-stakeholder forum should also be able to make recommendations to the Commission;
- (35) The basic parameters for the FLEGT and FLEGT II licensing scheme will be laid down in the present Regulation;
- (36) States participating in the FLEGT and FLEGT II licensing scheme need to determine whether timber and timber products imported into or exported from their territories comply with the requirements set forth under the scheme; whereas these requirements entail a certificate of origin and a certificate of legality for the FLEGT licensing scheme and a certificate of origin, a certificate of legality, a certificate of sustainable forest management, chain of custody documentation, the interim and the ultimate destination of the timber or timber products for the FLEGT II licensing scheme;
- (37) The Regulations establishing the FLEGT and FLEGT II licensing scheme should at a minimum provide for independent monitoring and verification;
- (38) Moreover, it is essential to lay down the requirement that the Regulation establishing the FLEGT II licensing scheme is to be adopted within a reasonable time period;
- (39) The measures necessary for the implementation of the present Regulation are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission¹²;

language taken from:

Preamble (7) Draft Regulation FLEGT

- (40) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the promotion of sustainable forest management and the

¹² OJ (1999) L184/23.

prevention of trade in illegally harvested timber, and timber products originating thereof, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects thereof, be better achieved by the Community; whereas the present regulation confines itself to the minimum required in order to achieve the above objectives and does not go beyond what is necessary for that purpose.

language taken from:

Preamble (36) Proposal for a Regulation on Shipments of Waste

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECT AND DEFINITIONS

Article 1

1. The object of the present regulation is to establish a set of rules to prevent the import into and export from the Community of certain illegally harvested timber and timber products originating thereof.

language taken from:

Art. 1 Reg. 338/97 CITES

2. The present regulation will also provide a basis for the establishment of the FLEGT and FLEGT II licensing schemes.
3. Until bilateral or multilateral agreements, ensuring a prohibition in trade of illegally harvested timber and timber products originating thereof and providing for the sustainable management of forests, are concluded, the present Regulation, together with the Regulations establishing the FLEGT and FLEGT II licensing schemes will serve in support of achieving these goals.

language taken from:

Section 609 of Public Law 101-162 Prohibition imposed by the US on the importation of shrimps

Article 2

For the purposes of the present Regulation the following definitions shall apply:

(a) *Competent authorities* means the competent authorities designated by the Member State in accordance with Article 16 of the present regulation.

language taken from:

Art. 2 (b) Reg. 259/93 Shipments of Waste

(b) *Country of origin* means with regard to timber the country where the timber was originally harvested and with regard to timber products the country where the products originates according to the Community provisions concerning non-preferential origin;

language taken from:

Art. 2 (1) Draft. Reg. FLEGT

(c) *Illegally harvested timber* means timber, and timber products originating thereof, harvested in violation of the laws applying in the country of origin;

language taken from:

Art. 2 Draft Reg. FLEGT

(d) *Import* means the introduction into the Community of timber and timber products subject to the provisions of the present regulation;

language taken from:

Art. 2 (u) Reg. 338/97 CITES

(e) *Independent monitoring* means a system of monitoring by an independent body of the operation of the licensing scheme for the purpose of detecting and reporting failures in the systems established by partner countries.

(f) *Independent verification* means verification by an appropriately, qualified and independent organisation that harvesting and subsequent processing and transport of relevant timber products have been carried out in compliance with relevant legislation.

(g) *Forest Law Enforcement, Governance and Trade licensing scheme* (hereinafter FLEGT Licensing Scheme) means the licensing scheme for trade in timber and timber products negotiated with partner countries and regions;

language taken from:

Art. 2 Draft Reg. FLEGT

(h) *Forest Law Enforcement, Governance and Trade II licensing scheme* (hereinafter FLEGT II licensing scheme) means the licensing scheme for trade in timber and timber products negotiated with FLEGT partner countries and regions and other States wherein minimum criteria for the trade in timber and timber products from sustainable managed forests are listed;

language taken from:

Art. 2 (b) Draft Reg. FLEGT

- (i) *FLEGT licence* means a document of a standard format which is to be forgery-resistant and tamper proof, verifiable, and which refers to a shipment of timber or timber products as being in compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by a partner country or region's competent authority;

language taken from:

Art. 2 Draft Reg. FLEGT

- (j) *Partner country or region* means any State or regional organisation for which the FLEGT Licensing Scheme is effective;

language taken from:

Art. 2 Draft Reg. FLEGT

- (k) *Timber* means all timber as specified in Annex I to the present Regulation;

- (l) *Timber products* means all timber products as specified in Annex I to the present Regulation;

CHAPTER II

SCOPE

Article 3

1. The present regulation is to establish various procedures and control regimes to achieve the objective laid down in Article 1 (1).

language taken from:

Art. 1 Proposal for a Regulation on Shipments of Waste

2. The present regulation shall only apply to timber and timber products insofar as they are listed in Annex I to the present regulation.

3. In cases of movement of timber and timber products originating thereof within the Community, the person responsible must be able, where applicable, to provide proof of the legal origin of the timber or timber products in question.

language taken from:

Art. 9 Reg. 338/97 CITES

Article 4

With respect to timber and timber products of species listed under Annexes A, B and C of Council Regulation (EC) No 338/97 of December 1996 on the protection of species of wild fauna and flora by regulating trade therein, this Regulation applies without prejudice to the mentioned Council Regulation.

language taken from:

Art. 4 (3) Draft Reg. FLEGT

CHAPTER III
ORIGIN AND LEGALITY
FLEGT-LICENCE AND FLEGT II LICENCE

Article 5

The import into and export from the Community of timber and timber products listed in Annex I that have been harvested or manufactured in violation of the laws applying in the country of origin, is prohibited.

Article 6

The trade in timber and timber products listed in Annex I shall be subject to the presentation of valid and verifiable documents manifesting the country of origin as well as the region of origin within that country and demonstrating in a verifiable manner that the timber in question, and the products originating thereof, has not been logged in violation of the laws of the country of origin.

Article 7

The valid documents requested in Art. 6 shall be substituted by:

- (a) a FLEGT licence when the country of origin is a partner country or region;
- (b) a FLEGT II licence when the country of origin participates in the FLEGT II licensing scheme.

Article 8

1. The FLEGT Licensing scheme will at least include the criteria laid down in the following two paragraphs.
2. The release for free circulation into the Community of timber and timber products originating in FLEGT States shall be prohibited unless the consignment of timber and timber products is accompanied by a valid FLEGT licence issued by the competent authority of the FLEGT State.

language taken from:

Art. 4 Draft Reg. FLEGT

3. The FLEGT licensing scheme will at least include:
 - (a) certification of origin;
 - (b) certification of legality;
 - (c) independent monitoring and independent verification.
4. The FLEGT licensing scheme will at least apply to the timber and timber products as listed in Annex II.

Article 9

1. With the conclusion of the first FLEGT partnership agreements, the Commission will present recommendations for a negotiating mandate for a FLEGT II licensing scheme. The FLEGT countries or FLEGT regions will be invited to take part in these negotiations as well as other (timber producing) States which have indicated a willingness to reach the goals served by the FLEGT II licensing scheme.
2. The release for free circulation into the Community of timber and timber products originating in FLEGT II States shall be prohibited unless the consignment of timber and timber products is accompanied by a valid FLEGT II licence issued by the competent authority of the FLEGT II State.
3. The FLEGT II licensing scheme will include:
 - (a) certification of origin;
 - (b) certification of legality;
 - (c) certification of sustainable forest management;
 - (d) chain of custody documentation;
 - (e) interim destination of the timber or timber products;
 - (f) ultimate destination of the timber or timber products

- (g) independent monitoring and independent verification.

CHAPTER IV

MONITORING

Article 10

1. (a) The competent authorities of the Member States shall monitor compliance with the provisions of the present regulation.
(b) If, at any time, the competent authorities have reason to believe that these provisions are being infringed, they shall take the appropriate steps to ensure compliance or to instigate legal action.
(c) Member States shall inform the Commission of any steps taken by the competent authorities in relation to significant infringements of the present regulation, including seizures and confiscations.
language taken from:
Art. 14 (1) Reg. 338/97 CITES

2. The Commission shall draw the attention of the competent authorities of the Member States to matters whose investigation it considers necessary under the present regulation.
language taken from:
Art. 14 (2) Reg. 338/97 CITES

3. Member States shall collect detailed data on imports into and exports and re-exports from their territory of the timber and timber products specified in Annex I. They shall report on these data in line with Article 13.
language taken from:
Art. 39 Reg. 1801/2001 Implementation Reg. 338/97 CITES

CHAPTER V

SANCTIONS

Article 11

1. If a customs authority establishes that the conditions of Article 5 and 6 are not fulfilled, it shall detain and impound the shipment, immediately inform customs and police authorities of the other Member States with the relevant details, and proceed in accordance with national legislation in force.

language taken from:

Art. 6 Draft Reg. FLEGT

2. If a customs authority finds that the failure to present the documents required by Article 6 is not done knowingly or intentionally, it may proceed with release of the shipment if there is sufficient evidence that the required valid documents do exist. These valid documents have to be presented to the competent customs authority within the delays laid down in Article 256 of Commission Regulation No. 2454/1993.

language taken from:

Art. 6 Draft Reg. FLEGT

3. If after importation, a customs authority or any legal person establishes that the conditions of Article 5 and 6 have been breached, they shall be allowed to take judicial action or to participate as third parties in such actions when taken by other interested parties.
4. The provisions with regard to breaches of Articles 9 and 10 shall be laid down in respectively Council Regulation (EC) 2005/??/ and the Regulation establishing the FLEGT II licensing scheme. These provisions shall at least include the sanctions laid down in this Chapter.

Article 12

1. Each Member State shall determine the sanctions to be imposed where the provisions of Article 5 and 6 are infringed. Such sanctions shall be effective, proportionate and dissuasive and shall be capable of preventing those responsible for the infringement from obtaining any economic benefit from their action. Member States shall also determine how to deal with timber and timber products seized when the provisions of Article 5 and 6 are infringed.

language taken from:

Art. 17 Draft Regulation FLEGT

2. Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of Article 5 and 6 are infringed shall, where relevant, be those which have been determined by the Member States in order to give effect to Article 5 of Regulation (EC) No. 303/2002.

language taken from:
Art. 17, Draft Reg. FLEGT

3. The infringements of Article 6 to be sanctioned in accordance with the previous two paragraphs shall at least include:
- (a) introduction into, or export or re-export from, the Community of timber and timber products without the appropriate document or with a false, falsified or invalid document or one altered without authorization by the issuing authority;
 - (b) failure to comply with the stipulations specified on a document issued in accordance with the present regulation;
 - (c) making a false declaration or knowingly providing false information in order to obtain a document;
 - (d) making no import notification or a false import notification;
 - (e) shipment of timber and timber products into or out of or in transit through the territory of the Community without the appropriate documents issued in accordance with the present regulation or without satisfactory proof of the existence of such certificate or licence;
 - (f) use of a document for any timber and timber products other than one for which it was issued;
 - (g) falsification or alteration of any document issued in accordance with the present regulation;

language taken from:
Art. 16 Reg. 338/97 CITES

- (h) failure to disclose rejection of import into or export from the Community by a Member State customs authority in according with the provisions of this Regulation.
4. The provisions with regard to breaches of Articles 9 and 10 shall be laid down in respectively Council Regulation (EC) 2005/??/ and the Regulation establishing the FLEGT II licensing scheme. These provisions shall at least include the sanctions laid down in this Chapter.

CHAPTER VI
COMMUNICATION

Article 13

1. The Member States shall communicate to the Commission before 15 June each year the data referred to in Article 10 (3) of Chapter IV relating to the preceding year. On the basis of this information, the Commission shall publish before 31 October each year a statistical report on the trade in timber and timber products.

language taken from:

Art. 15 Reg. 338/97 CITES

2. Each Member State shall prepare and communicate to the Commission before 15 June each year a report on the legislative, regulatory and administrative measures taken to enforce the provisions of the present regulation. This report shall include the following information:

language taken from:

Art. 15 Reg. 338/97 CITES & art. VIII (7) CITES

- (a) the provisions which it has adopted specifically for the implementation of the present regulation and of all the legal instruments used and measures taken for its implementation and enforcement;

language taken from:

Art. 20 Reg. 338/97 CITES

- (b) the number of seizures and the volume and value of timber and timber products seized;

language taken from:

Art. 8(2) Draft reg. FLEGT

- (c) the progress with legal proceedings instigated to enforce the present regulation.

language taken from:

Art. 15 REG. 338/97 CITES & Comments on FLEGT

On the basis of this information the Commission shall draw up before 31 October each year a report on the implementation and enforcement of the present regulation, which will include an assessment of the effectiveness of the present regulation and its environmental and social impact.

CHAPTER VII
AUTHORITIES

Article 14

Member States shall provide all customs authorities of the other Member States' customs authorities with relevant information received in respect of the documents required by the present regulation.

language taken from:

Art. 7 Draft Reg. FLEGT

Article 15

Member States shall designate the competent authority or authorities for the implementation of the present regulation.

language taken from:

Art. 36 Reg. 259/93 on shipments of waste

Article 16

1. Member States and the Commission shall each designate at least one correspondent responsible for informing or advising persons or undertakings who or which make enquiries. The Commission shall forward to the correspondents of the Member States any questions put to him which concern the latter, and vice versa.

language taken from:

Art. 37 Reg. 259/93 on shipments of waste

2. The Commission shall, if requested by Member States or if otherwise appropriate, periodically hold a meeting of the correspondents to examine with them the questions raised by the implementation of the present regulation.

language taken from:

Art. 37 Reg. 259/93 on shipments of waste

CHAPTER VIII
PUBLIC ACCESS AND PUBLIC AWARENESS

Article 17

1. The provisions of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents shall apply until the Regulation on the application of the provisions of the Århus Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters to EC Institutions and Bodies has been adopted. From the day of its entry into force the principles of the latter Regulation shall apply likewise to all issues related to and to all data required by the present Regulation.
2. The provisions of directive 2003/4/EC on public access to environmental information shall apply likewise.

Article 18

The Member States and the Commission shall ensure that the necessary steps are taken to make the public aware and inform it of the provisions regarding implementation of the present Regulation and of the latter's implementing measures.

language taken from:

Art. 15 Reg. 338/97 CITES

Article 19

The Member States shall:

- a) promote and encourage understanding of the importance of sustainable forest management and the measures to further develop sustainable forest management, including those required for the prevention of trade in illegally harvested timber and timber products originating thereof; and
- b) cooperate, as appropriate, with other Member States in developing educational and public awareness programmes, with respect to conservation and sustainable use of forest biological diversity.

language taken from:

Art. 13 CBD

CHAPTER IX
COMMITTEE AND MULTI-STAKEHOLDER FORUM

Article 20

1. In the performance of its duties, the Commission shall be assisted by a Committee (referred to as 'the Committee' in the present Regulation) composed of the representatives of the Member States and chaired by the representative of the Commission.

language taken from:

Art. 22 Reg. 236/2002 Kimberley Process & art. 12 Draft Reg. FLEGT

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 4(3) of Decision 1999/486/EC shall be set at ten working days.

language taken from:

Art. 22 Reg. 2368/2002 Kimberley Process & art. 12 Draft Reg. FLEGT

3. The Committee shall establish its rules of procedure.

language taken from:

Art. 22 Reg. 2368/2002 Kimberley Process & art. 12 Draft Reg. FLEGT

Article 21

1. A multi-stakeholder forum shall meet periodically to discuss the functioning and the effectiveness of the prohibitions and requirements as laid down in Articles 5 and 6. The forum shall be required to make recommendations to the European Community.
2. The Commission shall determine the format and the mandate of this multi-stakeholder forum.

Article 22

The Committee referred to in Article 20 and the multi-stakeholder forum referred to in Article 21 may examine any question concerning the application of the present Regulation and make recommendations to the Commissions.

language taken from:

Art. 23 Reg. 2368/2002 Kimberley Process

CHAPTER X **GENERAL PROVISIONS**

Article 23

1. The valid documentation requested in Article 6 may in any case be provided by new or existing schemes that verify the origin and legality of the timber and timber products. This would be on the condition that the format of these schemes has been assessed and approved to agreed requirements in accordance with the procedure laid down in Article 20(2) of the present Regulation.

language taken from:

Art. 4 (2) Draft Reg. FLEGT

2. The requirements as referred to in the previous paragraph shall entail at a minimum the criteria as listed in Article 24 (3). The format should also provide for:
 - (a) transparency;
 - (b) consistency in definitions of legality;
3. The Commission shall annually publish a list of approved formats.

Article 24

1. Without prejudice to the approved schemes as mentioned in Article 23, the Commission shall decide upon a form in accordance with Annex III which may be used within the Community to provide the information requested by Art. 6.
2. The form may, upon request, also be used by third States.
3. The form shall stipulate at least:
 - (a) the country of origin, including the region of origin within that country,
 - (b) certification of legality,
 - (c) the species of timber contained in the shipment,
 - (d) the volume of the shipment,
 - (e) the HS code(s).

language taken from:

Art. 19 Reg. 2368/2002 Kimberley Process

Article 25

1. In accordance with the procedure laid down in Article 22, the Commission shall:
 - (a) lay down uniform conditions concerning the issuing, validity and use of the document referred to in Article 24 of the present Regulation;

language taken from:

Art. 19 Reg. 338/97 CITES

- (b) present a Regulation setting up the FLEGT II licensing scheme;
- (c) annually review and when necessary expand the annexes to the present Regulation.

language taken from:

Art. 3 Reg. 348/8 Import of Whales

- 2. The Commission shall exercise its implementing powers as mentioned in the previous paragraph under (a) within one year after the entry into force of the present Regulation and shall present a proposal for the Regulation mentioned under (b) within three years after the entry into force of the present Regulation.

Article 26

- 1. The present Regulation shall apply:
 - (a) within the Community territory.
 - (b) to any national of a Member State, and to any legal person, entity, or body which is incorporated or constituted under Community Law or under the law of a Member State.

language taken from:

Art.18 Draft Regulation FLEGT

CHAPTER XI
ENTRY INTO FORCE AND APPLICATION

Article 27

- 1. The present Regulation shall enter into force on the day following the date of its publication in the *Official Journal of the European Communities*.

language taken from:

Art. 19 Draft Regulation FLEGT

- 2. It shall apply six months after publication.

language taken from:

Art. 44 Reg. 259/93 Shipment of waste

3. The present Regulation shall be binding in its entirety and will be directly applicable in all Member States.

language taken from:

Art. 19 Draft Regulation FLEGT

Done at Brussels, xx xxxxx 2005

For the Parliament
The President

For the Council
The President