



FLEGT Briefing Notes

FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE

What are the WTO implications?

1. Why consider the WTO?

The FLEGT Action Plan emphasises the need for a mechanism that allows EU customs authorities to identify legally produced timber and exclude illegal timber from the EU market. The Plan proposes the development of Voluntary Partnership Agreements, under which legally produced timber exported to the EU would be identified by means of licences issued by participating producer countries (FLEGT Partner Countries). Unlicensed timber exports from those countries would be excluded from the EU (see **Briefing note 7**). As any restrictions on trade are potentially subject to World Trade Organisation (WTO) rules, the question arises as to whether the EU's proposed scheme is consistent with international trade rules.

2. Likelihood of a challenge within the WTO

Rulings on the WTO-compatibility of trade measures are made only when a complaint is raised within the WTO. It is therefore important to ask, as a prelimi-

The titles of the eight briefing notes in this series are:

1. What is FLEGT?
2. What does FLEGT mean for Member States?
3. What is legal timber?
4. Why the focus on legality, not sustainability?
5. Bilateral, regional and multilateral approaches
6. Verification of legality
7. Voluntary Partnership Agreements
8. What are the WTO implications?

nary matter, whether the proposed licensing scheme would be challenged at all.

The licensing scheme would apply only to timber imports into the EU from FLEGT Partner Countries. The terms would be agreed voluntarily and bilaterally between the EU and each FLEGT Partner Country. It is inconceivable that a country which has entered into such an agreement would itself mount a WTO challenge.

It is also far from clear what incentive any third country would have to challenge EU practices under FLEGT agreements. In the absence of any direct or indirect economic interest, it is doubtful whether any third





P. v. Gardingen/FRP

country could bring a WTO challenge; any WTO action is therefore very unlikely in this case.

It follows that the likelihood of a challenge is extremely low, if not non-existent. Therefore, the question of whether measures implemented under the FLEGT scheme are compatible with WTO rules is, in fact, largely theoretical.

3. The WTO does not protect illegal trade

For the sake of completeness, this briefing note will now consider the compatibility of the proposed FLEGT scheme with WTO rules.

The WTO multilateral trading system is based on a set of rules agreed by all WTO Members. The aim of these rules is to liberate trade through the progressive reduction of tariffs and the elimination of other protectionist measures. Of course, WTO rules are designed to protect legitimate trade, not to encour-

age or protect illegal practices such as smuggling. Likewise, the FLEGT Action Plan aims to fight against illegal timber production and sales.

According to the FLEGT Action Plan, the legality of timber production would be defined with reference to the applicable legal rules in the country of export (see **Briefing note 3**), and the details of the system would be worked out in bilateral agreements (see **Briefing note 5**). Clearly, exports of unlicensed timber from FLEGT Partner Countries would amount to smuggling of illegal timber; there is no obstacle in WTO rules to the implementation of bilateral agreements aimed at countering such illegal practices.

The proposed trade measures aimed at fighting illegal timber production are based on voluntary, bilateral agreements and therefore pose no problem for WTO-compatibility. These measures would be precisely targeted – operating at consignment rather than country or company level – since their goal is to prevent illegal, not legitimate, flows of trade.



Tony Simons/ICRAF

