

Center for Biological Diversity, Center for International Environmental Law, Defenders of Wildlife, Environmental Investigation Agency, Humane Society International, Lewis & Clark (IELP), National Resources Defense Council, Pro Wildlife, Species Survival Network, Wildlife Conservation Society, WWF

**Non-Governmental Organization Legal Acquisition Finding Recommendations  
Prepared in Advance of the June 13-15, 2018 International Workshop on  
CITES Legal Acquisition Findings  
Brussels, Belgium**

Concept of legality in CITES and Legal Acquisition Findings

A CITES shipment must be considered legal only when it is accompanied by a permit issued by the Management Authority of the exporting country, after making the Legal Acquisition Finding (“LAF”) and receiving the Non-Detriment Finding (“NDF”) from the Scientific Authority. Even when a court has ordered the issuance of a permit or certificate, Management Authorities are recommended by the Conference of the Parties to “not proceed with any export of specimens of any CITES listed species without evidence of legal origin of specimens of the species”. (Res. Conf 12. 3 (Rev. CoP17). Article XVI (27)).

Parties should check and verify legality with the initial country of export to ensure that the Convention has been complied with. This includes assessing the original LAF made by the exporting country, as outlined in Res. Conf. 12.3 (Rev. CoP17) Art. II(5)(j), which recommends that “Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin.” The importing Party should check with the exporting Management Authority if export permits were issued under a court order to verify that the LAF was made or reject import.

*If the importing country is not satisfied with the exporting country proof of legality for a given shipment, the former should reject the import of specimens of CITES listed species.*

For example, the United States often requests more information from the country of export and if that information does not demonstrate that the specimen was indeed legally obtained or that an LAF was made, then the US will not allow import. This is consistent with the requirements of the CITES treaty, and is not a stricter domestic measure. In *Castlewood Prod. v. Norton* (365 F.3d 1076 (D.C. Cir. 2004)), the court found that the US government could detain shipments of timber accompanied by CITES export permits, but for which there was no evidence that the timber was legally obtained.

EU Member States also have procedures to look beyond the permit, particularly after the passage of the 2015 amendment to the EU Wildlife Regulation, which includes Article 7(6) “Export permits and re-export certificates issued by third countries shall be accepted only if the competent authority from the third country concerned provides, where requested to do so, satisfactory information that the specimens were obtained in accordance with the legislation on the protection of the species concerned.”<sup>1</sup>

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<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02006R0865-20150205&from=EN>

## **PROPOSED GUIDANCE FOR PARTIES ON LEGAL ACQUISITION FINDINGS**

The CITES treaty requires the Management Authority (“MA”) of each country to make a finding that a specimen was not obtained in contravention of applicable laws before issuing a CITES export permit or re-export certificate for the specimen. These provisions provide that such permits or certificates may only be issued when “a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.” CITES, Art. III(2)(b), IV(2)(b), V(2)(a).

In addition, with their CITES permit application the applicant should submit sufficient evidence for the MA to make an LAF. The MA should evaluate the evidence, legal considerations outlined below, and species related concerns, also outlined below in making their LAF. As necessary, the MA should consult with other Parties' MAs and Scientific Authorities; national law enforcement, environmental, and customs officials; and other relevant experts.

LAFs should apply not just to the specimen in trade, but also to the status of parental stock (for specimens that are claimed to be captive bred or ranched) and whether prior trade of the specimen occurred legally. Importing and re-exporting countries must be satisfied that the initial export of the specimen occurred in accordance with the requirements of the Convention, namely the obligation that the MA in the first country of export make a legal acquisition finding. Obligations of MAs with respect to LAF are separated below into initial country of export, country of import, and country of re-export.

The MA staff who issue permits should be trained and provided with guidance and the information necessary to make a valid legal finding. LAFs should be in writing and accompany export permits, re-export certificates, and certain CITES exemption documents. MAs should consult with national authorities and foreign authorities, as needed.

For export and re-export of personal and household effects refer to and apply Res. Conf. 13.7 (Rev. CoP17) (e.g. consider whether the number of specimens is reasonably appropriate for the nature of the export or re-export as personal use).

This document was prepared by the above-listed NGOs to present our recommended guidance for inclusion in the Resolution to be considered by the 70<sup>th</sup> Standing Committee and subsequently by the Conference of the Parties.

### **I. Guidance for Management Authorities in Country of Export**

MAs should take the following factors into consideration in making an LAF, in addition to assessing whether there is a higher likelihood that the specimens has been illegally obtained. For those with higher likelihood or risk of illegality, the applicant should be required to present, and the MA authority must assess, more evidence to demonstrate legality. The burden of proof should always be on the applicant to demonstrate the legality of the specimen for which they are seeking a permit or certificate (and not on the MA to show that it is not legally acquired). Exporters have the obligation to seek CITES permits for all products, including parts and derivatives, that contain CITES listed species (Res. Conf. 9.6 (Rev. CoP16). See Annex 1 for US regulation on documents to be provided by applicant to demonstrate legal origin.

Legal considerations: (Article III, IV and V of the Convention)

- **Legal domestic frameworks** and applicable regulations for the protection of fauna and flora meaning:
  - Is the harvest/offtake and quantities/volumes of harvest/offtake authorized?
  - Were any and all transfers of the specimen conducted in accordance with applicable laws and regulations (for example permit and registration requirements)? Such laws can be federal, state/provincial, local/county, those of indigenous communities, and other relevant laws and regulations.
  - Was the specimen (including founder stock) taken from the wild in accordance with national, local, state/provincial, indigenous, and other relevant laws and regulations?
  - Does the range state allow for legal exports?
  - Do commercial trade bans or restrictions in other range states exist?
- **Applicable management framework:** which regulations or agency guidelines apply to the specimen?
- **Examine the applicant:** has the applicant been involved in prior illegal activities? Have others in the supply chain been involved in illegal practices?
- **Assess illegal trade of the species:** is there a higher than average probability or significant risk that the specimen was illegally acquired? Which Appendix is the species listed on?
- **Source code:** Is there enough evidence provided for the source code requested? Was the specimen wild-collected, or from outside its range and propagated in a controlled environment, bred in captivity, ranched, farmed or artificially propagated?
- **Supply chain:** The MA should verify the accuracy of information from the capture/harvest of the specimens along the supply chain to export. Each transaction in the chain must be in accordance with national legal frameworks. See below for more detailed procedures on traceability.

Recommended Source-Specific Traceability Procedures for Determining Legality of Specimens:

MAs issuing export permits should trace the legality of the specimen back to its origin.

- For **Wild Specimens** consider: 1) where the specimen was collected; 2) whether the species is known to occur at that site; 3) the abundance of the species at that site; 4) where applicable, whether necessary permissions (from the appropriate management agency or landowner) was obtained prior to collection of the specimen; and 5) whether transport or transfer domestically and for purposes of export was done legally.
- For **Donated Specimens of unknown origin** consider: 1) is the institution public or private; 2) were standard recordkeeping practices followed and have reasonable efforts been made to obtain supporting information on the origin of the specimen; 3) has the institution provided sufficient information to show it made a reasonable effort to find a suitable recipient in the country from which export is sought; 4) will the export provide a conservation benefit to the species; 5) does any persuasive information exist on illegal transactions involving the specimen; 6) is the export noncommercial, with no money or barter exchanged except for shipping costs; 7) confirm that the institution has no history of receiving a series of rare and valuable specimens or a large quantity of wildlife or plants of unknown origin.

- For **Captive Bred, Cultivated, Ranched Specimens, or Artificially Propagated** consider: 1) whether there is evidence that parental stock was legally acquired and the data establishing a legal founder stock is credible; 2) biological characteristics of the species that might affect the ease or otherwise of breeding it in captivity to at least two generations; 3) whether the applicant obtained the parental stock, whether that acquisition was legal and if stock was acquired from another source, whether that acquisition was legal; 4) whether there is any marking or record-keeping; and 5) whether proper methods were used to produce specimens.

Additional considerations for MAs prior to issuing export permits should include:

- **Quotas.** Have exports within the calendar year already reached the approved annual quota? If so, no more exports should be approved. Res. Conf. 14.7 (Rev. CoP15), Annex, paragraph 22.
- **Specimen characteristics:**
  - native or non-native
  - whether the trade is commercial or non-commercial
- **Level of trade by range countries.** Are there any significant exports? The MA should consult the CITES Trade database and other available data sources.
- **NDF:** Has an NDF been produced and has the Scientific Authority advised that the export will not be detrimental to the survival of the species?
- **Introduction from the Sea** - if the removal from the wild of the relevant species is governed by a Regional Fisheries Body have the rules, and conservation and management measures, of that body been complied with? For example, several Regional Fisheries Management Organizations (RFMOs) prohibit retention or landings of certain CITES-listed species. Also, refer to United Nations Convention on the Law of the Sea, Resolution Conf. 14.6 (Rev. CoP16) Annex II) 1.1.2 and CITES Articles III (5) and IV (6).
- **Captive Bred, Cultivated, or Ranched Specimens** factors to assess:
  - Evaluation of the price of alleged captive-bred specimens.
  - Is the species common in captivity? Is it widely accepted that the species is commonly bred or is there documented information on the species' ability to breed species in captivity?
  - Reproduction capacities of the species including biological characteristics of the species that affect the ease or otherwise of breeding it in captivity to at least two generations.
  - Is there history in the CITES trade database establishing legal founder stock?
  - Is there original CITES export/import paperwork - has the species ever been officially exported from its range state(s)?
  - In situ controls at breeding facilities (not just paperwork or notice by phone):
    - Credibility of breeding facility
    - Stock size
    - Composition
- **Confiscated specimens:** Generally, LAF cannot be issued for seized or confiscated specimens because the specimen is illegal. Parties should consider marking or tagging of confiscated or illegally acquired specimens to ensure they do not end up back in trade. Res. Conf. 17.8 outlines

exceptional circumstances under which export of confiscated specimens may occur. If such exports are authorized, the permits must “clearly indicate that the specimens are confiscated specimens.” Res. Conf. 17.8(8)(d).

- **Testing to resolve uncertainty:** If documents and other evidence provided are insufficient to establish legal origin, but the applicant still seeks to export the specimen, the applicant should provide results of genetic, isotope, or other tests to support the body of evidence.

## **II. Guidance for Management Authorities in Country of Import**

The import of a specimen of any Appendix I or II-listed species requires the prior presentation of an export permit or a re-export certificate. CITES Arts. III(3), IV(4). The import of Appendix III-listed species also requires an export permit from the country which has included that species in Appendix III. CITES Art. V(3). Each export permit requires the MA of the exporting country to make an LAF. CITES Arts. III(2)(b), IV(2)(b), V(2)(a). Each re-export certificate requires the MA of the re-exporting country to be satisfied that the import of the specimen into their country was done in accordance with the provisions of the Convention, namely with an LAF and an export permit or re-export certificate. CITES Arts. III (4)(a), IV(5)(a). Therefore no imports can occur without the initial LAF by the MA in the country of export.

Importing parties have an obligation to not “authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin.” Res. Conf. 12.3 (Rev. CoP17) (II)(5)(j).

Furthermore, importing parties should not accept any export permit or re-export certificate for an Appendix II CITES-listed specimen issued by any other entity than the officially designated MA. Res. Conf. 11.3 (Rev. CoP. 17)(2)(d). If a MA issued the export permit or re-export certificate as a result of a court order, the importing party should reject shipments of specimens that did not have the required LAF or NDF. Res. Conf. 12.3 (Rev. CoP17) (XVI)(27)(b). In addition, “[t]he importing Party should contact the exporting Party to seek confirmation that a non-detriment finding by the Scientific Authority and a legal acquisition finding by the Management Authority were made.” Res. Conf. 12.3 (Rev. CoP17) (XVI)(27)(b).

In cases where “an importing country has reason to believe that specimens of an Appendix-II or -III species are traded in contravention of the laws of any country involved in the transaction” the importing country should contact the Party whose laws may have been violated and provide them with the documentation. Res. Conf. 11.3 (Rev. CoP17)(13)(e). This includes violations in the original country of export, which should have made an LAF prior to export. If such a finding was made, but the laws in the country of export were broken, then the specimen was traded in violation of the Convention.

If information from NGOs is provided to Parties, including importing countries, related to any of the violations outlined above, Parties should “evaluate and utilize for enforcement purposes” such information, as appropriate. Res. Conf. 11.3 (Rev. CoP17)(13)(l).

## **III. Management Authority in Country of Re-export**

Re-export of specimens requires a re-export permit issued by the MA. A re-export permit may only be issued if “a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention.” Article III(4)(a) for

Appendix I, Article IV(5)(a) for Appendix II. These same requirements for the re-exporting State are outlined above for importing States. Each re-export certificate requires the MA of the re-exporting country to be satisfied that the import of the specimen into their country was done in accordance with the provisions of the Convention, namely with an LAF and an export permit or re-export certificate. CITES Arts. III (4)(a), IV(5)(a). Therefore no imports and subsequent re-exports can occur without the initial LAF by the MA in the country of export.

Regarding confiscated or seized specimens, MAs should not authorize the re-export, since the specimens were imported in violation of the provisions of the Convention. Res. Conf. 17.8(8)(a). Res. Conf. 17.8 outlines exceptional circumstances under which re-export of confiscated specimens may occur. If such re-exports are authorized the permits and certificates must “clearly indicate that the specimens are confiscated specimens.” Res. Conf. 17.8(8)(d).

#### **IV. Recommendations to the Convention Bodies and Secretariat**

##### Recommendations to the Standing Committee

The Standing Committee instruct the Parties to provide a list to the Secretariat of domestic laws and regulations that regulate CITES listed species, which MAs review and assess in making their LAFs. Furthermore, Parties should be requested to include in their biennial report any modifications in accordance with Article VIII (7) (b) periodic reports any modifications, updates to the laws and regulations previously submitted. The list of current legislation should be included in the CITES website.

The Standing Committee instruct the Parties to provide a list to the Secretariat of their written procedures for making LAFs, which should be included in the CITES website.

The Standing Committee instruct Parties to share with other Parties and Secretariat the LAFs made for exports of CITES listed traded specimens.

##### Recommendation to the Conference of the Parties

The Conference of the Parties should include the written procedures to make an LAF in the National Legislation Project's evaluation of the adequacy of CITES implementing legislation, and amend Res. Conf. 8.4 (Rev. CoP15) to reflect this requirement.

##### Recommendations to the Secretariat

- a) maintain a prominent section for LAFs on the CITES website and to update it regularly with information from the Standing Committee, Parties and other sources;
- b) implement a user-friendly mechanism on the CITES website that would allow Parties to easily submit relevant information to be considered for inclusion in the website;
- c) ensure that this information is accessible in the appropriate sections of the CITES Virtual College; and
- d) assist in identifying possible funding sources to help Parties implementing capacity-building activities related to the making of LAFs.

##### References:

- CITES Articles III, IV, V, and VIII

- CITES Res. Conf. 17.8
- CITES Res Conf. 16.7 (Rev. CoP17)
- CITES Res. Conf. 13.7 (Rev. CoP17)
- CITES Res. Conf. 12.3 (Rev. CoP17)
- CITES Res. Conf. 11.3 (Rev. CoP17)
- CITES Res. Conf 9.6 (Rev. CoP16)
- US 50 C.F.R. 23.60
- US 50 C.F.R. 23.34

**ANNEX 1**

US requirements per US 50 C.F.R. 23.34

“What kinds of records may I use to show the origin of a specimen when I apply for a U.S. CITES document?”

(a) When you apply for a U.S. CITES document, you will be asked to provide information on the origin of the specimen that will be covered by the CITES document.

(1) You need to provide sufficient information for us to determine if the issuance criteria in this part are met (see the sections in this subpart for each type of CITES document).

(2) We require less detailed information when the import, introduction from the sea, export, or re-export poses a low risk to a species in the wild and more detailed information when the proposed activity poses greater risk to a species in the wild (see Subpart D of this part for factors we consider in making certain findings).

(b) Information you may want to provide in a permit application includes, but is not limited to, the following:

<b>Source of specimen</b>	<b>Types of records</b>
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<p><b>(1) Captive-bred or cultivated</b> <sup>1</sup></p>	<p>(i) Records that identify the breeder or propagator of the specimens that have been identified by birth, hatch, or propagation date and for wildlife by sex, size, band number, or other mark, or for plants by size or other identifying feature:</p> <p>(A) Signed and dated statement by the breeder or propagator that the specimen was bred or propagated under controlled conditions.</p> <p>(B) Name and address of the breeder or propagator as shown by documents such as an International Species Information System (ISIS) record, veterinary certificate, or plant nursery license.</p> <p>(ii) Records that document the breeding or propagating of specimens at the facility:</p> <p>(A) Number of wildlife (by sex and age- or size-class) or plants at the facility.</p> <p>(B) How long the facility has been breeding or propagating the species.</p> <p>(C) Annual production and mortalities.</p> <p>(D) Number of specimens sold or transferred annually.</p> <p>(E) Number of specimens added from other sources annually.</p> <p>(F) Transaction records with the date, species, quantity of specimens, and name and address of seller.</p> <p>(G) Marking system, if applicable.</p> <p>(H) Photographs or video of facility, including for wildlife any activities during nesting and production and rearing of young, and for plants, different stages of growth.</p>
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<p><b>(2) Confiscated or seized</b></p>	<p>Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment, which demonstrates the applicant's legal possession.</p>
<p><b>(3) Grown from exempt plant material</b></p>	<p>Records that document how you obtained the exempt plant material, including the name and address of the person from whom you received the plant material.</p>

<b>(4) Imported previously</b>	<p>(i) A copy of the cancelled CITES document that accompanied the shipment into the United States.</p> <p>(ii) For wildlife, copies of cleared Declarations for Importation or Exportation of Fish or Wildlife (Form 3-177) associated with each specimen.</p>
<b>(5) Pre-Convention</b>	<p>Records that show the specimen was acquired before the date the provisions of the Convention first applied to it, such as:</p> <p>(i) Receipt or invoice.</p> <p>(ii) Catalog, inventory list, photograph, or art book.</p> <p>(iii) Statement from a qualified appraiser attesting to the age of a manufactured product.</p> <p>(iv) CBP (formerly U.S. Customs Service) import documents.</p> <p>(v) Phytosanitary certificate.</p> <p>(vi) Veterinary document or breeding or propagation logs.</p>
<b>(6) Ranched wildlife</b>	<p>(i) Records, such as permits, licenses, and tags, that demonstrate that the specimen was legally removed from the wild under relevant Federal, tribal, State, or local wildlife conservation laws or regulations:</p> <p>(A) If taken on private or tribal land, permission of the landowner if required under applicable law.</p> <p>(B) If taken in a national, State, or local park, refuge or other protected area, permission from the applicable agency, if required.</p> <p>(ii) Records that document the rearing of specimens at the facility:</p> <p>(A) Number of specimens (by sex and age- or size-class) at the facility.</p> <p>(B) How long the specimens were reared at the facility.</p> <p>(C) Signed and dated statement by the owner or manager of the facility that the specimens were reared at the facility in a controlled environment.</p> <p>(D) Marking system, if applicable.</p> <p>(E) Photographs or video of the facility.</p>

<b>(7) Sequential ownership or purchase</b>	(i) Records that specifically identify the specimen, give the name and address of the owner, and show the specimen's origin (pre-Convention, previously imported, wild-collected, or born or propagated in a controlled environment in the United States). (ii) Records that document the history of all transfers in ownership (generally not required for pre-Convention specimens).
<b>(8) Unknown origin, for noncommercial purposes</b>	A complete description of the circumstances under which the specimen was acquired (where, when, and from whom the specimen was acquired), including efforts made to obtain information on the origin of the specimen.
<b>(9) Wild-collected</b>	Records, such as permits, licenses, and tags, that demonstrate the specimen or the parental stock was legally removed from the wild under relevant foreign, Federal, tribal, State, or local wildlife or plant conservation laws or regulations: (i) If taken on private or tribal land, permission of the landowner if required under applicable law. (ii) If taken in a national, State, or local park, refuge, or other protected area, permission from the applicable agency, if required.

<sup>1</sup> If the wildlife was born in captivity from an egg collected in the wild or from parents that mated or exchanged genetic material in the wild, see paragraphs (b)(6) and (b)(9) of this section. If the plant was propagated from a non-exempt propagule collected from a wild plant, see paragraph (b)(9) of this section.”

## **ANNEX 2 - Species Recommended Reading**

### Marine species

Legal Acquisition - North America paddlefish example:

<http://www.oas.org/en/sedi/dsd/Biodiversity/WHMSI/Sharks%20Event/2.1d%20Legal%20acq-paddlefish%20example.pdf>

Sharks implementation workshop Latin America and the Caribbean - Brazil, 2013:

<http://www.oas.org/en/sedi/dsd/biodiversity/WHMSI/SharkEvent%20.asp>

### Tree species

Link to download EUTR Due Diligence Guidance:

[http://ec.europa.eu/environment/forests/pdf/eutr\\_guidance.zip](http://ec.europa.eu/environment/forests/pdf/eutr_guidance.zip)

The EU Timber Regulation and CITES:

<https://www.chathamhouse.org/publications/papers/view/199158>

Chatham House LAF workshop summary and presentations: <https://www.illegal-logging.info/content/legal-acquisition-cites-timber>

The role of CITES in the governance of transnational timber trade:

<https://www.cifor.org/library/5668/the-role-of-cites-in-the-governance-of-transnational-timber-trade/>

## **ANNEX 3 - Additional LAF Considerations for CITES-listed Tree Species**

### **Illegalities are Widespread and LAFs are Rare for Tree Species**

INTERPOL reports that between 15-30% of all wood traded globally each year (worth between US\$ 50-152 Billion) is illegal.<sup>2</sup> Most tree species listed on CITES Appendices I and II have been listed almost entirely due to extremely high-levels of international trade directly causing waves of illegal and unsustainable logging and illegal domestic trade in producer countries.

The listing of tree species on CITES does not in itself automatically reduce the illegal harvest or trade of specimens thereof. While all CITES export permits issued by MAs should be accompanied by LAF findings, as well as documentary evidence used to determine legal acquisition, many countries exporting CITES listed tree species do not currently conduct LAFs at all, or do not do so in a meaningful way. There are numerous examples of exports and imports of CITES listed tree species specimens under CITES permits in violation of both national laws regulating production, trade, and export of these species, and in violation of the CITES Convention itself, or in violation of Resolutions and decisions in support of it.<sup>3</sup>

Consequently, ensuring LAFs have credibly and verifiably occurred is a particularly important responsibility of CITES MAs in all Parties to CITES when issuing or accepting export or re-export permits for CITES listed tree species.

### **Scope of Laws relevant for Timber Tree Species**

Domestic laws governing the commercial exploitation and use of timber are not generally limited to those laws explicitly and solely for the protection and conservation of other wild flora or fauna. The scope of legislative and regulatory frameworks relevant to a CITES LAF for specimens of tree species, may additionally include:

#### **1. Laws governing the **allocation of the “right to harvest”**:**

These may include:

- Laws regulating the allocation of logging concessions or other timber harvesting permits;
- Laws regulating land use planning, forest zoning, land tenure rights, and consultation with and compensation for indigenous or local people;
- Laws prohibiting crime or corruption in the allocation of timber harvesting rights and permits;
- Laws establishing national, subnational, or Forest Management Unit-level prohibitions on the harvest of rare, endangered, or threatened species;
- Laws governing the payment of taxes and fees by forestry operators (often designed to pay for enforcement, monitoring, and other laws designed to maintain the forest resource-base).

#### **2. Laws governing the **conditions on timber harvesting**:**

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<sup>2</sup> INTERPOL 2018, <https://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Leaf>

<sup>3</sup> High profile examples include: Environmental Investigation Agency (EIA), Red Alert: How Fraudulent Siamese Rosewood Exports from Laos & Cambodia are Undermining CITES Protection, June 2016, <https://eia-international.org/wp-content/uploads/EIA-Red-Alert-FINAL.pdf> & EIA, The Rosewood Racket, China’s Billion Dollar Illegal Timber Trade & the Devastation of Nigeria’s Forests, November 2017, <https://eia-global.org/reports/the-rosewood-racket>

These may include:

- Laws establishing national, subnational, or Forest Management Unit-level volume quotas or annual allowable cuts (AACs), at general and/or species levels, as relevant;
- Laws establishing requirements for pre-harvest inventories, the establishment of and compliance with authorized Forest Management Plans, pre-harvest tree selection, post-harvest inventories, and harvesting monitoring;
- Laws requiring the observance of harvest cycles (such as observance of annual coups or compartments) and minimum harvesting girths by species (e.g., minimum Diameter at Breast Height, DBHs);
- Laws governing the establishment and observation of conservation set-asides, prohibitions on harvesting on steep slopes or within a certain distance to watercourses, or stipulations requiring selective or reduced impact logging, such as directional felling, log skidding, road planning, development and maintenance, and other silvicultural practices required by law;
- Laws governing reporting obligations, environmental monitoring, and resource-protection obligations of forestry operators (anti-illegal logging patrolling, avoidance of fire, etc.);
- Laws governing rules around the marking of the timber (barcodes, log tags, etc.);
- Particular timber species may domestically be included on national red lists of endangered species and thus may have separate rules governing their harvesting, e.g. the requirement to maintain a set number of mature reproductively active trees in the remaining stand.

### 3. Laws governing the **domestic timber trade**:

These may include:

- Laws governing the domestic transportation of timber, including required permits and reporting obligations – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws prohibiting domestic trade in illegal timber or in endangered or rare timber species – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws governing the legal registration and operation of timber trade enterprises and facilities – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws governing the environmental and social practices of timber businesses, including those regulating the use of chemicals, the management of waste, the employment of labor, etc.;
- Laws establishing the monitoring and reporting of input and output volumes of sawmills and wood products factories – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws governing the payment of taxes and fees by timber traders and manufacturers – often levied to pay for forest-sector resource monitoring and enforcement for environmental purposes;
- Laws requiring traceability of timber, such as chain of custody (CoC), to enable monitoring of pressures on the forest resource-base, and enforcement of non-compliant trade in violation of sustainable-forestry prescriptions.

### 4. Laws governing **timber and wood products exports**:

These may include, inter alia:

- Laws governing the products permitted for or prohibited from export. Many countries have log export bans, sawn-timber export bans, or species-specific export bans, usually to reduce timber smuggling by facilitating simplified monitoring and enforcement designed to maintain the forest resource-base;

- Laws governing the payment of taxes and fees by timber exporters – often levied to pay for forest-sector resource monitoring and enforcement for environmental purposes;
- Laws governing the registration and operation of timber exporters – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws governing the declaration of timber exports to customs and compliance with customs procedures;
- Laws establishing requirements for traceability along the chain of custody (CoC) from the point of harvest to export.

#### Chain of Custody (CoC) as Prerequisite for LAF

Verifiable traceability of tree specimens through the Chain of Custody (CoC) from the point of export back to the point of harvest is a prerequisite for any CITES LAF. Without such traceability it is not possible to assess compliance with the relevant scope of laws pertinent to each stage in production, trade, and export of timber species specimens.

#### Timber Legality Assurance Systems (TLASs) and Relevance to LAF

In light of the global scourge of illegal logging and timber smuggling, many countries have dedicated significant time and effort into the development of Legality Definitions (LDs) for timber production and trade. These LDs have subsequently been codified into Timber Legality Assurance Systems (TLAS) constituted of Principles, Criteria, and Indicators (P,C, & Is) used to demonstrate compliance with the full scope of relevant underlying laws.

Where TLAS's exist, verifiable compliance with them is usually a legal requirement in its own right. In such cases, evidence of compliance with a TLAS is therefore a prerequisite for any LAF. Commensurately, the non-existence of evidence of compliance with a TLAS where compliance is required is evidence in itself that Legal Acquisition has not occurred.

However, where a TLAS does not provide for traceability (a verifiable CoC) from the point of export back to the point of harvest, it cannot on its own constitute sufficient evidence for making an LAF.

#### Guidance for Management Authorities in Country of Export

MA's requested to issue CITES export permits for tree species should always:

- Verify compliance with the specific provisions across the full scope of laws relevant to each stage of production and trade, as outlined above;
- Verify a full CoC of the specimens concerned from the exporter back to an identified forest management unit (FMU), concession of harvest, or other permitted harvesting area. Where applicable, the details of the forestry concession should be included both on the permit application and on the issued permit, to allow for crosschecking.
- Verify that the CITES Scientific Authority (SA) of the exporting Party to CITES has conducted a NDF and that the NDF was positive.

#### Types of evidence that should be provided by Applicant

Evidence needed to be able to make LAF for CITES-listed tree species includes, but is not limited to, the following:

- Evidence that an NDF was conducted and was positive for the specimens concerned;
- Source of timber should be a specific concession/permit area;
- Evidence of right to harvest;
- Evidence of compliance of conditions of harvest: inventories, management plan, production did not exceed authorized amounts, prohibitions on harvest of rare or endangered species, etc.;
- Chain of custody from forest to exporter;
- Evidence of payment of taxes and fees, and of compliance with trade and export laws;
- Evidence of compliance with any TLAS in force in the country.

Where a CITES export permit is requested in connection with a court order to issue one, an export permit should still not be issued if an LAF as described above has not occurred or its finding is negative, or in the absence of an NDF by a Scientific Authority, because the issuance by an MA of an export permit without a positive LAF and NDF (for Appendix I and II-listed species) is a violation of Articles, III(2)(a), III(2)(b), IV(2)(a), IV(2)(b), and V(2)(a) of the Convention.

#### **Guidance for Management Authorities in Country of Import:**

For timber species on Appendix II, the MA of the importing Party should always:

- contact the exporting Party to verify the permit was issued by the exporting party MA;
- verify that a non-detriment finding by the Scientific Authority and a legal acquisition finding by the Management Authority were made and were positive. This should require the acquisition of documentary evidence from the Exporting Party MA that NDFs and LAFs have occurred;
- thoroughly examine the LAF presented for inconsistencies between quotas, legal harvest levels, restrictions on species, and other aspects of the legal scope in the country of export;
- liaise closely with CITES Management Authorities and law enforcement agencies in consumer, source, and transit countries to **help detect, deter, and prevent illicit trade** in wildlife through the exchange of intelligence, technical advice, and support;
- “evaluate and utilize for enforcement purposes, information from non-governmental sources” provided to Parties, including importing countries, related to violations of laws relevant to an LAF for tree species (Res. Conf. 11.3 (Rev. CoP17)(13)(l));
- not “authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin.” Res. Conf. 12.3 (Rev. CoP17)(II)(5)(j).