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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2173/2005**of 20 December 2005****on the establishment of a FLEGT licensing scheme for imports of timber into the European Community**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Council and the European Parliament welcomed the Communication from the Commission to the Council and the European Parliament on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) as a first step towards tackling the urgent issue of illegal logging and associated trade.
- (2) The Action Plan puts emphasis on governance reforms and capacity building, supported by actions aimed at developing multilateral cooperation and complementary demand-side measures designed to reduce the consumption of illegally harvested timber and contributing to the wider objective of sustainable forest management in timber-producing countries.
- (3) The Action Plan identifies the setting up of a licensing scheme as a measure to ensure that only timber products that have been legally produced in accordance with the national legislation of the producing country may enter the Community, and emphasises that that licensing scheme should not impede legitimate trade.
- (4) Implementation of the licensing scheme requires that imports of relevant timber products into the Community be made subject to a system of checks and controls seeking to guarantee the legality of such products.
- (5) To this end the Community should conclude voluntary Partnership Agreements with countries and regional organisations, which are to place a legally binding obligation on a partner country or regional organisation to implement the licensing scheme within the schedule stipulated in each Partnership Agreement.
- (6) Under the licensing scheme, certain timber products exported from a partner country and entering the Community at any customs point designated for release for free circulation should be covered by a licence issued by the partner country, stating that the timber products have been produced from domestic timber that was legally harvested or from timber that was legally imported into a partner country in accordance with national laws as set out in the respective Partnership Agreement. Compliance with those rules should be subject to third-party monitoring.
- (7) The competent authorities of the Member States should verify that each shipment is covered by a valid licence prior to releasing the shipment covered by that licence for free circulation in the Community.
- (8) Each Member State should determine the penalties applicable in the event of infringements of this Regulation.
- (9) The licensing scheme should initially cover a limited range of timber products. When agreed, the range of products could be extended to other product categories.
- (10) It is important to revise the Annexes specifying the countries and products covered by the licensing scheme promptly. Those revisions should take into account the progress in implementation of Partnership Agreements. A partner country may be added to Annex I after it has notified the Commission and the Commission has confirmed that this partner country has put in place all the controls needed to be able to issue licences for all the products listed in Annex II. A partner country may be removed from Annex I either when it has given one year's notice of its intention to terminate its Partnership Agreement or with immediate effect, in the case of suspension of its Partnership Agreement.

- (11) Annex II may be amended after the Commission and all partner countries have agreed to such amendment. Annex III may be amended after the Commission and the partner country concerned have agreed to such amendment.
- (12) The amendments to Annexes I, II and III would be implementing measures of technical nature and in order to simplify and expedite the procedure, their adoption should be entrusted to the Commission. Such amendments should comprise commodity codes, at four-digit heading level or six-digit subheading level of the current version of Annex I to the Harmonised Commodity Description and Coding System.
- (13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾ with a distinction being made between those measures which are subject to the regulatory committee procedure and those which are subject to the management committee procedure, the management committee procedure being in certain cases, with a view to increased efficiency, the more appropriate,
2. 'partner country' means any State or regional organisation that enters into a Partnership Agreement, as listed in Annex I;
3. 'Partnership Agreement' means an agreement between the Community and a partner country by which the Community and that partner country undertake to work together in support of the FLEGT Action Plan and to implement the FLEGT licensing scheme;
4. 'regional organisation' means an organisation consisting of sovereign states that have transferred competence to that organisation, granting it the capacity to enter into a Partnership Agreement on their behalf, in respect of matters governed by the FLEGT licensing scheme, as listed in Annex I;
5. 'FLEGT licence' means a shipment-based or market participant-based document of a standard format which is to be forgery-resistant, tamper-proof, and verifiable, and which refers to a shipment as being in compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by a partner country's licensing authority. Systems for issuing, recording and communicating licences may be paper-based or based on electronic means, as appropriate;

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

1. This Regulation establishes a Community set of rules for the import of certain timber products for the purposes of implementing the FLEGT licensing scheme.
2. The licensing scheme shall be implemented through Partnership Agreements with timber producing countries.
3. This Regulation shall apply to imports of timber products set out in Annexes II and III from partner countries listed in Annex I.

Article 2

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

1. 'Forest Law Enforcement, Governance and Trade licensing scheme' (hereinafter referred to as FLEGT licensing scheme) means the issuing of licences for timber products for export to the Community from partner countries and its implementation in the Community, in particular in Community provisions on border controls;
2. 'market participant' means an actor, private or public, involved in forestry or transformation or trade of timber products;
3. 'licensing authority(ies)' means the authority(ies) designated by a partner country to issue and validate FLEGT licences;
4. 'competent authority(ies)' means the authority(ies) designated by Member States to verify FLEGT licences;
5. 'timber products' means the products set out in Annexes II and III, to which the FLEGT licensing scheme applies, and which, when imported into the Community, cannot be qualified as 'goods of a non-commercial nature' as defined in point 6 of Article 1 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽²⁾;
6. 'legally produced timber' means timber products produced from domestic timber that was legally harvested or timber that was legally imported into a partner country in accordance with national laws determined by that partner country as set out in the Partnership Agreement;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 883/2005 (OJ L 148, 11.6.2005, p. 5).

11. 'imports' means the release for free circulation of timber products within the meaning of Article 79 of Council Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾

12. 'shipment' means a shipment of timber products;

13. 'export' means the physical leaving or taking out of timber products from any part of the geographical territory of a partner country to bring them into the Community;

14. 'third-party monitoring' means a system through which an organisation that is independent of a partner country's government authorities and its forest and timber sector monitors and reports on the operation of the FLEGT licensing scheme.

CHAPTER II

FLEGT LICENSING SCHEME

Article 3

1. The FLEGT licensing scheme shall apply only to imports from partner countries.

2. Each Partnership Agreement shall specify an agreed schedule for implementing the commitments entered into by that Agreement.

Article 4

1. Imports into the Community of timber products exported from partner countries shall be prohibited unless the shipment is covered by a FLEGT licence.

2. Existing schemes that guarantee the legality and reliable tracking of timber products exported from partner countries may form the basis of a FLEGT licence on condition that those schemes have been assessed and approved in accordance with the procedure referred to in Article 11(2), in order to provide the necessary assurance as to the legality of the timber products concerned.

3. Timber products of species listed in Annexes A, B and C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating

trade therein ⁽²⁾ shall be exempt from the requirement laid down in paragraph 1 of this Article. The Commission shall review this exemption, in accordance with the procedure referred to in Article 11(3), by 30 December 2010.

Article 5

1. A FLEGT licence covering each shipment shall be available to the competent authority at the same time as the customs declaration for that shipment is presented for release for free circulation in the Community. The competent authorities shall keep a record — in electronic or paper format — of the original FLEGT licence together with the corresponding customs declaration.

Import of timber products under a FLEGT licence issued to a market participant shall be accepted as long as the market participant's licence remains valid.

2. The competent authorities shall provide the Commission, or persons or bodies designated by the Commission, with access to the relevant documents and data, should problems arise which impair the effective operation of the FLEGT licensing scheme.

3. The competent authorities shall grant to the persons or bodies designated by partner countries as being responsible for the third party monitoring of the FLEGT licensing scheme access to the relevant documents and data, but the competent authorities shall not be required to provide any information which they are not permitted to communicate pursuant to their national law.

4. The competent authorities shall decide on the need for further verification of shipments using a risk-based approach.

5. In case of doubt as to the validity of the licence, the competent authorities may ask the licensing authorities for additional verification and seek further clarification, as set out in the Partnership Agreement with the exporting partner country.

6. Member States may collect fees to cover the necessary expenses arising from official acts by competent authorities required for control purposes under this Article.

7. Customs authorities may suspend the release of or detain timber products where they have reason to believe that the licence may not be valid. Costs incurred while the verification is completed shall be at the expense of the importer, except where the Member State concerned determines otherwise.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13);

⁽²⁾ OJ L 61, 3.3.1997, p. 1. Regulation as last amended by Commission Regulation (EC) No 1332/2005 (OJ L 215, 19.8.2005, p. 1).

8. Each Member State shall determine the penalties to be imposed where the provisions of this Regulation are infringed. Such penalties shall be effective, proportionate and dissuasive.

9. The Commission shall adopt detailed requirements for application of this Article in accordance with the procedure referred to in Article 11(3).

Article 6

1. If competent authorities establish that the requirement laid down in Article 4(1) is not fulfilled, they shall act in accordance with national legislation in force.

2. Member States shall notify the Commission of any information suggesting that the provisions of this Regulation are being, or have been, circumvented.

Article 7

1. Member States shall designate the competent authorities responsible for implementing this Regulation and for communicating with the Commission.

2. The Commission shall provide all competent authorities of the Member States with the names and other relevant details of the licensing authorities designated by partner countries, authenticated specimens of stamps and signatures attesting that a licence has been legally issued, and any other relevant information received in respect of licences.

Article 8

1. Member States shall be required to submit by 30 April an annual report covering the previous calendar year, which shall include the following:

- (a) quantities of timber products imported into the Member State under the FLEGT licensing scheme, as per HS Heading specified in Annexes II and III and per each partner country;
- (b) the number of FLEGT licences received, as per HS Heading specified in Annexes II and III and per each partner country;
- (c) the number of cases and quantities of timber products involved where Article 6(1) has been applied.

2. The Commission shall lay down a format for annual reports in order to facilitate monitoring of the FLEGT licensing scheme.

3. The Commission shall prepare by 30 June an annual synthesis report based on the information submitted by the Member States in their annual reports covering the previous calendar year and shall make it accessible to the public in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾.

CHAPTER III

GENERAL PROVISIONS

Article 9

Two years after the entry into force of the first Partnership Agreement the Commission shall present the Council with a report on the implementation of this Regulation, based in particular on the synthesis reports referred to in Article 8(3) and on the reviews of Partnership Agreements. This report shall be accompanied, where appropriate, by proposals for improvement of the FLEGT licensing scheme.

Article 10

1. The Commission may amend the list of partner countries and their designated licensing authorities as set out in Annex I in accordance with the procedure referred to in Article 11(3).

2. The Commission may amend the list of timber products as set out in Annex II to which the FLEGT licensing scheme applies in accordance with the procedure referred to in Article 11(3). Those amendments shall be adopted by the Commission taking into account the implementation of the FLEGT Partnership Agreements. Such amendments shall comprise commodity codes, at four-digit heading level or six-digit subheading level of the current version of Annex I to the Harmonised Commodity Description and Coding System.

3. The Commission may amend the list of timber products as set out in Annex III to which the FLEGT licensing scheme applies in accordance with the procedure referred to in Article 11(3). Those amendments shall be adopted by the Commission taking into account the implementation of the FLEGT Partnership Agreements. Such amendments shall comprise commodity codes, at four-digit heading level or six-digit subheading level of the current version of Annex I to the Harmonised Commodity Description and Coding System and shall only apply in relation to the corresponding partner countries as set out in Annex III.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

Article 11

1. The Commission shall be assisted by the Forest Law Enforcement Governance and Trade (FLEGT) Committee (hereinafter referred to as the Committee).

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 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its Rules of Procedure.

Article 12

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 2005.

For the Council
The President
M. BECKETT

ANNEX I

PARTNER COUNTRIES AND THEIR DESIGNATED LICENSING AUTHORITIES

ANNEX II

Timber products to which the FLEGT licensing scheme applies irrespective of the partner country

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
4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar 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 III

Timber products to which the FLEGT licensing scheme applies only in relation to the corresponding partner countries

Partner country	HS heading	Description