Designing Verification Systems for the Timber Trade: learning from International Processes

David Brown

Timber producer states are coming under increasing pressure to guarantee the legality of their production on international markets. The need to attest to the legality of traded goods demands a system to verify the authenticity of the claim, and it is with this aspect of timber policy development that the present article is concerned. The requirements for timber verification are placed in the context of diverse experiences of verification in relation to international treaties and conventions. Drawing on the evidence of such international processes, the topic of verification turns out to be rather more complex than might initially be assumed. Issues that, at one level, appear narrowly technical and specific to the forest sector raise broader questions about political structures and relationships, and forms of public accountability. The paper discusses the implications of this, and identifies a number of principles of verification systems design.

Policy Conclusions

- Verification requirements vary according to the interests of their proponents, as well as their (often multiple) objectives.
- When applied in technically complex environments, with diverse and potentially conflicting constituencies, verification needs to be viewed as a complex process of investigation and validation, with wide participation, and not merely as an act of technical inspection.
- There are a number of principles for effective verification design, including: the need for a supreme authority with the ability to bring decisions to closure; the capacity to prevent migration to non-parties; broad and inclusive structures of participation; strong positive incentives to comply; and capacity for independent oversight.
- Verification systems need to be designed so as to strengthen public governance; this favours a systems approach, putting as much emphasis on the interactions between actors as on their individual identities, and ensuring that information which is generated is independent of all interests, but made publicly available in a transparent way.

Introduction: Aid, Global Governance and Timber Legality

An interesting development in post-Cold War international relations is the use of bilateral aid to promote national governance reform. Corruption is central to the concern with governance. De Maria refers to 'the new internationalisation of the fight against western-defined corruption' (2005:218). He notes that the past tendency to prop up dictatorships to prevent the spread of communism and to secure goods and markets for the West has been succeeded in the post-Cold War era by a singular interest in honest administration and unfettered market competition.

He writes: 'Corruption, once the concern of moralists, is now confronted by a politics driven by economic and legal interests. Simply put, the new mantra is "corruption is not good for trade". It is seen to distort the cash nexus, requires expensive regulatory regimes, shelters inefficiency and retards competition' (*Ibid*).

Governance concerns are much in evidence in the forest sector (see Brown *et al*, 2002), and corruption is alleged to be widespread, particularly (though by no means, exclusively) in tropical environments. The anti-corruption drive has coalesced around the issue of illegal logging, and numerous aid donors are active in this area. It has been the subject of major international policy initiatives, including the G8 Action Programme on Forests (1998) and the US President's Initiative against Illegal Logging (2002). An important policy process has developed on the topic of 'Forest Law Enforcement, Governance and Trade' (FLEGT), which has already culminated in EU-supported and World Bank-led conferences in East Asia (2001) and Africa (2003), soon to be joined by the former Soviet States (the 'ENA [Europe and North Asia] FLEGT', 2005) and possibly, South America (in 2006).

In an era when the international trade is dominated by seemingly well-regulated Western European and North American producers, it might be wondered why this issue is now of such widespread concern. In 2000, for example, Western Europe and North America accounted for 75% of global forest products exports, and the Developing Asia-Pacific region for a further 10%, leaving a maximum of 15% for the remaining tropical regions which are the main areas of contention in illegal logging terms. Africa contributed only 2% of global forestry sector value added and exports in 2000 (Lebedys, 2005). The likelihood is that the proportion from producers in the humid tropics will continue to decline.

The interests of northern business corporations are certainly one reason for the interest. A recent study estimates that:

- Up to 30% of international hardwoods (lumber and ply) are traded illegally.
- This depresses world prices by 7-16%.
- The opportunity costs to US exporters, in terms of depressed prices and negative effects on external trade, are of the order of US$460 mn. per year (*Seneca Creek Assoc.* 2004).

There are evidently high costs to western industry from competition with illegal timber, and a powerful constituency exists to press for governance reforms.

However, the development assistance interest in illegal logging goes beyond mere profitability. The poverty dimensions are central preoccupations, and figure strongly in

the international policy processes, particularly with regard to tropical producers. A link can therefore be made to one of the underlying themes of the new aid architecture, 'Poverty Reduction Strategies' (PRSPs). It is in this latter reference that the EUs FLEGT initiative is of particular interest.

The EU's FLEGT Action Plan

The EU's FLEGT Action Plan proposes a range of measures to increase the capacity of developing and emerging market countries to control illegal logging and reduce the trade in illegal timber and products, especially with EU states. The initial focus is mainly on sawnwood and lumber. Equity and good governance concerns are central to its aims:

> 'Efforts will be focused on promoting equitable and just solutions to the illegal logging problem which do not have an adverse impact on poor people; helping partner countries to build systems to verify timber has been harvested legally; promoting transparency of information; capacity building for partner country governments and civil society; and promoting policy reform' (2003:1).

The Action Plan also proposes the development of 'Voluntary Partnership Agreements' (VPAs) with timber-producing countries to prevent illegal timber from entering the EU market. As the name suggests, VPAs will be voluntary agreements, drawn up on a bilateral basis between the EU and individual producer countries. By means of a licensing system, they will attest to the legality of the timber exported to the EU. This will provide a reliable means for customs officers and purchasers to verify that timber comes only from legal sources. The Action Plan includes a number of other measures to promote the use of legally-sourced timber in the EU – for example, encouraging public procurement by EU Member States in conformity with EU guidelines.

Such demand-side measures are not an entirely new development. Forest certification schemes have played a similar role, and have had a considerable effect on consumer preferences. However, VPAs differ in some important ways from certification, increasing their attractiveness to tropical producers. This is particularly so in areas such as the African humid tropics, where certification has met with limited success. They are aimed at national production, not individual suppliers, and by addressing 'legality' rather than the more difficult notion of 'sustainability', they should be easier to attain. The hope is that they will prove more effective than the previous generation of supply-side measures (for example, donor conditionalities and financial incentives) in bringing about positive change in a problematic sector.

Verification Of Legality

Anything that requires parties to enter into agreement on the legality of a trade creates the demand for some system to verify the authenticity of the claim.

No VPAs have yet been agreed between the EU and its supplier countries. As they are to be tailored to national needs, their specific content is difficult to predict. However, EC FLEGT Briefing Note No. 09 outlines one system that could be used to ensure compliance. This would involve the establishment of a legality assurance system built around activities such as the following:

i. An agreed definition of legally-produced timber;
ii. A secure chain of custody to track the timber from its source to the point of export;

iii. A mechanism to verify the legality of products, accompanied by a licensing system
iv. Independent monitoring or audit arrangements to attest to the transparency and credibility of the whole arrangement. (2005: 1)

Steps [ii-iii] are largely technical, and a number of organisations could provide the necessary systems and technologies. These mostly derive their sectoral competence from experience with timber certification. However, Steps [i] and [iv] have a more institutional orientation.

It is with these institutional dimensions of verification that the remainder of this article is concerned. The focus is on the overall conception of verification systems, rather than the individual measures by which they can be delivered.

Verification of legality in the international timber trade is in its infancy, and there is no established corpus of forestry literature on which to draw (one notes in passing that there is, as yet, no law in the European Union to restrict imports to legal timber alone).

Beyond the timber sector, however, there exists a substantial literature on verification, much of it relating to international treaties and conventions. It is not necessarily limited to the trade dimension (in the sense of ensuring only that the production of commodities is in compliance with national laws and regulations). Nevertheless, it offers much food for thought, especially as regards the negotiation of agreements where the parties in question have diverse and competing interests, often transcending national boundaries. A common feature of such negotiations tends to be the uneasy balance between national sovereignty and intergovernmental responsibilities.

Verification In A Wider Perspective

The rest of this paper examines the requirements for timber verification by reference to established verification processes in fields such as international treaties and conventions. Among the reference agreements are the: Convention on international trade in endangered species (CITES); Nuclear Test Ban Treaty (NTBT) and other arms control agreements; Kimberley Process for diamonds; Montreal Protocol of the Vienna Convention on substances that deplete the ozone layer; and Kyoto Protocol to the UN Framework Convention on Climate Change (UNFCCC).

This literature is often quite situation-specific, and thus commonalities have to be sought at the level of analytical features, not off-the-shelf rules. The nature and means of verification differ widely according to such factors as the character of the commodity under consideration, the nature of the parties to the agreement, the circumstances of the adoption of the agreement governing its use, etc. Verification of, say, carbon emissions, demands different skills and judgments from verification of diamonds in the trade. The character of the commodity also affects its verifiability – in the sense both of its 'monitorability' (ease of observation of the activity or substance) and 'assessability' (ability to compare observed performance with a standard). (Greene, 1994: 4)

Verification systems may also have multiple objectives which may not be easy to reconcile. These objectives reflect the interests of the parties involved, and this has implications for the verification mechanisms used. If the call for verification comes mainly from industry, the system must be one the industry can accept, while a system

driven by civil society will need to meet its own, often very different, demands.

The objectives of verification systems might include:
- Supporting enforcement of the law and 'good governance';
- Building market confidence;
- International policing, environmental controls & public protection;
- Ensuring efficiency and value-for-money, with regard to non-marketed public services;
- Quasi-judicial functions.

The current demand for verification in the forest sector appears to have come mainly from donors and various elements of civil society (particularly, but not only, in consumer nations). The primary objectives included at least three of the above list: building market confidence; establishing environmental controls; and promoting good governance. The fact that the objectives are already so diverse hints at the challenges ahead.

What Is 'Verification'?

Colloquially, verification tends to be seen as akin to 'inspection' to verify that an agreement has been met. The approach from the theory of treaty verification suggests the need for a rather broader understanding.

A basic definition of verification might be the following:

> 'Verification is a process covering the entire set of measures aimed at enabling the parties to an agreement to establish that the conduct of the other parties is not incompatible with the obligations they have assumed under that agreement' (Sur, 1991:13).

This definition has a number of common features with others that are standard in the field (see for example, Greene, 1994). On such a view, verification must be seen as:
- a process of investigation and validation
- one that is broad and multilayered.

The theory of verification in a treaty context tends to focus on this process dimension, and on verification as a complex mechanism rather than an act or acts of inspection.

Why this complexity? For many treaties (such as nuclear safeguards, weapons controls), there are a number of elements in the production situation and the political context of their operation which generate conflicting interests. Where sovereignty inheres in the State, then inter-governmental sanctions must rely heavily on soft law mechanisms, and behavioural change can only come about through the sharing of interests. As has been noted in relation to the Antarctic Treaty System, a basic question to ask in such cases is: 'why do powerful nations obey powerless rules?' The answer lies in the quality of the rules and the atitudes towards them among subjects (Stokke et al, 1996: 22).

The complexity of verification systems is a function of a number of influences, several of them interlinked. These include:
a) The number of players with an interest;
b) The range of authorities required to state an opinion before a verification decision can be reached;
c) The variety of the interests of the players, and their relative powers;
d) The confidence of the players in each other;
e) The extent to which the verification decision can be characterised in absolute or only relative terms;

f) The limits of tolerance in the system of diagnosis (how precisely can the facts of the case be ascertained?).

With reference to all of these, the operational rule is that the more complex the variable, then the more demanding will be the verification requirements. Thus:
- The wider the range of actors, and the more diverse their views, then logically, the more difficult it will be to get them to agree;
- Similarly, a decision which is based on a simple inspection of an observable fact is clearly quite different in its verification requirements from one which depends on a more evaluative judgment of multiple realities and intentions;
- Where verification is based on a number of considerations and a degree of uncertainty, then the process is likely to have a strong political component; considerations might, for example, include not just legal rules but also the future self-interest of the parties, their assessments of what tolerances they and other powerful parties would regard as acceptable, and the estimates of various actors as to the likely costs and benefits;
- As regards the limits of tolerance, the extent to which major breaches differ materially in their implications from minor ones will also condition the complexity of the verification response (nuclear safeguards are an obvious case in point). Minor problems of product labelling, or transgressions of boundaries, are of a different nature from systematic and serious breaches of agreements, with evident ill-intent.

Commonly in the forest sector (but particularly in tropical environments), any activity concerned with the verification of legal production of high-value timber is likely to be fraught with difficulty and controversy. There are several reasons for this, of which the following are the most prominent:
a) There is often a great diversity of actors with an interest in the forest, and wide variations in their power and influence, and in the benefits which they can derive from exploitation of trees and products;
b) Given the global goods dimensions, government-government relations may be important, though complicated by the buying power of the industry, and the sensitive sovereignty dimensions;
c) The legal frameworks which govern forest use tend to be complex, even contradictory. This has its origins in the ways in which colonial regimes interacted with, and imposed themselves on, customary systems of varying types, though it reflects continuing class struggles, particularly in relation to tenure of land and trees;
d) One consequence of this complexity is that agreeing a definition of legally-produced timber may be a far from simple task; it is likely to require high-level policy processes to decide what aspects of national legislation will apply, as well as (when there is unsatisfactory or conflicting legislation) a process of public consultation to validate the definition which is agreed;
e) Another outcome is that there is a heightened likelihood of conflict between interest groups, so that what appears fully legal and legitimate to one party may appear quite the contrary to another.

Constructing Verification Systems

If then, experience suggests the need to move beyond verification as a straightforward matter of licensing, what, in practical terms, would this entail? The treaty literature offers guidance at two further levels: firstly, in terms of the elements which would make up the verification system, and secondly, some of the analytical principles which would need to be observed in verification systems design.

Elements of a verification system

A number of elements may be included in the 'verification regime' in relation to treaty and convention obligations (Sur, 1991). The verification regime is normally taken to include: legal commitments; data exchange and notification arrangements; monitoring methods; communication, consultation and clarification mechanisms; a method for making verification judgments, and possibly, the compliance mechanisms (VERTIC, 2003). The verification system is seen as all of these except, perhaps, compliance mechanisms (procedures for dealing with alleged and actual non-compliance). These tend to be viewed as part of the enforcement system, i.e. the various coercive measures which can impose demands to conform (variously, political and economic pressures, and sanctions such as the use of force), and kept analytically separate from the assessment of compliance.

Lang identifies three institutional elements which comprise the minimum requirements for a satisfactory system of compliance control (1996: 694-5):

i. An institution to collect information from whatever sources are available;
ii. A 'reviewing mechanism' to evaluate and interpret data (often entrusted to a separate body or bodies, whose memberships may be selective or open-ended);
iii. The 'taking measures' function, which is likely to be reserved for a political body (for example, the supreme authority of the treaty or convention), which acts either on the recommendations of the reviewing body, or on its own initiative.

The emphasis, once again, is on verification as a process, in which activities are multilayered, and functions separately executed, by different institutions.

What makes verification effective? Some principles of wide applicability

Drawing on the wider literature, we can also identify some principles that might make verfication effective. Boxes 1–3 briefly review three case studies from which such principles can be drawn, *viz.* the Kimberley Process for diamonds (Box 1), the International Atomic Energy Agency and nuclear safeguards (Box 2) and the Montreal Protocol (Box 3).

Not all these principles are likely to be complied with in equal measure (if at all) in every verification context, including this one. Where they are weak or lacking, then the task of effective verification will be more difficult, increasing the need for compensatory measures. The principles identified include:

Reciprocity
Where an agreement is fully reciprocal, its verification is, to a degree, depoliticised. This is most obvious (in principle if not in practice) with trade agreements, though less often with weapons and the environment. Some important international treaties are not fully reciprocal, and for historical reasons, particular players stand outside them (the Nuclear Test Ban

Treaty is one of these); this renders their implementation and control highly political. Timber VPAs are, by their nature, bilateral and non-reciprocal, which has implications for their ability to stick. The conclusion may be drawn that strong positive incentives will be needed for the tropical partner to comply. It remains to be seen if the European market will provide these incentives.

The Kimberley Process illustrates one interesting route to reciprocity, through a peer review mechanism (see 5.2 of Comparative Case Study No. 1, this website). This involves a number of participants from producer states, along with industry and NGO representatives.

Ability to Prevent Migration to Non-Parties
Where participants can withdraw from agreements, their force is clearly weakened, with knock-on effects on the ability to assess and enforce compliance with the demands of the agreement. A particular feature of the Montreal Protocol, one of the most successful treaties in terms of both compliance and impacts, is that the breadth of its international acceptance has severely restricted the possibility for industries to migrate to non-parties (Brack, 2003: 220). Similarly, it was only when CITES reached a certain critical mass that it became possible to limit the negative effects of non-party influence. (Until it ratified CITES in 1986, Singapore functioned as a major entrepôt for the wildlife trade, and on-selling from there made it difficult to control the trade.)

A VPA by its nature would have even less ability to sanction migration than do these conventions, a fact which is particularly pertinent for the Asian producers with easy access to the burgeoning (and not notably green) Chinese market. Questions are already being asked about the EU's ability to impose demand-side pressures on these producers. However, China's accession to the WTO could have positive effects, particularly by reinforcing its growing dependence on retail markets which are already eco-sensitive. African producers may be less well-placed to migrate elsewhere.

Include all Stages in the Chain of Custody, and Doubly Secure the Most Vulnerable Stages
Rather similar arguments apply in this area. Any weaknesses in the chain of custody are likely to be exploited, not only by the unscrupulous. A substantial literature exists on vulnerable points in the chain, such as pre-shipment inspection (PSI). In the forest sector, the forest management unit is often a weak point, and may merit particular emphasis.

Broad Involvement in the Processes leading up to the Verification Decision
Where there are multiple players with an interest in the issue under review, often with conflicting views, then the decision-making processes should reflect this divergence. A mix of principle and pragmatism appears to be called for. For example, states may baulk at the involvement of civil society actors in matters which are under state sovereignty (as has been the case with the Kimberley Process and CITES). This may have some justification, in principle, in that state and international civil society are not equal actors in the policy realm. However, there are some grounds to open up the process to these civil society groups. They may bring expertise to the table, and their inclusion can promote transparency in the process and help to engage the public at large. Decision-making in conventions such as CITES has arguably gained from such widening of

Box 1: The Kimberley Process Certification System

The 2003 Kimberley Process Certification System (KPCS) for rough diamonds is an outcome of the 'Kimberley Process', which aims to end the trade in conflict diamonds. The basic elements of the agreement are that each participant undertakes to maintain internal controls over rough diamonds on their territories; bans the export and import of rough diamonds unless accompanied by a KP certificate from another participant; acknowledges all parcels shipped into its territory to the exporting authority, and submits regular trade statistics.

The KPCS is not a legally-binding, international treaty but rather, a voluntary international certification scheme based on agreed minimum standards; decision-making depends on consensus of the parties. Each participating government must pass its own KPCS-related legislation, which makes the KPCS binding in each of 44 jurisidctions including the EC. An innovative feature of its compliance system is the peer review mechanism. Review teams comprise representatives of three other governments and one each from NGOs and industry. Though purely voluntary, by mid-2005, 18 reviews had been carried out, and there was no country left in the KPCS that had not requested one. The KPCS also has a 'complaints procedure' through which any participant or observer can communicate with the Monitoring Working Group on the compliance of any other participant.

Despite early misgivings, the provision on consensus decision-making has proven in many ways to be a strength. In the early days of the agreement, a voting arrangement would have had the effect of 'ganging up' on members that held contrary views. The possibility of an important participant walking away from the table was real, and this could have proven very destructive. While some decisions may represent the lowest common denominator, there are few major disputes.

Some of the basic lessons are:
• The humanitarian imperative was important at the start, but as the KPCS has matured, it has focused as much on prevention as cure.
• The vulnerability of diamonds to consumer action helped bring industry and governments to the negotiating table;
• Heavy media pressure fostered by NGOs helped to keep the momentum going;
• A government 'champion' was important to the organisation of meetings, and South Africa has played this role;
• International interest (UN expert panels, the UNGA resolution and positive references to the KP at two G8 meetings) have helped with momentum and legitimacy;
• The KPCS could never have been meaningful without strong industry participation. Had governments and/or NGOs attempted to design a certification system, the outcome would probably have been unworkable. The industry knew where the problems lay and it knew best how they could be addressed effectively;
• While the KPCS is 'voluntary', diamond producing and trading countries *needed* to be members, making membership virtually compulsory.

Source: VERIFOR Comparative Case Study One: The KPCS, by I. Smillie (http://www.verifor.org/case_studies/Kimberley.html)

participation, though there remain important questions about accountability, particularly trans-nationally.

Separation of Verification from Enforcement

Detecting non-compliance is generally viewed as quite different from dealing with it. Verification is largely in the former area, and needs to be kept apart from enforcement, which is in the domain of the supreme authority. Where the agreement is UN-mandated (as with the NTBT and Kimberley Process), this has major implications for the nature of enforcement. Kyoto is an interesting case in that it also separates facilitation from enforcement, and only the latter has judicial functions.

An interesting question, in relation to VPAs, is the identity and functioning of the 'supreme authority'. At one level, this must be the sole prerogative of the range state government or other relevant legal authority. At another level, EU involvement is implied, as the VPA is a bilateral agreement heavily dependent on official endorsement by the importing states. Given their ability to influence consumer preferences, Involvement of international NGOs might also be encouraged, though this could be seen as intrusive in the producer states, and the political costs could well be high.

Incentives

Verification systems work best where there are strong incentives to comply and few to do the reverse. These incentives may be financial, strategic or reputational. Montreal is one example

of a treaty whose 'win-win' qualities much increased its effectiveness. Strong commercial and other incentives existed to encourage governments and industry to abandon the old polluting technologies and adopt new non-polluting ones (Barrett, 1999). Kyoto also looks promising, as a whole new economic system has been created for its implementation.

The issue of incentives for timber verification merits some reflection. Price premiums have been the Achilles' heel of timber certification, and the general conclusion can be drawn that, while buying publics often favour sustainable trade, they are not always prepared to pay for it at a level sufficient to cover the additional costs. The issue of legality may be even more problematic, as the mere presence of a good on a market tends to be viewed by the purchasing public as proof of its legality, except where they are warned off it altogether.

A related issue is *incentives to report,* an important dimension of compliance. The manner of resporting is also crucial. There is a paradox in that, in a low governance system, the demand for effective reporting can itself fuel illegality because of the ways in which documents achieve a cash value in the market place. CITES, for example, has suffered heavily from fraudulent documentation, although technical advances are making it more difficult (Brack, 2002).

The Value of Independent Oversight

The EU Action Plan comments that 'independent monitoring makes verification systems more credible and less prone to

corruption' (2003), and this view is shared by observers of many agreements. However, there are issues around the appropriate balance between self-reporting (whether by the industry or the licensing government) and independent oversight, at all stages of the verification process. Self-reporting tends to generate responsibility, though it may be low on external legitimacy, while independent oversight tends to favour the reverse. The concept of 'independence' also needs unpacking. Most basically, it refers to the impartiality of the verifier in relation to potential conflicts of interest (PROFOREST, 2005). It also has a more active dimension insofar as it implies a high level of disengagement from the outcomes of verification. However, this may come at a price, as the ability to engage with external audiences may exert a powerful force in inducing compliance.

'Mandate Limitation'

The concept of 'mandate limitation' tends to have rather specific meanings in international arms negotiations, referring to the authority of the governing mandate. Here we use it more idiomatically to focus on whether verifiers should be required to base their decisions on the mandate of the agreement, or allowed to introduce their own interests. The approach from financial audit theory would suggest the former, though this is only likely to be effective where there are strong pressures to ensure that the information so derived is allowed to enter the public domain, and contributes to transparent governance. A particular issue in the forestry sector is that old growth forest tends to figure for some key players more (in the language of international law) as an 'object' than as an 'activity' (cf. Stokke *et al*, 1996:13). This makes it difficult to reconcile biodiversity and use values, and may undermine negotiating processes.

Some important questions surround the identity of the verifiers, and the controls placed upon them. A fundamental requirement is that they must be equally willing to provide a positive endorsement for the verification decision when its conditions are met within the agreed tolerances, as to oppose it when they are not. This may be an issue which environmental watchdogs will need to consider particularly carefully if they decide to take on verification roles. As Haufler notes, this may be a challenging area for NGOs if their normal mode of operations is to continually push for heightened standards, with an emphasis on the negative (2001:5).

Tropical Timber Verification In Practice

Drawing on this experience, we can begin to build up a picture of what verification of timber legality might involve. It is likely that the verification of legality for many tropical timber producer states will involve decision-making processes that are considerably more sophisticated than the simple model of licensed export trade. The following elements appear to be central:

• Institutional fora which can accommodate diverse actors and interests, and various sources of information;
• Separation of decision-making levels, between the political and technical;
• Separation of the operational levels, between verification and enforcement mechanisms;
• Demarcation of a supreme authority, enjoying broad public confidence;
• A strategic focus on incentives for compliance, and on heading off factors that encourage non-compliance and migration;
• A capacity for independent oversight, though with a balanced view of what this should involve.

Agreeing a definition of legality is likely to be a particularly critical step. The legal context for forestry in many countries is widely recognised to be complex and contradictory, with overlapping jurisdictions and competing rights. For structural and/or political reasons, it may operate in a profoundly anti-poor way. Priority needs to be given to establishing an appropriate forum to address the issue, which recognises state sovereignty but provides real opportunities to all interested parties to assert and negotiate their interests, within the framework of the law. This is likely to represent an important statement of political will, as well as an institutional development with long-term implications. Failure to achieve it will not only convey negative political messages, but also impose a conceptual barrier to negotiations similar to that which inheres, in conventional environmental discourse, in the notion of 'sustainability'.

Though not a VPA (nor even a verification system, as such), the Ecuador Outsourced Forest Monitoring System has many characteristics which meet the above criteria, and suggests some of the institutional arrangements that might be required in a VPA (See Box 4).

There are a number of practical issues that will have to be dealt with once these wider design matters have been addressed. For example, should the verification system have a consignment or operator focus? CITES focuses only on the consignment. In other cases (e.g. nuclear safeguards, Kimberley diamonds), both are pursued simultaneously. If the approach is consignment-based, then sanctions could hamper trade by increasing uncertainty in the flow of goods. If the focus is on the operator, verification would tend to converge with certification, and increasingly serve commercial rather than national interests. In highly politicised environments, it would also tend to infuse operator licensing with political patronage, with detrimental effects on the legitimacy of the scheme.

Important issues might also arise in the decision-making processes. How can conflicting assessments be reconciled? How can decision making 'tolerances' be defined? And in complex legal environments, how much ambiguity can be accepted for timber still to be labelled as 'legally harvested'?

What Are The Risks?

VPAs and other measures to enhance the legality of timber management processes are intended to improve the governance of the society, the benefits to the nation and ultimately, the sustainability of the resource. However, these benefits are far from guaranteed, and there are some significant risks to their attainment. A particular problem is that the financial incentives to the legal trade may well prove very limited, and largely reputational. There is logically no legitimate market for 'illegal production', so a price premium for legal products would be difficult to negotiate. Additionally:

• The increment to production costs is likely to be much higher in complex natural forests in the tropics when compared with standardised temperate plantations (as is the case with certification); this is doubly problematic in view of the preceding point, as the implication is diminished profitability;
• There is also a danger that the reputational effects will be negative; that is, the attempt to establish a legality assurance system will succeed only in confirming the western buying public's view that all tropical timbers are suspect; this would serve the interests already advantaged by the ease of certification in the north, to the detriment of legitimate southern producers. This is a particular area of risk for the verifiers, who may find it difficult to safeguard their independence in ways that maintain their good faith with both producer and consumer constituencies.

There is also a risk of some significant perverse effects. For example:

a) That the system of inspection will increase the resource rents gained by the powerful in society, because of the high cash values that the documentation will assume, but without substantial impact on the condition of the resource or the welfare of those dependent on it.
b) That the producers will merely migrate – this is largely a question of alternative markets, in which (as noted above) China's burgeoning demand looms large;
c) Regarding the EU VPAs, there is a concern that the country specificity of the approach will prove unworkable: consumers will want a common standard for all suppliers, and will not accept a variable standard as being valid in principle. This would introduce an extra level of political complexity, opening up the possibility for challenges under the WTO from

Box 4: Ecuador's Outsourced Forest Monitoring System

Growing national concern at the mismanagement of Ecuador's forests gave a reformist government the opportunity to re-examine its system of forest management. The Ministry of Environment took the lead in 1999, through a process of analysis, visioning and negotiation, involving wide public participation. The role of the Forest Authority was narrowed down to a rule-setting function, focusing on policy formulation, regulation and enforcement, and all other functions were delegated to outside agencies. A new forest law was formulated; while this still has not passed into legislation, the process of policy development gave renewed momentum to the drive for change. Principles, Criteria and Indicators (P,C & Is) of sustainable forest management were made mandatory at a Forestry Management Unit level, streamlined to down to five principles and 22 criteria.

A 'National Outsourced Forest Control System' was introduced that was legally binding, and illegal forest clearing or destruction subjected to harsh penalties. This system:

- Delegated the control and verification of compliance with the P, C & Is to specialised, independent but interlinked bodies,
- Built a chain of custody from the forest to the forest industry;
- Involved participation of, and investment by, civil society and the private sector.

Structure of the System:

FOREST DIRECTORATE

⬇

SGS CONTRACTED VERIFICATION SERVICES

⬇ ⬇ ⬇

SGS
CONTRACTED FOREST ADMINISTRATIVE SERVICES

•APPROVING MANAGEMENT PLANS
• GIVING OUT LOGGING LICENCES
• GIVING OUT TRANSPORT PERMITS
• COLLECTING STUMPAGE TAXES

FOREST STEWARDS
DELEGATED CONTROLLING & ADMINISTRATIVE SERVICES

• CONTROLLING TIMBER HARVESTING OPERATIONS
• FILLING OUT TRANSPORT PERMITS AT LANDING

VIGILANCIA VERDE

• CONTROL OF TIMBER TRANSPORTS (ROADS)
• GRANTING SOCIAL CONTROL & ACCOUNTABILITY

Key Players:

The Private Verification Company (SGS)

Following an open competitive tender process, *SGS SA* won a contract to issue logging licenses; grant timber transportation permits; oversee logging operations; collect stumpage tax for the government; and supervise the transport of forest products (supported by *Vigilancia Verde*). The whole production chain was linked up by a computerised supervision and control system, using GIS and similar tools. SGS' costs were covered by charging loggers for services.

Vigilancia Verde ('Green Surveillance')

This is a consortium of five environmental NGOs, together with the police and armed forces, acting under the leadership of the Ministry of Environment. They man check points on the roads where timber passes (illegal timber is seized and retained), and provide an important element of social control and public accountability. Their costs are covered from a trust fund to which the NGO community contributed, as well as receipts from the sale of illegal timber.

Forest Stewards (Regents)

The weak point in the system is the forest management unit, as this tends to be in isolated areas, away from the public eye. Forest stewards are appointed to supervise the production site, acting in a personal capacity. These are foresters trained in monitoring the application of criteria and indicators in the forest. They ensure that management plans meet legal requirements; monitor the logging operations in the field; and fill out and sign timber transportation permits. They are paid by the logger or forest owner.

The development of the system has not been without problems (a new, and more right-wing govenment has since taken power, only to be ousted by a popular movement). However, the technical and legal disagreements have been solved in consensus between environmentalists and the timber industry, and legal objections overcome (for example, governmental opposition to the use of the expatriate verifier, SGS).

This is not an example of a VPA, but it does illustrate the ways in which national participation may contribute to the design of a verification system. Among the lessons to be drawn are:

- If there is no political will it is very difficult to achieve progress toward better forest governance;
- A profound crisis can be an opportunity for consensus building between parties;
- A control system must be rooted in local society to have certain resilience to political instability.

Source: VERIFOR Forest Sector Case Study: Ecuador, by G. Navarro & H. Thiel *forthcoming* (www.verifor.org/case_studies)

unwilling participant states, who allege a restraint of free trade. Country specificity may also be problematic from the producer perspective. Producers may hesitate to sign up to bilateral agreements, seeking strength in numbers and thus delaying the launch of the scheme.

d) That the resource rights which are promoted will be contrary to the interests of the poor, so that, despite the attempt to strengthen forest law enforcement and governance, the effects are actually the reverse.

Ultimately – and returning to the post-Cold War theme with which we started – there is the danger that the environment and poverty criteria that are central to the international development assistance cause will be hijacked by the business interest. It would be regrettable indeed if these two criteria were reduced to the level of sweeteners to mobilise a constituency, but not seriously allowed to influence the course of events.

Against these risks must be set the benefits which would come from reform of a deeply problematic sector. The inter-governmental element of the VPA could be very progressive as it brings national, as well as commercial, interests into the arena of negotiation. This development also provides an opportunity for the use of aid resources to help rationalise and clarify outmoded legal and regulatory frameworks left over from colonial regimes.

Conclusions

Promoting the legality of the tropical timber trade appears, at one level, as a purely technical issue, specific to the forest sector. At another level, however, it raises much broader questions about structures of accountability. Important questions are raised about the political architecture which is needed to allow for effective verification, 'effectiveness' being judged not only in terms of conduciveness to trade flows but also in terms of public accountability in timber producer states.

Whether, at the end of the day, reforms of forest trade can push some problematic states towards enduring democratic reforms is a moot point. But, as Haufler notes (writing of international industry self-regulation, though the point is more general) such innovations may have 'the potential to encourage significant improvements but only in concert with traditional political processes' (2001:122).

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David Brown is a Research Fellow of the Forest Policy & Environment Programme at ODI and Director of VERIFOR.

Overseas Development Institute, 111 Westminster Bridge Road, London SE1 7JD
Telephone: +44 (0)20 7922 0300 Fax: +44 (0)20 7922 0399 Email: publications@odi.org.uk

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