



Strengthening the performance of the Wood Processing Sector
in Guyana, through Building Local Capacity and Enhancing National
Systems that promote forest product trade and sustainable utilization of
forest resources.

**Report on Present System for Trade of Lumber
and
National System for the Inspection and Certification of Lumber for Local and
Export Market**

May 2015

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1 Introduction

This report represents the first deliverable of the International Building/Construction Consultant on the ITTO/GFC Forest Industry Development Project. It is aligned to the TORs provided and covers the national system for inspection, certification and trade of lumber; a review of the requirements of the European Union Timber Regulation and the US Lacey Act; guidance for the industry in Guyana to meet the requirements of trade legislation; and recommendations for improved data collection to support the development of local and export trade of wood products from Guyana.

2 System for inspection, certification and trade of lumber

2.1 Legality monitoring of operations

Routine monitoring of forest and downstream operations is undertaken by the Forest Monitoring Division (FMD) in the Guyana Forestry Commission (GFC) and coordinated by its Legality Monitoring and Extension Unit (LMEU). Assessment of all large and small concessions in addition to private property and Amerindian Reservations is conducted with the aid of standard forms and report templates. Compliance with the most important requirements of the Code of Practice for Forest Operations is assessed covering: forest operations; site hygiene; social issues; occupational health and safety; and working conditions.

Downstream facilities are also regularly monitored to assess compliance with the relevant Code. In all cases discrepancies where they occur are identified and quantified leading to a time period for correction or possibility of financial compensation.

Auditing of enterprises in the sector and of the GFC's own systems and performance plays an important role in the GFC's overall monitoring strategy. The LMEU takes the lead role in auditing and assessment covers much the same items as the routine monitoring.

In addition, the forest sector is audited periodically by 3rd-party international independent auditors against Independent Forest Monitoring criteria and Monitoring, Reporting and Verification standards.¹

2.2 Chain of Custody

The Wood Tracking System managed by the GFC is a critical element in its monitoring of legality. Its primary objective is the establishment of a national-level system of linked procedures, paperwork, marking techniques and monitoring that enables chain of custody to be established from the source tree to the final wood product being exported.

The monitoring of log-tracking and chain of custody is undertaken by the FMD as part of routine monitoring. In addition, the Tag Unit and Management Information System supports the efforts to ensure that logs and lumber can be traced back to source stump and/or source block or concession. Important elements of the monitoring are checks on log and stump tags in-forest; checks on produce in transit; checks in sawmills and lumberyards; and checks of exporting entities.

¹ Latest reports (2014) at:

http://www.forestry.gov.gy/Downloads/MRVS_Interim_Measures_Report%20Year_4_Version_1.pdf

http://www.forestry.gov.gy/Downloads/Independent_Forest_Monitoring_Second_Assessment_Report_2014.pdf

Operators, small- and large-scale, are required to comply with the log tagging system. The GFC monitoring systems randomly verify the proper implementation of the log tracking system by checking the tagging of forest produce in transit and also by verifying the tagging of tree stumps after harvesting. Additionally, forest operators are required to give an account of the use of tags uplifted from the GFC, through a Removal Permit and a Production Register. This forms the basis for tag reconciliation as per quota allocation.

2.3 Export markets

2.3.1 Procedures Pertaining to the Export of Forest Produce

All exporters must be in possession of a valid Timber Dealer's Licence, Export Licence or a Sawmill Licence. These Licences are issued and renewed on an annual basis by the GFC.

Exporters desirous of exporting forest produce from Guyana must first apply to export forest produce via completion of an Application for Export of Forest Produce form. This form is used by the GFC Officer as the basis for conducting checks to verify that the produce intended for export was legally obtained.

From the Application for Export of Forest Produce it is possible through the Removal Permits and sales receipts to track to a batch of possible source logs by GFC tag numbers and thereafter to the concession (or private property). In the case of large concessions it is possible to track to the source block via the Removal Permit or the tag issuance range. Since the concessionaire should enter the enumeration number of logs on the production register, and submit a stock map per block, tracking back to source stump is also possible.

At the same time, the exporter should apply for a Timber Marketing Certificate (TMC). All produce to be exported must first be graded by a GFC-licensed independent grader in accordance with the Guyana Grading Rules for Hardwood (Third Edition 2002). The grader brands the produce with his personal hammer and completes the relevant sections of the TMC. Inspection of any forest produce must only be conducted at GFC-approved sites, a record of which is maintained at the licence department.

Once the GFC is in receipt of the TMC application, and is informed that the produce has been graded, a GFC Grading Inspector does a 100 % verification of the grades assigned by the independent grader. Once a TMC is submitted to a GFC Forest Station a note is made on the document of the date and time submitted. Legally, the GFC Officer has 48 hours within which to carry out the inspection, and do the verification and grading of the forest produce.

If the GFC Grading Inspector is satisfied that the forest produce meets the necessary quality standards, he then affixes his brand and completes the relevant sections of the TMC. For logs, piles and lumber above 2" thickness a 100% inspection is required and both ends stamped. For lumber below 2" thickness a random 25% selection is checked (and further 25% samples taken if the grade is not reached on more than 5% of material) and both ends stamped. For furniture and charcoal a 100% check is required and brands appropriately placed with rubber stamps.

The TMC is then issued to the exporter who will use the information stated to complete the other relevant documentation. The exporter then applies for an Export Certificate which is prepared by the exporter and is for products already inspected and certified by the GFC.

The exporter then completes the Customs declaration (C72) and other forms that are required by Customs and Trade Administration (CTA) and attaches the TMC, Commercial Invoice and the application for the Export Certificate. The Commercial Invoice should state the commercial value and other pertinent details of the shipment.

The GFC stamps the C72 form on the back (4 copies) with a stamp marked “Approved for Shipment” and two GFC Officers will sign, authorizing the export of that particular batch. The Export Certificate is also stamped with a stamp marked “Approved for Export”, and initialled by one or both GFC Officers who signed the C72 custom document.

The exporter is then required to pay an export commission to the GFC, based on the value of the produce (calculated as a percentage of the commercial value). High value-added products such as kiln-dried lumber do not attract this fee.

The complete sets of authorized documents are then forwarded to CTA by the exporter. The exporter is only authorized to export the produce approved on the Export Certificate and Commercial Invoice. The CTA process then takes over with the container being ultimately examined and sealed by the CTA.

2.4 Local markets

2.4.1 Record-keeping

Logs entering a sawmill should be entered onto the Sawmill Record of Produce Received which records Removal Permit number, source, species, type of produce and volumes. Sales of sawn lumber should be recorded on the Sawmill Sales Form and a monthly declaration made. Volumes of inputs and outputs should also be recorded on the monthly Return of Lumber Sawn and Lumber Produced.

Lumber transported from a sawmill is not covered by an official document but a bill of sale should be carried. However, lumber sawn in the concession (chainsawn or with a portable mill) should be declared on a Removal Permit which should accompany wood material in transit.

All lumber entering a lumberyard should be recorded on the Record of Produce Received with sales recorded as for sawmills on the Sales Form; both should be submitted monthly to GFC.

2.4.2 Licence procedures – timber dealers

For new Timber Dealers² applications inter-agency permissions are required (Environmental Protection Agency permit; Planning Permission from the Central Housing and Planning Agency; No Objection Letter from the Neighbourhood Democratic Council/Regional Democratic Council/Town Council; Public Health and Safety Certificate).

In addition the application is required to provide details covering Taxpayer Identification Number (TIN); National Identification Card Number; Business Registration (Companies only); Proof of Address; Proof of Ownership of Land or Proof of Legal Access; and Proof of Ownership of Mill. Planning requirements are waived on Amerindian Lands; however an authorization in the suitable format from the Captain of the Reservation or, for non-Amerindians the Ministry of Amerindian Affairs, is required.

Also, the applicant must submit a plan of proposed layout of the operation and a map showing proposed geographic location of the proposed site along with the application for a Timber Dealer’s Licence using the prescribed form. This must be accompanied with an application fee of US\$50. The application and preliminary information are reviewed by the GFC using defined criteria and if the application and preliminary documentation submitted are satisfactory, the application is approved and the applicant uplifts a Timber Dealer’s License upon payment of the relevant fees.

² Charcoal Dealers and Firewood Dealers are classed as Timber Dealers and the Regulations also apply to them.

If the application and preliminary documentation submitted are not acceptable the applicant is so informed and given an opportunity to re-submit same, until it satisfies the GFC's requirements.

2.4.3 Licence procedures – sawmillers

For sawmill licenses the name of the applicant must be clearly and carefully written on the application form and individuals making new applications must personally sign the application form. Where the applicant is a company, a "Certificate of Incorporation" (with reference to the Companies Act, Cap. 89:01) must accompany the application. An application fee must be paid; however, the licence fee of US\$250 is only payable when the application has been approved by the GFC.

When making recommendations on applications for renewal of Licences to Operate Sawmills, the responsible GFC Officer for licences must take into account: the sawmillers' compliance with the Regulation which states "Books to be kept by Timber Dealer and records to be submitted to the GFC".

3 Review of regulatory requirements for export of lumber

3.1 EU-FLEGT

3.1.1 FLEGT Action Plan

The EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan was published in 2003. The Action Plan sets out a range of measures available to the EU and its member states to tackle illegal logging in the world's forests.

Though the long-term aim of the Action Plan is sustainable forest management its immediate objectives are prevention of the import of illegal timber into the EU, the improvement in the supply of legal timber and an increased demand for timber from responsibly managed forests. The Action Plan puts emphasis on governance reforms and capacity-building supported by actions aimed at developing multilateral cooperation and complementary demand-side measures. These measures are designed to reduce the consumption of illegally harvested timber and contribute to the wider objective of sustainable forest management in timber-producing countries.

The Action Plan focuses on seven broad areas covering private- and public-sector initiatives, policy support, financing and conflict timber. Two key focus areas of the Action Plan are (a) the development and implementation of bi-lateral Voluntary Partnership Agreements (VPA) between the EU and timber-producing countries and (b) the development of existing or new legislation to support the Action Plan, including the EU Timber Regulation.

Under the FLEGT licensing scheme certain timber products exported from the partner country and entering the EU at any customs point designated for release for free circulation should be covered by a licence issued by the partner country. The license states 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 VPA. Compliance with those rules should be subject to third-party monitoring.

The FLEGT licence itself can be a shipment-based or market participant-based document of a standard format 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. A FLEGT licence covering each shipment is 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 EU. Imports into the EU of timber products exported from partner countries are prohibited unless the shipment is covered by a FLEGT licence.

3.1.2 EU Timber Regulation

3.1.2.1 *Introduction*

The EU Timber Regulation (EUTR) and VPAs are part of the EU's FLEGT Action Plan. All timber and timber products with a FLEGT licence automatically comply with the EUTR. This means that when purchasing FLEGT-licensed timber EU operators do not need to carry out additional due diligence checks.

However, until such time as a FLEGT licence is available, importers need to present other means of compliance with the EUTR.

The EUTR (No. 995/2010) came into force in March 2013. The Regulation lays down the requirements of persons who place timber and timber products on the EU market through three key obligations:

1. It prohibits the placing on the EU market for the first time of illegally harvested timber and products³ derived from such timber;
2. It requires EU traders who place timber products on the EU market for the first time to exercise “due diligence”;
3. Once on the market, the timber and timber products may be sold on and/or transformed before they reach the final consumer. To facilitate the traceability of timber products economic operators in this part of the supply chain (referred to as traders in the regulation) have an obligation to keep records of their suppliers and customers.

3.1.2.2 *Operators*

Operators are any (natural or legal) person first placing timber on the EU market. In the first obligation the EUTR makes it an offence to ‘first place’ illegal timber on the EU market, whether that’s sourced from outside the EU or grown within it – and the definition of illegal is that of the country of origin.

For the second obligation the EUTR imposes a best efforts obligation and operators are required to provide information and maintain records on the supply of timber products in addition to assessing the risk that their products come from illegal sources. To do this, they must operate a sound due diligence system (DDS) which satisfies the Regulation’s legality requirements and incorporates information gathering, risk assessment and risk mitigation activities.

3.1.2.3 *Due Diligence*

Due diligence systems must be in place to minimise the possibility that products placed on the EU market contain illegally harvested timber.

The first part of the DDS requires information gathering about the supply of wood products specifically covering at minimum: proof of compliance with applicable legislation; description of species; volume of

³ ‘Timber and timber products’ refers to the timber products set out in the annex to the EUTR. The exceptions to this are products which have completed their lifecycle and would otherwise be disposed of as waste

imported materials or products; country or regions where harvested and, where applicable, harvest concession; name and address of the supplier and subsequent trader.

Having collected the basic supply information operators must assess the risk of having illegal timber in the supply chain by taking into account all relevant risk criteria, including:

- Assurance of compliance with applicable legislation, which may include Certification or other 3rd-party Verification Schemes whose scope includes compliance with applicable legislation
- Extent of illegal harvesting of specific tree species
- Extent of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict
- Sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports
- Complexity of the timber and timber products supply chain.

Where a non-negligible level of risk is identified or when the risk level cannot be determined, the operator must undertake mitigation measures to eliminate any potentially illegal timber. Mitigation of the risk identified concerns a set of measures and procedures that are adequate and proportionate to minimise risks and may include additional information or documents and/or requiring 3rd-party verification. This can include obtaining additional sourcing data and third party verification to back supplier claims. Certification or other 3rd-party Verification Schemes may be taken into account in risk assessment and risk mitigation procedures in accordance with the criteria described by the EUTR.

Certification and 3rd-party Verification Schemes are instrumental in assisting the due diligence process by providing trustworthy information on the company, the products supplied and the origin of these products, and credible and professional control over the supply chain.

Although at first glance 3rd-party Certification and Verification appear to be disapproved, they are in fact considered as fully credible for the compliant implementation of the EUTR.

Operators can either set up their own DDS, make use of one aligned to EUTR legality requirements provided by bodies such as national timber trade federations, or use a system set up by a Monitoring Organisation.

3.1.2.4 *Traders*

Under EUTR definitions, businesses which buy timber and wood products from Operators are termed 'Traders'. Their obligation under the Regulation is to keep records of which Operators they bought products from, and who they sold them on to. Traders, when exposed to public scrutiny, may also choose to go above and beyond the requirements of the European legislation and ask their suppliers for more detailed information on the origin and legality of their timber products.

3.1.2.5 *Monitoring organisations*

A Monitoring Organisation can be a national trade body or a private operation (such as an environmental certification consultant) which has to be approved and appointed by the European Commission. They not only have to set up an EUTR-aligned DDS, but also check Operators using it are doing so correctly, and take corrective action where they are not.

A list of approved monitoring organisations is available on the European Commission website including the countries they can operate in (which are restricted to the EU). The use of a monitoring organisation is optional and operators can choose to implement their own DDS.

Employing the services of a monitoring organisation does not remove individual operators of their obligations, responsibilities or liabilities under the regulation.

3.1.2.6 *Competent Authority*

In each of the 27 EU member states, national governments have appointed a “Competent Authority”, the body responsible for monitoring and enforcing the EUTR. They have also introduced national measures and mechanisms for the implementation of the Regulation in their country, in terms of policing and penalties.

3.1.2.7 *Sanctions*

Penalties include seizure of illegal timber, fines and, in the event of serious or repeated offences, prison sentences. Currently penalties vary across the EU but national and international industry bodies have pledged to monitor the application of the Regulation to ensure international conformity and fairness.

3.1.2.8 *Exemptions*

There are also a range of EUTR exemptions. Notable among these are products covered by a certificate issued under CITES (Convention on International Trade in Endangered Species) and those imported into the EU from supplier countries signed up to an EU FLEGT VPA.

3.2 US Lacey Act

3.2.1 Introduction

The Lacey Act is a United States law from 1900 that originally related to illegal trade in wildlife. In 2008 amendments to the US Lacey Act were passed. Effective 22 May 2008, the law makes it illegal to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the US, a US State, or relevant foreign law.

The US government can use this law to impose significant penalties on individuals and companies who are found guilty of such acts. This new law, and the new import declaration it requires, affects manufacturers and exporters who ship a variety of products made from wood to the US, including paper, furniture, lumber, flooring, plywood and other products made out of wood.

The ban on illegal timber as defined in the Lacey Act amendments is not supported by a clear framework of regulations that sets guidelines for importers, exporters and traders. However, it is suggested that operators exhibit due care and implement due diligence systems in order to minimize the risk of illegal wood entering supply chains.

3.2.2 Illegal acts

There are two parts to a Lacey Act violation. First, an underlying law must be violated. There are only six specific types of laws which, if violated, mean that the resulting product is illegally sourced. They concern forestry, taxes, and export (other activities which may be illegal in the country of origin, such as labour violations, are not covered by the Lacey Act).

The six categories are:

1. Theft of plants
2. Taking plants from an officially protected area such as a park or reserve
3. Taking plants from other types of “officially designated areas” recognised by a country’s laws and regulations, such as a designated community forest
4. Taking plants without, or contrary to, required authorisation, including cutting without permits for the area or species harvested
5. Failing to pay appropriate royalties, taxes, or fees associated with the harvest, transport, or commerce of plants, including not paying stumpage fees or paying appropriate taxes
6. Violating laws concerning export or trans-shipment, such as exporting logs from a country with a log export ban

Second, the resulting product must be traded to or within the US. This second transaction triggers a Lacey Act violation.

The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant.

3.2.3 Coverage

The ban on trade in illegally sourced wood products applies to all products, except for certain scientific specimens and food crops, and has been in effect since the law was passed in 2008. It includes common products such as raw logs, sawn timber, plywood, composite materials, furniture, pulp, paper and musical instruments.

The Lacey Act covers the entire supply chain. Illegal activity at any point means that the product may not be legally traded in the US. All parties are equally liable under the law, not just the first placer into the US market.

Some of the provisions of the Lacey Act apply regardless of whether a firm has actual knowledge of illegalities in the sourcing of a product's raw materials. It is not enough to simply get a letter or contract from the supplier stating that the wood products were legally obtained. A certificate of legality or sustainability may not provide a shield against enforcement. If the US government has sufficient reason to believe that the wood was obtained illegally it can take enforcement action regardless of whether the product is accompanied by such a certificate. However, the implementation of verification or certification in the supply is considered part of due care systems and will significantly reduce the risk of illegal wood entering into the supply chain.

3.2.4 Documentation and due care

While the Lacey Act is rooted in the same concept of reducing demand for illegally sourced wood, it is distinct from the EU’s or other countries’ national or voluntary schemes. The Lacey Act is a fact-based statute rather than a document-based statute. In other words, a company is not required to match any one standard of legality documentation or due diligence — and, conversely, no document is a 100% guarantee of legality in and of itself. This also means that there is no requirement to have certification or verification of legal origin, but also means that there are no documents, stamps, licenses, or marks that are accepted as final proof of legality.

It is up to each individual US buyer to determine how best to conduct due care and avoid illegal timber in the market, in accordance with its own risk profile and level of comfort with its suppliers. In practice, the

steps taken to conduct due care will probably closely track those taken to manage risk properly under the due diligence requirements of the EUTR.

In order for companies to ensure that illegal wood does not enter into their supply chain it is expected that they exhibit due care which is defined as "...that degree of care which a reasonably prudent person would exercise under the same or similar circumstances." Due care is applied differently to different categories of persons with varying degrees of knowledge and responsibility. Greater knowledge requires greater care. Due care can be established by putting in place supply chain management systems including verification of legality and 3rd-party auditing. Even though verification cannot guarantee protection from prosecution, it can serve to limit the risk of illegal timber entering into the supply chain. Note that in the Act there is no "de minimis" provision.

Approaches that could help demonstrate due care could include: asking questions to suppliers; compliance plans; industry standards (such as certificates); records of efforts; changes in behavior in response to practical experiences.

Although most certification systems for forest products include legality of harvest among their criteria these are voluntary, private sector systems, the accuracy of which cannot be readily determined by the government. Nevertheless, such certification systems may provide information useful to manufacturers and importers in their efforts to exercise due diligence regarding sources and species of timber.

Importers should ensure shipments were obtained legally; shipments' documentation and records are true and accurate; and make sure the shipment is properly declared under the Lacey Act declaration requirement. Manufacturers and exporters/importers should put a management process in place designed to investigate the product supply chain and provide documented assurance that potentially illegal wood products are not being received and used. Companies and company officials who simply ignore potential sourcing problems can still be found liable for violations of the Lacey Act in not showing due care.

3.2.5 Declarations

The Lacey Act requires that all wood imported into the US is accompanied by a Declaration Form made at time of importation. The Declaration must contain scientific name of plant, value of importation, quantity of the plant and country of origin from which the plant was harvested. For paper and paperboard products with recycled content the average percent recycled content without regard for species or country of harvest must be stated. Declaration requirement does not apply to packaging material used to support, protect or carry another item (unless the packaging material itself is the item being imported).

3.2.6 Sanctions

Sanctions for the violation of the Lacey Act requirements include forfeiture of goods and vessels, fines, and jail time. Penalties will be higher or lower based on whether the US authorities deem that the importer knowingly or unknowingly engaged in illegal sourcing and whether the importer has taken due care or not.

Violations of the Lacey Act provisions for timber and other plants may be prosecuted in three ways: civil penalties (fines up to \$10,000); criminal penalties of misdemeanor (fines up to \$100,000 for individuals and \$200,000 for organizations or imprisoned up to one year, or both) or felony (fines up to \$250,000 for individuals or \$500,000 for organizations or twice the amount of the gross gain or loss, or imprisonment up to 5 years); forfeiture – dispossession of the wood products in question.

4 Recommendations for a national system

The recommendations provided are based on a gap assessment considering the data collection and management in place currently compared to what may be required by various pieces of legislation and auditing bodies. Recommendations consider the systems in place at the national level and those at a company level as the data requirements and systems are different for each. Systems at a national level will address local and export markets while those at a company level are targeted at meeting export requirements of foreign country legislation.

4.1 National level

At the national level the data and system requirements must be in compliance with national legislation as well as the obligations resulting from international agreements and conventions that Guyana is signatory to. To simplify the assessment will consider the data requirements for a wood tracking and licensing system as part of the licensing and inspection of trade locally and for export. These requirements stem from the Forest Act 2009, the IFM requirements of the REDD+ Agreement with the Government of Norway; and the requirements of the EU FLEGT VPA and specifically the national legality definition.

4.1.1 Log Production and transport

Concession allocation and planning management systems are well established and described by the procedures and associated guidelines. Currently small concession holders (SFPs) and private properties are exempt from the requirement to submit forest management plans. According to the latest data from GFC (FSI report Jan-Jun 2012) there were 416 SFPs issued covering an area of over 1.5m ha; this means that – excluding Amerindian lands and other private properties – around 28% of active forest is not covered by any form of management plan. It is recommended that for consideration a form of “mini-management” plan or “forest management statement” is considered as the minimum requirement for all state forest areas. These documents could contain concession maps, outline harvest plans and production forecasts, equipment lists and a précis of any social and environmental issues.

4.1.2 Licences and monitoring

Good systems are in place for managing the range of licences required by entities within the sector. However, it appears that a lot of effort is expended by the industry and GFC in obtaining and managing licenses. It is therefore recommended in order to increase efficiency that a simplification of the licensing system is looked at along with an extension of licence validity beyond the current one year. Finally, it is recommended that data management is reviewed and specifically that procedures for corrective action and follow-up post-monitoring are developed and implemented.

4.1.3 Wood tracking system

The following recommendations are made for the improvement of the wood tracking system:

1. Given the variable degree of precision and confidence associated with the system, the expectations of the wood tracking system should be reviewed and, for example, any IFM indicators associated with tracking are revised to be more realistic and attainable.
2. Further tracking checks should be undertaken for all possible scenarios. This would have the dual purpose of further testing the system to identify loopholes and also going some way to quantifying the expected precision and confidence in tracking for the various supply chain scenarios and thus helping to manage the expectations of the system.

3. Though the greatest uncertainty in the tracking system occurs as material moves through sawmills and lumberyards the current requirements for monthly returns from these facilities does allow tracking with some degree of confidence if not precision. While individual CoC systems in each facility would improve the overall wood tracking system whether it would be feasible in practice is doubtful.
4. Specific items recommended for improving the system based on the tracking exercises are: requirement to include tree inventory number on production register for all TSAs (and entry into the database); entry of source block number into the database; information on clearance passes collected and entered as appropriate.
5. In the short term, the overall efficiency of the system would be greatly improved by a higher proportion of returned forms with the correct data included (e.g. removal permit numbers on receipts). Therefore, the mechanism for collection of forms and the system of incentives or punishments should be reviewed.
6. Given the glitches encountered in the wood tracking database systems it is recommended that the procedures for data entry, database maintenance and hard-copy storage are reviewed and written into the manual of procedures.

4.2 Company level

Companies wishing to export wood products into the EU and the US are obliged to comply with the relevant legislation as described earlier. While the requirements and composition of the regulations are not the same they both centrally require a due diligence or due care procedure accompanied by documentation.

4.2.1 Due Care v Due Diligence

In legal terminology there are some subtle differences between “due care” and “due diligence”. Due care is performing the ongoing maintenance necessary to keep something in proper working order, or to abide by what is commonly expected in a situation. This is especially important if the due care situation exists because of a contract, regulation, or law (the opposite of due care is “negligence”). Due care covers taking responsibility for security; demonstrating that responsibility is taken; planning for threats and vulnerabilities; and documenting the processes.

Due diligence is performing reasonable examination and research before committing to a course of action. In law, due diligence would be performed by researching the terms of a contract before signing it (the opposite of due diligence might be “haphazard” or “not doing your homework”). Due diligence includes implementing controls; ensuring controls are monitored and updated; having a team that assesses all threats and evaluates loss; reviewing adequacy of threat analysis; and ongoing risk assessment and documentation.

Due care is a central term of the Lacey Act’s text. However, the law does not provide a definition, and therefore judicial interpretation will be crucial if future secondary regulations are not more specific. In the absence of explicit requirements for due care guidance usually recommends risk assessment, documentation of origin and legality, or a certified chain of custody (in other words in practice similar to due diligence).

4.2.2 Due Diligence Process

There are several approaches available to suppliers wishing to ensure their products meet the requirements of the EUTR:

1. Obtain independent accredited certification (e.g. FSC or PEFC) or legality verification (such as VLC or LHV). While this will not alone guarantee compliance with either the EUTR or the Lacey Act it is considered that such verification or certification will be recognised as sufficient due diligence.
2. Adopt a due diligence model developed by Monitoring Organisations recognised by the EU and collect information that will be appropriate for their buyers in the EU with local assistance based on an accepted DDS format. This approach will make life easier both for Operators and also their suppliers worldwide who will have less variation in DDS inquiries from their EU customers to deal with.⁴
3. Conduct basic due diligence checks at source and provide information to buyers.

4.2.2.1 *Due diligence model*

Below is an example of a due diligence model that will meet requirements of the EUTR (based on a model produced by NepCon).

1. Meet general requirements	<ul style="list-style-type: none"> • Establish a timber sourcing policy • Establish written procedures • Define responsibilities and train staff • Establish performance monitoring • Define Legal Source scope
2. Supply chain information	<ul style="list-style-type: none"> • Record supplier information • Collect Additional Supplier Information
3. Risk assessment	<ul style="list-style-type: none"> • Evaluate information • Classify supplier information • Identify risk at country level • Specify risk • Record the risk assessment conclusion • Verify presence of non-compliances
4. Risk mitigation	<ul style="list-style-type: none"> • Identify risk mitigation actions • Obtain consent from suppliers • Plan and record risk mitigation actions • Implement risk mitigation actions • Evaluate the effectiveness of risk mitigating actions

4.2.2.2 *Basic due diligence information*

Basic due diligence requires that evidence can be provided for the following:

1. Rights for logging are in place and all relevant planning permissions/plans are held
2. Royalties and acreage fee are paid or a written payment plan is held
3. Relevant laws on labour, health & safety, environment and indigenous peoples' rights are complied with

⁴ A recent study into operators response to the implementation of the EUTR found that the main request was for assistance from suppliers in providing information, verifying supply chains and conducting due diligence.

4. Chain of custody system to ensure that material can be traced from source to sale

While a certification from the regulatory agency will contribute to due diligence a 3rd-party verification (which can be done locally) adds further credibility to satisfy the competent authority in the receiving country.

4.3 Protocols for improved data collection

Protocols for improved data collection should be developed at the national level as well as promoting awareness of the requirements of export regulations. A useful means for expediting these objectives would be an “Export Platform”. Such a mechanism could establish and maintain a web-based platform which will contain the latest information relevant to the implementation of import legality regulations. Such data could cover:

- Information from various sources (NGOs, associations, public bodies, key experts, etc.) needed to conduct risk assessments (e.g. relevant applicable legislation)
- Reference documents indicating legal compliance (including examples) and pinpointing legislation more at risk of being breached
- Occurrence of illegal practices
- Lists of high risk species, CITES, clarify trade names vs. scientific names
- Risk related to supply chain complexity and timber products
- Information on critical control points within typical supply chains etc
- Availability of certified products, trade of certain species, known high risk products
- Collated information accessible and searchable on a country, species and product level
- Information and clarification of the EUTR text from the European Commission
- Cases and reference official guidance available from the EU, member states and other bodies
- EU’s list of approved Monitoring Organisations, Member State contacts and support bodies and organisations
- Available risk identification and classification tools
- Available funding for other potential activities related to export

Specific areas that require addressing in data collection and promoting local and export sale of lumber are:

- Inspection, grading and quality standards for local sales
- Control and grading of imports into Guyana of (pine) lumber
- Coordination and streamlining the requirements of the various agencies responsible for exports