

A Comparison between South Korea's Act on the Sustainable Use of Timbers and the EUTR

The Republic of Korea had not clearly regulated the legality of timber and timber products until recently. Article 34 of the 2012 Act on the Sustainable Use of Timbers focused on 'countermeasures against illegally felled timber'. However, it simply provided that the State and local governments would establish and implement measures to prevent the distribution or use of timber illegally harvested inside or outside the Republic of Korea.

Based on this mandate, on 21 March 2017, South Korea revised the Act, a milestone in its efforts to promote legal timber trade. The revisions made South Korea the first East Asian market to issue mandatory legislation that regulates the legality of imported and domestically produced timber and timber products. According to the revised Act, unverified timber cannot be sold in South Korea and has to be returned to the country of origin or destroyed. Infringement of the legislation triggers fines and, in the most severe cases, imprisonment. Implementation of the revised Act started on 1 October 2018 through an Enforcement Decree and an Enforcement Rule.¹

It is noteworthy that civil society exercised little to no pressure to revise the Act. South Korean policy makers had an increased awareness because of their engagement in international fora on timber legality. Along with other internal factors, this triggered the regulation of the legality of timber and timber products placed on the Korean market. The longstanding cooperation between South Korea and Indonesia also played an important role. Indonesia is an important trade partner of South Korea. Among the countries that have entered in a Voluntary Partnership Agreement (VPA) on Forest Law Enforcement, Governance and Trade (FLEGT) with the European Union (EU), it is the first to issue FLEGT licences.

This brief describes the main similarities and differences between South Korea's Act on the Sustainable Use of Timbers and the European Union Timber Regulation (EUTR)². It then outlines key elements for the full implementation of the Act and the possible cooperation between South Korea and other regulated markets. An annex to the brief features a table drawing a detailed comparison between the provisions of the EUTR and South Korea's Act on the Sustainable Use of Timbers.

Key similarities and differences between South Korea's Act on the Sustainable Use of Timbers and the EUTR

The key similarity between the EUTR and the Act is the mandatory nature of both pieces of legislation and the sanctioning of non-compliance. Another similarity is the legislation's scope. Both the EUTR and the Act apply to domestic and imported timber and timber products. Furthermore, timber covered by FLEGT licences is considered to comply with the requirements of both the EUTR and the Act. FLEGT licences are documents issued by timber-producing countries that have ratified a VPA with the EU under its FLEGT Action Plan. The licences confirm that timber or timber products comply fully with the relevant laws of the country of export.

There are significant differences in the way the EUTR and the Act operate. Under the EUTR, operators are obliged to exercise due diligence and maintain a robust due diligence system. The EUTR details the three main elements of the required due diligence system. These are access to information, risk assessment and risk mitigation. Operators can either develop their own due diligence system or use one developed by a monitoring organisation. The authorities in EU Member States responsible for implementation of the EUTR (or Competent Authorities) carry out checks on operators to verify compliance with the EUTR. They also check monitoring organisations to verify that they continue to fulfil their functions and comply with the EUTR's requirements.

Similarly to the EUTR, prohibition is the main provision of the Act. South Korean operators shall not import, distribute, produce or sell illegal timber. However, the Act does not mention due diligence as an obligation of operators.



Cutting the big log of tree into small wood cut. ▶
Photo: Mokhamad Edliadi, CIFOR



◀ **Processing timber.**
Photo: Aris Sanjaya,
CIFOR

The Act is based on pre-import controls. Importers are required to submit an import declaration including evidence that the imported timber or timber products are legal. An inspection agency, currently the Korea Forestry Promotion Institute, verifies that the legality documentation submitted by the importers complies with the Detailed Standards for Determining the Legality of Imported Timber.³ The Institute then reports the results of the verification to the Korea Forest Service.

The Korea Forest Service carries out checks to verify that the imported products match the legality documentation provided in the declaration. Upon confirmation by the Korea Forest Service that the timber and timber products are legal, Korean customs clears the imports. The operators' due diligence only aims to provide evidence of legality, which is submitted together with the import declaration in accordance with a defined standard.

What constitutes legally harvested timber is different under the EUTR and the Act. Under the Act, timber is illegal when harvested in contravention of the laws of the Republic of Korea and/or the country of harvest. The Act refers to harvest-related statutes as the applicable legislation. According to the Detailed Standards, harvesting permits would be sufficient to prove legality. Under the EUTR, legally harvested timber is harvested in accordance with the applicable legislation in the country of harvest. The applicable legislation not only covers rights to harvest and payment for harvest rights and timber, but also environmental and forest legislation, use and tenure rights of third parties, and trade and customs.

The Annex below summarises other important differences between the two pieces of legislation, including the range of timber and timber products covered and the status of third-party certification.

Further development of the Act and potential cooperation with regulated markets

The implementation of the Act started on 1 October 2018. In July 2018, the EU FLEGT Facility carried out a mission in South Korea. The operators interviewed during the mission were aware of the Act and generally supportive. Larger companies in the timber panel sector will need minimal adjustments to their chain of custody systems to comply with the revised Act. However, compliance by small and medium enterprises will require awareness raising and capacity building, especially when it comes to plywood distributors.

The experience and lessons learnt from the first years of implementation of the Act will enable the Korea Forest Service and the Korea Forestry Promotion Institute to refine the enforcement mechanisms and develop effective risk criteria for monitoring. In the next few years, the Korea Forest Service is likely to expand the product scope and revise enforcement documents. The country-specific guides that South Korea is developing will help importers better understand what constitutes legal timber in its key sourcing countries. These countries include Vietnam, Indonesia, Thailand and Lao People's Democratic Republic. FLEGT VPA processes will also play an important role in providing timber legality information and ease the burden of operators that source from VPA countries.

Operators and authorities in regulated markets could exchange on their experience and lessons learnt to support the implementation of the Act, particularly during the first few years. The cooperation could focus on the following areas:

- **Development of risk criteria:** authorities in regulated markets could exchange on their experience and best practices in developing and applying risk-based criteria for checks on operators.
- **Verification:** authorities in regulated markets face challenges related to verification. The first challenge is verifying the authenticity of timber legality documents. The second challenge is verifying the legality of products consisting of wood materials from sources that were mixed in a country lacking a legality assurance system.
- **Information about VPA countries:** the exchange of information on progress and achievements of VPA countries would benefit the implementation of the Act. VPA countries such as Indonesia and Vietnam are important sources of timber and timber products for South Korean operators.

Sharing best practices and experience in developing and implementing laws related to the legality of timber trade would contribute to creating a level playing field. It would also contribute to global efforts to stop illegal logging and promote supply chain transparency throughout the forest products sector. As the first market in East Asia with mandatory legislation on the legality of imported timber, South Korea is an example for other countries in the region. It could play an important role in efforts to promote timber legality worldwide.



▲
Timber ready for shipping.

Photo: Korean Women's
Businessmen Association

Annex: Detailed comparison between the EUTR and South Korea’s Act on the Sustainable Use of Timbers

The following table compares the EUTR’s requirements and mechanisms to those of South Korea’s Act on the Sustainable Use of Timbers. It provides an overview of the two pieces of legislation, identifies similarities and differences, and aims to support the collaboration between the Republic of Korea and other regulated markets.

Features	EU Timber Regulation	South Korea’s Act on the Sustainable Use of Timbers
Scope		
Definition of illegal timber	Timber is illegal when harvested in contravention of the applicable legislation in the country of harvest. The applicable legislation covers the rights to harvest, payment for harvest rights and timber, environmental and forest legislation, use and tenure rights of third parties, and trade and customs.	Timber is illegal when harvested in contravention of the laws of the Republic of Korea and/or the country of harvest. The applicable legislation are harvest-related statutes of the Republic of Korea or of the country of origin.
Definition of country of harvest	The country or territory where the timber or the timber embedded in the timber products was harvested.	There is no definition. However, the Act requires importers to submit documentation proving that the timber was harvested in compliance with the laws of the county of origin. It is our understanding that ‘country of origin’ in the context of the Act means ‘country of harvest’.
Corruption	The EUTR does not mention corruption, but the 2016 Guidance Document for the EUTR specifies that operators must consider the risk of corruption when evaluating documentation as part of their due diligence measures. Mitigation measures must be in place when the risk is high, for example low Corruption Perceptions Index score.	Corruption is not directly mentioned in the Act but Article 14-3 (3) of the Enforcement Rule addresses the risk of corruption. It states that the Korea Forest Service may request the country that issued legality documentation to verify the accuracy and authenticity of the documents submitted by the importer as part of the import declaration. In addition, the Korea Forest Service is currently revising an article of the Act to prevent inspectors from being involved in corruption.

Features	EU Timber Regulation	South Korea's Act on the Sustainable Use of Timbers
Products covered	<p>The annex to the EUTR provides a detailed list of the products.</p> <p>The EUTR covers a broad range of timber products. This includes solid wood products, flooring, plywood, pulp and paper.</p> <p>Recovered/waste products, printed matter including magazines, newspapers and books and products made from plaited or woven bamboo are exempt.</p> <p>The product scope can be amended if necessary.</p>	<p>Detailed Standards list the products covered:</p> <ol style="list-style-type: none"> 1. Log (HS4403) 2. Sawn Timber (HS4407) 3. Anti-decay wood (HS4407) 4. Fire retardant treated wood (HS4407) 5. Laminated wood (HS4407) 6. Plywood (HS4412) 7. Wood pellets (HS4401-31) <p>Pulp and paper is not included. An amendment of the Enforcement Decree could extend the range of products covered.</p>
Recycled timber	<p>Used timber and timber products that have completed their lifecycle, and would otherwise be disposed of as waste, are excluded from the scope of the EUTR.</p>	<p>The Act and the Enforcement Decree do not mention whether recycled timber is excluded from the scope of the legislation. This is largely due to the low probability of using recycled materials in the context of the products covered. The potential extension of the product scope might lead to adopting a clause excluding recycled timber in the future.</p>
Operators	<p>The EUTR sets out the obligations of the operators that place timber and timber products on the internal market for the first time, as well as the obligations of traders.</p> <p>'Operator' means any natural or legal person that places timber or timber products on the market.</p> <p>'Trader' means any natural or legal person who, during a commercial activity, sells or buys on the internal market timber or timber products already placed on the internal market.</p>	<p>The Act requires timber producers to endeavour to import, distribute, produce and sell legally harvested timber or timber products. The key obligation for operators is to submit an import declaration including evidence that the timber or timber products imported are legal.</p> <p>The Act defines 'Timber Production Business' as 'business of cutting, sawmilling or distributing standing timber or bamboo defined in the Forest Resources Creation and Management Act. This includes sawmilling and distributing raw timber and imported products.'</p> <p>Timber production businesses include those that produce, process, import and distribute timber and timber products.</p>
Traders	<p>Traders are required to keep records of:</p> <ul style="list-style-type: none"> • the operators or the traders who have supplied the timber and timber products • where applicable, the traders to whom they have supplied timber and timber products. 	<p>The Act requires timber production businesses to keep books stating the types and volume of distribution of timber, as well as documentation verifying that the relevant timber or timber products have been legally harvested. Timber producers must keep the legality documentation for five years.</p> <p>The above requirement is for all operators.</p>

Features	EU Timber Regulation	South Korea's Act on the Sustainable Use of Timbers
Compliance Measures		
Checks on operators	<p>Competent Authorities carry out checks on operators to verify compliance with the EUTR and keep records of those checks.</p> <p>Competent Authorities also carry out checks on monitoring organisations to verify that they continue to fulfil their functions and comply with the requirements of the EUTR.</p>	<p>The Act mandates an inspection agency provided by Presidential Decree to inspect the documentation submitted by the operators as part of the import declaration. The Enforcement Decree lists the following agencies:</p> <ol style="list-style-type: none"> 1. The Korea Forestry Promotion Institute 2. An agency or institution designated and publicly notified by the Korean Forest Service that has sufficient competence and capacity to inspect documents that verify the legality of timber and timber products. This agency could be a public institution or a research institute. <p>It is our understanding that the Korea Forestry Promotion Institute is currently the main inspection agency. The role of the Institute is to verify that the legality documentation submitted by the importers complies with the Detailed Standards.</p> <p>The Korea Forest Service carries out checks to verify that the actual products imported match the legality documentation accompanying the declaration. Upon confirmation by the Korea Forest Service that the timber and timber products are legal, Korean customs would clear the imports.</p>
Penalties for non-compliance	<p>EU Member States lay down the penalties applicable to infringements of the EUTR.</p> <p>Penalties relate to the key obligations in the EUTR: prohibiting the placement of illegal timber and timber products on the EU market, the obligation to exercise due diligence and the obligation of traders to keep records of their suppliers and customers.</p> <p>Penalties must be effective, proportionate and dissuasive. They may include fines, seizure of timber and suspension of authorisation to trade.</p>	<p>The Act lays down the penalties for infringements. Penalties range from the revocation of the business registration to monetary penalties and imprisonment. The maximum penalties are imprisonment for not more than three years or fines up to KRW 30 million (approximately EUR 30000).</p> <p>According to the Act, the Korea Forest Service may issue an order to suspend the sale of any timber and timber products that have not been verified as legal. The Korea Forest Service could also issue an order to return or destroy such timber or timber products.</p>

Features	EU Timber Regulation	South Korea's Act on the Sustainable Use of Timbers
Due diligence obligations	<p>Operators are obliged to exercise due diligence when placing timber or timber products on the EU market. They also have to maintain and regularly evaluate the due diligence systems consisting of three main elements: access to information, risk assessment and risk mitigation.</p> <p>Operators have the option of developing their own due diligence system or using one developed by a monitoring organisation. Monitoring organisations are public or private entities recognised by the European Commission that provide EU operators with operational due diligence systems.</p>	<p>The obligation to exercise due diligence is not stated but the Act requires timber producers to endeavour to import, distribute, produce and sell legally harvested timber or timber products.</p> <p>Due diligence is not mentioned in the Act, the Enforcement Rule, the Enforcement Decree or the Detailed Standards. However, importers would not be able to supply the legality documentation required as part of the import declaration without at least a basic due diligence system.</p>
Due diligence systems– access to information	<p>Specific information requirements related to the product, the country of harvest, the quantity, the supplier, the trader and documents or other information indicating compliance with the applicable legislation.</p>	<p>The Korea Forest Service issued Detailed Standards for Determining the Legality of Imported Timber. According to the Detailed Standards, the following documents would verify that the timber and timber products are legal:</p> <ul style="list-style-type: none"> • A permit for felling issued by the country of origin (it is our understanding that 'country of origin' in the context of the Detailed Standards means 'country of harvest') • A certificate issued by the Forest Stewardship Council, the Programme for the Endorsement of Forest Certification (PEFC), a scheme endorsed by PEFC or a certificate issued by an international certification system that complies with ISO 17065 • A document or certificate recognised by the Korea Forest Service based on bilateral consultations between South Korea and the country of origin • FLEGT licences or export permits that verify legality <p>Importers are required to submit any of these documents as part of their import declaration.</p>

Features	EU Timber Regulation	South Korea's Act on the Sustainable Use of Timbers
Due diligence systems – risk assessment	Risk assessment criteria are defined. These consider the assurance of compliance with applicable legislation, prevalence of illegal harvesting of specific tree species, prevalence of illegal harvesting or practices in the country of harvest, including prevalence of armed conflict, United Nations Security Council or EU sanctions, and the complexity of the supply chain.	<p>The Act, the Enforcement Rule, the Enforcement Decree and the Detailed Standards do not define risk assessment criteria for operators because the obligation to exercise due diligence is not stated in the Act.</p> <p>The Korea Forest Service carries out risk assessments when verifying the legality of timber imports. The Korea Forest Service may also request the country that issued legality documentation to verify the accuracy and authenticity of the documents submitted by the importers.</p>
Due diligence systems – risk mitigation	When the risk is not negligible, risk mitigation procedures, such as additional information or third-party verification, shall be implemented to bring it to a negligible level. If this is not possible, operators may not place the timber on the EU market.	<p>The Act and the enforcement rules do not define risk mitigation criteria for operators because the obligation to exercise due diligence is not stated in the Act.</p> <p>However, the Korea Forest Service would provide South Korean importers with information about high risks based on the risk assessment conducted when verifying the legality of timber imports. The Korea Forest Service would expect operators to take action to address the risks. If importers did not take additional action, their imports would not be cleared.</p>
CITES certificates and FLEGT licences	Timber and timber products covered by FLEGT licences or certificates delivered under the Convention on International Trade in Endangered Species of Wild Fauna (CITES) should be considered legally harvested.	The Detailed Standards recognise FLEGT licensed timber as legally harvested. The Detailed Standards do not mention CITES certificates. However, Article 16 of the Wildlife Protection and Management Act stipulates that those who intend to export or import globally endangered species and products processed there from shall obtain permission from the Minister of Environment.
Status of third-party certification	May be used in the risk assessment, but it does not have the same status as FLEGT licences or CITES certificates.	The Detailed Standards recognise certificates issued by FSC, PEFC, a scheme endorsed by PEFC or certificates issued by an international certification system in compliance with ISO 17065 as proof of legality.

Features	EU Timber Regulation	South Korea's Act on the Sustainable Use of Timbers
Implementation Support		
Exchange and dissemination of information	<p>The operator is responsible for collecting information as part of its due diligence system.</p> <p>EU Member States, assisted by the European Commission, may facilitate the exchange and dissemination of information on illegal logging to assist operators in assessing risks.</p>	<p>The Korea Forest Service is compiling country specific-guides to help importers understand timber legality in key sourcing countries for South Korea. The guides are compiled based on information provided by the relevant authorities in the sourcing countries.</p> <p>As of October 2018, 42 country-specific guides are available on the website of the Korea Forest Service.⁴</p>
Promotion	<p>No specific clause on promotional activities by the European Commission, the EU Member States or the Competent Authorities.</p>	<p>The Act specifies that the State and local governments shall endeavour to promote the sustainable use of timber. They shall do so by formulating and implementing measures to promote wood use culture and education, and the steady supply of timber products.</p>

Endnotes

- ¹ The English version of the Act, the Enforcement Decree, the Enforcement Rule and the Detailed Standards for Determining the Legality of Imported Timber are available on the website of the Korean National Law Information Center at <http://law.go.kr/LSW/eng/engMain.do> and on the website of the Korea Forest Service at http://english.forest.go.kr/newkfsweb/eng/idx/Index.do?mn=ENG_01
- ² Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, <https://eur-lex.europa.eu/eli/reg/2010/995/oj>
- ³ http://www.forest.go.kr/newkfsweb/html/HtmlPage.do?pg=/conser/conser_090101.html&mn=KFS_02_02_07_01_01
- ⁴ The guides are available at http://www.forest.go.kr/newkfsweb/html/HtmlPage.do?pg=/conser/conser_090301.html&mn=KFS_02_02_07_03

About the EU FLEGT Facility

The EU FLEGT Facility supports the European Union, its Member States and partner countries in implementing the EU FLEGT Action Plan. The European Forest Institute has hosted the Facility since 2007. The Facility has its headquarters in Barcelona, Spain, with additional offices in Brussels, Belgium; Joensuu, Finland; and Kuala Lumpur, Malaysia.

Disclaimer

This briefing has been produced with the assistance of the European Union and the Governments of Finland, France, Germany, the Netherlands, Spain, Sweden and the United Kingdom. The contents of this briefing are the sole responsibility of the EU FLEGT Facility and can under no circumstances be regarded as reflecting the position of funding organisations.

© EU FLEGT Facility, 2018