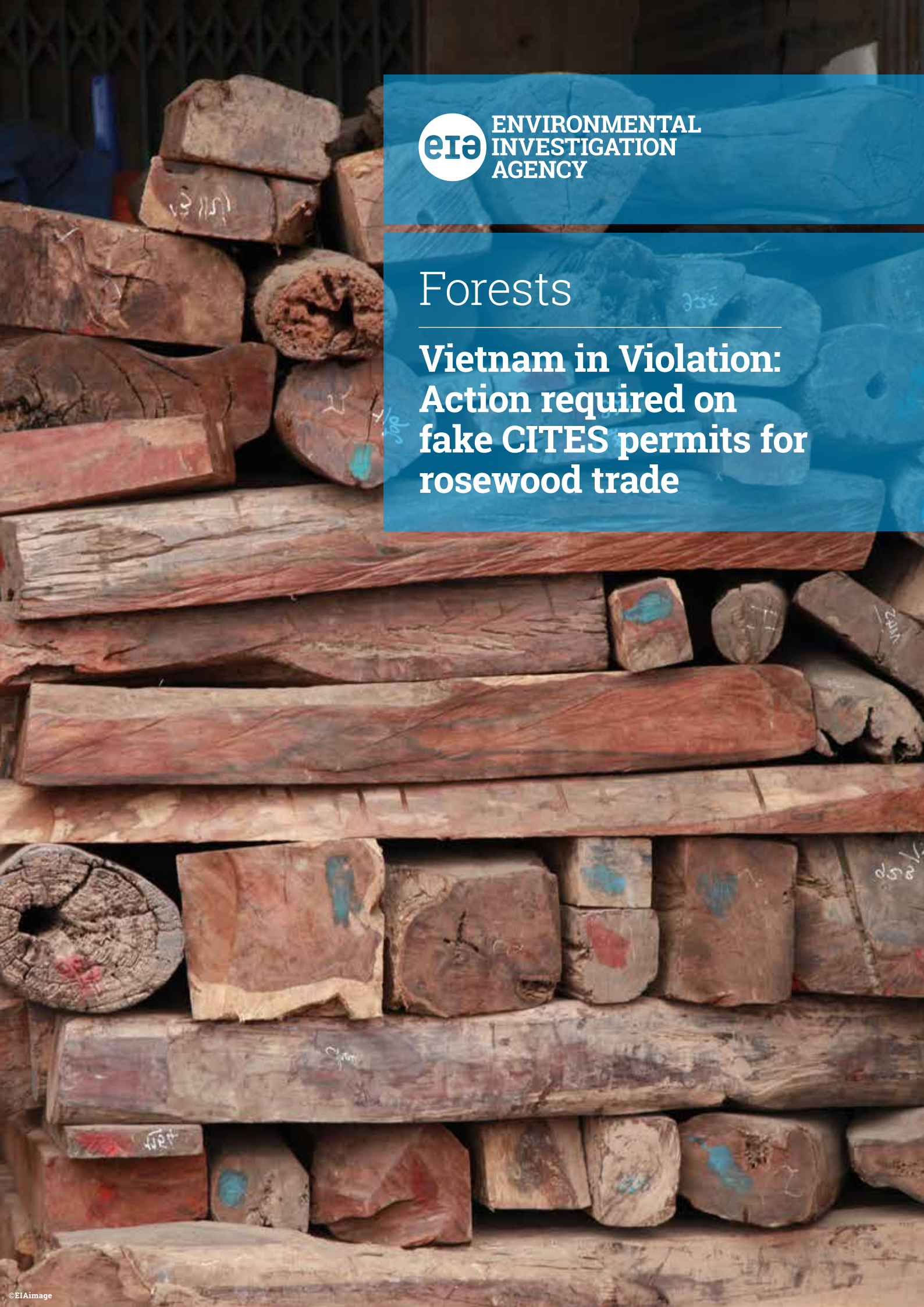




ENVIRONMENTAL
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Forests

**Vietnam in Violation:
Action required on
fake CITES permits for
rosewood trade**



The scandal of Siamese rosewood under CITES

To feed an insatiable demand for luxury furniture in China, species of rosewoods such as highly prized Siamese rosewood (*Dalbergia cochinchinensis*) have been unsustainably harvested in the entire Mekong region.

Documented evidence suggests various national wild stocks have now been exploited beyond return and are teetering on the brink of commercial extinction and, potentially, demographic collapse.¹

Following the listing of the species on Appendix II of the Convention of International Trade in Endangered Species (CITES), EIA revealed how in 2014 a volume equivalent to the largest known population of Siamese rosewood remaining in the world had been harvested in the region and exported. Vietnam was central to this trade. EIA and some of the most qualified expert scientists in this field consider that the volume of CITES export permits issued pose a direct threat to the survival prospects for Siamese rosewood.²

EIA's information helped produce the imposition of a trade suspension on Laos for issuing CITES export permits without knowledge of the volumes of standing stocks and without the existence or implementation of credible Non-Detriment Finding (NDFs) systems or any verification of legal acquisition.³

Contrastingly, Cambodia claimed that Vietnam's imports from Cambodia occurred with the use of fake CITES permits. Importantly, documents submitted by the Government of Cambodia to the CITES Secretariat during 2017, as part of the Review of Significant Trade (RST) of *D.cochinchinensis*⁴, constitute evidence that Vietnam violated numerous provisions of CITES, including at least two fundamental provisions of Article IV of the Convention, and at least two Resolutions in support of them.

With Vietnam's CITES Management Authority (MA) not having been held accountable for these violations, the time for action is now.



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Vietnam's violations as an Importing Party

Cambodia's submission reveals that in April 2013, two months prior to the entry into force of the CITES Appendix II listing of Siamese rosewood, Vietnam received a formal written notification from Cambodia indicating the country had banned all "trade and circulation" of Siamese rosewood. The ban was instituted through Cambodian Prime Minister's Order No.2 of 22 February 2013 "on Prevention and Suppression of Logging, Transporting, Collecting, Storing and Exporting of rosewood".⁴

Cambodia's April 2013 notification explicitly requested Vietnam's cooperation to "prevent trade, purchase or import of rosewood from Cambodia".

Yet, during 2013 and 2014, Vietnam authorised the import of over 8,000m³ of Siamese rosewood from Cambodia in repeated and flagrant disregard

What permits?

While violating CITES Resolutions is not, legally speaking, a violation of the CITES Convention (Resolutions not being legally binding on Parties to CITES), EIA believes Vietnam's imports from Cambodia also violated provisions of the legally binding Convention itself.

In its response to the Review of Significant Trade in Siamese rosewood, Cambodia has disclosed that "subsequent to the imposition of that ban, the CITES Management Authority of Cambodia requested that the Vietnam CITES Management Authority seize and/or take appropriate legal action associated with the use of fraudulent CITES export permits of *Dalbergia cochinchinensis*".

Cambodia added: "Vietnam nevertheless continued to allow the entry into the country of rosewood, repeatedly referencing CITES permits, notwithstanding that they had been previously informed on several occasions of the illegality of those permits."⁴

Cambodia's statement is evidence that Vietnam's MA illegitimately and repeatedly authorised imports of Appendix II-listed specimens in lieu of Cambodian CITES export permits it knew to be fake and which it had been repeatedly asked to seize at the border.

Other factors not in the official CITES RST submission further support Cambodia's complaint that Vietnam accepted export permits it knew to be fake.

Vietnam has stated that it verified the legitimacy of the permits with Cambodian officials at the time and has presented emails verifying them, purportedly from the Cambodian MA. Yet Cambodia has also suggested

of Cambodia's formal request for cooperation in preventing such trade. The majority – over 7,000m³ – was imported in 2014.

These imports into Vietnam were authorised by Vietnam's CITES Management Authority (MA) in wilful violation of CITES **Resolution Conf. 12.3 II. 5. (a) paragraph j (Rev. CoP17)**⁵ and its preceding version (Rev. CoP16) which require that "Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin".

Cambodia's April 2013 notification to Vietnam could not have been clearer and gave Vietnam clear "reason to believe" that Siamese rosewood could not have been legally acquired in Cambodia.

hacking may be a factor and requested an INTERPOL investigation into the matter in Vietnam and Cambodia, as is made clear in the RST submission.⁶

Similarly, when EIA had contacted the Cambodian MA independently on two occasions, in January and March 2014, the MA immediately confirmed it had not issued a single CITES export permit for the species. EIA published the fact that Cambodia had not issued any permits in the April 2014 report on Siamese rosewood trafficking, *Routes of Extinction* – a report in which Vietnam featured centrally and which the CITES MA will have read.¹ It appears inconceivable the MA was unaware of the existence of fraudulent permits.

Yet Vietnam persisted in accepting Cambodian CITES export permits for the species throughout 2013-14.

Vietnam's authorisation of many if not all of those imports constituted structural and wilful violations of **Article IV, paragraph 4** of the CITES Convention, which requires that: "The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate."

As Vietnam's MA knew the permits presented to it on import were fake, as Cambodia has stated, it necessarily also knew there were "no real permits" and thus wilfully authorised the imports in the absence of CITES export permits.

This is an egregious and deliberate violation of the Convention that, in light of Vietnam's onward re-exports, justifies a trade suspension being placed on Vietnam.

Fraudulent reasoning: “Trade in violation” or just “illegal trade”?

Trade in violation: Under CITES, trade in listed species which occurs under permits and certificates issued by the authorised CITES management authority (MA), but which are issued in ways that violate the provisions of them issuing such permits, is considered “trade in violation” of the convention. In these cases, the MA themselves and the state Party to the Convention they represent are accountable for the violations and can be sanctioned appropriately by the Secretariat and other Parties.

Illegal trade: In contrast, trade which does not occur under permits and certificates issued by the authorised CITES MA is considered merely “illegal trade” outside of the authority of the CITES MA and the Party to CITES from which exports occur is not accountable to CITES.

Fake permits: Consequently, trade in listed species that occurs under fake or fraudulent CITES permits,

which were not issued by the authorised MA but are perhaps genuine CITES permits the MA would use, is also considered merely as “illegal trade” because the official MA of the exporting Party did not issue any permits in violation of the convention.

While this interpretation acts to exonerate any importing Party from responsibility for unknowingly importing specimens under fake permits, this is only reasonable if the importing Party is unaware that the permits are fake.

When importing or re-exporting Parties authorise and facilitate trade in specimens under permits they know to be fake, they act in wilful violation of the core provisions of Article IV underpinning the entire CITES permitting system. This is clearly “trade in violation” of the convention by a Party to it and information submitted by Cambodia to CITES indicates this was the case with Vietnam’s imports of Cambodian Siamese rosewood.

Vietnam’s violations as an Exporting Party

Having violated the CITES Convention and relevant resolutions when authorising imports from Cambodia, Vietnam’s CITES MA then went on to violate the Convention and further Resolutions again when re-exporting Cambodian-origin Siamese rosewood to China.

Vietnam has reported to CITES that during 2013 and 2014 it issued CITES re-export certificates covering 5,325m³ of Cambodian-origin Siamese rosewood destined for China – nearly all of it (5,175m³) in 2014.

Article IV Paragraph 5.(a) of the CITES Convention stipulates that: “The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met: (a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;”

Clearly, Vietnam knew it had violated Article IV, paragraph 4 of the Convention when it authorised the import of Appendix II specimens under Cambodian export permits it knew to be fraudulent. To then justify the issuance of re-export certificates predicated on these known fakes constituted a further wilful subversion of Article IV paragraph 5. (a) – another core provision of the CITES system – violation of which is deserving of a trade suspension.

In re-exporting Cambodian-origin Siamese rosewood to China, Vietnam also violated **Resolution Conf. 12.3 II. 5. (a) i. (Rev. CoP17)**⁸ and its preceding version (Rev. CoP16), which stipulates that “no export permit or re-export certificate be issued for a specimen known to have been acquired illegally, even if it has been imported in accordance with the national legislation, unless the specimen has previously been confiscated”.

None of the Cambodian rosewood had been confiscated and Vietnam had known since April 2013, prior to the listing entering into force, that Cambodia had banned all trade in the species. Indeed, as a co-sponsor of the proposal to list the species⁷ in 2012, Vietnam’s MA must have signed off on the texts which specifically cite legislation prohibiting its harvest and trade in Cambodia since years prior to the listing.

Some of the imports from Cambodia that Vietnam reported to CITES for 2013 and 2014 were said to be “preconvention”⁸, a factor that could normally have provided reason to believe timber may have been legally harvested prior to the February 2013 Prime Minister’s Order in Cambodia. However, as the permits were fake, none of the information they contain can be relied on as being true and Vietnam certainly knew they were all false when it reported trade under them to the Secretariat, if Cambodia’s submission is to be believed. The same is true for any “pre-convention” supplies re-exported to China.

Accountability?

Cambodia’s bombshell disclosures came to light within the CITES Review of Significant Trade (RST), a procedure (defined in Resolution Conf. 12.8 Rev. CoP17)⁹ designed to identify species that may be subject to unsustainable levels of international trade and to identify problems and solutions concerning effective implementation of the Convention. An EIA intervention at the 23rd Plants Committee in 2017 contributed to Vietnam, Cambodia and Laos being added to the RST.

EIA notes, however, that several limitations of the RST exist; the procedure is only mandated to review problems regarding the implementation of CITES Article IV paragraph 2(a), 3 or 6(a) and does not consider other paragraphs of Article IV (notably paragraphs 4 and 5) or the full scope of the wider Convention or the Resolutions that guide its effective implementation.

Consequently, the report of the RST¹⁰ at the 24th Plants Committee (PC24, July 2018) therefore classified the trade in *D.cochinchinensis* between Cambodia and Vietnam from 2013-16 as “illegal trade” deemed to be “not related to the implementation of Article IV”.

Similarly, the species/country combinations were categorised as being of “less concern” and have subsequently been removed from the RST ahead of SC70.¹¹

Nevertheless, as this briefing makes clear, while narrow in scope the Review highlighted fundamental problems in the implementation of the Convention not covered by the Review’s mandate and sheds light on how Vietnam has been unscrupulously violating the convention.

While Vietnam now seeks to use the existence of fakes to exonerate itself from responsibility for facilitating “illegal trade” in a way that constitutes “trade in violation” of the Convention, it also needs to rely on the idea of real permits to justify those re-export permits it issued for onward markets in China.

From CITES violations to EU Timber agreement - Contagious credibility gap?

Revelations of Vietnam’s wilful violation of CITES permitting rules casts a dark shadow over hopes for the Voluntary Partnership Agreement (VPA) between the EU and Vietnam, an ambitious legal timber trade agreement expected at the time of writing to be signed in October 2018. The VPA aims to issue Forest Law Enforcement, Governance and Trade (FLEGT) licences for timber shipments from Vietnam to the European Union, subject to legality verification and other due diligence processes to exclude illegal timber.

Under negotiation since 2010 and initialled in May 2017, the EU-Vietnam VPA designates Vietnam’s CITES MA as the issuer of those FLEGT licences.

The evidence of wilful violations of CITES permit administration by Vietnam’s CITES MA, combined with the absence of accountability for these violations of the UN treaty, is of grave concern to EIA. If unable to deliver on its commitments under CITES, any credibility of Vietnam’s MA within the FLEGT VPA will be significantly diminished.

That Vietnam’s MA can so obviously maladminister trade in a species which it listed itself on CITES Appendix II raises clear concerns that the agency will struggle to perform its role administering the trade

and the related information the VPA will involve, the scope and scale of which is many magnitudes larger than that involved in administering the permitting system for CITES-listed timber species.

The scope for suspicious FLEGT licences is immediately apparent and undermines the considerable effort investing in ensuring legal trade from Vietnam to European markets through the VPA. If unaddressed through CITES, as proposed by EIA, problems arise as to the credibility of CITES and its MAs, even more so in light of the role both the Vietnamese State and its timber sector have played in the wholesale theft of any available timber from the last protected forests in eastern Cambodia in recent years, as exposed by EIA in 2017 and 2018.^{12 13}

While the EU cannot rely on CITES to ensure Vietnam’s CITES MA is sufficiently reformed to perform the function given to it in the VPA, as a key Party to CITES it is in the EU’s interests for the CITES system to play the role provided for in the treaty. Similarly, as a major contributor to CITES across all fronts, CITES owes it to the EU to enforce CITES provisions.

Conclusions

A formal submission to CITES from Cambodia evidences that Vietnam MA repeatedly accepted what it knew to be fake CITES permits when authorising imports of Siamese rosewood from 2013-15 and subsequently re-exported many of these shipments to China under permits it issued in lieu of the fakes.

By importing and re-exporting specimens of *D. cochinchinensis* from Cambodia, Vietnam appears to have wilfully violated Articles IV paragraphs 4 and 5 (a) of the CITES Convention, and Resolutions 11.3 and 12.3 in support of it.

Robust measures are needed to address this trade in violation of the Convention.

Yet while evidence for this has come to light through formal submissions to the CITES Review of Significant Trade, vagaries of the procedures and classifications of CITES have prevented formal acknowledgement of these violations, let alone seeking to hold Vietnam accountable under the treaty.

The agency responsible for these violations – Vietnam's CITES MA – is designated as the licensor-in-chief of a flagship legal timber trade agreement that the EU is due to sign with Vietnam in October 2018. Without reform, the scene is set for much questionable licensing of illegal timber under the EU's flagship anti-illegal logging legislation as well as questions as to the credibility of Vietnam's CITES MA.

Enforcement of CITES Article IV violations is required in its own right if Vietnam is not to repeat these offences for other CITES-listed timber and wildlife species; as a major Party to that treaty, the European Union should expect to see that enforcement undertaken, along with appropriate reforms.

Recommendations

The CITES Secretariat should:

- Ensure the Standing Committee includes discussion on these violations in the 70th Standing Committee meeting in Sochi
- Seek immediate clarification from Vietnam on the import and re-export of Appendix II-listed *Dalbergia* and other lookalike timber species
- Recommend a trade suspension be placed on Vietnam for all exports or re-exports of all *Dalbergia* species pending a formal Mission to assess the Party's ability to comply with the Convention and supporting Resolutions
- Publicly communicate the status and results of the 2016 INTERPOL investigation requested by Cambodia
- Seek information from Cambodia on its procedures to ensure *Dalbergia* species (and other lookalike species) are exported in compliance with CITES
- Where Parties have domestic bans on CITES-listed species, such as Cambodia's ban on Siamese and other rosewood species, these should be encouraged to be officially communicated to the CITES Secretariat and zero quotas should always be in place and publicly disclosed

The Government of Vietnam should:

- Cooperate with CITES in any investigation into the scandal surrounding Siamese rosewood
- Declare timber imports from Cambodia to the Cambodian Government, along with information on the exporters
- Investigate and prosecute the collusion and corruption between Vietnamese state officials and timber traders which drives and facilitates illegal logging in Cambodia and legitimises shipments of illegal timber into Vietnam and make those outcomes public
- Publicly report on progress with the development of new legislation to address imports of illegal timber, as pledged in the European Union Voluntary Partnership Agreement (VPA) texts and annexes initialled in May 2017¹⁵
- Detail a plan to reform the CITES MA and other agencies involved in timber trade administration in Vietnam's proposed Vietnam's timber legality assurance system (VNTLAS), including a process of corruption eradication
- Implement recommendations in EIA's 2018 Serial Offender report¹³

The Government of Cambodia should:

- Formerly communicate its timber harvesting and trade/export laws to Vietnam and clarify that the border has been closed to the timber trade
- Request that Vietnam stops accepting Cambodian timber and share with Cambodia detailed records of imports and the names of exporters from 2013-18
- Instruct all Cambodian border posts to enforce timber export bans and investigate associated corruption detailed in EIA's Serial Offender report¹³

The European Union should:

- Encourage CITES to include at the forthcoming 70th Standing Committee meeting discussion on enforcement, accountability and capacity-building for Vietnam's CITES MA in light of its violations of Article IV and offer support to any actions taken as a result
- Promote the above recommendations to CITES to the Secretariat
- Seek a formal response from Vietnam detailing how it will ensure both its CITES violations and state collusion in the ongoing illegal timber trade from Cambodia are immediately ended and publicly provide clarity on this matter prior to signing the VPA with Vietnam

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