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Regulatory Transparency in Multilateral Agreements Controlling Exports of Tropical Timber, E-Waste and Conflict Diamonds

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Abstract

Regulatory Transparency in Multilateral Agreements Controlling Exports of Tropical Timber, E-Waste and Conflict Diamonds

Export restrictions can be problematic if trading partners question either their conformity with international obligations or their possibly unintended negative impacts on others. Regulatory transparency can help. This paper examines how three multilateral environmental agreements (MEAs) incorporate transparency into their regulatory regimes: CITES (endangered species, especially tropical timber), the Basel Convention (hazardous e-waste), and the Kimberley Process (conflict diamonds). All three require producing countries to control exports of sensitive commodities, while allowing (Basel) or requiring consuming countries to control imports. Export and import restrictions are usually intended to affect relative prices, but in these three MEAs the ultimate objective is to limit the negative consequences, whether economic, environmental or societal, associated with improper exploitation of the covered commodities. In each case all trade in the target commodities ought to be covered, no export permits should be issued that do not meet the standards established by the MEA, and no imports should take place without the appropriate documentation. In order to have a consistent comparative basis for assessing the contribution of regulatory transparency to the success of these regimes, we use an analytic framework based on three major transparency principles: publication of the rules (the "right to know"); peer review by governments (monitoring and surveillance); and public engagement (reporting on results, and a role for non-governmental organisations, NGOs). The paper concludes with some observations about characteristics that appear to make transparency more or less effective.

Keywords: multilateral environmental agreement, MEAs, CITES, Basel Convention, Kimberley Process, tropical timber, hazardous waste, e-waste, conflict diamonds, transparency, export restrictions, international trade, export, import, World Trade Organisation, WTO, General Agreement on Tariffs and Trade, GATT, trade suspension, export permit, certification, labelling, monitoring, surveillance, peer review, compliance, publication, reporting, notifications, enforcement, non-governmental organisations, NGOs.

JEL classification: D7, F1, F5, F6, L6, L7, Q2, Q3, Q5, Q53.

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Executive Summary

Export restrictions are used to pursue various stated objectives, from raising government revenue to protecting the environment. From a domestic perspective, it is not always evident that export restrictions are the most effective and efficient instrument to pursue the stated objectives: this issue warrants further analysis, but is beyond the scope of this paper. From an international perspective, export restrictions can also be problematic if trading partners question either their conformity with international obligations or their possibly unintended negative impacts on others. This paper looks at the role of regulatory transparency in the specific case of regulating trade in sensitive commodities. In particular, it examines how three multilateral environmental agreements (MEAs) incorporate transparency into their regulatory regimes: CITES (endangered species), the Basel Convention (hazardous waste), and the Kimberley Process (conflict diamonds). The Kimberly Process is referred to as an MEA because it, too, regulates the exploitation of natural resources and achieves that objective in part by regulating trade.

All three MEAs require producing countries to control exports of sensitive commodities, while allowing (Basel) or requiring consuming countries to control imports. Export and import restrictions are usually intended to affect relative prices, but in these three MEAs the ultimate objective is to limit the negative consequences, whether economic, environmental or societal, associated with improper exploitation of the covered commodities. In each case all trade in the target commodities ought to be covered, no export permits should be issued that do not meet the standards established by the MEA, and no imports should take place without the appropriate documentation.

In order to have a consistent comparative basis for assessing transparency with respect to export restrictions, we use an analytic framework based on three major transparency principles: publication of the rules (the 'right to know'); peer review by governments (monitoring and surveillance); and public engagement (reporting on results, and a role for non-governmental organisations, NGOs).

Governments need to know how their trading partners are implementing their obligations. Citizens cannot hold governments accountable and firms cannot navigate global markets if they do not know what tariffs or rules apply. This basic "right to know" principle is reflected in the publication of all trade-related international obligations, including: the publication of the national laws and regulations that meet those obligations; domestic bodies that administer the provisions of any agreement, and can be contacted with enquiries; and notifications of new or changed national measures that may have implications for the agreement.

Monitoring refers to any activity where Parties review each other's implementation of the Agreement. Peer review might focus on checking whether governments have created national legislation that incorporates an agreement into law; or on whether those laws are adequately enforced. Such surveillance can be based only on the data provided by the Parties, perhaps supplemented with data provided by a third party, such as an NGO, or it can be based on a synthesis report drafted by an MEA's Secretariat.

Public engagement encompasses a set of practices addressing how MEAs report on their work and how they create an inclusive decision-making process. This dimension may have the greatest relevance for civil society organisations and for those developing countries that may not have the capacity to analyse the information generated by transparency mechanisms.

The paper presents three case studies of transparency in action.

The first study examines tropical timber, one of the most highly traded and valuable wildlife commodities, with an estimated turnover of over USD20 billion annually. Transparency makes trading partners confident that export and import restrictions are based on a scientific assessment conducted in a transparent and inclusive process. One of the virtues of CITES is its ability to work closely with other organisations, including NGOs. These organisations help gather additional information that CITES transparency mechanisms (i.e. annual reports) may miss. The most innovative CITES transparency mechanism is the 'Review of Significant Trade' (RST), a form of peer review that examines whether range states are taking the necessary steps to ensure a high volume of trade is not detrimental to the survival of a specific endangered species.

The second study looks at trade in e-waste governed by the Basel Convention. A lack of clarity in what can be defined as 'reusable' equipment has led to a number of situations in which supposedly reusable equipment exported to a developing country was improperly disposed of as waste. Parties may also have difficulty distinguishing between hazardous and non-hazardous e-wastes. More transparency will help all along the chain, including for improved understanding of what ought to be regulated by Basel, generating the kind of data that will help importers distinguish normal commercial transactions from problematic shipments, and providing enough information about the evolution of these trades that concerned citizens in countries of import and export can know what is going on.

The third study examines the Kimberley Process (KP), a regulatory scheme for international trade in rough diamonds. The cooperation of governments, industry and civil society within the KP has helped to curb the flow of conflict diamonds in a relatively short period of time. Poor reporting has made it hard to determine whether states fulfil the obligations assumed under this initiative. Many well-publicized cases illustrate the KP's failure to use transparency, along with other measures, to hold participants accountable. If non-compliance goes un-checked, it threatens to undermine legitimate international trade for all producers, leaving consumers still unsure whether the diamond they are purchasing is truly 'conflict-free'.

These MEAs use comprehensive transparency systems that vary in their performance, and this paper offers some conclusions about characteristics that appear to make transparency more or less effective. The rules of the regulatory regime have to be clear, information on what is done to implement international commitments must be available and used, including for collective monitoring and reporting. Broad involvement by NGOs and other stakeholders also strengthens transparency. Finally, transparency policies work better under conditions where parties have incentives to follow the rules, users of information can influence situations, and providers of information believe that doing so is also in their own interest.

Regulatory transparency in multilateral agreements controlling exports of tropical timber, e-waste and conflict diamonds

Export restrictions can be used for the protection of human health, the environment, or social stability. Sometimes the best way to prevent harmful exploitation of a natural resource is to control trade flows. And yet export restrictions can be problematic, if they do not respect the non-discrimination norms of national treatment and the Most Favoured Nation (MFN) principle, or if trading partners have reasons to doubt the supposedly virtuous policy objectives motivating their imposition.[1] This paper looks at how three multilateral environmental agreements (MEAs) use transparency to resolve these problems: CITES (endangered species), the Basel Convention (hazardous waste), and the Kimberley Process (conflict diamonds).[2]

These three MEAs are concerned with the export of resources, but they regulate trade only as a policy tool to achieve their principal objectives. All three require producing countries to control exports of sensitive commodities, while allowing (Basel) or requiring consuming countries to control imports. Export and import restrictions are usually intended to affect relative prices, but in these three MEAs the ultimate objective is to limit the negative consequences, whether environmental or societal, associated with improper exploitation of the covered commodities. In each case all trade in the target commodities ought to be covered, no export permits should be issued that do not meet the standards established by the MEA, and no imports should take place without the appropriate documentation. In all three, the rules affect government policy; it is that national policy that in turn regulates private behaviour.[3]

Export restrictions are usually discouraged within the World Trade Organization (WTO), but governments may apply them in reference to the "exceptions" listed in Articles XI:1(a), XX and XXI of the General Agreement on Tariffs and Trade (GATT). A significant concern from the perspective of trade law and policy regarding such legal export restrictions is whether they are actually achieving the stated objectives, or simply providing benefits to downstream domestic producers.[4] Import restrictions are equally

1. On the problem of knowing protectionism when you see it in the absence of multilateral standards, see Fontaigne, von Kirchbach and Mimouni, 2005.

2. The Kimberley Process is not usually considered an "MEA". While its purpose may be human rights, in practice what KP does is regulate the exploitation of natural resources, like many MEAs, and it achieves that objective in part by regulating trade, again like many MEAs. Little is lost therefore by referring to it in this paper as an MEA.

3. We decided not to add the *Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone layer* to our comparison, even though it is widely regarded as one of the most successful MEAs, because its important export restrictions are incidental to its primary regulatory tools. Similarly while transparency is part of how Parties to the Vienna Convention ensure compliance, it is not particularly important with respect to trade.

4. OECD, 2010, p. 8-10. That said, the "specific trade obligations" imposed by MEAs have never been at issue in a WTO dispute.

important in the regulatory framework of each MEA. The presence of an import restriction can obviously help a domestic producer of like products, if there were one, but with these MEAs, the *absence* of an import restriction mandated by the agreement might also be intended to help a domestic user of these inputs at the expense of users in countries that faithfully implement their obligations.

Producers are the ultimate target for all three MEAs. Their actions can be influenced by restricting their exports, which is made effective by restricting imports of potential buyers. The authority for both actions is participating governments. Citizens and NGOs care about what is going on in part for ethical reasons. Transparency can affect their actions as consumers and can give them resources to pressure their governments. Economic actors need transparency because they need to know what is going on.

Transparency – one of the fundamental norms of international trade – is generally accepted as both legitimate in itself and essential to modern governance.[5] Transparency as "governance by disclosure" is also a common tool of global environmental governance, although some analysts fear it is often chosen because more effective tools are not available.[6] The assumption of disclosure-based transparency is that some interested public will respond to information in a way that changes a targeted actor's behaviour. Transparency can also be seen as educational, however, on the assumption that when actors receive new information about themselves, they may adopt new behaviours.[7] In both WTO and MEAs we see a mix of disclosure and education motivations. The first aim of disclosure is simply to tell trading partners what is going on. The process of peer review is partly meant to be educational. Governments are assumed to be likely to change their behaviour, therefore, for two reasons: because of pressure and because they learn about the benefits of socially acceptable policy action.

A trade agreement is a set of rules for government policy in a given domain. If no one knows what the policy is, the agreement cannot reduce uncertainty, which ought to be a central goal of trade policy.[8] When we look at the trade policy of a Party to one of these MEAs, we ought to see domestic legislation explicitly implementing its provisions. In principle export or import restrictions authorised by such legislation would have been required by the MEA. The international obligations accepted with the MEA should be published on the MEA's website, and the national legislation implementing the obligations should be available through links on that site as well as in the country concerned. Countries ought to have what amounts to an enquiry point where clarification of the rules can be sought. In the case of CITES, for example, the country should have a Scientific Authority responsible for providing advice on the sustainability of species in its territory, as well as a Management Authority to operate the permit system. The

5. On transparency as a basic principle of democratic government, see (Florini and Stiglitz, 2007). Transparency is seen in many instances as part of "access to information" or a basic right to know, a principle that has become more important especially in OECD countries over the last 30 years, notably with respect to environmental governance. This trend is exemplified in Europe in the 1998 *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in* Environmental *Matters* (Krämer, 2012) and (Mason, 2010). We examine transparency from a different angle, as a policy tool.

6. Gupta, 2010

7. Mitchell, 2011, p. 1882

8. On the importance in *new* new trade theory of reducing uncertainty at the extensive margin of trade, see Ciuriak, et al., 2011

monitoring and surveillance process at the WTO should help to ensure that all these things happen, and that comparison of implementation across Parties is possible. If a Party believes an internationally traded species warrants protection under CITES, it can recommend that the other Parties agree to list the species in Appendix I or II, a multi-stage multilateral process that includes international scientific advice and a role for NGOs and the public. In short, the creation and implementation of MEA export restrictions ought to take place transparently with multilateral authorisation and surveillance.

One of the questions in any international legal regime is the extent to which differing national laws are functionally similar, or recognizably similar, to the objective intended by the international obligation. Good faith implementation of international obligations need not and does not result in identical national law.[9] The purpose of transparency and accountability mechanisms in reducing information asymmetry is thus to allow verification by other Parties and citizens that national law, policy, and implementation are consistent with the international obligations.

The transparency process and the content of the information to be made available matter in different ways for governments, citizens, and economic actors: why information is made available, and for whom, differs. Moreover transparency about export restrictions is a minor subset of transparency in governance generally. Countries that struggle to make information available at home may not be able to provide any more of it to these MEAs. Being transparent may be good for governance, good for trade, and good for investment, but complying with an MEA may not be the prime motivation. And none of these MEAs see help for economic actors as one of their core objectives. These MEAs affect the rules in many areas of trade. Firms need to know what the rules are, and whether they are likely to change. Beyond reducing policy uncertainty, transparency promoted by the regime can be especially valuable with respect to commercially important commodities—firms need to have some predictability about what will be available, or not, and at what price.

Without transparency these regimes would not work. Formal third party adjudication is technically available, but never used, in part because appropriate remedies are hard to imagine, especially in the many cases where non-compliance is due to a lack of administrative capacity to implement rather than to strategic misbehaviour. Moreover the harm of non-compliance is often not to another country, but to the global commons, which creates a collective action problem: nobody would be willing to bear the diplomatic costs to pursue coercive dispute settlement since they would not reap the full benefits of success.[10] Dispute settlement processes may be moribund in these MEAs, but monitoring and surveillance functions have varying degrees of health. Sanctions, authorised for example by a CITES trade suspension recommendation, can be coercive, notably when implemented by major importers, but without transparency throughout the system, could not be effectively or fairly implemented. Regimes depend on the constant evolution of shared understandings of the essential rules and norms of the system. Where the social interaction essential to such normative evolution is constrained, the regime may be ineffectual; where it is robust, the regime can evolve along with a changing context.[11] Transparency is the essential underpinning.

9. Wolfe, 2003

10. Moltke, 2001, p. 21-22; UNEP and IISD, 2005, p. 19

11. The theoretical roots of this approach are found in constructivist international relations and in interactional law. See Wolfe, 2005; Brunnée and Toope, 2010.

This paper looks only at transparency, not at whether a given MEA achieves its intended objectives. Knowing whether the underlying environmental problem is solved is not easy. MEAs set standards; if those standards are respected, if the required procedures are followed and laws changed, or policies implemented, then the MEA can be said to be effective regardless of the environmental consequences or even real changes in behaviour by individuals.[12]

The question for the paper then is how is transparency used as a tool by these MEAs in changing the actions of the states who are the subjects of their rules? In the next section (1) we use an analytic framework developed for analysis of WTO transparency to suggest what to look for in an assessment of MEA transparency. This framework can be used as a benchmark for assessing the presence and effectiveness of transparency mechanisms in these regimes. Before applying this framework in a detailed description of transparency in each MEA in three Annexes, we present case studies of transparency in action in controlling trade in tropical timber (2), e-waste movements (3), and conflict diamonds (4). The conclusion (5) comments on key questions posed for a Workshop on Regulatory Transparency in Trade in Raw Materials organised by the Organisation for Economic Co-operation and Development (OECD) on 10-11 May 2012.[13]

1. An analytic framework for trade and MEA transparency

Transparency is a representation of reality. As with a painting or a photograph, what we choose to include within the frame, and how it is portrayed, depends on what we think is important. In order to have a consistent comparative basis for assessing transparency in these MEAs with respect to their restrictions on trade, we use an analytic framework developed for looking at the WTO.

The WTO Glossary on its website defines transparency as the "Degree to which trade policies and practices, and the process by which they are established, are open and predictable." The definition (which is not clear on who should be transparent, and to whom) necessarily requires choices both about how to be transparent, and what to be transparent about. It refers to a number of inter-related actions, including how: a rule or a policy is developed domestically; the rule is enforced or a policy is implemented; the rule is published; the other Members of the WTO are notified of the new rule or a policy action; a notification is discussed in the WTO; and the results are published. The concept of transparency refers, therefore, both to generating information and to generating agreed interpretations of the information. The ultimate objective is reducing information asymmetries among governments, and between the State, economic actors, and citizens.

For convenience, transparency practices can be categorized as first, second and third generation policies, a typology developed to think about the evolution of transparency policies in advanced economies, which we have adapted for analysis of the WTO.[14] We place WTO transparency practices in three groups as described below and summarized in

12. Moltke, 2001. The literature on compliance and enforcement of MEAs approaches these questions from a subtly different angle. See for example Reeve, 2002. Nor do we consider the related literature on the "effectiveness" of MEAs—see Breitmeier, Underdal and Young, 2011.

13. For more information on the OECD Workshop, see http://www.oecd.org/document/29/0,3746,en_2649_36251006_49660509_1_1_1_1,00.html.

14. This section is based in part on Collins-Williams and Wolfe, 2010, as adapted in Halle and Wolfe, 2010.

Table 1, and we follow this categorization in the Annexes, each of which asks the same question about the three MEAs.

Table 1. Categorisation of transparency

Principle	Essential components
1. Publication, or "right to know"	Publication of obligations Publication of laws and regulations Enquiry points Independent administration and adjudication Notification of existing and new measures
2. Monitoring and surveillance	Policy clarity Peer review Third party adjudication
3. Reporting and engagement	Internal transparency for governments External transparency for citizens and economic actors Role for NGOs

1. Right to know

WTO Members need to know how their trading partners are implementing their obligations. Citizens cannot hold governments accountable and firms cannot navigate global markets if they do not know what tariffs or rules apply. This basic "right to know" principle is reflected in the publication of all trade-related international obligations, most notably the codification of Members' specific mutual obligations in the thousands of pages of "schedules" attached to the general obligations of WTO agreements. Members are also subject to dozens of requirements to notify new or changed legislation and policies, both ex ante and ex post (especially with respect to technical standards) and to notify various aspects of their implementation of WTO obligations, for example regarding subsidy levels.

In the first part of the Annex on each MEA, therefore, we report on the publication of obligations and legislation, the administrative authority for implementation, enquiry points, and notification requirements. We also note the extent to which these notification obligations are met, recognizing that without an audit procedure, we have no way to know what a government could have notified, but did not.

2. Monitoring and surveillance

Some WTO notifications are linked to the possibility of review by a relevant WTO body before or after the measure takes effect, leading to a second grouping of WTO transparency policies as *monitoring and surveillance mechanisms*. Monitoring takes place in the various WTO committees, often with an opportunity for Members to ask each other questions about notifications and sometimes with a formal "specific Trade Concerns" procedure. Peer review is also found in the Trade Policy Review Mechanism (TPRM), which aims at "achieving greater transparency in, and understanding of, the trade policies and practices of Members." Discussion in the Trade Policy Review Body (TPRB) is based on major reports written by the WTO Secretariat and the Member under review. The reports, and a record of the discussion, are subsequently published, as is the Director-General's annual report to the TPRB, an overview of developments in the international trading environment. The behavioural assumption is that providing information can

influence policy. As a result of questions and challenge in a committee, a government may provide more information, change policy, or pressure other units of government to respond. If the obstacles in a given market are understood, economic actors can make alternative decisions, which might induce the government to change policy to maintain the benefits of investment. Such illumination might also generate domestic political pressure for change.

In Part 2 of each annex, therefore, we report on how each MEA Secretariat uses available data to provide monitoring reports on the implementation of obligations, and on peer review processes. As mentioned above, formal dispute settlement is unusual in MEAs, but since it is part of the monitoring and surveillance process in the WTO, for comparison purposes we note in the Annexes the extent to which such processes exist in these MEAs.

One of the ultimate purposes of transparency is to ensure accountability for commitments.[15] Such accountability in an international organisation can be horizontal, where governments hold each other to account. In the Annexes, therefore, we summarize monitoring and surveillance as *horizontal accountability*.

3. Reporting and engagement

With what is sometimes called *collaborative transparency*, the *internal* challenge is to create a more inclusive decision-making process in Geneva, ensuring that all Members have and can make use of information. WTO Members are also concerned about how international standards are set, for example in standards recognized by the Technical Barriers to Trade (TBT) Committee.[16] The same considerations might apply to MEAs. Whether developing countries have the capacity to analyze the information generated by the transparency mechanisms, and perhaps influence regulatory development processes, affects both the operation of existing agreements and new negotiations. An assessment of these considerations is noted in each Annex in the first part of section 3.

As to *external transparency*, the challenge is to enable better policymaking in capitals, engaging both economic actors and citizens. WTO Members are committed to making information available in Geneva, but that information is largely a by-product of information otherwise generated by the WTO transparency mechanisms that serve Member governments. Only some information is published with civil society organisations, economic actors, or citizens in mind. External transparency starts with transparency about the regime's process, and extends to engagement. That is, NGOs need to know how the international organisation works; being involved in some way is a further step.

In the second part of section 3 in the Annexes, we begin with a description of what information is published. MEAs too produce their reports first for governments, but given the importance of the ethical concerns of citizens in motivating their creation, they tend to be more engaged than the WTO with civil society. Accordingly, we report the institutional role for NGOs, including their contribution to accountability, since accountability in international organisations can also be vertical, where participants in the regime are accountable to citizens, mediated by civil society organisations or industry associations. Such mechanisms do make a difference in the trading system and in MEAs

15. For a full discussion see Wolfe, 2011.

16. See for example the discussion as it applies to TBT in WTO, 2011b.

where scientifically-based assessments of the situation on the ground are central to their role. Civil society can act as a corrective to the 'official story'. They may find more or less information on the practices in question, and they may be able to offer compelling alternative interpretations. Vigorous civil society reports may also contribute to horizontal accountability by increasing the policy space available to Secretariats, ensuring that Members allow a more ambitious and comprehensive transparency exercise than might otherwise be possible. And civil society organisations play an essential role in vertical accountability, by acting in some way on behalf of those affected by the decisions of international organisations.[17]

Finally, we assess how the information made available by each MEA might be useful for economic actors. In addition to the information on the regime rules noted in other sections, does the MEA provide statistical or other data on market conditions?

This general approach to transparency is used to structure the analysis of the three MEAs in the Annexes below and forms the basis for our assessments in the Conclusion. We next turn to three case studies of transparency with respect to export restrictions of three commercially significant commodities, one for each MEA.

2. Trade in tropical timber

Tropical timber is one of the most highly traded and valuable wildlife commodities, with an estimated turnover of over USD20 billion annually.[18] Until the early 1990s, however, only a small number of timber species was actually listed under CITES (see Box 1 for a description of the commodities). In addition, all the species that *were* listed were minimally traded, and considered economically insignificant.[19] The reason for this limited role can largely be attributed to the protectionist stigma attached to CITES and the perception that it was unsuitable for regulation of large-scale commercial regimes. In 2002, however, opinions started to change in the wake of increasing illegal logging. CITES was beginning to be seen as having a role in large-scale commercial forestry as a complementary management mechanism.[20] The watershed moment in this change of thinking occurred in 2003, when the South American hardwood Big-leaf Mahogany (*Swietenia macrophylla*), the most valuable and widely traded Neotropical timber tree, was listed for protection under Appendix II of CITES.[21] As of 2010, CITES included six Appendix I species, 13 Appendix II taxa (eleven species and two genera), and 120 Appendix III species used for lumber or other wood products.[22] But only three listed species are considered commercially important: afrormosia, big leaf mahogany, and ramin.[23] CITES only regulates trade in mahogany for logs, lumber, veneer, and plywood; and trade in afrormosia for logs, lumber and veneer, while other timber species such as ramin, are regulated for all parts and derivatives (i.e. furniture and other

17. See Wolfe, 2011. On NGOs, see UNEP and IISD, 2005, p.19; and Drake, 2011.

18. FAO, 2009, p. 64.

19. ITTO, 2007.

20. Milledge, 2003, p. 5.

21. Grogan and Baretto, 2005, Neotropical refers to a region of Mexico through to most of South America.

22. USDA, 2012, ScienceDaily, 2010.

23. ScienceDaily, 2010.

manufactured/finished products). Transparency helps to ensure that regulation of selected processed products in addition to raw logs does not lead to trade distortions elsewhere (i.e. diversions to domestic processing).[24] Transparency also helps trading partners have confidence that export and import restrictions imposed in conformity with CITES obligations are based on a scientific assessment conducted in a transparent and inclusive process.

Box 1. CITES

The earliest of the key MEAs, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was adopted in 1973 and entered into force two years later. CITES seeks to regulate trade in certain species and their parts, as well as products made from such species to ensure international trade in wildlife specimens does not threaten their survival. Recent modelling suggests that 30% of global species threats are due to international trade.[25] At the same time CITES serves to protect a State's ownership of its biological resources by requiring that listed species be legally acquired within relevant domestic laws.

Trade in animal and plant species is quite diverse and some levels of exploitation are very high. Together with other environmental factors (habitat loss, etc), populations can become so depleted they risk immediate or eventual extinction. Three appendices list the approximately 35 000 species identified by the Conference of Parties (on scientific advice) as requiring various degrees of trade restrictions to ensure their sustainability. These restrictions range from a general prohibition on commercial trade to allowing international trade via a system of permits and certificates, which have been issued in accordance with certain requirements. CITES has long been known for the unusually active participation of non-governmental organisations—scientific and advocacy organisations in particular—in its deliberations. In recent years it has begun—not without controversy—to address species traded in such volumes as to have a significant economic value, such as certain tree and fish species.[a]

All import, export, re-export and introduction of species listed in the Convention must be authorised through a licensing system. Parties issue over 850,000 permits a year. Each Party is responsible for designating a Management Authority to administer this licensing system as well as a Scientific Authority to advise on the effects of trade in certain species. Appendix I includes species threatened with extinction. Trade is permitted only in exceptional circumstances. An export permit can only be issued after verifying that the specimen will not be used for commercial purposes. The import of any of these listed species requires the prior grant and presentation of an import permit. Appendix II species, the majority of highly traded and commercially important species, are not necessarily threatened with extinction, but may become so if trade is not controlled, essentially by ensuring that any specific trade will not be detrimental to the sustainability of the species in a defined range. Export permits are required, but the import of any of these listed species requires only the presentation of an export or re-export permit.

Appendix III species are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade. For any State that has included a certain species under Appendix III, export permits are required for the trade in that species. In the case of export from any other State, a certificate of origin must be issued. Correspondingly, the import of any specimen from a State that has the species listed under Appendix III, requires an export permit; imports from all other States require a certificate of origin

Implementation is monitored through annual and biennial reports, various committees and reviews, statistical information and third-party organisations. The CITES Secretariat has a staff about 22, administered by UNEP. The Secretariat roles include recommendations for implementation, receiving and distributing information to and from Parties, preparing annual reports and undertaking various studies. The Secretariat not only controls and organizes the information assessment stage by consulting states and non-State actors, and by collecting the

24. CITES, 2002.

25. Lenzen et al., 2012.

incoming information; it also enjoys the de facto right to evaluate the incoming information and to elaborate the recommendation for the decision by the Parties.[26] The CITES Trade Database is administered by the UNEP World Conservation Monitoring Centre (UNEP-WCMC).

a. UNEP and IISD, 2005, p. 15.

Source: CITES website http://www.cites.org/.

In agreeing to list these commercially important species, Parties confirm that tropical forests ought to be managed sustainably, and that legitimate trade should continue to take place on a non-discriminatory basis. CITES rules, and transparency in the implementation of these rules, contribute to both of these objectives.

One of the virtues of CITES is its ability to work closely with other organisations including NGOs like TRAFFIC, an NGO whose purpose is essentially to support CITES. For such NGOs, the effectiveness of CITES is a key part of achieving their own mandate. (Table Annex 1.) They see CITES as effective, science-based and only marginally tripped by politics. These organisations help gather additional information that CITES transparency mechanisms may miss while providing on the ground support and resources within States. They fund activities that governments will not, and use their liberty to do and say things that international organisations cannot.[27] NGOs also lobby for the organisation in capitals. CITES mobilises a community with a stake in wildlife trade – from safari hunters to animal rights activists. NGOs have created a virtual community around wildlife trade in which each plays his or her part for the greater good of the whole. The Secretariat is acutely aware of "the indispensable role played by these organisations in achieving the objectives of CITES."[28]

For timber the essential third party organisation is the International Tropical Timber Organization (ITTO), an intergovernmental organisation promoting the conservation and sustainable management of trade in tropical forest resources. Its members represent about 80% of the world's tropical forests and 90% of the global tropical timber trade. It essentially serves as another monitoring mechanism because it collects, analyzes, and disseminates data on the production and trade of tropical timber. The Conference of the Parties (COP) explicitly recommends that Parties support and facilitate the work of ITTO, and welcomes ITTO's promotion of transparent markets for trade in tropical timber.[29] The two organisations have launched a multi-year project focusing on the three most traded tropical timber species (afrormosia, big-leaf mahogany, ramin), particularly to help develop a common, cost-effective system for some of the Parties to make non-detriment findings.[30]

In addition, NGOs with observer status, such as the Environmental Investigation Agency (EIA), monitor illegal logging and extensive trade taking place in contravention of CITES rules. The EIA depends on the CITES database, but it goes further by conducting its own research and in-country investigations, usually through undercover interviews. The EIA focuses on providing evidence of illegal timber trading and on

26. Gehring and Ruffling, 2008.

27. Princen and Finger, 1994.

28. Princen and Finger, 1994.

29. CITES, 2007a.

30. CITES, 2009a

strengthening the level of protection accorded to certain timber species listed under CITES.[31] For example, EIA conducted an investigation that consisted of cross-referencing the export permit documents for CITES-listed cedar and big-leaf mahogany species in Peru with inspections conducted by the Supervisory Body for Forest Resources and Wildlife. Based on their investigation, they assert that more than 100 shipments containing illegally logged CITES wood exported to the US from 2008-2010, which means that over 35% of all cedar and mahogany shipments with CITES permits leaving Peru for the United States alone were of illegal origin.[32]

Labelling and marking systems have proven to be highly effective for implementation and enforcement for certain things in CITES in the past. Some Parties believe, therefore, that defining uniform standards for certification and labelling systems for tropical timber could assist in addressing widespread illegal logging and unsustainable extraction related to trade. Such schemes (existing at the national and international level) help consumers identify and purchase wood products from sustainably managed forests.[33] The challenges related to these schemes, however, include: the absence of generally accepted international principles for forest management, the lack of a universally accepted accreditation process, and the proliferation of parallel schemes. At the Plants Committee in 2009, therefore, the European Community proposed establishing clear and simple standards to evaluate existing certification schemes. CITES could then collaborate with these schemes to increase worldwide enforcement throughout the timber supply chain.[34] This initiative appears to be dead, however, since it is viewed as largely unfeasible.

Also important for timber trade is the most innovative CITES transparency mechanism, the "Review of Significant Trade" (RST). This mechanism, described in Annex A sub-section 2b) below under "peer review," which goes back to the early 1980s in various iterations, was revised in 2002 out of growing concern that some Parties were failing to undertake proper non-detriment findings for heavily traded Appendix II species. Non-detriment findings verify through scientific evidence that the volume of trade within a certain State that includes all or part of the wild range of a species (the range State) is not detrimental to the survival of that species.[35] Information regarding population assessments, monitoring programmes and other biological data is frequently unavailable. If export permits continue to be issued without knowing this information, the whole CITES regulatory system is undermined. An RST is launched when the Animals or the Plants Committee is worried about inappropriate trade.

The RST outlines the status of the species within the states that includes all or part of the wild range of a species (range states) and the reasons for concern. It concludes with recommendations and literature-based suggestions for management techniques. The stages of the review are clearly defined,[36] and these stages can be tracked for each species in each range State through the online RST resource tool. That the whole RST process is

31. See http://www.eia-international.org/

32. EIA, 2012, p. 3.

33. On the Forest Stewardship Council, see Bell and Hindmoor, 2012; and Auld and Gulbrandsen, 2010.

34. CITES, 2009b.

35. CITES, 2010.

36. CITES, 2002.

public contributes to its effectiveness. NGOs can contribute data, the Party concerned knows that it is in the spotlight, and trading partners gain confidence that they know what is going on. The review is conducted by the Animals and the Plants Committees (composed of experts not government representatives) with outside consultants. Reports are sent to the range State concerned, including states excluded from the process on the basis of the first stages of the review. At the next stage the Committee may formulate a recommendation that the Management Authority of the range State set a zero export quota. Before trade resumes the Management Authority should clarify with the Secretariat how it determines that the level of trade is not detrimental to wild populations. If the Party does not comply with the recommendation, the CITES Standing Committee, which comprises country representatives of each of the six CITES geographic regions, may recommend that Parties not accept exports of the species in question from that Party. If the range State does accept the zero quota recommendation, trading partners understand the basis for the export restriction, and if they do not, everybody understands the reasons for the import restriction.

Mahogany and afrormosia, two of the three most commercially important timber species listed in CITES, are currently subject to the review. Mahogany was selected for review in 2008 at the 17th Plants Committee, while afrormosia was selected for review in 2002 at the 12th Plants Committee. Both have been selected for certain range states due to the combination of their threatened status, high levels of trade, and lack of information regarding non-detriment findings. Table 2 includes excerpts from a report prepared by UNEP and the WCMC outlining specific mahogany range states still subject for review (and the reasons why) at the time of the most recent Plants Committee (19th PC).[37]

The RST is a transparency tool used to fulfil the CITES objective that trade, or at least significant trade volumes, does not undermine species sustainability, but confidence in the RST depends on assurances that CITES data on trade values are reliable. No such assurances are possible. Nobody can be sure how much illegal timber enters international trade, nor how much of illegal timber is a CITES-listed species, but in Indonesia and Peru, to take two disparate examples, estimates range up to 80% of total wood production. The World Bank estimates that total illegal timber trade is worth between USD 10-15 billion annually.[38] A significant percentage of tropical timber on western markets could still be illegal, but official and unofficial transparency, by illuminating the problems, notably in key consuming markets such as the USA, may help to limit such illegal trade.

37. UNEP-WCMC, 2010.

38. Brack, 2007; Goncalves et al., 2012.

Table 2. Excerpt from the review of significant trade report on big leaf mahogany

Range state	Provisional category	Summary
Venezuela	Least Concern	Reported to be widely distributed in the coastal regions of the country – some areas depleted due to overharvesting. Very low levels of international trade reported 1999-2008, with no exports since 2004, therefore categorized as Least Concern.
Belize	Possible Concern	Distribution area of the species in the country has decreased substantially. International trade of around 9,000m^3 during 1999-2008. Remains unclear if current trade impacting populations and whether Article IV implemented fully, therefore categorized as Possible Concern.
Bolivia	Urgent Concern	Overharvesting reportedly led to the near disappearance of the species in Bolivia. Relatively high levels of international trade reported 1999-2008 (73,000m^3). Although positive steps made towards establishing non-detriment findings, they have not been formulated to date in Bolivia, therefore categorized as Urgent Concern.

3. Trade in e-waste

Trade in e-waste is worth billions of dollars a year. E-waste can be described as electrical and electronic equipment that is no longer suitable for use or that the last owner has discarded with the view of its disposal.[39] Due to widespread development and the increasing use of electronic equipment in both developed and developing countries, the amount of e-waste generated every year is growing, with an estimated 53 million tons generated worldwide in 2009.[40] Although the scale of trade in e-waste is hard to quantify, with little verifiable and detailed information about trade flows, at least one study suggests that 50-80% of e-waste collected in developed countries is exported to developing countries.[41] Another study found that more than 90% of discarded computers are exported to developing countries,[42] ostensibly for re-use, repair or recovery of materials due to low labour costs and a flourishing market for second hand equipment. For unscrupulous firms, however, this ambiguity presents opportunities for exports to take place that avoid the costs of more diligent environmentally sound management at home.[43]

E-waste recycling is highly lucrative for some developing country importers, with revenues in global recovery expected to grow to USD 14.6 billion by 2014.[44] Additionally, re-use or remanufacturing contributes to sustainable development by extending the lifetime of equipment, as well as providing equipment to people who might not otherwise be able to purchase it.[45] But some observers suspect that large proportions

39. Basel Convention, 2011a.

40. Zeller, 2010.

41. Yu Xiezhi et al., 2008, p. 813.

42. United Nations. 2010 , p. 27.

43. Basel Convention, 2009.

44. Zeller, 2010.

45. Basel Convention, 2011a.

of e-waste exports to Africa and Asia are camouflaged under the pretext that these countries are obtaining 'reusable' equipment or 'donations'.[46] The practice of extracting valuable materials in the recycling process, moreover, can be dangerous for both human health and the environment. A host of hazardous substances are associated with e-waste items, including: lead, mercury, PCB, asbestos and CFCs. Women and child labourers can be exploited for manual labour in dangerous conditions if destination countries do not have the proper infrastructure for recycling.[47]

The Waste Shipment Regulation of the European Union categorizes any export of hazardous waste from Europe to a non OECD-country as illegal. Recycling plants in Europe must meet high environmental standards, safely capturing all of the materials in an electronic component, valuable and toxic alike. The difficulties in meeting such standards can be seen in Canada, where the best estimate of e-waste that was destined for end-of-life disposal is a government report from 2003—e-waste was thought to be 167 500 tonnes in 2002, rising to 224 500 tonnes by 2010.[48] Despite rapid technological change and ever shorter life cycles for these products, nobody knows how much e-waste is being generated today, nor how much is exported or imported from Canada. We do know that at least some recycling companies in Canada have benefitted for years by being able to send a "considerable amount" of e-waste to processers offshore.[49] An enquiry by BAN into one Vancouver recycler found almost 7 000 tonnes of e-waste exported to China in 2000, and 5 000 tonnes exported in 2002 to unspecified locations.[50] Officially, only the United States receives shipments of hazardous waste destined for disposal from Canada.[51] However, interpretation of the definition of "hazardous" is difficult when it comes to e-waste, allowing firms to exploit certain loopholes. And illegal exports may continue to leave Canadian ports undetected. Canadian provinces have introduced electronic recycling programs, but one, Ontario Electronic Stewardship (OES), has come under fire for supposedly sacrificing its own set of environmental standards to contract operators that can do the work at a lower price, which reduces the investment incentives for high quality recyclers, and may encourage illegal exports.

A Basel Convention Advisory Group of Senior Experts (convened by the Secretariat) has observed that the traditional approach of restricting and prohibiting trade in e-waste is unviable. For one, outright bans on such a valuable waste stream would prevent development of economically and environmentally important recycling industries—better to think of resources rather than wastes.[52] Second, these bans are difficult and costly to enforce, and trade continues to take place illegally. In contrast, the Basel Convention does allow some transboundary movement of hazardous waste, but such movements can only take place after prior informed consent of the transit and importing states. But to what should they be giving consent, and how can that consent be informed? One problem with trade in e-waste arises if parties have difficulty distinguishing between waste and non-

46. Heynen and Swyngedouw, 2006, p. 223.

47. EIA, 2011, p.1; Basel Convention 2009a.

48. RIS, 2003.

49. RIS, 2000.

50. BAN, 2002.

51. Canada, 2011.

52. Kummer Peiry, 2011a.

waste. A lack of clarity in what can be defined as 'reusable' equipment has led to a number of situations in which supposedly reusable equipment was simply disposed of in the developing country as waste.[53] Second, Parties also have difficulty distinguishing between hazardous and non-hazardous e-wastes, the latter not subject to regulation by Basel. Most e-waste probably contains hazardous substances, but the sampling necessary for proof with any specific shipment is costly, and international standards are lacking.[54] If a new framework were developed, however, countries that have met the required obligations will become more economically attractive and legalized trade in e-waste would create green business opportunities and jobs, which should ultimately help deter illegal trade and recover secondary materials more efficiently and safely. The Basel Convention is situated to play a key role in facilitating this new framework and has started taking steps towards developing clearer definitions and more transparent reporting procedures for countries (see below).[55]

More transparency will help all along the chain, from improved understanding of what ought to be regulated by Basel, to generating the kind of data that will help importers distinguish normal commercial transactions from problematic shipments, to providing enough information about the evolution of these trades that concerned citizens in countries of import and export can know what is going on. Similarly, everyone will be able to tell whether restrictions on imports and exports of e-waste are imposed in consistency with a Party's obligations.

Since the ninth COP in 2008, the Parties have begun the process of developing technical guidelines for e-waste, particularly differentiating between what is considered waste and non-waste. In February 2011 a draft of the technical guidelines was published that provided: (1) Information on the relevant provisions of the Convention applicable to e-waste, (2) guidance on distinctions between waste and non-waste in relation to used equipment, (3) guidance on the distinction between hazardous waste and non-hazardous waste, and (4) general guidance on movements of equipment, e-waste and enforcement of the Convention provisions. Comments were received from interested countries (notably Canada, USA, EU), Industry, and NGOs, including the, Information Technology Industry Council, Philips, and the Basel Action Network (BAN). [56] The ninth COP also launched The Partnership for Action on Computing Equipment (PACE), which is a public-private stakeholder collaboration aimed at developing environmentally sound management, refurbishment, recycling and disposal practices for used and end-of-life computing equipment.[57] PACE is also working on the distinction between wastes and non-wastes. The 10th COP in 2011, taking account of the PACE work, established a Technical Expert Group to develop a more comprehensive framework for environmentally sound management, The Technical Group, which includes representatives from Parties, Industry and NGOs, had their first meeting in early April 2012 and is expected to produce a draft framework by September 2012.

53. Basel Convention, 2009a.

54. Basel Convention, 2011b; CDTSC, 2004.

55. Kummer Peiry, 2011b.

56. Basel Convention, 2011a.

57. Basel Convention, 2011f.

Box 2. The Basel Convention

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted in 1989, is an attempt to regulate the transboundary movements of hazardous wastes, as well as their proper disposal, for the purposes of protecting human health and the environment. A wide range of waste streams (from electronic wastes to chemical and biomedical wastes) may be considered to be hazardous waste under the Convention. Although many of these wastes have enormous economic value (the trade in scrap metal alone is now estimated at USD 48 billion per year[a]), some countries (primarily developing ones) receive shipments they cannot properly handle, with potentially devastating effects on the environment or human health. The Convention obliges its Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. To this end, Parties are required to prevent or minimize the generation of wastes at source, take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement. Strong controls have to be applied from the generation of a hazardous waste to its storage, transport, treatment, reuse, recycling, recovery and final disposal.

Estimating the overall volumes of hazardous wastes is complicated by the complexity of knowing what is and is not hazardous, by the non-participation of some major economies, and. Roughly 11 million tons of hazardous waste are reported as imports each year, but only 6 million tons are reported as exports.[b] In the case of Canada, for example, 99% of imports and 96% of exports in 2010 for both hazardous waste and hazardous recyclable materials occurred between Canada and the United States. As the United States has not ratified the Convention, a U.S. export to Canada would not be reported to Basel by the United States but would be reported by Canada as an import.

A number of provisions address the Convention's aims, including the prohibition of exporting waste to a State not party to the Convention; although trade with non-parties may still occur under a bilateral, multilateral or regional agreement provided that such agreements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention (hence how Canada can trade with the United States). In addition to this provision, once entered into force, the Ban Amendment adopted in 1995 will prohibit all exports of hazardous wastes covered by the Convention, for any purpose, from OECD to non-OECD countries (controversy remains over the number of ratifications required for entry into force).

The cornerstone of the Basel Convention, however, is the regulatory system, which is based on the concept of "prior informed consent". Each Party is required to designate a Competent Authority and a Focal Point to carry out the provisions of the Convention. Before an export takes place, the Competent Authority of the State of export must notify the Competent Authorities of prospective States of import and transit, providing them with detailed information about the movement. The movement may only proceed when the exporting State has received written consent from all other States concerned; movement without prior informed consent is considered illegal traffic. States are encouraged to cooperate with each other by exchanging pertinent information and providing technical assistance to countries in need.

The Basel Convention had its own Secretariat until February 2012, when it was amalgamated with the Secretariats of the Rotterdam, and Stockholm Conventions. The new Executive Secretary has approximately 65 staff members who are administered by UNEP. The Secretariat provides logistical and substantive support to the Parties. Some roles include: preparing and transmitting reports, ensuring necessary coordination with relevant international bodies, and communicating with Focal Points and Competent Authorities. The Secretariat receives information relating to cases of non-compliance from a variety of sources – but without consent of the relevant Parties or specific authorisation from Convention bodies, the Secretariat may not investigate further or officially raise a case in the Convention bodies, except in the case of non-compliance in reporting obligations themselves.

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a. Basel Convention, 2009.

b. Basel Convention, 2011c.

c. Shibata, 2006.

Source: Basel Convention website http://www.basel.int/

While the Basel Convention Parties work to put in place more explicit guidelines regarding e-waste, NGOs such as BAN and the EIA are helping shine a light on widespread dumping and smuggling into developing countries. BAN has documented cases of dumping by developed countries into China and other parts of Asia, while the EIA has recently published a report exposing the lax control of e-waste exported from the UK.[58] Clearer guidelines, more transparency in what exactly Parties are exporting and greater cooperation in enforcement ought to help limit this growing problem.[59]

4. Trade in conflict diamonds

Trade in diamonds is worth close to USD 40 billion per year, yet for all its allure, it blights thousands of lives—or did. Around the turn of the millennium, a series of detailed reports published by the NGOs Global Witness and Partnership Africa Canada (PAC) helped mobilise an international campaign against violence and bloodshed associated with the diamond industry, ultimately framing the issue as "conflict diamonds". The existence of illicit diamonds had become undeniable to both the diamond industry and the international community.[60] Although UN sanctions had some effect in areas such as Angola, the problems continued to persist throughout many Africa states.[61] With the threat of a consumer boycott looming, the South African government invited stakeholders from trading states, industry and civil society to Kimberley in 2000.[62] The result was the Kimberley Process Certification Scheme (KPCS or KP), a multi-stakeholder initiative intended to regulate and oversee all international trade in rough diamonds in order to prevent the receipts from illegal trade funding armed conflict and associated human rights abuses.

The KP can be described as "an industry-based certification scheme wrapped inside an export/import regime that is implemented through domestic legislation of member states."[63] The cooperation of governments, industry and civil society within the KP has helped to curb the flow of conflict diamonds in a relatively short period of time. Once estimated to be as high as 15%-25% of total world trade, conflict diamonds are now thought to represent less than 1%, largely as a result of the efforts of the Kimberley Process.[64] The process has helped support the development of some of the countries worst affected by violence by allowing them to capture a greater portion of revenues generated by legitimate diamond production and trade.[65] For example, some of the greatest blood

58. EIA, 2011.

59. (see 'Members of the Intersessional Working Group' at www.basel.int/Implementation/TechnicalMatters/DevelopmentofTechnicalGuidelines/Ewaste/tabid/2377/Default.aspx)

60. Grant and Taylor, 2004.

61. Grant (2011) observes that the rapid decline in UNITA's (the Angolan rough diamond producer) rough diamond proceeds from 1998-2001, worth hundreds of millions of dollars, coincides largely with the UN sanctions imposed during the same period of time.

62. Haulfer, 2010, Grant, 2011.

63. Haufler, 2010

64. see KP website < www.kimberleyprocess.com/web/kimberley-process/kp-basics >), Global Witness and Wexler, 2006.

65. Grant, 2011.

diamond atrocities were experienced in Sierra Leone during the 1990's at the hands of the Revolutionary United Front (RUF). At its peak power during this time, the "RUF's annual income from rough diamonds was estimated at USD 125 million."[66] Once peace was established, however, the government was able to capture this revenue stream in its entirety. Since 2005, Sierra Leone has been averaging USD 125-150 million per year in diamond exports, compared to almost nothing in the 1990's.[67]

Although the combination of industry and public sector export/import controls strengthens the legitimate diamond market, providing incentives for participation, the KPCS is susceptible to being undermined by "spoilers": weak governments, smugglers and corrupt officials who free-ride on the system. The unwillingness or inability of states to enforce export and import controls and instances of falsification of certification documents (corrupt officials can be highly rewarded for fraud), all contribute to weaknesses in the process. The KP transparency system seems to be rudimentary in principle and poorly implemented in practice, making it hard to determine whether states fulfil the obligations assumed under the initiative.

Many well-publicized cases illustrate the KP's failure to use transparency, along with other measures, to hold Participants in the KPCS accountable. Of these cases, the on-going situations of non-compliance in Cote d'Ivoire, Venezuela and Zimbabwe are of particular concern. The northern region of Cote d'Ivoire is considered the last area whose production is viewed officially as conflict diamonds, and it remains under UN sanction. Although the Cote d'Ivoire is not an official KP Participant, diamonds are being smuggled into some neighbouring countries that are Participants. Their inability to control the flow of smuggling has allowed these diamonds to be laundered into legitimate trade by way of the production or manufacturing process.[68] One UN panel of experts estimated that up to USD 23 million worth of conflict diamonds are reaching international markets through these neighbouring countries. Ghana, a KP Participant, was allegedly certifying a large proportion of these smuggled conflict diamonds.[69] Since then, pressure from the KP and the UN has led to stricter regulations within Ghana's diamond sector (to the sector's detriment) that includes efforts to register diamond miners and traders.[70] Regardless, the illicit flow of conflict diamonds from the Cote d'Ivoire continues due to the inability or reluctance of some governments and industry to perform meaningful oversight and monitoring.[71]

In 2006 civil society groups showed that Venezuela had stopped issuing KP certificates since 2005, yet continued to mine and openly export diamonds. It was not until 2008, however, that a KP review team was actually sent to investigate. Not only was the usual inclusion of NGOs forbidden in this visit, but the team was also denied access to mining areas and known trans-border smuggling points. Although non-compliance with KP commitments was still corroborated, Participants could not agree to suspend that country, although Venezuela chose to suspend itself until their diamond sector could be

66. Grant, 2011: p. 162

67. Grant, 2010: p. 242.

68. PAC-Global Witness, 2008.

69. Global Witness, 2006

70. Nyame and Grant, 2012

71. PAC-Global Witness, 2008.

reorganized. In 2009, however, five diamond mining contracts were renewed, yet Venezuela continued to fail to provide export data or issue KP certificates. Venezuela claims not to be exporting diamonds, despite credible reports of blatant illegal traffic into Brazil and Guyana where these smuggled diamonds are entering legitimate trade. Since 2008 there has been little communication from the KP demanding better transparency and accountability in Venezuela regarding these illegal exportations.[72]

Box 3. The Kimberley Process

The Kimberley Process Certification Scheme (KPCS) came into effect in 2003 as a multi-stakeholder initiative between governments, industry and civil society organisations with the goal of putting an end to the trade in 'conflict diamonds', meaning the diamonds obtained and used by rebel factions to finance violence and armed conflicts against legitimate governments. KPCS Participants must meet 'minimum requirements' regarding national legislation pertaining to export, import and internal controls, including establishing an Exporting and Importing Authority to carry out these regulations. Participants should maintain dissuasive and proportional penalties for transgressions.

Participants can only legally trade with other participants who have also met the minimum requirements of the scheme, and international shipments of rough diamonds must be accompanied by a KP certificate guaranteeing they are conflict-free. For example, in Canada, a significant source of legal diamonds, producers wishing to export diamonds must: (1) complete and submit a KP certificate application to the Department of Natural Resources, (2) obtain a certificate, (3) properly prepare diamonds for shipping in a tamper proof container, and (4) present the certificate at time of export. Imports must also be reported and accompanied by a certificate verifying that the export was conducted in manner that meets KP requirements.

The KP has no official Secretariat. The "Chair", who oversees implementation of the KPCS and general operations, rotates annually and is not considered to be a 'central authority' or permanent fixture of the KP. The administration is hosted and staffed by the government of the Chair. KP has no ongoing staff or budget for an official Secretariat. [73]

Source: KP website http://www.kimberleyprocess.com/

Finally, the situation in Zimbabwe has become a polarizing case among KP Participants and a particularly frustrating one for NGOs. In 2008 it became clear that Zimbabwe was losing its ability to meet the minimum KP standards. Among other concerns, a large rush of illicit miners into the Marange area led to hundreds of deaths at the hands of the Zimbabwe armed forces in an effort to suppress the mining. Once again, however, it took months of internal debate until the KP sent in a review team to investigate. They found ample evidence of non-compliance with the KPCS minimum requirements and a large complement of human rights abuses. Ironically, India, Russia, China and Namibia denounced these concerns because they did not see KP as having a role in human rights violations, bringing into question the motivations for establishing the KP in the first place. In addition, Namibia (the Chair at the time) and South Africa practically absolved Zimbabwe of any wrongdoing before the review team even prepared their report.[74] After follow-up monitoring and negotiations, a plenary meeting in 2011

72. Smillie, 2010a.

73. Grant, 2011.

74. Smillie, 2010a, Harrowell, 2010.

cleared Zimbabwe to resume exports from the troubled Marange diamond field under continued KP supervision. This decision continues to remain controversial, however, especially among NGOs. The displeasure of being removed from their former official oversight status in the area lead those associated with KP's tripartite structure to express a lack of confidence in the current system. Global Witness, an NGO and founding organisation of the KP, has left the process altogether. They have continually stressed KP's insufficient system of checks and balances in preventing substantial volumes of illicit diamonds from entering the global diamond supply chain.[75]

Although the KP may be perhaps the most inclusive and popularized conflict diamond prevention effort, others also exist, albeit in a much narrower scope. For example, the Extractive Industries Transparency Initiative (EITI) aims to end corruption through transparency in the payments made by extractive companies to governments. Many observers argue that this type of transparency also tends to reduce conflict. One could argue that more mechanisms like these are needed in the KP to instil confidence in the system.[76]

Domestic implementation of export, import and external controls is critical for the proper functioning of the KP system. The requirements fit easily into the regulatory framework of an advanced economy producer like Canada. Creating a comprehensive and effective regulatory system for extractive industry can be a powerful inducement for essential foreign investment, but still be a challenge for small developing countries.[77] If non-compliance goes un-checked, it threatens to undermine legitimate international trade for all producers, leaving consumers still unsure whether the diamond they are purchasing is truly 'conflict-free'.

5. Conclusions

Consistent with the overall theme of the Workshop on Regulatory Transparency in Trade in Raw Materials convened by the OECD on 10-11 May 2012, this paper asks a series of questions about regulatory transparency in three MEAs. Governments have agreed that controlling certain exports of tropical timber, e-waste, and conflict diamonds is essential for the protection of the environment, human health, and social stability, and they use transparency to hold one another accountable for their multilateral commitments. Is information about these export and import restrictions collected and published as systematically as other border measures affecting trade? How does transparency help resolve problems with export restrictions? How does it ensure that these MEAs impose such restrictions for the stated purposes? Are the existing procedures and mechanisms effective? Can we draw any general lessons for transparency on export restrictions in other areas from the functioning of those MEAs?

The transparency systems used by all three MEAs are comprehensive; all make use of the transparency practices found in the WTO, namely publication, monitoring and reporting, both at national level, and collectively through international organisations. Yet there are differences in MEA performance, as the comparative analysis of the three agreements shows. In principle all Parties to these Conventions should:

75. Global Witness, 2011a; Nyaira and Gonda, 2011.

76. Haufler 2010, see http://eiti.org/

77. Bérété, 2012.

- publish their international and national obligations with respect to export restrictions, and they mostly do;
- publish all of the measures that they take to implement these restrictions, but here performance is more variable;
- notify specific measures, which happens in CITES but is harder to verify in Basel and KP;
- report on what is going on, which is excellent in CITES, murky in Basel and poor in KP, and
- collectively monitor implementation, which is excellent in CITES, improving in Basel and poor in KP.

From this variable picture, we offer some general conclusions about what appears to make transparency more or less effective in international regimes involved in the regulation of trade.

For transparency to work well, the rules of the game have to be clear. Key concepts (the export/import rules themselves and the commodities and policy measures covered) need to be defined precisely and unambiguously. Reporting requirements and procedures must also be clear. Where this is not the case - for example it is unclear whether e-waste is hazardous under Basel - national reporting and monitoring inevitably suffer. Worse, different governments will interpret rules and obligations and behave differently, which will undermine the achievement of the collective goals.

All three MEAS make large amounts of policy and trade data publicly available. CITES has a searchable database for all notifications to the Parties submitted via the Secretariat, and the trade database contains full details of all export and import permits and certificates issued during a given year. Basel has a database with movement information transmitted by Parties in their annual reports, but the movement notification document itself is not posted. KP makes some administrative notifications available online along with a database of statistics on diamond production, import, export, and KP certificates issued and collected, but individual certificates cannot be viewed for verification.

Adequate information about national policies is a critical prerequisite for effective surveillance and confidence that governments act consistently with agreed rules. We have not been able to assess the quality of notifications in the MEAs in detail, but our impression is that notification varies enormously in completeness and quality. Inadequate notification is closely monitored in CITES and is in itself a reason for sanction. Improving the quality of national reporting is a strategic objective for Basel, along with providing assistance to Parties to facilitate improvement.[78] In general, to include an audit procedure in the transparency toolbox would appear useful in order to know what a government could have notified, but did not, and the reasons for reporting omissions.

Whatever information is provided is only valuable if it can be used, which will not be possible if institutional and other barriers exist. For example, despite the vast amount of online information that is made available, the KP Secretariat is unable to evaluate the data received or use it as part of a compliance mechanism.

78. Basel Convention, 2011e.

A collective process of monitoring and review is a requirement for effective transparency. The peer review process in each MEA potentially offers Parties an effective forum in which to ask questions of each other. Such interaction promotes better understanding of what countries are planning or actually doing, and why. Governments may change policies as a result of what they learn and hear from their trading partners. How the mechanism is designed also matters. Unlike a WTO committee where all Members are present three times a year, the MEAs offer more limited opportunities for direct interaction among the Parties in the monitoring and surveillance function. For species listed in Appendix II, only an export permit is required for international trade in the listed species. Some Parties, such as the Member States of the European Union, have enacted stricter domestic measures requiring the issuance of an import permit for Appendix II species, but this is not a CITES requirement. Concerns regarding the making of non-detriment findings, which are made by the Party and not by the exporter/industry, or the robustness of a non-detriment finding can be raised bilaterally between the Parties concerned. Since trade can easily be diverted to other markets, such measures do little to achieve the objectives of CITES, and indeed in themselves lack transparency since other Parties might not be made aware of the reason for concern. Moreover, an inadequate NDF can often be a capacity problem not an indication of wilful intent to avoid disciplines. Efforts to help everyone understand how to do an NDF that other Parties will recognize have included holding a workshop on best practices.

Transparency systems perform more robustly when they are inclusive. Broad NGO and other stakeholder involvement helps fill information gaps and augments the pressure for Parties to play by the rules or risk exposure for non-compliance. One of the factors strengthening CITES is that whether or not trade in a species is allowed for a given range State begins with a multilateral scientific assessment by experts in which transparency helps ensure that all voices are heard and that everyone can have confidence in decisions and outcomes. NGOs play a more active role in compliance in CITES than in the other MEAs, using and evaluating information that CITES publishes and playing a consultative role directly with the Secretariat and Parties. In Basel, Compliance Committee meetings can only be opened to the public and outside information can only be used with consent from the Party that is not in compliance with the obligations. Public pressure, if any, could therefore only be utilized if the non-compliant Party agrees: the Basel Compliance Mechanism therefore depends on the cooperative attitude of the very Party whose non-compliance with the obligations is at issue.[79]

Pressure from peers or public exposure alone will not always change behaviour, and in instances of deliberate non-compliance more coercive methods may be necessary, for which transparency is no substitute. We find that on the enforcement front, CITES is unusual among MEAs for a number of reasons: the Secretariat has more authority, and has been far more active in compliance matters; NGOs play a far more active role in compliance; and it actually issues recommendations that Parties suspend imports species from a given range State while waiting for the Party to return to compliance.

Finally, three sets of considerations help to assess whether and why transparency works in a particular context. The first is the existence of incentives for following the rules. The second consideration is having an appropriate policy purpose: information is not an effective policy tool if the user of the information is unable to do anything to

79. Shibata, 2006.

influence the situation.[80] The third is evident benefits: providers of information must see how doing so helps them meet their own objectives. Do they believe that the information they provide will be analyzed, aggregated and disseminated in a way that is helpful to them or crucial for the policy regime? These requirements can only be met when transparency is incorporated into an agreement from the ground up, when the subject matter and requirements for transparency are clearly defined, and when Governments think carefully about the behaviour they wish to modify using transparency.

Transparency in CITES works well because at its core is a simple principle: it is better to regulate trade than to ban it. With the exception of species listed in Appendix 1 (3% of the total), trade in species with a non-detriment finding is allowed, providing an economic incentive for producers to work within the rules. Indeed, CITES should be seen first as a trade-enabling system, since following the rules allows everyone along a supply chain to distinguish legal, sustainable products from illegal harvesting that threatens species survival. Similar logic applies also to the KP. The complementary nature of import and export restrictions in CITES also serves to motivate both Parties to a trade to be more transparent in their reporting because import and export data should match. If analysts in or out of government are able to look at import data for a Party, and they see a discrepancy with export data, then they know that someone is not meeting their obligations. Significant discrepancies are pointers to areas needing further investigation. This kind of transparency could increase the incentive for both exporters and importers to be accurate in their reporting since under-reporting risks exposure. Unfortunately, this kind of analysis is more difficult in agreements with smaller membership. In Basel, for example, not all countries report exports or imports of hazardous waste to the Secretariat because some have not ratified the Convention, making the corresponding import and export data harder to interpret. In KP, leakage from a Participant through a neighbouring non-Participant would also create anomalies in the statistics: importers alone cannot solve the diamond problem if significant exporters flaunt the rules. Transparency sheds some light on their activities, but its effect may be limited: if a government does not share the KP principles and objectives, and if significant economic actors see benefits in evading the KP rules, then transparency will not be an effective policy tool because the providers of the necessary information are not users, and see no benefits for themselves in increased monitoring and surveillance.

80. Weiss, 2002, p. 233-4.

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Annex 1.

CITES[1]

1. Right to know

a) *Publication of international obligations?*

Convention text outlining legally binding obligations and a framework for domestic implementing legislation is publicly available online.

b) *Publication of laws and regulations?*

i. Transparency to other Parties?

Required to report to other Parties via the Secretariat relevant national legislation, polices and bodies of authority. Access to relevant laws and regulations is better for some countries than others. Developed countries tend to have well laid out websites specifying their national policies. A number of developing and smaller countries do not have links to websites or much information on their policies – most likely due to both lack of capacity and inability to meet legislative requirements.

ii. *Transparency for citizens and economic actors?*

The reports mentioned in 1 (e) i) below "shall be available to the public where this is not inconsistent with the law of the Party concerned (Article VIII, Paragraph)." Access to relevant laws and regulations is better for some countries than others.

c) *Enquiry points for trading partners?*

Can be directed towards either the Management Authority or Scientific Authority

d) *Independent administration and adjudication?*

Each Party is required to designate: (1) One or more Management Authorities competent to grant permits or certificates on behalf of the Party, and (2) One or more Scientific Authorities. For example, Canada's Management Authority and Scientific Authority for CITES is the Canadian Wildlife Service (CWS). In some cases an Enforcement Authority is designated. For Canada it is the Wildlife Enforcement Branch.

e) *Notifications*

i. What is the requirement?

Under Article VIII of the Convention, each Party shall maintain records of trade in specimens of listed species, including the names and addresses of exporters and importers, and the number and type of permits and certificates granted. Each Party must prepare periodic reports to the Secretariat on its implementation of the Convention in an annual report containing a summary of the specified information, and a biennial report on

[1]. The source of statements in this appendix about CITES is the website, unless otherwise indicated. For considerable extra detail, see WTO, 2011a. For an extensive, if now dated, review of CITES provisions and their evolution, see Reeve, 2002.

legislative, regulatory and administrative enforcement measures. The annual report is viewed as "output" orientated (producing facts and figures), while the biennial report is "input" driven (describing actions by Parties to implement commitments).[2]

Notifications to the Parties issued by the Secretariat contain information about forthcoming meetings, decisions and recommendations of the permanent Committees, details of legislation of the Parties, details of lost or stolen permits or security stamps, and advice on the interpretation or implementation of the Convention. Revised versions of the Appendices, the list of reservations made by the Parties and the Resolutions and Decisions of the Conference of the Parties are also provided with these Notifications. At the beginning of each year the Secretariat issues a list of the Notifications that remain valid.

ii. Does it happen?

An enormous amount of information is available online, but see sub-section 2 a) ii) below: while we cannot know what governments do not notify, a great deal of information could be missing. Previously, a chronic lack of Biennial-reporting compliance meant patchy information on national implementation and enforcement, but reforms introduced within the past few years have been aimed at stimulating better reporting.[3]

iii. Are notifications published on the website?

Yes.

2. Monitoring and surveillance

a) *General clarity?*

i. The Secretariat uses the information provided by the Parties under Article VIII of the Convention along with data *from* other sources, especially NGOs, to assess the current State of implementation among Parties and the overall effectiveness of the Convention. These reports are considered among the most important means of monitoring the implementation of the Convention and the level of international trade in specimens of species included in the Appendices.

ii. To facilitate the production of complete, accurate and timely reports, Parties have agreed on a standard format for annual and biennial reports, guidelines for their preparation and submission, the possibility of assistance from the Secretariat, electronic submission where possible, annual deadlines, a public record of report submissions, and measures for addressing persistent non-compliance with the obligation to submit annual reports.[4]

iii. All Parties must have domestic legislation to: 1) designate a CITES 'Management Authority' and a CITES "Scientific Authority"; 2) regulate trade in accordance with the Convention; 3) penalize illegal trade; and 4) confiscate specimens that are illegally traded or possessed. The Secretariat assesses compliance in a report before each COP. At the end of 2009, the legislation of 83 Parties and 13 dependent territories met all four requirements, 48 Parties and 14 dependent territories whose legislation met one or more (but not all) of the requirements, and 44 Parties and 2 dependent territories whose

2. UNEP, 2006.

3. Reeve, 2006.

4. Notification to the Parties No. 2011/019 of 17 February 2011; Notification to the Parties No. 2005/035 of 6 July 2005; see Resolution Conf. 11.17 (Rev. CoP14); Resolution Conf. 11.17 (Rev. CoP14); Resolution Conf. 11.17 (Rev. CoP14); Resolution Conf. 11.17 (Rev. CoP14).

legislation did not meet any of the requirements.[5] CITES has also developed the National Legislation Project, based on Resolution Conf. 8.4 (Rev. CoP15) on National laws for the implementation of the Convention (http://www.cites.org/eng/res/08/08-04R15.php) to empower the Secretariat to provide financial and/or technical assistance to Parties in the development and effective implementation of CITES implementing laws and regulations.

iv. CITES has one initiative that looks remarkably similar to the WTO TPRM. Under COP decisions 14.21 to 14.24 "exporting and importing countries are invited to carry out voluntary National Wildlife Policy Reviews in order to facilitate a better understanding of the effects of wildlife trade policies on the international wildlife trade".[6] The intent, according to the CITES website, was to look "at effective CITES implementation from a 'wider' policy perspective. Focusing on the implementation and effectiveness of CITES-related policy is helpful for understanding the discrepancy between formal compliance (the ideal world of written law, action plans, scientific findings, trade moratoria, etc.) and real compliance (what is actually happening on the ground) with existing policy. Drafting policy declarations and laws that call for the conservation of wild animals and plants is easier than ensuring that those policies and laws are effectively implemented and achieve the Convention's aims."[7] Four countries (Madagascar, Nicaragua, Uganda and Viet Nam) were subject to pilot reviews in 2008, but the initiative seems to have withered since.

b) *Peer review?*

CITES has extensive monitoring and reviews to ensure adherence to international obligations. Secretariat activity is closely observed by so many states and non-State actors that unconvincing conclusions will almost certainly be discovered.[8]

1. The Conference of the Parties (COP), which meets every three years, is tasked with monitoring compliance among Parties of the Convention, as well as recommending measures to improve the effectiveness of the Convention. The limited membership Standing Committee (country representatives of each of the six CITES geographic regions, which are empowered to speak on behalf of the Party countries in the particular region), which normally meets once a year, as well as before and after each COP, provides policy guidance to the Secretariat concerning the implementation of the Convention and oversees the management of the Secretariat's budget.[9] While members of the Standing Committee are recognized first by the chair, all parties are able to speak in the committee, as are NGOs. The Animal and the Plant Committees consist of experts who provide scientific advice and guidance to the COP, committees, working groups and the Secretariat. Eight committee meetings and one major COP are held in every three-year cycle.[10]

5. CITES, 2009a.

6. UNEP, 2010.

7 CITES n.d.

8. Gehring and Ruffling, 2008.

9. The members of the Standing Committee are Parties representing each of the six major geographical regions (Africa, Asia, Europe, North America, Central and South America and the Caribbean, and Oceania), with the number of representatives weighted according to the number of Parties within the region. Being a formal member of the committee allows greater influence on the agenda.

10. CITES, 2009a.

2. TRAFFIC (Trade Records Analysis of Flora and Fauna in Commerce) is an organisation with a unique affiliation with CITES due to their ability to undertake inspections within the territories of Treaty Parties.[11] TRAFFIC is the joint wildlife trade-monitoring programme of the World Wildlife Fund (WWF) and The World Conservation Union (IUCN). In 1999, TRAFFIC and CITES signed an agreement designating the regional and national offices of the TRAFFIC Network as 'CITES Capacity Building Collaborating Centres' (CBCC). The goal was to improve implementation of CITES provisions by having offices on the ground in some of these countries to help in inspection, mobilizing resources, enforcement, etc. TRAFFIC also manages the Elephant Trade Information system (ETIS) on behalf of CITES (formally the Bad Ivory Database System created by TRAFFIC). They are mandated to produce a comprehensive analytical report on the ETIS data for each meeting of the COP.[12]

3. The Secretariat can request information from any Party to ensure implementation of the Convention (Article XII 3). The information provided by the Party [about possible breaches of the Convention] shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

4. CITES benefits from the Interpol Working Group on Wildlife Crime and the World Customs Organization, both of which act as semi-formal review bodies that spend considerable time in examining enforcement, compliance and implementation of the Convention.[13] The Secretariat also collaborates with the UN office on Drugs and Crime, the World Bank, the ASEAN Wildlife Enforcement Network, and CITES Enforcement Task Forces.[14]

5. Possibly the strongest and most important transparency mechanism in CITES is the "Review of Significant Trade."[15] In this process the Animals and the Plants Committees, in cooperation with the Secretariat and experts, and in consultation with range States, review biological, trade and other relevant information on Appendix II species subject to significant levels of trade and identify problems and solutions concerning the implementation of the Convention. The review proceeds as follows:

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11. Bothe, 2006.

12. See TRAFFIC website < http://www.traffic.org/>

13. WTO, 2001. Interpol and CITES have an MOU to work closely to strengthen surveillance and enforcement measures since Interpol has the ability to coordinate between a variety of criminal police authorities in different countries. In summary the two Parties have agreed to:

    - send each other information of common interest (i.e. info and data relevant to enforcement, implementation, violations, wildlife crime, etc)

    - be observers at meetings of common interest they organize
    - devise publications and other material to help raise awareness and inform others about the services available to combat wildlife crime

    - help disseminate information to the relevant enforcement authorities on the ground about trafficking and trade in CITES-listed species. (CITES and ICPO-INTERPOL, 1998).

14. CITES, 2009a. The CITES Secretariat has also recently entered into a collaborate effort with four other inter-governmental organizations (INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Bank and the World Customs Organization (WCO)), entitled the International Consortium on Combating Wildlife Crime (ICCWC). For more information, see http://www.cites.org/eng/prog/iccwc.php.

15. CITES, 2002.

1. The World Conservation Monitoring Centre (WCMC) produces, after each COP, a summary of statistics (gathered from the CITES database) showing the net level of exports for all Appendix-II species
2. From this list, species of priority concern are selected, and range states are requested to submit information regarding their implementation of non-detriment findings.
3. The Animal and Plants Committees review this information and place the selected species in one of three categories for each range State:
   - "Species of urgent concern"
   - 'Species of possible concern'
   - "Species of least concern"
4. Species of least concern are removed from the review while short and long term recommendations are made to states identified as having species of possible or urgent concern
5. The implementation of these recommendations is monitored. If they are met, the species is removed from the review, if not, further action may be taken, such as a recommendation for a trade suspension.

c) *Third party adjudication/dispute settlement?*

Resolution 14.3 provides a guideline for Compliance procedures. Information received under Article XIII, indicating potential non-compliance and adverse trade effects, may come from any source, especially other Parties or NGOs. In the case of non-compliance, Conf. 14.3 outlines the procedure for: a) Identification of potential compliance matters, b) consideration of these matters by the standing committee, c) measures recommended to achieve compliance, d) monitoring and implementation of measures to achieve compliance.

A formal dispute mechanism exists but has never been used.[16] But Parties do have the right to take unilateral 'stricter' action under Art. XIV: a Party may refuse to accept shipments of all CITES specimens from a country found in persistent non-compliance with reporting and other requirements if within 90 days that country has not demonstrated to the standing committee that it has adopted all necessary measures to adequately implement the Convention.

Trade sanctions under this provision have been implemented in at least 40 well-documented cases since 1985. Financial and technical help is offered to return countries to full compliance. This system can be credited with "an almost 100 percent success rate" in bringing about compliance when violations are seen as a significant problem.[17] In the case of the polar bear, the endangered species that has become emblematic of climate change, an EU decision to ban imports of certain sub-populations led to a listing change in CITES, with Canadian support. In contrast, the United States bans imports, although Canada would prefer that other countries use CITES as the best way to control trade in this iconic species. The U.S. prohibition on imports results from the stricter domestic measures of the US Endangered Species Act and the Marine Mammal Protection Act.

d) *Horizontal accountability*

CITES appears to have a remarkable record on Parties holding each other accountable for their obligations under the Convention. Compliance is manifestly far from complete,

16. Yeater and Vasquez, 2001.

17. Sand, 2006.

however. We are not able to assess whether better formal compliance with CITES would improve the prospects of any endangered species.

3. Reporting and engagement

a) *Internal transparency*

CITES does very well (the best of the three MEAs) when assessed on its ability to meet the various principles the WTO TBT committee established for the development of international standards. Parties receive the information they need to participate in decision-making processes—see part 1 above. We think the multi-step listing procedure is illustrative of how CITES usually operates.

- A proposal to list a species in one of the Appendices, in effect a new standard, starts with a submission by one or more Parties to the Secretariat, which has to be accompanied by all available scientific data supporting the listing.

- To make sure that all Parties have the chance to review the proposal, and possibly to collect their own information, the proposal shall be sent to the Secretariat at least 150 days before the next COP.[18] The Secretariat in turn sends the proposal to the rest of the Parties along with its own recommendations.

- Parties have 60 days after the Secretariat communicates its recommendations to transmit comments on the proposed listing along with scientific data and information.

- The proposal is then decided upon by the next COP by at least a two-thirds majority of the members present and voting.[19]

- NGOs have an opportunity to participate at all stages.

But that process is not perfect, as illustrated by a major problem with internal transparency currently before the Standing Committee. The EU and its member states, supported by Canada and the United States, are concerned about the frequent use of vote by secret ballot.[20] Secrecy is fine for the election of officers and host countries, and may be needed to protect small island states from pressure over listings in certain circumstances, but secrecy can otherwise be so problematic that some countries (e.g. Canada) immediately make their votes public. The request for a secret vote is public, but only needs 20 Parties, a relic from the days when CITES was smaller. The EU expressed concern after the last COP, when Japan induced a number of countries to ask for a secret vote on blue fin tuna. Japan is alleged to have used questionable practices (the usual bullying and bribing of small states by a larger power) in seeking votes. The buying of votes can be limited by using a special fund that supports travel by developing country delegates.

b) *External transparency*

All information and data CITES receives is made available on the website, with helpful query tools, including: national reports, publications, Convention texts, and databases. This material includes:

18. Gehring and Ruffling, 2008.

19. See CITES Convention text on website < http://www.cites.org/eng/disc/text.php> .

20. CITES, 2011b.

- Review of Significant Trade Management System – contains responses by the Parties and documents pertaining to cases under active consideration by the Animals and Plants Committees.
- CITES Trade Database – lists all records of trade in CITES-listed species of wildlife that is reported annually by Parties. Trade database has been online since 2004 and, since then, has been used extensively by CITES national authorities, non-governmental organisations, journalists and university students. The database is separately managed by UNEP-WCMC, who also creates and manages the more graphic trade data "dashboards".
- CAVIAR Database – records and details permits and certificates that authorise trade in caviar (considerable 'laundering' of caviar of illegal origin has occurred in the past)
- CITES Register – pertaining to trade in species not imported for commercial purposes, those institutions who wish to be registered must be listed and must meet stringent conditions reviewed by national governments and the Secretariat
- CITES Directory – reference containing the contact details of the National Management, Scientific, and Enforcement Authorities dealing with CITES matters
- Export Quotas – Secretariat is informed of nationally established export quotas and publishes them on its website for public access

The Convention has a long history of using labelling or marking systems, a policy tool, to: (1) distinguish legal from illegal specimens (e.g. caviar, crocodilian skins or ivory), (2) facilitate the identification of species or specimens that have been derived from specific production systems, or (3) general management reasons.[21] For example, CITES requirements for caviar labels include: standardized species code, source code, two-letter ISO code, year of harvest and processing plant code and lot identification number.[22]

c) *Institutional Role for NGOs*

i) Role formally assigned to NGOs?

The CITES Secretariat may be assisted by "suitable" and "technically qualified" NGOs and other bodies "to the extent and in the manner it considers appropriate"[23] allowing the Secretariat to draw information to the attention of Members from third parties. Such international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies may also be granted observer status at meetings, with the right to speak. When it comes to compliance and enforcement, specific issues involving Parties are still considered in closed session; only the review of significant trade and Party reporting is open to NGOs.[24]

ii) What happens in practice?

At the COP in 2002, 73 national NGOs and 55 international NGOs were represented; civil society accounted for one-third of the registered participants.[25] Ample opportunities are available for consultation in Geneva. Many industry associations watch CITES

21. CITES, 2009b.

22. US FWS, 2008.

23. Biniaz, 2006.

24. Reeve, 2006.

25. CITES, 2004.

closely and use meetings as lobbying opportunities, notably the fish, fur, guided hunt and luxury goods industries. NGOs are heavily relied upon within CITES to increase monitoring and surveillance capacity, and provide technical expertise and data where it is lacking. The IUCN and TRAFFIC (the joint wildlife trade monitoring program of WWF and IUCN) are active collectors of on the ground information about CITES compliance, which they provide to the Secretariat.[26] In short, the Secretariat has taken full advantage of its authority to rely on the assistance of NGOs.

iii) Vertical accountability

NGOs are a source of high quality information. They lobby governments in Geneva and in capitals, and they mobilise citizens by providing information on the extent to which a given governments is acting consistently with CITES objectives.

d) *Utility for Economic Actors*

The general information in section 3 b) will be useful for economic actors. The frequently asked questions (FAQ) page of the website has a section specifically for the 'traders' of wildlife species that includes these questions:

- How can I know whether I need a permit to import or export wildlife specimens? (check CITES-listed species database or website of national agency)
- Where can I find the details of the national agency in charge of the implementation of CITES?
- Do animals that were bred in captivity also require permits?

In addition, the UNEP World Conservation Monitoring Centre has developed a "Trade Information Query Tool" that "allows users to search and download data relating to CITES export quotas, CITES Notifications relating to trade bans and suspensions, and European Community suspensions and EU Scientific Review Group opinion"

National websites, especially of OECD countries, include:

- Detailed descriptions of the relevant regulations for wildlife species importers/exporters
- Species list
- Outline of permit requirements
- Guidance on where to find, how to fill out, and submit permit applications

[26]. Biniaz, 2006.

Annex Table 1. Key organisations associated with CITES

Name	Role in CITES	MoU*
IUCN (International Union for Conservation of Nature)	World's oldest and largest global environmental organisation and instrumental in CITES creation Supports the implementation and monitoring of the convention – assists in training activities Scientific and advisory roles Species Survival Commission is a huge network of over 10 000 scientists from all over the world who work on the CITES Annexes Contributes to the review on significant trade	Yes (1999)
TRAFFIC (Trade Records Analysis of Flora and Fauna in Commerce)	Partners with IUCN and WWF Active in monitoring illegal trade In depth analyses on Party proposals; independent reports; on-the-ground investigations; lobbying Establishment of 'CITES Capacity Building Collaborating Centres' Technical assistance and fund-raising Manages Ivory Database	Yes (1999)
ITTO (International Tropical Timber Organization)	Assists in monitoring by collecting, analyzing and disseminating data on the production and trade of tropical timber ITTO-CITES project launched to focus on assisting Parties in making non-detriment findings	Cooperative agreement for trade in tropical timber (2007)
WWF (World Wildlife Fund)	Provides scientific and technical support Works to enforce regulations and acts as lobbying power It campaigns are often in support of CITES targets, e.g. on elephants, rhino, or marine species.	No, but WWF is affiliated with TRAFFIC
UNEP-WCMC (United Nations Environment Programme – World Conservation Monitoring Centre)	Vital to providing data for the review of significant trade Manages the CITES Trade Database on behalf of the CITES secretariat Produces CITES Trade data Dashboards Set up originally by UNEP, IUCN and WWF, UNEP took it over later as the only way to give the staff international status in the UK, where it is located.	Yes
WAZA (World Association of Zoos and Aquariums)	Provide cooperation in research, capacity building and training, communication and public awareness due to their expertise in animal care, transport and conservation	Yes (2011)
ICPO-INTERPOL (International Criminal Police Organization)	Wildlife Crime Unit Semi-formal review body examining enforcement, compliance and implementation Information exchange This is a key relationship in the context of enforcement and therefore accountability.	Yes (1998)
WCO (World Customs Organization)	Semi-formal review body examining enforcement, compliance and implementation Information exchange	Yes (1996)
EIA (Environmental Investigation Agency)	Conducts independent reports and investigation on illegal trading Some credit EIA for arousing worldwide attention to protecting elephants against weak trade regulation[1]	No

1. Princen and Finger, 1994.

* Memorandum of Understanding with CITES.

Annex 2.

Basel Convention[1]

1. Right to know

a) *Publication of international obligations?*

Convention text outlining obligations assumed by Parties is available online.

b) *Publication of laws and regulations?*

i. *Transparency to other Parties?*

Parties required to report what is "considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes." Must also report designation of proper authorities to the Secretariat.

ii. *Transparency for citizens and economic actors?*

No explicit requirement, with one exception, but the website provides documents, text and links for each Party's national legislation and their national definitions regarding waste. The exception is that Parties must make available to their exporters the information provided by the Secretariat on how other Parties define hazardous waste, and their rules for transboundary movements.

c) *Enquiry points for trading partners?*

Enquiries can be directed towards the "Competent Authority" or "Focal Point" depending on the issue being addressed. Website provides a list of Country Contacts (for competent authorities)

d) *Independent administration and adjudication?*

Parties required to designate one or more Competent Authorities and one Focal Point to facilitate the implementation of the Convention. The Competent Authority receives notification of transboundary movements and any related notifications and responds to such notifications. Parties may designate their Permanent Mission to the UN based in Geneva.

e) *Notifications*

i. *What is the requirement?*

The main pillar of Basel Convention is "prior informed consent", a requirement that, before an export may take place, the authorities of the State of export notify the authorities of the prospective States of import and transit, providing them with detailed

[1]. The source for this section unless otherwise indicated is the Basel Convention website. For considerable extra detail, see WTO, 2011a.

information in a standard form on the intended movement. The movement may only proceed if and when all States concerned have given their written consent.[2]

Parties are required to notify the Secretariat (so they may transmit this information) of changes regarding national authorities, definitions of hazardous wastes, decisions for stricter export/import bans, and any other relevant new laws that may affect other Parties. Parties are required to transmit national reports annually to the Secretariat that include information regarding: types and amount of wastes exported and imported, measures adopted by them in implementation of the Convention, statistics regarding health and environmental effects of these wastes, accidents that have occurred, disposal options, technology deployment and regional agreements, and any other relevant matters. National reports are submitted in a common format by all Parties through a questionnaire on "transmission of information."

ii. *Does it happen?*

Actual notifications are not published online, but we suspect that Basel notification is less than complete. First, records of movements are found in annual reports, but it is hard to know if all movements are recorded. When we tallied the totals in "Generation and Transboundary Movements of Hazardous Wastes per Parties in 2009" dated October 5, 2011, we found that reported global imports were 11 million tons but reported exports were 6 million tons. The reason for this discrepancy is not evident. Second, the Secretariat has observed that while the number of Parties to the Convention increased from 133 in 1999 to 174 in 2010, the number of Parties submitting national reports has declined from 96 to 50 over the same period.[3] The reason for this discrepancy is also not evident. The two together suggest that the picture available through Basel is less than the full story.

iii. *Are notifications published on the website?*

No.

2. Monitoring and surveillance

a) *General clarity?*

The Secretariat carries out some level of quality control of data and information received before preparing Compilations and Country fact sheets that are made publicly available on the website. The Secretariat may use information provided by relevant intergovernmental and non-governmental entities when preparing its reports, but in practice it has demonstrated restraint in preparing independent reports.[4]

b) *Peer review?*

The Conference of the Parties is mandated to keep the effective implementation of the Convention's obligations under continuous review and evaluation. The Open-ended Working Group, a subsidiary body, also keeps the implementation of the Convention

2. The Montreal Protocol has an interesting analog, the "informal Prior Informed Consent" procedure, which allows participating Parties to develop more comprehensive information about importers, exporters, and trade volumes.

3. See graphical representation of national reporting at http://www.basel.int/Countries/NationalReporting/StatusCompilations/GraphicalStatus/tabid/1604/Default.aspx accessed June 19, 2012.

4. Shibata, 2006.

under continuous review, and considers and advises the COP on policy, budgetary, legal, and scientific matters. In practice, the COP and the OEWG undertake neither a review of each individual report nor a substantive evaluation of the Secretariat's compilation reports.[5]

c) *Third party adjudication/dispute settlement?*

The objective of the Implementation & Compliance Committee is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention. Hazardous waste movement is illegal if it takes place without notification, without consent of a State concerned, through false consent, or in deliberate contravention of the Convention. The Secretariat assists in identifying these cases, circulates pertinent information, contacts the Focal Points of the countries concerned and, if requested, supports cooperation between Parties to come to a successful conclusion. Submissions can be made by a Party as to its own compliance difficulty, a Party as to another Party's failure to comply, and by the Secretariat as to a Party's reporting obligations. In the past, some critics argued that an inappropriate emphasis was placed on the "general review" function rather than the "specific submission" function within the Committee. They were concerned that focusing on abstract compliance "difficulties," rather than specific cases of non-compliance, undermined the mechanism's utility.[6] In reality, however, the Committee did not receive the first individual submission for review until 2009, with only ten individual submissions in total so far: one Party self-submission, and 9 Secretariat submissions (No Party-to party submissions have been made). The emphasis by the Committee on general review seems to come from the lack of any other work to be done.

If a non-compliance case is submitted, the Compliance Committee must consider the case with the information provided in the initial submission and by the very Party who is not complying with the obligations. The Committee can only request information from outside sources with the consent of the Party concerned or as directed by the COP. The "non-confrontational nature" of the Basel Compliance mechanism means that the Party bringing up a case of non-compliance does not participate in the proceedings, whereas the Party whose compliance is in question is guaranteed both participation and the right of rebuttal.[7] Once a case is submitted, no established procedure is available for direct negotiation.

Separate from the compliance mechanism, a dispute settlement mechanism has been established that involves settlement by negotiation or any other peaceful means of their own choice, but it is effectively non-functional.

d) *Horizontal accountability*

Parties could do much more to hold each other accountable for their obligations and for meeting the objectives of the Convention.

5. *Ibid.*

6. Shibata, 2006.

7. *Ibid.*

3. Reporting and engagement

a) *Internal transparency*

The Basel Convention does an acceptable job when assessed on its ability to meet the various principles the TBT committee established for the development of international standards. The information described in Part 1 above seems to allow Parties to adequately and fairly partake in decision-making processes, although up-to-date notification data is lacking (partially because few notifications seem to be made to and from Basel in the first place). Comments and questions regarding decisions, amendments and various reports are welcome, and publicly available. Only Parties can vote, but non-voting observers are welcome. NGOs are invited to participate but very few actually do.

b) *External transparency*

- Online Reporting Database – provides access to data and information contained in the national reports that are required by all Parties to be transmitted to the Secretariat
- Status and Compilations – documents pertaining to the status of national reporting submissions and compilations of information contained in national reports
- Country Fact Sheets – contain the latest national reporting information made available (can also access archived country fact sheets)
- Documents for National Legislation and Definitions
- Text of the Bilateral/Multilateral/Regional Agreements or Arrangements in Force as Transmitted to the Secretariat
- Information on Illegal traffic **(**only available to the public with the consent of the non-complying Party)

Also available online are meeting notes, annual reports, publications and compilations. A large amount of information exists even for developing countries. Compliance Committee meetings, however, can only be opened to the public and outside information can only be used with consent from the Party which is not in compliance with the obligations.

c) *Institutional Role for NGOs?*

i) Role formally assigned to NGOs?

"Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted." The Secretariat may also use information provided by relevant intergovernmental and non-governmental entities when preparing and transmitting its reports.

ii) What happens in practice?

The Secretariat has demonstrated restraint in preparing independent reports using data from NGOs, having only prepared compilations of Parties' annual reports.[8] The Basel Action Network (BAN), however, participates actively in COP meetings, the OEWG, PACE and many other technical working groups. Due to their extensive involvement, BAN has been described as having considerable influence on the decisions taken under the Convention. Along with BAN, the Environmental Investigation Agency (EIA) also

8. Shibata, 2006.

serves as an occasional watchdog, bringing to light evidence of smuggling and illegal dumping. Although a lot of the data both these NGOs use is gathered from the Parties themselves (much like the Secretariat), they also conduct independent reports and investigations.

An NGO workshop was held in parallel to the eighth COP to discuss how the Basel Convention, among other agreements, could be useful for their work. Other COP decisions in the past have encouraged greater participation of NGOs to provide technical and financial support for the Basel Convention Partnership Programme, an initiative aimed at facilitating public-private dialogue and partnerships to support the Convention.[9] Regardless, BAN has essentially been the only NGO that has followed the Basel Convention consistently over the years. Efforts to get other NGOs interested were not successful.

iii) Vertical accountability

The Secretariat does not make good use of NGO data. NGOs do increase the pressure on governments to act consistently with the obligations, and they can articulate demands for improvements to the rules.

d) *Utility for Economic Actors*

Data submitted by Parties is readily available in the online reporting database, as are compilations of the information contained in national reports.

Generally found on national websites (e.g. OECD members)

The Basel website contains the relevant texts of national legislation for each Party, a database of their (sometimes) varying definitions of hazardous wastes, and country contacts for Focal Point and Competent Authorities for each Member. The national websites, at least for OECD countries, had at least information on what the Convention is, relevant domestic legislation and requirements for import and export. Canada is among the best from the standpoint of economic actors. Its website has links to main piece of legislation that implements provisions of Basel Convention, multiple links back to the Basel website to give information about other Countries, and notices about new regulations. Canada also has a "Tools for regulatees" page that includes:

- Guide to Classification
- User Guide
- Administrative Notice Forms (for prior informed consent)
- Movement Documents (for prior informed consent)
- Confirmation of Disposal or Recycling

[9]. Basel Convention, 2011d.

Annex 3.

Kimberley Process

1. Right to know

a) *Publication of international obligations?*

The text of the Kimberley Process Certification Scheme (KPCS) is available online, but critics observe that the rules of the game are not clearly set out, with some minimum standards are so loosely defined that they are meaningless.[1]

b) *Publication of laws and regulations?*

i. Transparency *to other Parties?*

Each Participant is required to provide to other Participants through the Chair information, preferably in electronic format, on its relevant laws, regulations, rules, procedures and practices, and update that information as required. No standard format is required.

ii. Transparency *for citizens and economic actors?*

Domestic publication is not explicitly required. NGOs cannot easily find the rules for all Participants, especially developing countries.

c) *Enquiry point for trading partners?*

Enquiries would most likely handled through the Importing and Exporting Authorities of each Participant.

d) *Independent administration and adjudication?*

An Importing and Exporting Authority(ies) should be designated for implementing the provisions of the agreement, and for enforcement. This basic information is much harder to find for KP than for CITES or Basel. In Canada the Importing and Exporting Authority is the Kimberley Process Office of the Department of Natural Resources, while enforcement is the responsibility of customs officers working for the Canada Border Services Agency.

e) *Notifications?*

i. What is the requirement?

Participants are required to inform other Participants through the Chair on changes to relevant national polices and law. The national authorities must collect and maintain relevant official production, import and export data. Annual reports and periodic statistical reports are required. Participants are also encouraged to exchange information and experiences on the basis of a self-assessment. A Participant can notify

1. Harrowell, 2010.

with respect to another Participant through the Chair if it thinks the other Participant is threatening the integrity of the system by not ensuring the diamonds they export are conflict free.

ii. Does it happen?

Annual and statistical reports are submitted, but because publishing the reports online is a new initiative for KP, only the reports for 2011 are available. Some critics allege that Participants consistently fail to share information on enforcement. They claim that KP-related arrests and seizures have been reported in the media in many countries, but little or no data is circulated among KP participants – if they are, participants seldom provide information about follow up action taken by authorities. The secrecy suggests that either KP authorities in many countries do not actually know the answers to the questions posed; or worse, that there has been complete inaction on the enforcement of KP obligations.[2] This problem may not be as widespread as critics allege, however, because "according to a 2006 survey of KP participants, half of all members had recorded at least one case of KPCS infringement since 2003. The leaders in terms of reported cases of KPCS infringement were as follows: the European Union, 26; Sierra Leone, 16; Australia, 8; and Canada, 5". Based on follow up interviews and conversations with KP Participants, at least one author suggests similar numbers have continued since 2006 (with more countries recording cases of KPCS infringement).[3]

iii. Are notifications published on the website?

Some notifications are posted on the website. These include: some annual reports, core document and decisions, administrative decisions and notices from the chair.

2. Monitoring and surveillance

a) *General clarity?*

The Chair does not have the capacity to check the quality of the data or information provided by Participants, and undertakes no independent compilation or analysis.

b) *Peer review?*

The Peer Review Mechanism is administered by the Monitoring Working Group (MWG). Every three years a peer review team consisting of representatives from government, industry and civil society visits and reviews a Participants' KP-related systems and controls. A written report is then made available to all KP participants.[4] Additional monitoring could take place if there were "credible indications of non-compliance," but this monitoring would require agreement of all participating countries.[5] The composition of review teams is inconsistent: some KP Participants have never taken part in a review. Although reviews can be thorough, with important recommendations, the KP suffers from a chronic lack of follow-up on whether recommended changes are made. In the case of Venezuela, for example, the review was

2. PAC-Global Witness, 2008.

3. Grant, 2011: p. 164.

4. Smillie, 2010a, KP, 2003.

5. Smillie, 2010b.

orchestrated entirely by a non-compliant host government, and civil society was prevented from participating in the exercise.[6]

Aside from coordinating the peer review visits, the MWG also conducts an assessment of the Participants' annual reports, and the Working Group on Statistics (WGS) ensures timely reporting and analysis of statistical data in order to identify anomalies and ensure the effective implementation of the KPCS. The Committee on KPCS Review (CKR) is a new body tasked with co-ordinating the periodic review of the KPCS itself, as provided by the KPCS Core Document and the 2010 Plenary AD on Efficiency.

c) *Third party adjudication/dispute settlement?*

No official dispute settlement system is mentioned in the KPCS. One Party can bring to light allegations of non-compliance towards another Party, which will initiate a potential fact-finding procedure that may result in a review visit. Enforcement measures such as trade sanctions, however, are rarely used due to the ability of the offending state's close political allies to block actions.

d) *Horizontal accountability*

KP has limited capacity, or will, for participants to hold each other accountable.

3. Reporting and engagement

a) *Internal transparency*

We had difficulty assessing the KP on its ability to meet the various principles the TBT Committee established for the development of international standards. The website is improving, but we cannot observe whether all Participants have the information they need, and the capacity to use it in order to fairly partake in decision-making processes. As shown in Part 1 above, the available information only meets minimum requirements. Periodic reports are only available for one or two years, and only for certain Participants. With a few rare exceptions, updates through notifications are not made available on the website (though we do not have access to the Participants area of the site). Participation in the various working groups and committees is good. Voting is allowed for all Participants and non-voting observers are welcomed. NGOs are particularly important in the KP process and are relied upon for information and monitoring. The KP does undertake regular self assessment that, along with its various other working groups, helps contribute to its relevance.

b) *External transparency*

The external monitoring provisions in KP were so feeble at the time of agreement that NGOs dissociated themselves from the entire text.[7] The KP statistics website is today the best source of data on rough diamond production and trade, an essential tool for tracking anomalies in the system. Recent initiatives to revamp the KP website and make documents such as annual reports available are starting to improve KPs public transparency. Data archives are still extremely poor, however, and information resources are nowhere near as complete as CITES and Basel. Availability of information has always been a contentious issue with the NGOs, but Participants were fearful of public scrutiny and confidentiality issues. Albeit gradually, it seems that now

6. Smilie, 2010a.

7. Smillie, 2002.

the KP is finally taking steps towards providing more information online for the public, yet many reports of review visits are still unavailable (in the past they were kept confidential on the assumption that governments would not open themselves to full peer scrutiny if their blemishes were to be made public). The confidentiality of these reports obscures KP follow up, if any, on its own recommendations and prevents concerned citizens from knowing about and calling for change in their government's implementation of its KP obligations.

Consumer-oriented labelling such as the polar bear on Canadian diamonds comes from scattered private initiatives, although based on KP principles, but KP has no officially mandated label to indicate whether a particular diamond is or is not illegal.

c) *Institutional Role for NGOs?*

i) Role formally assigned to NGOs?

The 'conflict diamond' issue was first brought to public attention by NGOs, and they participated in the founding of the KP itself (PAC and Global Witness). They were included not least because countries and industry realized that a meeting that did not include NGOs would have appeared illegitimate.[8] NGOs are now a critical part of KP for monitoring and surveillance. They are considered a fundamental pillar in KP's tripartite structure (Participants, Industry, Civil Society); they can attend and speak at plenary meetings, submit proposals and amendments, participate in working groups and review visits, and have equal access to KP internal data and communications.[9]

ii) What happens in practice?

NGOs have come to be seen as equals at the negotiating table in the KP, largely due to their ability to lend expertise and assistance in day-to-day operations. NGOs participate in working groups, which requires full time NGO staff members for KP matters. They assist in monitoring internally, by participating in KP review visits, but also monitor the process and members externally through the publication of independent reports. For example, an independent report by PAC outlined a range of illegal activities in Brazil that went unnoticed by KP mechanisms; exports from Brazil were temporarily suspended as a direct result of this report.[10]

Many civil society groups have been critical of KP's failure to hold certain Participants accountable for their non-compliance, which led some civil society groups to express a vote of no confidence in the scheme and walk out of a meeting held in Kinshasa. One of the founding NGOs, Global Witness, has withdrawn from the KP altogether to invest its efforts elsewhere.[11]

iii) Vertical accountability

NGOs give voice to citizen concern about the human rights issues associated with conflict diamonds. Their reports and activism increase the scrutiny of all Participants, which may improve the functioning of a weak agreement.

8. Bieri, 2010.

9. Bieri, 2010.

10. *Ibid.*

11. Global witness, 2011b.

d) *Utility for Economic Actors*

The KP only works if industry is engaged. The KPCS text itself states that:

Participants understand that a voluntary system of industry self-regulation, as referred to in the Preamble of this Document, will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.

The Kimberley Process Rough Diamond Statistics web site is a basic source of statistics on production and trade. The KP website provides specific links for industry:

- Diamondfacts.org.
- World Diamond Council (important 'tripartite' body and source of useful industry-related publications including the "Essential guide to implementing the Kimberley Process").
- World Federation of Diamond Bourses.
- International Diamond Manufacturers Association.

The Canadian Department of Natural Resources provides the usual information on the legislative and regulatory framework, plus guidance on the process for the export and import of rough diamonds. The United States Kimberley Process Authority website has links similar to the ones on the KP website.