
Counter-brief

LOGGINGOFF

A Civil Society Counter-brief on the Central African Republic – European Union VPA

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p.2 Summary

p.2 Forests and Logging in CAR

p.3 Why a Voluntary Partnership Agreement?

p.4 Box 1: Key aspects of the CAR-EU FLEGT VPA

p.5 The Negotiating Process and Civil Society Involvement

p.6 The VPA in Detail

p.6 Box 2: Principles of the legality grid

p.7 Box 3: The Reform of the legal and regulatory framework:

p.9 Box 4: What place is there for local and indigenous communities in the VPA?

p.10 Implementing the FLEGT VPA: Significant Challenges Ahead

p.11 Acronyms and End Notes

SUMMARY

On 21 December 2010 the government of the Central African Republic (CAR) and the European Union (EU) signed a Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreement (FLEGT VPA)¹ to tackle illegal logging. This agreement is the fourth of its kind concluded between the EU and timber-exporting countries.² The objective of the agreement is to improve forest governance, contribute to economic growth and to combat poverty. By signing the FLEGT VPA on 28 November 2011, the CAR government committed itself to putting in place a reliable system to ensure that timber logged within its borders and then exported comes from legal sources, beginning 1 January 2014.

This briefing presents the point of view of civil society in CAR and the EU, looking at what was in the signed agreement, what is at stake, and the challenges to implementation. It shows that the signing of the VPA is but a first step: its economic and social development goals cannot be attained without respect for the rights of forest communities and the environment, and genuine political will. Success will require:

- the involvement of civil society and other stakeholders in the planned reform of the legal framework
- significant improvements in forest sector working conditions;
- effective redistribution of the forest sector's revenues towards economic and social development of the country and its forest regions;
- effective participation of local and indigenous communities in the implementation of the agreement and genuine recognition and consideration of their rights;
- stronger consideration of environmental protection and efficient management of the impact of forest activities on the environment;
- and finally, improved forest monitoring that includes independent observation by civil society to guarantee the reliability of the entire scheme.

FORESTS AND LOGGING IN CAR

Within CAR's borders lie the northernmost parts of the forests of the Congo Basin, roughly 46,162 km² of dense forest. These forests are comprised of four ecological areas, and officially only the dense rainforests of the southwest, with a surface of roughly 3.5 million hectares,³ are logged by the timber industry. Teak plantations are however being logged, particularly in the southeast of the country (the forests of Bangassou), although the quantities of timber exported are small by comparison to the timber coming from Logging and Management Permits (LMPs) which grant the right to log commercially.

Logging and the timber industry occupy a dominant place in the national economy. According to official figures, the forest sector contributes approximately four per cent of the country's Gross Domestic Product (GDP), and some 40 per cent of its export revenue.⁴ It is the greatest contributor to government tax revenues, and license fees and direct forest taxes total some 10 billion Central African Francs (CFA) (15.2 million Euros) annually.⁵ Timber operations are governed by the Central African Forest Code.⁶ In 2009, LMPs were given to 11 forest companies, covering 2.3 million hectares – 66 per cent – of the surface of southwestern forests.⁷

LMPs are given under certain conditions, including the existence of a forest management plan and the establishment of a unit of transformation.⁸ In return, industrial loggers pay rent according to surface area and a tax linked to the volume produced and exported. Annual industrial production of timber is estimated at approximately 600,000 cubic metres (m³) of timber and 200,000 m³ of lumber.⁹ Of this production, almost two-thirds are exported to the EU (60 per cent), and one-sixth to Asia (China), North America and Africa (Cameroon and Chad).¹⁰

“...with regard to the domestic market, the volume of timber consumed in the capital, Bangui, coming from the informal sector and from commercial logging is just about the same.”

The domestic market plays an important role that has long been neglected. Even though the Forest Code provides for the legalisation of traditional activities, implementing measures have yet to be drawn up. This means that at present all traditional activities are defined as ‘informal.’ This phenomenon is made worse by the decision to exclude the domestic timber market from the VPA, slowing the process of legal recognition of the domestic market even more. In 2011, a joint study carried out by the Centre for International Forestry Research (CIFOR) and the Centre de Coopération Internationale en Recherche Agronomique pour le Développement (CIRAD) indicated that, with regard to the domestic market, the volume of timber consumed in the capital, Bangui, coming from the informal sector and from commercial logging is just about the same (roughly 33,000 to 34,000 m³ per year). In addition to the consumption in Bangui, about 6,000 m³ of lumber is destined for neighbouring Chad (82 per cent would be considered from traditional sources, and therefore informal).¹¹

The international economic crisis that began in 2008 is hitting the timber sector hard. CAR’s timber exports fell by 28 per cent between 2008 and 2009, and that of lumber by 38 per cent. This affected the country’s fiscal revenues, which were reduced by half between 2008 and 2009.¹²

WHY A VOLUNTARY PARTNERSHIP AGREEMENT?

The 2003 FLEGT action plan is the EU’s strategy to combat illegal logging of forests across the globe. FLEGT VPAs, the cornerstone of the FLEGT process, are legally binding bilateral trade agreements that define the commitments and the measures to be taken by the EU and timber-exporting nations in order to guarantee that the timber sold on EU markets comes from legal sources.¹³

Thus, the signatories of a VPA identify the set of national laws to be applied and enforced within the context of implementing the agreement. They commit to setting up a system to monitor and enforce legality in order to guarantee that timber and timber products exported to the EU respect the national legal framework. The EU commits to supporting the partner country in the development phase of the scheme.

Civil society supports the general goals of the FLEGT VPA

Given the underlying objectives of the FLEGT VPAs, civil society in CAR and the EU have encouraged the conclusion of such an agreement. These actors see a unique opportunity to raise a number of concerns previously neglected by forest management policies. In particular, two of the broad goals of the agreement seem particularly important: a) the fight against illegal logging, be it commercial or traditional, in order to contribute more effectively to the economic and social development of the country and, b) the creation of a sustainable forest management strategy in which forest communities are able to participate and have their interests considered.

Box 1. Key aspects of the CAR-EU FLEGT VPA

- The goal of the VPA between CAR and the EU is to improve forest governance in CAR through forest legislation and trade. Attaining this goal requires the existence of a legal and regulatory framework formulated in a manner that integrates the requirements of social justice and respect for the environment, while ensuring strong coordination and participation of the parties concerned about the management of forest resources;
- The Central African government undertakes to put in place the systems needed to ensure chain of custody and monitoring procedures sufficient to guarantee that wood exports from CAR to EU markets are from legal sources;
- The current version of the VPA covers only the export of timber and timber products coming from LMPs and plantations. These two permits are each accompanied by a unique 'legality grid' (a matrix that defines each legal reference and the means to verify that it has been implemented). This matrix defines the legality guidelines based on the national legal framework;
- The agreement provides for the adoption of accompanying measures prior to the issuance of the first FLEGT licences, foreseen 1 January 2014. These measures relate to the reform of the national legal and regulatory framework in light of inadequacies noted. Government commitments include recognition of environmental rules as well as customary rights and usage by local and indigenous populations;
- The Legality Assurance System (LAS) will apply to all Central African timber logged in LMPs or plantations that is intended for export. The legal framework, and the systems, monitoring and enforcement procedures outlined in the VPA will therefore cover all the timber destined for international markets, including the EU;
- Work has not yet begun on the elaboration of a national chain of custody. However, together with the LAS, these two systems are the two key pillars that guarantee the reliability of the entire scheme;
- CAR is the first African country not to include the domestic market in its VPA. If initiatives are not taken quickly, there is the risk of creating a two-tiered system: a first class that features quality enforcement for the timber intended for export; a second class of timber intended for local consumption, that will not take into account concepts of economic and social development or of environmental protection;
- Community and traditional logging are currently excluded from the VPA. These logging methods are recognised by the 2008 Forest Code; nevertheless, as yet no decree has been drawn up. Only political will can redress these inadequacies and allow these methods to be integrated within the VPA;
- The VPA provides that information be accessible for the wider public (cf. Annex IX on public information);
- Independent audits of the scheme are foreseen to promote interactive monitoring and to guarantee the credibility of the new monitoring system;
- Complete implementation of the agreement will not be effective until the LAS, the national chain of custody and the FLEGT licensing system are operational. The first FLEGT licences for timber intended for European markets are expected in January 2014, but already this date seems optimistic.

THE NEGOTIATION PROCESS AND CIVIL SOCIETY INVOLVEMENT

The negotiation process in CAR: rushed negotiations and lack of stakeholder buy-in

“...redressing the initial lack of buy-in and of participation during the negotiations by the main concerned parties, particularly the forest communities, constitutes a strong challenge to implementation of the agreement.”

The VPA negotiations between the CAR and the EU officially began in October 2009 and carried on throughout 2010. During this time, four negotiation sessions were held alternately in Bangui and Brussels, in addition to 18 technical sessions (video conferences). The agreement was signed on 21 December 2010, after only 15 months of negotiation.

At the EU level, a team from the Directorate General of Development of the European Commission (EC) was in charge of leading the negotiations. The choice to have the development branch of the EC in the leadership role, rather than the trade branch, reflects the EU's intention to make VPAs development instruments. Nevertheless, the EU delegation in CAR was absent throughout the negotiation process. This lack of participation raises concern that the EU delegation has not bought into the process despite being a key part of its implementation.

At the Central African level, three groups of actors (government, private sector and civil society) participated in drawing up the Central African negotiating stance, with a multi-party negotiating team composed of 13 members. In addition, a National Coordination Committee (NCC) ensured validation during the negotiation process. Central African civil society organised itself in a mixed platform that included environmental, social and human rights organisations. Despite its organisation as a platform and the selection of two representatives designated to follow the process and integrate the negotiating team, internal weaknesses undermined the effectiveness of civil society participation. Its relative youth; notable weaknesses in its organisational and technical capabilities; the lack of dialogue among the actors and their representatives; a lack of information-sharing among actors; and limited mastery of case-building strategies were the main problems with civil society's participation during negotiations. In addition, the interruption of the formal consultation sessions managed by international NGO WWF weakened this group of actors' buy-in to the FLEGT process.

Despite these drawbacks, a core of actors involved itself in finding solutions to the constraints and is working to improve internal coordination. Civil society's environmental platform is principally involved in the various political processes now underway that affect Central African forests and their populations (notably the Reduced Emissions from Deforestation and forest Degradation (REDD) process, implementation of International Labour Organisation Convention No. 169 on Indigenous and Tribal Peoples, legal reform, etc.). These initiatives aim to reinforce civil society so that it may become an active and effective stakeholder in the implementation of the agreement. However, redressing the initial lack of buy-in and of participation during the negotiations by the main concerned parties, particularly the forest communities, constitutes a strong challenge to implementation of the agreement.

THE VPA IN DETAIL

The agreement relies on a national definition of legality. The concept of 'legality' is founded on CAR laws and incorporates rules broadly relating to the forest sector (including land laws, environmental laws, laws pertaining to human rights, workers rights, commercial rules, etc.) and on those international conventions that have been signed and ratified by CAR (for instance, ILO Convention No. 169 on Indigenous and Tribal Peoples).

Legality is translated in the agreement through a 'legality grid' based on ten principles (see Box 2), that outline the legal requirements to be fulfilled by logging companies, and that ensure that timber and timber products for export are produced in conformity with national rules. Compliance with each principle is verified according to agreed criteria, indicators and verifiers. It is therefore important that the elements chosen be relevant and correspond to each principle's requirements.

During VPA negotiations, formal consultations were organised with the three groups of actors in order to draw out a national consensus concerning the legality grid. Civil society were involved but now views its involvement as insufficient (for the reasons cited above). This could well have a negative impact on the applicability of the selected measures (indicators and criteria). Civil society is lobbying for further clarification with regard to the legality grid's environmental and social aspects, the underdogs of the grid.

During negotiations, it became clear that the current legal and regulatory framework cannot meet the requirements of the agreement. Annex 9 of the VPA lists the reforms needed, including the elaboration or the revision of certain legal and regulatory references (see Box 3). These reforms, in association with the elaboration of a national chain of custody, must be finalised prior to issuing the first FLEGT licenses. Given the size of the task, already the allotted time (two years) seems too short to allow a national debate among stakeholders about the revision or adoption of legal and regulatory texts.

Box 2. Principles of the legality grid

The current definition is presented in the form of a legality grid that is organised on the basis of ten thematic principles:

1. The company has a legal existence;
2. legal access rights to forest resources in the concession area;
3. respect for environmental legislation;
4. rights of workers, and local and indigenous communities;
5. rules pertaining to logging;
6. rules pertaining to processing forest products;
7. general taxes and forest fees;
8. transport and chain of custody of timber and timber products are in conformity with regulation;
9. respect for the terms of contractual obligations;
10. relations with sub-contractors involved in activities other than timber production.

It is important to distinguish between phases in which the rules are elaborated and disseminated. A far-reaching communication strategy will be required in order to inform the relevant stakeholders. To ensure the texts are of a high quality and bought into by stakeholders, it is important that local and indigenous communities as well as other local actors affected by the implementation of the agreement are actively involved and participate in its implementation.

Beyond the definition of the legal and regulatory requirements to be respected, the LAS outlined in the VPA includes necessary monitoring and enforcement procedures. Given the deficiencies in existing legal texts (see Box 3), the LAS must be amended as rules are adopted.

The Central Inspectorate of Water and Forests (ICEF: l'Inspection Centrale des Eaux et Forêts) is the government agency responsible for implementation of the LAS, as well as for general coordination of those government services that have a role in enforcing the scheme. The first stage in monitoring legal compliance is to ensure that operators fulfil their obligations. Monitoring this requires the existence and availability of information and documents as well as of verification operations on the ground. The second stage is to monitor and enforce the supply chain. The VPA provides for the development of a system for timber and timber products that allows verification throughout the transformation process that legally sourced timber has not been mixed with illegal timber. Information will be gathered in the database of the Centre for Forest Data's Information Management System.

In order to make the system for monitoring forest infractions more reliable, the VPA allows civil society to carry out independent observation. However, an independent audit undertaken by an international study bureau will be an integral part of the LAS in order to guarantee the credibility of the new enforcement system.

Box 3. The reform of the legal and regulatory framework: A process with weak participation and little coordination

Annex IX of the agreement on accompanying measures includes the following:

- Environment: Texts governing plantations and norms of forest management; a text regulating who issues certain aspects of forest management and environmental matters; texts on how to implement the environmental code and environmental impact measures;
- Access to land: An updated text on compensation for cultures; the Rural Code (including user and tenure rights)
- Follow-up of the agreement: Texts on the participation of stakeholders and their role in the implementation of the agreement; a text instituting the manner in which the independent monitoring foreseen by the LAS will be carried out by civil society.

Despite its participation as a stakeholder in the VPA negotiations, civil society is not systematically (often little or not at all) involved in certain reforms directly linked to the implementation of the VPA. Worse, actors are often designated arbitrarily by the ministerial authorities to participate in 'text validations' without having been given the time or the means necessary to analyse these beforehand. Also, the lack of ministerial coordination of the reform process causes a proliferation of civil society actors who, confronted by a *fait accompli*, mobilise frantically in an attempt to be represented in the various processes.

In the aftermath of the signature of the VPA, the multi-stakeholder approach, a key element of the VPA negotiations, shows a certain slackening that is unlikely to reinforce the system or improve dialogue.

Implementation of the agreement will be supervised by the Joint Implementation Committee, a structure composed of Central African and EU representatives. This committee will also be charged with publishing an annual report that includes information about activities, progress and statistical data concerning the agreement.

For its part, the Central African party has set up a framework of national consultation, the National Committee to Monitor Implementation, composed of representatives of the three stakeholders: government, private sector, civil society. To facilitate public participation and monitoring of the agreement, the signatory parties must guarantee that information be accessible and publicised by appropriate means.

The system to monitor legality established by the VPA offers clear advances over existing measures and aims to reinforce consideration of environmental, social and economic issues in forest management (see Box 2). Nevertheless, civil society is currently undertaking analysis of the state of legislation in the forest sector and will propose texts to address inadequacies, in order to render the legality grid more complete and coherent, and the system truly operational.

Bamoundji village, in southwest CAR. A consultation of local communities by the Central African NGO MEFP and CIEDD, on the impact of commercial logging on their village.



Box 4. What place is there for local and indigenous communities in the VPA?

Voices missing during VPA negotiations and from the legal reform process

During the negotiations, forest communities and indigenous peoples (particularly the BaAkas and Mbororos) were represented by civil society, although it was soon clear there were limitations to such representation. In addition, reform of the legal framework remains largely the work of the central authorities. At present, there is weak involvement of national civil society and a complete absence of representatives of the interests of local and indigenous communities. It will therefore be necessary to ensure that the new rules are elaborated with transparency and with inclusive participation so that the rights and interests of these communities may be taken into account.

Information versus consultation

The legality grid outlines the logging companies' obligation to inform local communities, notably prior to applying for and after receiving a logging permit. The Forest Code imposes on local authorities the obligation to consult communities prior to issuing a permit and before opening a provisional logging concession area that takes into account the concerns raised by these communities during the consultation phase. Currently this two-step procedure is not stipulated clearly in the legality grid since the grid emphasises the legal obligations of the company, rather than those of the government.

Customary rights of access and usage

Indigenous and local communities speak of "the forest of their ancestors" and continue to depend on it for their survival. Customary rights of access and usage are rights recognised by the Forest Code of 2008, allowing a certain measure of protection for their traditional way of life. Within the framework of implementing the VPA, access to the land is exercised by agricultural series (spaces designated for the communities in which to carry out their agricultural activities) within forest concession areas. Access to forest resources is also a right that is recognised and embedded in law. These elements have been developed in management plans, which have in turn been informed by socio-economic studies. As a result, communities are confronted by long lists of prohibitions, which explain the significant tensions in all zones: communities do not fully enjoy the rights that have been recognised. One could sum this up by the fact that the law provides more of a "principle of prohibition" than a "right to." As an aside, defining the customary uses of communities living within and around concession areas is no simple task. The methodology employed is of the utmost importance so that communities may have input into the process.

The redistribution of forest taxes collected by communes (local authorities)

The law requires companies to pay back to communes taxes intended to finance investments in community interests. The mechanism currently set up by the government to access these funds is too complicated, with the result that the funds remain largely unused. This mechanism must be revised. The social outcomes from commercial logging are therefore only faintly visible. Only the construction of a few schools and meagre grants made here and there by logging companies, make the timber industry's social presence felt.

The absence of a legality grid for community forests

Although foreseen by the 2008 Forest Code and the VPA, community forests do not yet have a legality grid, principally because of the absence of implementing measures. Within the VPA framework, the two signatory parties agreed to draw up a legality grid once these application measures are adopted. Among the other concerns that can be raised, the issue of land law remains broadly problematic, giving cause to fear that the process will encounter considerable difficulty.

Respect for indigenous communities

CAR has ratified ILO Convention No. 169 on indigenous and tribal peoples. At present, its provisions have not truly been transposed into national legislation and therefore the risk is that they will not be respected. In view of the precarious conditions of these populations, the agreement does not actually provide any specific regime to guarantee that the rights of indigenous peoples (BaAkas and Mbororos) are well ensured during the agreement's implementation.

Independent monitoring and the involvement of communities in detecting forest infractions

If Independent Monitoring (IM) constitutes a sizeable advantage offered to civil society and, indirectly, to local and indigenous communities, effective application of this right remains to be seen. Enormous constraints in terms of Central African civil society's access to adequate materials and human resources may restrict its capacity to intervene on the ground.

IMPLEMENTING THE FLEGT VPA: SIGNIFICANT CHALLENGES AHEAD

The points raised above are far from exhaustive, but give an indication of the significant tasks CAR must confront to rise to the challenge of implementing the FLEGT VPA. Beyond the strictly legal framework, political will is the condition *sine qua non* for attaining the targeted goals. To achieve this, it will be important for the government to grant a space for dialogue to civil society, so that the latter may be capable of playing an active role in implementation, and to facilitate the capacity of other stakeholders to work in tandem with the administration to set up and consolidate the system.

A calendar for implementation of the VPA is regularly updated but is not always easily accessible. Exchange of information between the administration and the other stakeholders remains weak, although a ministerial decree adopted in October 2011 formalises the participation of the different groups of actors represented in the Joint Implementation Committee. Two civil society representatives have already been designated. The challenge for these representatives will be to take on their representative roles and to disseminate the important information that permits the ensemble of organisations to follow the process. They will be tasked also with defending environmental and social considerations so that these may be given the importance they merit.

Moreover, it should be noted that civil society is attempting, somewhat timidly, to organise itself to fill the political space granted it, notably through the IM of forest activities. In this regard, a project was launched in 2011 with Food and Agriculture Organisation (FAO) FLEGT financing to support the development of an independent monitoring strategy of civil society in CAR that is responsive to local and national conditions. The project aims also to reinforce civil society capacities regarding the content of the agreement and the LAS, as well as to ensure that legislation incorporates and recognises IM by civil society.

Regarding the financial system, the Central African government and the EU have committed to mobilising the financial means required to implement the system for issuing FLEGT licenses. In this context, one concern is the weak capacity of Central African stakeholders to be in a position to actually identify sources of financing and to present the appropriate dossiers to lenders.

The challenge of financing underscores indispensable pre-requirements: qualified human resources, an effective information system and strong coordination among the various actors involved, as much at the heart of the political class as among the stakeholders (government, civil society, private sector and communities).

Finally, CAR must ensure coherence and coordination among its initiatives and commitments in forest policy matters. The reform of the legal framework promised within the FLEGT VPA framework and the REDD process is an example. The harmonisation of international agreements that have been signed and the text of national laws must also be better taken into account. One example would be ILO Convention No. 169 on Indigenous and Tribal Peoples, ratified by the government of CAR, but whose provisions have never been transposed into national law. Coordination among ministerial departments is indispensable to ensure the political coherence of these processes.



Acronyms

CAR: Central African Republic

EU: European Union

FAO: Food and Agriculture Organization of the United Nations

FLEGT: Forest Law Enforcement, Governance and Trade

GDP: Gross Domestic Product

ICEF : L'Inspection Centrale des Eaux et Forêts (Central Inspectorate of Water and Forests)

ILO: International Labour Organization of the United Nations

IM: Independent Monitoring

LMP: Logging and Management Permit

LAS : Legality Assurance System

NCC: National Coordination Committee NCC

REDD: Reducing Emissions from Deforestation and Forest Degradation

VPA: Voluntary Partnership Agreement

Commercial logging truck headed toward the Cameroon border to export timber.

END NOTES

1. The EU action plan on the application of Forest Law Enforcement, Governance and Trade (FLEGT), defines the set of measures where the EU wishes to engage itself with the aim of tackling the problem of illegal logging and the trade associated with it.
2. In February 2012, six countries concluded FLEGT Voluntary Partnership Agreements with the EU: Ghana, The Republic of Congo, Cameroon, the Central African Republic, Indonesia and Liberia; the Democratic Republic of Congo, Gabon, Malaysia and Vietnam are in the process of negotiating, and other countries have indicated an interest.
3. Observatoire des Forêts d'Afrique Centrale, OFAC: www.observatoire-comifac.net/indicators.php?lvl=cntr&tab=1&country=CAF
4. FLEGT VPA between the EU and CAR, « Promouvoir ensemble le commerce de bois légal et une bonne gestion du secteur forestier », Note d'information, décembre 2010.
5. *Idem.*
6. Loi n°08.022 du 17 octobre 2008.
7. Centre des données forestières, Ministère des Eaux, Forêts, Chasse et Pêche, République Centrafricaine. Site web : www.cdf-rca.org/
8. Cf. Article 44 de la loi n°08.022 du 17 octobre 2008 portant code forestier.
9. FLEGT VPA between the EU and CAR, « Promouvoir ensemble le commerce de bois légal et une bonne gestion du secteur forestier », Note d'information, décembre 2010.
10. *Idem.*
11. Guillaume Lescuyer, Edouard Essiane Mendoula, « Consommation de sciage à Bangui : estimations et enjeux », CIFOR, CIRAD, Parpaf, 2011.
12. *Idem.*
13. For more information concerning VPAs, visit www.slideshare.net/LoggingOff/what-are-flegt-vp-as-fr.

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Waste caused by a commercial sawing operation in CAR; local villages work to recycle this wood on the local market.

Photos: Nathalia Dukhan



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This briefing note was developed by NGOs from European and timber-producing countries involved in or monitoring the implementation of the FLEGT Action Plan, and specifically the implementation of the Voluntary Partnership Agreements between the EU and timber producing countries. Their aim is to provide joint North-South civil society positions. For more information about each VPA see:

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