

6th Sub-Regional Training Workshop on Timber Legality Assurance

Group 2 – Timber Imports & Regional recognition

Wednesday (04 July 2018)

Background

Timber Legality Assurance Systems under a VPA and the EU Timber Regulation are interconnected. FLEGT licensed timber resulting from an operational TLAS is acknowledged under the EU TR as fulfilling the EU operator's obligation of timber legality assurance. Therefore, no further checks on legality are required on such timber when imported into the EU.

Due to this, the TLAS of a VPA country not only needs to address timber domestically produced, but also timber imported into that country. Only in this way all timber FLEGT licensed fulfils the requirements of the EU TR.

In Asia, Indonesia, Viet Nam and Thailand are working on such timber import controls. Alike the EU TR and legislation in other main consumer markets in Asia such as Australia and South Korea, operator based due diligence procedures are in place/proposed. It is important that such systems are practical while effective. This is a new area of work for all involved. An exchange on regional level of lessons learnt on approaches taken is therefore beneficial.

Import controls were already discussed in two earlier TLA workshops. Due to significant developments in the Asian VPA countries but also in EU TR implementation, the topic is again on this year's workshop agenda.

Session objectives

Building on the experience by Indonesia, Viet Nam and Thailand, the session explores how to design practical due diligence systems for timber import control. It also explores whether the experience gathered in the three countries could guide other ASEAN Member States, and whether Member States have an interest to develop an ASEAN regional standard for import controls.

Questions

1. Please describe the timber import controls in your country by pointing out the products covered, the tasks of the importer and the government, how legality is expressed and other aspects (see attached table). This shall be done by each country separately. Results will be discussed in the group afterwards.

Comparison of timber import controls in each ASEAN Member State and the EU

| Element/Country | Indonesia | Vietnam | Thailand | Laos | Malaysia-Peninsula | Myanmar | Cambodia | EU |
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| Products covered | Same coverage with VPA list, broad products scopes CITES | Same as VPA CITES | Very broad Same as VPA discussion CITES | Discussion ongoing Logs, semi/processed timber CITES | Logs, sawn timber, plywood / mandatory Required docs from other countries for other products CITES | Not defined yet, but currently ban native species to be imported to Myanmar Legal definition is being discussed Discussion on import timbers CITES | Cambodian list CITES UN-RED List | Broad scope, list of products defined in the Annex to EU Regulation 995/2010 |
| Definition of legal or illegal timber import | Definition is still developing, not finalized legally | Legally imported timbers – means timbers harvested, imported is in line with countries of harvest laws | No strict definition, but if there is no certificate of origin, it should not be allowed into Thailand Pay attention on bans in neighbour countries | Definition is under discussion But required documents for prove legality | Timber is legal when timber and timber products have been produced and exported according to the laws of the supplying countries | No definition on import yet But Myanmar checks documents for imported timber by trade, custom and forest department legality imported documents | Imports – need legal documents from export countries, certificate of origin, and other supporting documents | Timber is illegal when harvested in contravention of the applicable legislation in the country of harvest |

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| Regulated parties | All economic operators dealing with imports of timber | Operators/ importers | Operators/ importers | Operators | All importers | All operators | Importers | Operators who place timber and timber products on the EU market for the first time |
| Voluntary/mandatory | Mandatory, prior to FLEGT Licensing | Mandatory - Effective after FLEGT Licensing start | Mandatory but enforced yet | Mandatory But still under development for FLEGT | Mandatory | Mandatory But still need further development | Mandatory | Mandatory |
| Task of the regulated party | Custom documents and Compliant with due diligence, conducted prior to import | Custom documents and carry our due diligence, prior to import for custom clearance | Designing DDS will be effective later, prior to import for custom clearance Now, just custom documents (certificate of origin) | Required from operators documents expressing timber legality before issuing import license | Conduct DDS before import by submitting required documents | Import license and recommendation from forest department on species before custom clearance | Submit required documents to forest administration on timber legality (Country of Origin, export license from export country) before custom clearance | Conduct due diligence on imports / timber to be placed on the domestic market by fulfilling specific information requirements pre-import (related to product, country of harvest, quantity, supplier, and documents indicating compliance with the applicable legislation. Assess risks and mitigate |
| Checks on operators | Third party check to produce FLEGT Licence – | Custom office with relevant government agencies such | No third party check, but custom conducts the check and | Custom office when timber is imported to issue license | Custom and MTIB prior and post import | Custom and forest department when timber arrive | Custom (at check point) and forest administration (at entry point | Custom check pri0import and shipment description |

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| | systematic and mandatory | as forest department | forward documents to relevant agencies like the RFD | When timber is at operator, Forest Department and MoIC conducts another check | Prior – check all documents | Timber movement need forest department permit | and at factory) before and after import | Competent Authorities carry out checks on operators DDS post-import |
| Penalties for non-compliance | Losing the SVLK certificate – not able to be in legal supply chain | Proportionate with the cases (e.g. fines, license revoked) | Proportionate with the cases (e.g. fines, seizure of goods, jail) – already in place | Same with Thailand and Vietnam | No penalties for the operators but timber is stopped | Blacklisted for importers, no more imports | Same as Thailand | Proportionate penalties in place in all EU Member States |
| Guidance by the Government | Technical guideline, mandatory to be followed by operators, but lacking in dissemination and capacity building for certification bodies | Developing decree and directives (guidance, template) for FLEGT, effective from 2019 | No formal guidance, in the process of designing DDS, may create such guidance Standard form – first draft | Forestry law (revising) will contain articles on import | Guidance, director general circular by MTIB Conduct compliance audit | Trade Portal website, explains procedures and guideline on the website Plantation timber log export notification – under discussion | Guideline uploaded on the forest administration website | Guidelines available; regular implementation reports; 2 monthly meetings between EC and Competent Authorities |

Key Lesson: Need for dissemination on these requirements for importers in other countries such as China

2. What are the biggest challenges in implementing the system and how are they overcome?

| Challenges | Solutions |
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| Checking the documents submitted by the operators as authentic | ASEAN authorized economic operators, but progress from countries vary in terms of information submitted |
| Not knowing the required documents in some countries/ trading partners (e.g. required certificate of origin) | Regulations keep updating, maybe ASEAN Trade Repository to compile these legal documents, but depends on member countries to update the information |
| Checking if the operators are legally listed/ registered in the exporting countries | Information sharing such as custom information between imports and export countries – national single window, but depends on country to share those information Learning from Kimberly process for diamond as a way to cross-check information |
| Law enforcement needs coordination from various government departments/ ministries to do inspection on the import timber | Trying to develop manual for operators to understand requirements in the exporting countries as legal proofs Joint inspection |
| Competent authorities follow existing regulations, but some regulations do not exist yet (e.g. DDS) | Discussions among government ministries to develop such regulations to guide the operation Identification of competent authorities and their linkage to custom operation Identifying legal frameworks that need to be developed |
| Capacity building and guidance for operators | Working on template for operators to follow |
| Country negotiating VPA, additional guidance needs to be developed – e.g. identifying high and low risk for species and geographical areas, complying with new regulations Assessing the roles of certification credible for TLAS Capacity and awareness raising for competent authorities (e.g. custom, government agencies) | |

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| Government capacity to implement new regulations – e.g. checking import request | Understand the structure and magnitude of import |
| Capacity for operators on import requirements prior to implementation of VPA – strict implementation impacting on operators in terms of quantity of timber allowed for import | Digitized documents to system and declaring DD online, operators have access to this system |
| Transit timber trade – information can easily be lost | Need requirement for traceability for all specifically for transit timbers |

3. How can ASEAN MS work together to better document and transfer information on timber legality?

- ASEAN
 - ASEAN Authorized Economic Operators
 - ASEAN Trade Repository
 - ASEAN-China Center based in Guangxi
 - ASEAN Single Window Service
 - ASEAN should develop guideline on legal timber, requires countries to provide information on timber requirements (species description, forms, geographic locations, etc.)
- Bilateral cooperation?
 - Lao-Vietnam MoU on forest protection, forest law enforcement and illegal trading of forest products (forest protection and forest inspection department),
 - Cambodia-Vietnam MoU (forest administrations of the 2 countries) on protection for legal trade across borders (ministry of industry and trade and commerce), protection on forest fires – no detail on legal timber, but detail on the document requirements. Information sharing in the MoU
 - China-Indonesia MoU on combating illegal logging and associated trade,
 - Vietnam to consider export bans from neighbouring countries, but need information sharing
 - MoUs are ambitions, policy tools, but need implementation arrangements
- Multi-lateral
 - APEC expert group on combating illegal logging and associated trade, annual meeting in APEC member

4. Do you think it would be beneficial if an ASEAN regional standard for import control is developed? If so, who should move this forward?

ASEAN already has so many Working Groups, maybe this topic is already addressed in one of the working group? So need to identify where import control can be integrated into one of the existing Working Groups

Mechanisms exist (not on legal timber) for ASEAN, but implementation is not always up to date

Framework – guidance – standard (mandatory approach), ASEAN Member States is at different phase, having a common standard might be challenging for some

Existing mechanisms – NEPcon, WCMC-UNEP, South Korea and Australia with country specific guidelines – main challenge is keeping them up to date, due to donor funding

Mechanism for lesson learn/ experience sharing is limited for ASEAN structure, maybe this needs to be addressed. E.g. lessons from Indonesia can be shared to ASEAN Member States, to accelerate FLEGT progress in other ASEAN Member States.