

The Second Joint Expert Meeting (JEM-2)

EU-Thailand FLEGT VPA

Meeting Minutes

Centara Grand Hotel Ladprao, Bangkok, Thailand

27-28 June 2017

Day 1 (Tuesday, 27 June 2017)

SESSION 1: Introduction

AGENDA ITEM 1.1: Greetings, introduction of Thai and EU delegations

1. JEM Thailand co-chair (RFD DG Mr Chonlatid Surasawadi) welcomed the EU side to JEM2 meeting, followed by self-introduction of participants from Thailand.

2. Self-introduction of the EU side. EU co-chair (Ms Helene Perier) thanked Thailand for hosting the meeting and stressed that Thailand is an important player in the Asia region; VPA progress will have regional impact. This process will also contribute to Thailand's reputation in the timber industry in line with international standard. EU also thanked the Thai side for participating in the conference on tackling illegal logging and deforestation in Brussels during 21 – 23 June 2017.

3. EU side suggested that VPA Roadmap should be realistic and focus on the period leading to next negotiation and that it will share with the Thai side some ideas for the Roadmap.

AGENDA ITEM 1.2: Agreement on JEM agenda, working methods, note-taking

4. Both sides agreed with the proposed meeting agenda, working methods and note-taking.

SESSION 2: National process and updates

AGENDA ITEM 2.1: Process update and expectations

5. The Thai side updated the EU side of progress since last video conference (VC). Thailand negotiation structure comprising a National Negotiation Committee chaired by Permanent Secretary, a Subcommittee chaired by RFD Director General and an Ad-hoc Working Group (AHWG) chaired by RFD DG. All structures are multi-stakeholder, except the Negotiation Committee – comprising only government officials.

6. There were 6 consultations on legality definition (LD), 4 of which were in the regions outside Bangkok (Khon Kaen, Ratchaburi, Suratthani and Chiangmai provinces). The first LD consultation was presided by MoNRE Minister (Gen. Surasak Kanjanarat); and the last consultation chaired by MoNRE Permanent

Secretary (Dr Kasemsan Chinnavaso). There were additional 5 AHWG meetings: 1 technical meeting with EFI, 2 AHWG meetings on product scope, 1 AHWG meeting on supply chain control and 1 AHWG meeting on TLAS development, and 1 mini-field testing of draft LD.

7. LD consultations reveal stakeholders' concerns and suggestions in the following areas: amendment and streamlining of existing forest related laws, independent FLEGT licensing body, reduction of export tax, issues related to non-timber forest products.

8. Budget for VPA activities in Thailand during 2014-2017 totaled USD 817,120. FAO EU FLEGT, EFI EU FLEGT and RFD contributed 45, 44 and 11 per cent, respectively. In addition EU Del contributed substantively.

9. The EU side updated the Thai side on the evaluation of FLEGT Action Plan and the state of play of VPA processes globally. FLEGT continues to be a central and relevant initiative of the EU. Mr Jorge Rodriguez-Romero, Deputy Head of Unit, DG Environment, is the EU Chief Negotiator for Thailand VPA. At JEM level, Ms Helene Perier has replaced Mr Lucas Perez as contact point for Thailand VPA process and JEM co-chair. EU Delegation represents the EU in Thailand and provides and coordinates funding. Dr Alexander Hinrichs, EFI EU FLEGT Facility, plays a key technical role and will continue to work with the Thai side. Dr Somrudee Nicro is National FLEGT Facilitator and will be helpful to the process.

10. There are several stakeholders in the EU, e.g., EU member states, European Parliament, private sector and civil society. They are regularly informed on the VPA progress.

11. EU is keen to provide technical support to the Thai side through EFI EU FLEGT Facility and financial support through FAO EU FLEGT Programme. However, EU expects Thailand to have highest political support to ensure Thailand's ownership of the process and enable financial resources and technical expertise to develop the VPA Annexes. FLEGT is not only about timber, forest and trade, it is in fact a governance and legal reform process. Political support to MONRE from other agencies, e.g., trade, foreign affairs, agriculture, etc. are very important to progress on the VPA.

12. EU is encouraged to see stakeholder engagement in LD development process and stressed that stakeholder engagement (relevant government agencies, private sector, civil society, small holders, etc.), environmental and social safeguards, human rights, worker rights are all important to the EU in the context of LD development. The EU wished to learn more about recent changes in the Thai Negotiation Committee.

13. The Thai side assured EU that it has high-level political support to the VPA and that environmental, social, human rights, and labour aspects will be addressed in the VPA process.

AGENDA ITEM 2.2: Update on FLEGT VPAs and EUTR

Presentation on FLEGT VPA and EUTR implementation, FLEGT Action Plan evaluation and way forward (by EU side); Discussion

14. EU informed that the EU FLEGT Action Plan in a nutshell is a package of measures to combat illegal logging and related trade through demand and supply side measures, the latter leading to a FLEGT licensing scheme. The first FLEGT licence was issued in November 2016 by Indonesia. EU is negotiating

or implementing VPAs in 15 countries in Southeast Asia, West and Central Africa and Latin America, basing on reciprocal trust and relationship.

15. EU stressed that VPA stakeholders should include not only government but also private sector and civil society. Likewise, civil society organisations include not only those directly related to forestry and timber industry but also human rights groups, worker organisations, anti-corruption organisations, etc. Some of these CSOs may not have active roles in the VPA process but it is important to keep them informed of the process.

16. EU also clarified that stakeholder engagement helps identify weakness in the regulatory system. Gap issue paper, resulted from multiple stakeholder dialogue, is therefore important to the LD and the VPA process.

17. EU affirmed that VPA is not a project but a comprehensive process and a long-term partnership. It involves resources and time. Need to consolidate resources to ensure both sides can move forward together.

18. EU emphasized that the EU Timber Regulation (EUTR) includes two components. It (1) prohibits the placing of illegal timber on the EU market and (2) obliges operators to exercise due diligence to minimize risk of illegal logging. EUTR applies to both domestically produced and imported timber products. FLEGT licenses automatically meet the EUTR requirements for assurance of legal timber.

19. EU is now in full implementation of EUTR. The recent case of teak from Myanmar being questioned of its legality by the competent authority of Sweden and not allowed to enter EU market was cited as an example. It was stressed that there will be more and more cases of EU TR non-compliance. Like timber from Myanmar, timber product from Thailand will also be closely monitored, including products made in Thailand from imported timber. FLEGT licenses issued by Thai government will automatically meet the EUTR requirements.

20. FLEGT VPA addresses the supply side (timber producing countries) while EUTR addresses demand side (EU importers).

21. EU side introduced 'VPA Unpacked', an on-line tool to explain VPA and its process, also translated in Thai language.

Response by the Thai side:

22. The Thai side responded that the government's forest protection and reforestation policies are in line with FLEGT. There also are several royal-initiated projects to help reduce forest encroachment and support sustainable forest management. Royal Thai Government (RTG) also promotes tree planting on private land and community forest. The Thai side is ready for the VPA and would like to see a speedier VPA process than in the past.

AGENDA ITEM 2.3: Update on main forest related policy developments in Thailand

Presentation on forest related policy developments since 2013 by Thai side

The Thai side asserted the following:

23. At present, forest area amounts to 32 per cent of Thailand total land area. 10 more million *rai* (1.6 million hectare) is needed to meet government forest cover target of 40 per cent.

24. The Prime Minister has just approved the establishment of a National Forest Policy Committee, comprising several ministries and representatives of people sector.

25. It is MNRE Minister's policy to reclaim forest, enforce laws vigorously and solve forest boundary complications. The government has amended laws following good governance principle. RFD is committed to protect forest. No decrease of forest area during the past three years is an evidence of the government's commitment and success.

26. The Constitution (2017) recognizes human rights and supports people's participation in policy and law making.

Response by the EU side:

27. EU is interested to learn what reforms in Thailand are relevant to legality definition (LD), including those reforms beyond forest and trade.

28. Ongoing legal reforms, e.g., community forest bill, need to be included in the LD soonest as consultants are embarking on testing the draft LD.

29. EU wishes to be updated on the amendment of Private Plantation Act and the progress of the draft bills proposed by civil society, i.e., draft Economic Forest Act and draft Tree Bank Act.

30. EU is keen to learn how Thailand plans to promote synergies between Thailand REDD+ process and FLEGT process.

AGENDA ITEM 2.4: Presentation of stakeholder consultation process

Process, outcomes and current areas of discussion related to issues identified by stakeholders in the context of the Legality Definition (by Thai side)

31. Thailand conducted comprehensive stakeholder consultations on the draft LD. The consultation process resulted in the review of law-related problems and proposed solutions, improvement of the stakeholders' (especially small traders', villagers') awareness of the VPA as well as a better understanding of the forestry related laws.

Discussion of potential consequences for the Legality Definition

Comments by the EU side:

32. The EU looked forward to the continuation of inclusive consultation process and wished to understand how the Thai Constitutional requirements on public consultation will impact the VPA consultation process.

33. EU would like to learn how RTG intends to tackle the matters identified in the gap issue paper through the National Forestry Policy Committee mechanism, future stakeholder consultations or other ways.

34. EU viewed changes in Thailand legal system a national process. It wished to understand how the changes will impact LD and how legality of timber is verified as they are essential to the VPA.

Response by the Thai side:

35. Thailand Constitution (2017), Article 77, obliges the state to promote public and local community participation in natural resources and environmental management. In addition, this Constitution stipulates that it is the state's duty to guarantee people's right.

36. On Gap issues regarding verification of imports, RFD has cooperated with Ministry of Commerce, Custom Department and other relevant agencies resulting in a Ministry of Commerce Announcement requiring all imported timber to have at least a certificate of origin (CO). More documents will be required for more complicated cases. Thailand attempts to meet EU requirements on import controls. Details will be presented at the next JEM.

37. The Plantation Act (amended in 2016) aims to help differentiate timber of restricted species grown on private land from those found in natural forest by allowing private land owners to voluntarily register their trees with RFD. Those who do not register their trees under the Plantation Act can register the trees together with their coordinates on-line. RFD officials will visit the plantation before trees can be harvested. Today RFD 4.0 policy applies technology to speed up the process. The Department has launched E-Tree initiative to ease the registration and harvesting authorization process. On-line National Single Window system (NSW) to monitor timber movement and link customs, trade and RFD data is operating. GISTDA [Geo-Informatics and Space Technology Development Agency (Public Organisation)] reports RFD daily on forest encroachment. 'One Map' is another initiative.

SESSION 3: Legality Definition

AGENDA ITEM 3.1: Legality Definition

General introduction of structure and main content (by Thai side)

General comments by EU:

38. The EU welcomed the progress on the draft LD which shown a clear, well-developed structure and reiterated that LD is a key component of the VPA. EU appreciated the Thai side for taking the latest EU comments (Aug and Sept 2016) of the draft LD into account.

39. The EU reaffirmed that in case there are any legal changes, the LD needs to be revised. This is also relevant after the VPA has been signed as the LD is a living document and can continue to be developed over time.

The EU side raised the following:

40. EU wished to understand the scope of Thailand timber legality assurance system (TLAS) and whether there will be only one TLAS for all markets, both domestic and international, EU and elsewhere.

41. Whether the Thai side will include more timber sources than the four sources already included in the draft LD, e.g., legal conversion of natural forest and plantation for infrastructure, mining, agric., etc.

42. Whether fruit trees, and palm oil will be included in the LD.

43. The whereabouts of confiscated timber in Thailand and the process in which the timber is to be put into the market.

Response from the Thai side:

44. The Thai side affirmed that there will be only one TLAS for all markets, domestic as well as international, EU as well as other international markets.

45. Confiscated timber is for public use only. It will not enter the market and will therefore not be included in the LD.

The EU side recommended the following:

46. The EU side contended that field test is an opportunity to see to what extent the procedure described in the LD document is actually implemented on the ground. The LD field test consultants should probe the above issues whether they should be included in the LD. They should also develop and include glossary of terms into the LD. The consultants will report their findings and recommendations to the AHWG.

47. Environmental requirements, e.g., environmental impact assessment, and social safeguards for plantation, processing activities and production as well as Thailand's commitment to ILO Convention should all be included in the LD.

48. More government agencies should be engaged in the VPA structure, such as Ministry of Labour.

49. A risk-based balanced approach for verification of in particular unverified species should be explored in order to avoid over-regulating (posing unnecessary burden) on small farmers.

Update on LD field assessment (by TEFSO and EFI)

50. Both sides agreed to examine further the field test methodology (number of sample sites, members of field test teams, participation of stakeholder, etc.) and the associated field work costs of EUR 30,000 proposed by the consultants. They also agreed on cost-sharing to ensure Thailand's ownership of the LD and will exchange on the matter again within the following week.

51. The EU side clarified that the consultants were commissioned to perform the LD field test as specified in their ToRs. Their views do not represent the EU's. The Thai side should feel free to make their comments to the consultants' suggestions.

Discussion on LD for operators 1, 2, 3, 5, 6

52. The EU side reminded the Thai side that there need to be consistency between Product Scope and the LD, i.e., what is included in the Product Scope needs to be covered in the LD. Charcoal is not included in EUTR, with which Thailand's Product Scope is in line, but mentioned in the LD. Thailand can include charcoal if it so wishes.

53. The Thai side confirmed that charcoal is not to be included in the Product Scope.

Review of Day 1

54. The Thai side reaffirmed that the VPA is a priority. RFD expects more than trade from the VPA and uses people-centered approach to problem solving. RTG expects the country to have good governance in forest management and that people's fundamental rights are assured.

JEM Day 2 (Wednesday, 28 June 2017)

SESSION 4: Product Scope and verification mechanisms

AGENDA ITEM 4.1: Product Scope (PS) Annex

55. EU appreciated Thailand PS which is in line with the EUTR and stressed that the PS should reflect Thailand's national process.

56. EU stressed that since the LD, PS and verification process are interlinked, it is important to ensure that PS is reflected in the LD and *vice versa*.

57. On furniture, EU appreciated Thailand's plan to include furniture into its PS in a near future and would like to learn more about the timeframe and suggested further discussion at Negotiation level.

58. On HS codes, EU suggested that it may be worthwhile to explore to have 6 instead of 4 digits of HS codes included in the PS for clarity reasons.

59. EU wished to learn more on Thailand's stand toward the inclusion of recycled materials in its PS.

60. EU raised question concerning the control system of bamboo which the Thai side included in its PS for paper products and informed that the EUTR does not include most bamboo products. The Thai side confirmed that it will remove bamboo from its PS.

61. EU wished to know whether Thailand has any wood related HS Code banned for exportation. If so, it will have to be mentioned in the PS.

62. The Thai side clarified that its LD already includes furniture (to be included during phase 2) and that it will inform the EU side of the timeframe for including furniture in the PS later.

63. Both sides agreed to exchange export volume data by product listed in the PS.

AGENDA ITEM 4.2: Verification mechanisms

64. EU took note on Thai progress on verification mechanism especially the E-Tree.

65. EU reiterated that the system should be effective and may include a risk-based balanced approach in order that it would not add extra burden to small stakeholders. EU wished to know how the Thai side plans to translate this balanced approach into action.

66. EU wished to see a more systematic approach at national level to address the different verification related gap issues.

67. EU wished to know more on roles of external organizations, especially of CSOs in verification mechanisms.

68. EU welcomed the fact that Thailand already has existing on-line systems which will be crucial to supply chain control.

AGENDA ITEM 4.3: Verification of Unregulated Species (i.e. rubber) on Private Land

69. EU commented that Thailand has identified a number of options and that in the future Thailand should specify which option(s) it would take as they will affect TLAS. EU wished to learn more about Thailand's consideration of options and views of government on ongoing and planned pilot projects.

AGENDA ITEM 4.4: Verification of Imports

70. EU reiterated the importance of verification of imported timber to Thailand.

71. EUTR requires that operators importing timber products into the EU need to conduct due diligence (DD). The only exemptions are if the product is accompanied by a FLEGT license or a CITES permit.

72. Each VPA partner country has to ensure that its imported timber comes from a legal source. Good example of how this is regulated and described in the VPA text is Viet Nam

73. EU explained that DD important components include information of the timber, risk assessment, and risk mitigation. This concept is used more and more on the demand side (Australia, South Korea).

74. Vietnam uses self-declaration system in which the importer conducts DD.

75. Question for Thailand: Is Thailand developing DDS or other means for its imported timber to conform with the VPA requirement for import regulation? EU is keen to learn about the issue and will revisit the issue at the next JEM.

76. Thailand response: Relevant authorities are exploring ways to verify imported timber that will be accepted by legality-required markets. Thailand plans to have a system similar to that of Vietnam's.

77. EU gave example of Myanmar (reiterating what it already mentioned on Day 1).

78. EU suggested including verification of imported timber in the Roadmap and offering technical support.

79. EU was interested to exchange information on trade, for example, tables of Thailand import data, including species and countries of origin, because it will be useful for the process and to identify the risk. EU suggested to include this issue in the Roadmap and to further discuss at Negotiation level.

80. EU took note on the Thai private sector's interest to look at the American Hardwood DDS as an example and reiterated the importance of risk assessment in DDS. EU would like to work more with Thailand at technical level before further discussion at the next JEM.

81. Question for the EU: which countries are most advanced on using DDS for imported timber? Answer: the EU, Indonesia, VN (from VPA point of view).

82. Question on which countries have the technology to identify where the timber is exported from? Answer: Using DNA and fingerprinting technology makes it increasingly possible to identify the source of trees when entering the EU market. In some regions such as the Alps, for high value trees, it is also good practice that buyers visit the individual trees before purchase.

83. Question from Thai private sector on risk country: If Thailand imports from high-risk countries, then Thailand will be seen as a high-risk country too? Answer: EU has no country check list on the issue but it has criteria. Operators e.g. use corruption perceptions indices to identify high risk countries. VN may develop such a check list. Currently, there is no international check list. But indeed if Thailand imports from high risks sources and does not carefully check these sources the Thai timber may be seen as high risk.

84. Thailand reiterated that Thailand is developing its DNA/fingerprints system to facilitate the verification of timber grown in Thailand.

AGENDA ITEM 4.4: Supply chain controls (SCC)/TLAS

85. Thailand presented its initial ideas on SCC flowchart of timber from public land and imported timber which includes all operators.

86. Thailand informed its relevant law and regulation on SCC as well as its timber certification development.

87. Thailand stressed main components of its TLAS: wood legality, forest management, good governance, credibility, trade.

88. Thailand proposed to discuss all SCC details at next JEM.

EU's initial feedbacks:

89. Encouraging developments, well-designed, more clarity on imported timber required, linking SCC with legal verification system and licensing required

90. Way forward: to start drafting the TLAS Annex. LD field test consultants and EFI can help Thailand develop this structure and EU wished that this will be included in the roadmap.

91. EU recognised the importance of moving to SCC and TLAS, but suggested that Thailand should make sure that all trading points are included, the flow of the information all the way to the licensing, reconciliation of data along the supply chains.

92. EU recommended that certain outline on TLAS structure should be agreed upon to facilitate next steps.

93. Timber certification: EU was interested if Thailand wants to integrate voluntary certification in its TLAS and if so which systems would be acceptable.

AGENDA ITEM 4.5: TLAS synergies with existing mechanisms (private certification, due diligence, CITES, etc.)

94. EU side presented the relevance between CITES and EUTR. EU took note of Thailand's commitment on CITES. The importation and exportation of species covered by CITES are in line with EUTR. EUTR recognizes CITES; and FLEGT license is not required for importing timber with CITES certificate into the EU market.

SESSION 5: VPA legal text and other VPA Annexes

AGENDA ITEM 5.1: Introduction of VPA legal text and other Annexes such as independent auditing, licensing and transparency (by EU side); Discussion

95. EU clarified VPA agreement structure: body of the main text (25-30 articles) and country-specific Annexes (10 annexes).

96. EU reiterated that VPA is a result of national process, in particular some Annexes such as LD, TLAS, transparency.

97. EU highlighted 5 core elements of TLAS: LD, PS, SCC, Verification, FLEGT licensing as well as the importance of EU procedure on FLEGT licensing and the independent audit (giving opportunity for involvement of CSOs, strengthening credibility).

98. Next steps: EU will share a draft text of the main text (template) with Thailand (after 1st round of negotiation) and Thailand will continue to develop relevant Annexes.

99. Question from Thailand: Thailand has prepared the main VPA text in Thai since 2011, will this text still be usable? Answer: EU has a developed structure of the text. EU suggested to share the standard VPA template with Thailand first and Thailand can take it into consideration.

SESSION 6: VPA Negotiation Roadmap

AGENDA ITEM 6.1: Development of VPA negotiation roadmap (focusing on steps until next negotiations)

100. EU proposed a draft Roadmap from the first Negotiation to the second Negotiation (July 2017-March 2018) to be agreed at negotiation meeting. The draft Roadmap included: 2 video conferences in October 2017 and February 2018, JEM3 in December 2017 and JEM4 back-to-back with the second negotiation meeting in March 2018.

101. EU expressed that the proposed dates on the draft roadmap are flexible.

General comments on the draft Roadmap:

102. On LD Field Test: Thailand private sector suggested that there should be a mechanism to inform test sites of date and time and necessary preparation for the test. RFD will coordinate with the relevant agencies and stakeholders.

103. Both sides agreed to add this to the Roadmap, and that on 19 July 2017 RFD will organize an AHWG meeting on the preparation of field test.

104. Thailand expressed its wish to organize a following AHWG meeting on 18 August 2017 to focus on verification of imports and unregulated species.

105. Thailand CSOs suggested that gap issues should be included in the Roadmap. Both sides explained that some gap issues will be covered in the AHWG meeting on 18 August 2017.

106. Thai side proposed to postpone the next VC to early/mid of November due to the late King's cremation.

107. Thailand proposed to include an update on the timeline in which furniture is expected to be included in PS. EU suggested to address this issue at JEM3 in December 2017.

SESSION 7: Conclusion of JEM-2

108. Both sides agreed to have the EU side prepare draft conclusions and points for negotiation to be shared and agreed with the Thai side the following day before the negotiation started.

AGENDA ITEM 7.1: Review JEM2 draft minutes

109. Both sides agreed to exchange and finalise the minutes through email.

ANNEX 1: Participant lists of both sides

ANNEX 2: JEM2 agenda

ANNEX 3: Presentations

ANNEX 4: Conclusions and points for negotiation

ANNEX 5: The agreed Roadmap