

Summary of SWG-FLEGT ASIA Technical Meeting on

Supply Chain Control on Private Land

1 April 2021 – Zoom meeting

Introduction

Thailand RFD (Mr. Sapol Boonsermsuk): Dir Boonsermsuk opened the meeting and welcomed the participants. He excused Mr Somsak Sapakosolkul, Deputy Director General of RFD, who had to attend to other important matters due to the technical problems in the morning which delayed the start of the meeting. Today's discussion will be split into two parts, with the first dedicated to supply chain controls on private land, led by the chair of the sub-working group Ms. Rungnapa Wattanavichian (TFCC). The second part will cover the topic of import controls, led by the chair of the import control sub-working group Mr. Jirawat Tangkijngamwong, Chairman of the Thai Timber Association.

FLEGT Asia (Dr. Alexander Hinrichs): Dr. Hinrichs of the European Forest Institute, which is responsible for implementing the EU-funded FLEGT Asia programme (FLEGT Asia), welcomed the participants and expressed his regret that it is not possible to meet in person due to the pandemic. The FLEGT Asia team notes the long and trusted relationship with Thailand and is delighted to be able to continue to work with Thailand at the technical level in support of drafting technical documents for inclusion in the Annexes of the VPA.

The FLEGT Asia team has recently been joined by two new members: Mr. Peter Aldinger and Mr. Björn Dupong, who will support the work on Thailand. Mr. Morne van der Linde, who previously supported the work on Thailand, has taken on new tasks within EFI in Europe.

RFD (Mr. Boonsermsuk): Mr Boonsermsuk thanked Dr. Hinrichs and handed the floor to Ms. Rungnapa Wattanavichian to lead the exchange on supply chain controls on private land.

Chair of SWG PL (Ms. Rungnapa Wattanavichian, TFCC): Ms Rungnapa explained that since the last meeting in 2020, the sub-working group on supply chain controls on private land has advanced in its discussions on the self-declaration, which is reflected in the latest concept paper shared with FLEGT Asia. The sub-working group held stakeholder consultations in the Northern, Southern, Eastern, and North-eastern parts of Thailand to collate feedback on the self-declaration implementation guideline (SD guideline). The relevant feedbacks helped the sub-working group in refining the guideline to ensure that the self-declaration is operational.

RFD/FEO (Mr. Tanongsak Nontapa): Mr Tanongsak, Director of the Forest Economics Office (FEO) provided an update on the preparation of the SD guideline. The FEO has prepared a report assessing whether the SD guideline is compliant with the existing laws in place. The report is currently being reviewed by the legal division of RFD and will be shared with the Director General once the legal review has been completed.

FLEGT Asia Comments on TH SCC Private Land Concept Paper (Received on 4 February 2021)

FLEGT Asia: Recommended to go through each comment previously submitted to the Thai side, one at a time.

Self-Declaration & Required Information / Role of attorneys

FLEGT Asia: Understands that self-declaration (SD) compiles necessary information that mills should receive for them to understand that the timber they are buying comes from a specific legal source. Raised the question of the role of “attorneys” in signing the self-declaration form. Are these understood to be “solicitors/lawyers” or “legal representatives”?

Chair of SWG PL: Clarified that the term “attorney”, in this case, refers to a legal representative authorized to sign on behalf of a land owner or tenant (e.g. a parent for their children).

FLEGT Asia: It is understood that this is a semantic issue.

Chair of SWG PL: Suggested that the term could be changed to “legal representative” or other terms for clarity.

Self-Declaration & Required Information / Person responsible for signing the SD form and submitting to mill owner

FLEGT Asia: Understands that whoever signs the SD form does not necessarily need to be the person delivering it to the mill. Is the form travelling with the timber and are agents or legal representatives obliged to bring the SD form to the mill?

Chair of SWG PL: The person responsible for moving the timber will be responsible for bringing the SD form to the mill. This could be the timber owner, agent, or buyer which have possession of timber at that transportation period but can be assigned to staff or driver.

FLEGT Asia: It is important that the SD form travels with the timber to the mill owner. It would be helpful to include in the guidelines for the mill owners that SD forms are to be compiled at the mill and not at the place of the agents.

Self-Declaration & Required Information / Owners required to collect geographic coordinates

FLEGT Asia: Did piloting/field tests identify any issues farmers may have related to collecting GPS coordinates? From FLEGT Asia’s experience farmers may not have the technical capacity to collect geographic coordinates.

Chair of SWG PL: informed that this issue was identified at the stakeholder consultation meeting and discussed amongst the sub-working and ad-hoc working groups.

The working groups concluded that the GPS coordinates should remain in the SD guideline to ensure timber source information. To assist farmers, TH could organize a capacity-building activity to strengthen understanding. Buyers could also help the farmers.

Self-Declaration & Required Information / Owners required to declare volume and weight

FLEGT Asia: It is our understanding that it might be difficult for owners to weigh the timber onsite. Is this a universal requirement or only for bulk timber? Where will the weight be measured?

Chair of SWG PL: Collecting information on volume and weight is important, as it provides a way to check that the timber was grown and harvested on the land – land size and type will determine how much timber can be produced on a given plot.

Fast Growing Tree Business Association (Mr. Amornpong Hiruwong): This requirement is primarily geared towards fast growing timber. The processing mill will have a scale to verify the weight.

FLEGT Asia: In the explanation of the SD form it will be important that volume/weight are not requirements for all shipments but only for certain ones.

Alternative Documentation/Evidence

FLEGT Asia: In the concept paper there are multiple references to other documentation/evidence that can be used to provide information covered in the SD form. We understand that the SD form is just a tool and that there may be other ways to demonstrate the legality of the timber source. However, the current wording leaves a lot of room to manoeuvre, and more guidance may help mills to determine which alternative documentation is appropriate.

Alternative Documentation/ CITES

FLEGT Asia: Do CITES permits contain all of the information listed in Table 1 of the Self-Declaration concept paper? More details about how the CITES permit will supplement the self-declaration are needed. If CITES permits are retained as an alternative form of documentation, they will need to be incorporated into the Legality Definition for Operator 3. CITES permits are currently described in the LD only for export procedures.

Relatedly, when will the CITES permit be issued? Will this happen at the harvest site, so that the CITES permit travels with the timber to the first processing mill?

Chair of SWG PL: prefer to discuss this topic internally first and exchange with FLEGT Asia via email.

FLEGT Asia: This is a good way forward. What is important is that if the CITES permit is retained as alternative documentation under the self-declaration process to demonstrate legality, we incorporate the concept into the relevant annexes of the VPA. There needs to be consistency between the description in the LD, SSC PL and TLAS annexes and clear guidance for the mill owners.

Alternative Documentation/ Certification

FLEGT Asia: The concept paper refers to forest management certification as alternative documentation to demonstrate legality of the timber source. What we would like to know is how certification substitutes the information in Table 1 of the self-declaration concept note, and whether the mill will be able to identify the source of the timber with confidence. To this end, chain of custody certification might be better suited than forest management certification. What is Thailand's understanding of how forest management certification will demonstrate the information provided in table 1?

Chair of SWG PL: Forest management certification will complement and substitute some of the information provided in table 1. The certificate will show the species and geographic coordinates of the timber source. Forest management certification may replace land title deeds or other documents.

FLEGT Asia: We would welcome an example of how forest management certification would replace the SD form especially for larger sized units where forest management certification would be available. In principle we see that the information in table 1 can be demonstrated via other means than the SD form but we have not yet seen this with forest management certification.

Chair of SWG PL: We will share an example with FLEGT Asia via email.

Measures to Prevent Illegality

FLEGT Asia: The concept paper states that guidelines for the mills will be developed. Is our understanding correct that the mills will have the following four legal obligations?

1. To ensure all timber acquired is legal
2. Implement an appropriate process to determine this
3. Maintain adequate and appropriate records
4. Make records available to the regulatory body – periodically or on request

Chair of SWG PL: We can confirm that mills will need to comply with all four obligations.

FLEGT Asia: Regarding the second legal obligation (implementing an appropriate process), Chapter 5 describes the concept of visits to the plantation site. We would like to ask what is expected of the mills with these visits, and how this obligation relates to the ongoing study looking at the risks of illegal timber entering the mills' supply chain. Will TH

require a system where mill owners have an obligation to ensure the integrity of the supply chain by assessing and mitigating risk?

Chair of SWG PL: More detailed information will be added to the concept paper on this. We will check with operators whether the requirements are feasible. Mill operators will need to implement appropriate process on their suppliers and visit farms if they have any questions or suspicions or if they have new customers.

FLEGT Asia: We also understood this as a due diligence requirement on the mill side. It would be helpful to elaborate more in chapter 5 on what mills need to do to conduct a risk-based assessment.

FLEGT Asia: Relatedly, will TH still allow for the current practice of farmers or agents selling timber at the mill gate? In this case, it may be difficult for the mill to do a site visit and be assured of the timber source. If TH will still allow this practice, how will the due diligence requirement be implemented?

Veneer/Plywood Industry Group (Mr. Pingsun Wang): Mills will continue to be able to receive timber at the factory gate. It is at the mills' discretion to accept timber at the gate. For high-risk timber, mills will need to ask for further information. Typically, mills will determine risk from source, specie, and type of seller – old or new. If the timber is deemed as risk, mill will do a plantation visit and request more documents.

FLEGT Asia: Accepting timber at the mill gate is partially explained in section 5. We would recommend that the way the mill verifies information is described in more detail in section 5. There will need to be a separation between standard cases and cases where risk is perceived to be higher, to ensure the integrity of the supply chain and to avoid greenwashing through the SD. This was also a point made by the EU during the last negotiations. Having clear guidelines for the mills in place will be crucial.

Private Forest Plantation Cooperative (Ms. Yingluck Patiphanthewa): What does FLEGT Asia mean by these "risks"? All timber from private land is legal. For plantation cooperatives all species are registered. Land owners have relevant documentation that timber has been harvested from specific lands.

FLEGT Asia: To clarify, we do not think that the risk is related to illegality at source but rather that the SD process could be misused. There is a possibility that timber from other sources are mixed with timber that has been harvested on private lands, and listed under the same SD. We would like to clarify how this will be addressed via the risk assessment. It is important to provide support to mills so that they can effectively verify where the timber in their supply chains originates.

Thai Timber Association (Mr. Jirawat Tangkijngamwong): It is not always possible to trace the timber back to source. The SD form is like an ID and it is up to the mill to decide whether they want to accept timber from a specific supplier or not. We cannot require them to reject timber.

FLEGT Asia: To summarize, we would like to ask TH to provide more information in the concept paper on how mills will verify information they receive through the SD. We fully

support what is described, but more details could be provided. We would also like to make reference to the ongoing study looking at supply chain risks.

Timber exports

FLEGT Asia: The concept paper states the SD form can be used for timber exports. We were wondering how the process will work with regard to log exports under the SD. Our understanding is that RFD has to issue an export permit.

Forest Economics Office (FEO): The SD form can be used to apply for an export permit under Art. 18/2 of the Forest Act. When the Forest Economics Office receives the SD form it triggers an inspection of the plantation by an RFD official. It is for only log.

FLEGT Asia: It would be helpful if the inspection is added to the concept paper.

Additional Points

FLEGT Asia: We would like to raise two additional points. With regard to the SD on public land, can TH share an update on the discussions? And, is the SD foreseen to be the same as for private lands?

TEFSO (Ms. Panjit Tansom): The SCC on Public Land (PBL) SWG, with an approval from the ad-hoc working group, will develop the SD concept for Sor Por Kor land. The concept will be based from the SD for private land. Additional steps which will be differed from the private lands are still under discussion and have not been concluded yet.

FLEGT Asia: We are looking forward to getting more information on the discussions and are open to explore together with TH any additions needed for the SD on public land. During the last negotiations, the EU also asked for more information on the use of SD on different types of land.

FLEGT Asia: With regard to the second point, we were wondering how the SD would work for onsite processing (temporary processing.) Our understanding is that onsite processing (temporary processing) is not yet fully covered in the LD on private land. What does this mean for the use of the SD? The SD form is a document for logs but if processing is happening onsite, then the temporary mill will be the first point of processing. Will RFD inspect these onsite mills (temporary mills) as it is required under the LD for other mills?

Chair of SWG PL: This issue is still under discussion and has not yet moved forward.

FLEGT Asia: Our view is that it is important to have RFD inspect the mills. The LD needs to make reference to processing mills and inspections. The SD may need to be adjusted if it is used also for sawn timber. We will have to come back to this when discussing the SCC Annex.

Chair of SWG: explained that the current SD form is intended for log only. The discussion on the use of SD for sawn timber is still ongoing internally. The conclusion has not yet reached.

FLEGT Asia: This is something we will have to come back to. For us it is important to understand where and when onsite processing (temporary processing) takes place and how it fits into the SD concept. There is a need for a more detailed description of what is allowed for onsite processing (temporary processing). Likewise, onsite processing (temporary processing) will need to be described in the LD and SCC and TLAS annexes.

Director Vijarn, RFD Legal Department: Onsite processing (temporary processing) can only be done for restricted timber. Non-restricted timber will have to be processed at a mill. Farmer who wish to process a restricted timber on-site will have to obtain a permit before processing timber but does not have to obtain a mill licence. On the other hands, permanent mill is required to have a mill licence before processing any timber. By law all timber from private land is non-restricted, processing is allowed without a permit. However, due to the current legal definition of “permanent mill”, mill will still need a mill licence. RFD is looking at how to amend overall regulation on processing mill to ensure coherency with the amended regulation on private land and Sor Por Kor. The discussion on temporary mill will be more productive when there are more updates on the regulatory amendment.

Next steps

- The SWG will **revise the concept paper by June**, and exchange with FLEGT Asia via email in the interim. The revised concept paper will:
 - Provide more details on the usage of CITES permits as alternative means to demonstrate legality of the timber source and align it with the LD;
 - Describe in more detail the way mills are required to verify information they receive from their suppliers;
 - Include a reference to onsite inspections done by RFD when the SD is used for exports;
- Once the concept paper has been finalized, FLEGT Asia has offered to incorporate relevant parts of the concept paper into the draft VPA annexes (notably the SCC and TLAS annexes).
- The SWG will share with FLEGT Asia examples of how forest management certification can replace the SD form, especially for larger sized units where forest management certification would be available.
- Thailand and FLEGT Asia will discuss with the EU whether the next formal meeting shall only focus on the SCC and LD annexes or whether it should also include a discussion on the SCC PL concept note, depending on progress at the technical level.

Attachments: 1. Participant list

Participant list

1. Mr. Alexander Hinrichs Head of Asia Regional Office, European Forest Institute - FLEGT & REDD Unit
2. Mr. Mr. Peter Aldinger Forest Governance & Timber Legality Assurance Expert, European Forest Institute - FLEGT & REDD Unit
3. Mr. Björn Dupong Forest Governance Expert, European Forest Institute - FLEGT & REDD Unit
4. Ms. Somrudee Nicrowattanayingyong FLEGT Facilitator to Thailand, EU FLEGT Asia Programme
5. Mr. Somporn Khongthanakrittakorn SME Consultant, European Forest Institute
6. Mr. Sapol Boonsermsuk Director of the Forestry Foreign Affairs Office, RFD
7. Mr. Tanongsak Nontapa Director of the Forest Economics Bureau, RFD
8. Ms. Rungnapa Wattanavichian Consultant, Thailand Forest Certification Council
9. Mr. Boonsuthee Jeerawongpanich Director of the Forest Standards Division, RFD
10. Ms. Piyathip Eawpanich President of the Private Forest Plantation Cooperative Limited
11. Ms. Yingluck Patiphanthewa Honorary Advisor of the Private Forest Plantation Cooperative Limited
12. Mr. Montri Yotarak Board Member, Private Forest Plantation Cooperative Limited
13. Mr. Methanee Seemuntara Forestry Technical Officer, Forest Certification Division, RFD
14. Mr. Jirawat Tangkijngamwong President of the Thai Timber Association
15. Mr. Karoon Krairawee Thai Timber Association
16. Mr. Ekkasit Aneksthisin Thai Timber Association
17. Mr. Amornpong Hirunwong Board member of the Fast-Growing Tree Business Association
18. Mr. Vijarn Sensakul Director of the Legal Office, RFD
19. Ms. Apiradee Jitprarop Legal Officer, Legal Office, RFD
20. Ms. Promporn Sakulwatcharin Customs Department
21. Mr. Pingsun Wang Secretary-General, Thai Panel Product Industry Club

22. Mr. Wiroat Kanaphongsa Thai Panel Product Industry Club
23. Mr. Rangsi Pongsawang Forestry Officer, The Forest Industries Permission Division, RFD
24. Ms. Konwilai Wongyot Reclaimed Timber Association
25. Mr. Poramet Payapsatan Reclaimed Timber Association
26. Ms. Tarida Dalai Project Officer, Federation of Thai Industries
27. Ms. Kanokwan Yordtong Project Officer, Federation of Thai Industries
28. Mr. Bruno Cammaert Forestry Officer, EU-FAO FLEGT Programme
29. Ms. Erica Pohnan Consultant, FAO-EU FLEGT Programme
30. Ms. Panjit Tansom Consultant, Thai-EU FLEGT Secretariat Office
31. Ms. Tippayarat Limsaisuk Operation Associate, Thai-EU FLEGT Secretariat Office
32. Ms. Supada Kongnakorn Project Assistant, Thai-EU FLEGT Secretariat Office
33. Ms. Pitinan Wongmakluekao Forestry Officer, Forest Standards Division, RFD
34. Ms. Pawinee Udommai Consultant – Annex Drafting

Summary of SWG-FLEGT Asia Meeting on Import Controls

1 April 2021 – Zoom meeting

Introduction

Chair of SWG (Mr. Jirawat Tangkijngamwong, TTA): Welcomed the participants and noted that FLEGT Asia sent comments on the import control concept paper. The comments will be discussed one at a time.

FLEGT Asia Comments on TH Import Control Concept Paper (Received on 02 March 2021)

Introduction: Phased IC approach. Initial voluntary Due Diligence (DD) obligation which will become compulsory at a later point.

FLEGT Asia Focal Point (Dr Alexander Hinrichs): How will the phased approach work? From the perspective of the VPA, due diligence will need to be compulsory to ensure the legality of imported timber and timber products. Without import controls in place, FLEGT licensing cannot commence. Please clarify whether the idea is for the voluntary phase to be implemented over a specific period of time, or if it is a “milestone” approach, where certain objectives need to be met before the mandatory requirements for FLEGT licensing are enforced.

Chair of SWG Import Control (Mr. Jirawat Tangkijngamwong, TTA): DD will be compulsory by the time TH issues FLEGT licenses. The initial voluntary approach provides an opportunity to field-test the system and ensure it is practicable and implementable, while relevant regulations are being developed. The SWG does not yet know when the regulations will be issued.

Chair of SWG Import Control: RFD is waiting for the government to provide a timeline to issue relevant legislation. Once the timeline is clear enough, TH will inform FLEGT Asia. In the meantime, preparations are being made to apply import controls on a voluntary basis. Although the legislation’s timeline is still unclear, the SWG will specify whatever regulatory development required in Annex 11 as a commitment from the TH side to undertake such action.

FLEGT Asia FP: It is understood that implementation of the import controls will be phased. For the drafting of the VPA, it will be important that the import controls are described as a mandatory system.

Chair of SWG IC: Shared the same understanding with FLEGT Asia.

Section 2: Legality of imported timber

FLEGT Asia FP: Legality is usually well defined in the relevant laws [consider to add: regulations] of the country of harvest, in the four thematic areas (right to harvest, etc.). The DD system needs to ensure that appropriate and effective measures are in place to verify that all timber and timber products imported into TH have been produced in compliance with these laws and regulations – note that this is not yet clearly described in section 5 of the concept paper (see comments on this section).

With regard to the 3 document types listed under Section 2 of the concept paper, which will be used to demonstrate legality, it is recommended to revise the wording of point (3) to read: “A completed self-declaration form demonstrating the due diligence process conducted and accompanied by documentation and additional measures taken according to the risk categories status as identified”.

Chair of SWG IC: It is difficult for operators to ascertain whether foreign documents are complete and reliable, as there are differences across countries. How can operators verify the documents? We would need to look to RFD for guidance.

FLEGT Asia FP: Information on the four thematic areas of legislation is needed to ensure that imported timber and timber products are legal. RFD and/or customs will need to ensure that importers have adequately conducted DD. The government can develop guidance to support operators, so they know what they are expected to look out for in terms of potential illegality.

Chair of SWG IC: It is understood that Australia has a system in place that provides information about legal requirements in different harvesting countries. Can we rely on the Australian system?

FLEGT Asia FP: Thai operators can look at guidance produced by other countries to implement due diligence. The EU, Australia and other countries have developed such guidance. For the description in the VPA, there is no need to go much into detail. What is sufficient is a description on information collection, risk assessment and mitigation, requirements for operators and the government’s obligations with regard to assessing due diligence.

Section 3.1: Timber and Timber Product Import Control Process, flow diagram

FLEGT Asia FP: The flow diagram is a good illustration of the entire process, however, DD approval is not yet included.

Chair of SWG IC: Explained that while it is not yet clear which governmental body will assess operators’ due diligence – RFD or Customs – the diagram does include the due diligence assessment in the pink box. This also substantively covers the approval process.

FLEGT Asia FP: Recognized that the due diligence assessment and approval process is indeed included in the pink box.

Section 5: Due diligence process - contract-based due diligence

FLEGT Asia FP:

- Definition of DD: Propose to revise the definition (first sentence): ... “or that the production, transport, and export does not comply with the applicable laws of the country of harvest”.
- DD per contract: Is the idea of DD per contract that identical shipments – in terms of product type and source – which are purchased and imported into TH under a single contract, are only subject to a single DD assessment? What if the source of a product type differs during contract implementation? We understand the interest in reducing the number of times an operator has to conduct DD but would need to understand how the DD per contract approach would work in practice. Would it be possible for TH to provide more details?
- We would also like to understand when importers will be required to submit the self-declaration demonstrating that DD has been conducted. Will the self-declaration have to be submitted and assessed before the timber or timber products are allowed to arrive in TH?

Chair of SWG IC: Major suppliers prefer to conduct due diligence per contract rather than per shipment, as this reduces the amount of work that needs to be done. However, this only applies to contracts where the same source is used. In case where there are different sources, due diligence will be conducted per shipment.

FLEGT Asia FP: We foresee that the EU would support such an approach in principle, but the language will need to be more specific, in particular regarding how different sources will be addressed, risk related to species, and the point in time at which a self-declaration needs to be submitted to the TH authorities. Can TH provide more details about when a contract-based system will be used, and when a shipment-based system will be used?

Chair of SWG IC: Using a contract-based system is a new idea and we do not yet fully understand the potential challenges. This will need to be studied in more detail.

Section 5.1: Due diligence process – information collection

FLEGT Asia FP: Does ‘Kind of product’ mean ‘HS Code’? If so, please replace.

Chair of SWG IC: Agreed to change “kind of product” to “HS code”.

Section 5.2: Due diligence process – risk assessment

FLEGT Asia FP: Sentence “Level of risk is not determined by specific risk level indicators, because the assessment depends on several factors, such as location, special circumstance and time period,” is not clear to us. Doesn’t the risk assessment consider 4 risk criteria, i.e. compliance with applicable laws (availability of a ‘general’ document or information showing that the timber is legal), species, origin (i.e. geographic risk) and complexity of the supply chain? Is our understanding correct that if one of these is assessed as ‘unacceptable’ risk, mitigation would have to be conducted?

FLEGT Asia FP: The purpose of the risk assessment is to distinguish between the bulk of timber coming into the country and the small amount of timber where there is a higher risk. This is a filtering process under the risk assessment.

Chair of SWG IC: Shares the same understanding.

Section 5.2.1: Due diligence process – risk assessment – compliance with applicable laws

FLEGT Asia FP: We are uncertain as to what such a “letter of compliance” would contain/cover and whether it reflects current practice in Thailand. It would be good if TH can share examples of such letters, and what would represent ‘basic evidence of compliance’.

Chair of SWG IC: A letter of compliance is one of the options for exporters to declare legality of the timber. However, this type of letter is a new concept for TH and the SWG has not yet looked into the concept in detail. The SWG will work on a clearer description of the letter, in particular regarding its contents.

FLEGT Asia FP: Questioned whether this should be included as a filter under the risk assessment. Such a letter would probably be more appropriate for purposes of risk mitigation. Could this possibly be re-evaluated after further consideration of the other risk filters?

Chair of SWG IC: Agreed. It is important to first understand what evidence and documents are needed for the risk assessment. It may be more appropriate for the “letter of compliance” to be used during mitigation. The SWG will discuss further.

Section 5.2.2: Due diligence process – risk assessment - tree species

FLEGT Asia FP:

- This section seems to categorize risk species as either banned for import by TH, banned for export by the country of harvest, or ‘acceptable’. There are species that are not banned, but that are higher risk of illegality than other species. The current system does not allow for differentiation between banned, high risk (e.g. Rosewood), and low risk (e.g. Pinus radiata). A similar approach as in Viet Nam could be adopted, where categories are split between banned, high-risk (greater scrutiny / risk mitigation needed by the operator) and low-risk (less scrutiny) species. A methodology to determine which species fall into each of these categories would need to be developed.
- To simplify the task of the importer, TH could provide official guidance that lists species that are banned or considered high risk.

FLEGT Asia (Mr. Peter Aldinger): Provided an example of how the species risk filter functions in Viet Nam, for purposes of risk assessment.

FLEGT Asia FP: Viet Nam is supposed to issue a list of species that are considered high-risk, providing clear guidance to importers. Is this a system TH could consider?

Chair of SWG IC: There is a need to discuss with RFD and other government agencies about whether it is possible to use such a high-risk species list.

Consultant (Ms. Pawinee Udommai): Thailand has a list similar to the one used in Viet Nam, which lists species that are banned from import and which could be used. What is the process for the JIC to determine high-risk species in Viet Nam?

FLEGT Asia FP: Viet Nam is supposed to develop and share the methodology for generating the list with the JIC. Both the methodology and the list have to be approved by the JIC. Additional species can be added to the high-risk species list, if the JIC determines that it is appropriate.

Consultant (Ms. Pawinee Udommai): The SWG will discuss whether it is feasible to adopt some of the measures Viet Nam uses, and if the RFD can issue such a list.

Section 5.2.3: Due diligence process – risk assessment - origin of timber

FLEGT Asia FP:

- Similar comment as with tree species. This section does not include source areas where illegal logging is prevalent, only countries that are sanctioned by the UN, Thailand, or the country of harvest. Note that for countries with UN boycotts no DD form is needed in your proposed system, as timber coming from them is banned.
- As with the recommendation for tree species, we would suggest including at least three categories: products (HS Code) banned for export in the country of harvest (e.g. log export ban), and high- and low-risk countries. High-risk areas would be, for example, where there is information available on a prevalence of illegal harvesting or similar practices. A specific methodology would need to be developed, to identify which timber-exporting countries or regions would be subject to higher scrutiny (again, please see Viet Nam as an example).
- To simplify the work of importers TH could publish a list of countries that are considered high-risk, such as countries which are known to export banned products. As in Viet Nam, it may be more diplomatically acceptable to publish a list of positive countries (i.e. low-risk countries), which would place any country not on the list at a higher risk level.

FLEGT Asia (Mr. Peter Aldinger): Provided an example of how risk related to geographic origin is supposed to be assessed in Viet Nam.

Chair of SWG IC: It is not very clear how the World Bank Worldwide Governance Indicators used in Viet Nam are related to the issue of illegal logging. There is a need for a working group to work on the species risk filter. As for the geographic risk filter, Thailand will not be able to issue a high-risk country list but it is understood that there is a need for a risk filter related to geographic origin. TH will look into the development of relevant criteria taking into consideration Viet Nam's experience.

Section 5.3: Due diligence process – risk mitigation

FLEGT Asia FP: We propose to revise the language in Section 5.3(2): more appropriate to use independent third-party *certification* scheme, rather than “verification” scheme.

Chair of SWG IC : The SWG agrees with the proposed changes.

Section 6: Due diligence declaration

FLEGT Asia FP: We would like to explore with you how DD can be included in the RFD SW, using electronic submission of documents and evaluation of the same. As discussed earlier, the timing of submission and assessment/approval of self-declarations for shipments of timber and timber products needs to be clarified.

FLEGT Asia FP: Suggested that declaring due diligence electronically may lead to less delays during customs evaluation and inspection. However, will such requirements negatively impact small importers in TH, who do not have access to the necessary hardware? This could restrict access to the system and impede their businesses.

Forest Certification Division, RFD (Mr. Methanee Seemuntara): The National Single Window (NSW) is managed by Customs and not by RFD. RFD Single Window manages services under RFD. Linking the two is possible but will depend on institutional arrangements, which may require revisions in legislation, and may take some time.

FLEGT Asia FP: A suitable electronic system will need to be developed, but various questions will need to be answered, such as where will the system will be hosted – under the RFD Single Window, or the NSW? FLEGT Asia would be interested in working with TH to further develop such a system. To this end, it would also be helpful to better understand the capacity of importers, appropriate measures can be developed to phase out the paper-based system.

Chair of SWG IC: Importers have access to the NSW already and the whole system is paperless.

Section 11: Penalties and fines - Effective, proportionate and dissuasive penalties will be implemented in accordance with existing laws

FLEGT FP:

- The sentence underlines the mandatory nature of the DD system, which is welcomed;
- Appropriate legal instruments will need to be developed or amended to ensure a legal basis for the approach;
- When developing the procedures for DD further, it is important that a clearly defined legal standard is developed, which can be directly linked to a criminal or administrative penalty. Without such linkage, it will be difficult to enforce decisions made by the RFD or Customs on the DDS application by an importer.

Chair of SWG IC: The SWG agrees that there needs to be legal measures, sanctions and penalties but it is difficult for the SWG to propose these. The government will need to issue relevant legislation.

Forest Certification Division, (Methanee Seemuntara): RFD cannot deal with timber outside the country. If a shipment does not pass the due diligence process, RFD can only prohibit imports. However, the Ministry of Commerce has its own legislation covering fines, which may be applicable. If the imported timber is a prohibited goods by RFD legislation, the importer will be punished according to the Customs law.

FLEGT Asia FP: It is possible to park the issue of penalties for now. The important issue to consider at this point is that the more clarity TH can provide to operators to implement DD, the clearer TH can also be on the consequences of not adequately conducting DD.

Chair of SWG IC: Acknowledges FLEGT Asia's comment. If RFD cannot impose penalties under its existing authority, it will submit a proposal to the government on possible suitable changes to the legal framework.

Cross-cutting: Terminology

FLEGT Asia FP: The concept note uses the terminology, "acceptable/unacceptable" risk. We suggest replacing with "negligible/non-negligible risk", as this terminology does not suggest a normative value (i.e. good or bad) to the risk, but instead provides an estimate of risk prevalence.

Chair of SWG IC: Agrees with the suggested changes.

Next steps

- The SWG will further develop the concept paper based on the comments received and send a revised version to FLEGT Asia by early June. Once submitted, FLEGT Asia has offered to incorporate relevant parts of the concept paper into the draft TLAS Annex before the next JEM and NEG in September. Any outstanding issues will be kept in brackets.
- FLEGT Asia offered to provide support to the SWG via a consultant. The SWG will approach FLEGT Asia with key tasks for the ToR as soon as possible, so that the consultant can be hired as soon as possible.
- The import control workshop with the EU and Competent Authorities of member states, initially planned for spring, has been postpone until after the summer due to the limited availability of the EU representatives. The EU will propose a new date in due time. FLEGT Asia welcomes if the SWG IC could inform about specific topics Thailand would like to discuss during the workshop.

Attachments: 1. Participant list

Participant list

1. Mr. Alexander Hinrichs Head of Asia Regional Office, European Forest Institute - FLEGT & REDD Unit
2. Mr. Mr. Peter Aldinger Forest Governance & Timber Legality Assurance Expert, European Forest Institute - FLEGT & REDD Unit
3. Mr. Björn Dupong Forest Governance Expert, European Forest Institute - FLEGT & REDD Unit
4. Ms. Somrudee Nicrowattanayingyong FLEGT Facilitator to Thailand, EU FLEGT Asia Programme
5. Mr. Somporn Khongthanakrittakorn SME Consultant, European Forest Institute
6. Mr. Sapol Boonsermsuk Director of the Forestry Foreign Affairs Office, RFD
7. Mr. Tanongsak Nontapa Director of the Forest Economics Bureau, RFD
8. Ms. Rungnapa Wattanavichian Consultant, Thailand Forest Certification Council
9. Mr. Boonsuthee Jeerawongpanich Director of the Forest Standards Division, RFD
10. Ms. Piyathip Eawpanich President of the Private Forest Plantation Cooperative Limited
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12. Mr. Montri Yotarak Board Member, Private Forest Plantation Cooperative Limited
13. Mr. Methanee Seemuntara Forestry Technical Officer, Forest Certification Division, RFD
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15. Mr. Karoon Krairawee Thai Timber Association
16. Mr. Ekkasit Aneksitthisin Thai Timber Association
17. Mr. Amornpong Hirunwong Board member of the Fast-Growing Tree Business Association

18. Mr. Vijarn Sensakul Director of the Legal Office, RFD
19. Ms. Apiradee Jitprarop Legal Officer, Legal Office, RFD
20. Ms. Pavinee Chapanon Department of Foreign Trade
21. Ms. Promporn Sakulwatcharin Customs Department
22. Mr. Pingsun Wang Secretary-General, Thai Panel Product Industry Club
23. Mr. Wiroat Kanaphongsa Thai Panel Product Industry Club
24. Mr. Rangsi Pongsawang Forestry Officer, Forest Industries Permission Division, RFD
25. Ms. Konwilai Wongyot Reclaimed Timber Association
26. Mr. Poramet Payapsatan Reclaimed Timber Association
27. Ms. Tarida Dalai Project Officer, Federation of Thai Industries
28. Ms. Kanokwan Yordtong Project Officer, Federation of Thai Industries
29. Mr. Bruno Cammaert Forestry Officer, EU-FAO FLEGT Programme
30. Ms. Erica Pohnan Consultant, FAO-EU FLEGT Programme
31. Ms. Panjit Tansom Consultant, Thai-EU FLEGT Secretariat Office
32. Ms. Tippayarat Limsaisuk Operation Associate, Thai-EU FLEGT Secretariat Office
33. Ms. Supada Kongnakorn Project Assistant, Thai-EU FLEGT Secretariat Office
34. Ms. Pitinan Wongmakluekao Forestry Officer, Forest Standards Division, RFD
35. Ms. Pawinee Udommai Consultant – Annex Drafting

Summary of SWG-FLEGT Asia Meeting on the THA-TLAS

8 April 2021 – Zoom meeting

Introduction

Head of SWG TLAS/SCC (Director Boonsuthee Jeravongpanich, RFD):

Welcomed the participants and provided a recap of VPA development and the negotiation process with the EU over the past 7-8 years. The day's discussion covers the draft Timber Legality Assurance System (TLAS) annex which has been developed via a multi-stakeholder sub-working group, and is 90% complete. Asked Ms. Pawinee Udommai to present an overview of the status of the TLAS development.

Consultant to SWG TLAS/SCC (Ms. Pawinee Udommai): Introduced herself as the consultant assisting the sub-working groups on TLAS and Supply Chain Controls (SCC). Provided an overview of the structure of the TLAS Annex and improvements in the text made since the last NEG related to reclaimed timber, confiscated timber, the verification institution and licensing authority, and voluntary certificates issued by the public and private sector. In addition, she introduced concepts related to the development of the RFD Single Window (RSW) and the issuing requirements on verification and licensing.

FLEGT Asia Focal Point for Thailand (Dr. Alexander Hinrichs): Welcomed the participants and thanked Ms. Pawinee for the informative presentation. It is good to see that the SWG addressed the points raised during the last NEG with the EU. No specific comments on the presentation, but FLEGT Asia does have comments on the changes made to the TLAS. Suggested to go through these one at a time.

FLEGT Asia Comments on the Draft THA-TLAS Annex (Received on 31 March 2021)

Overall Comments

FLEGT Asia FP (Dr. Hinrichs): Substantial advancements have been made to the TLAS since the last version was shared with the EU. It is clear that the work of the SWG, with the support of Ms Pawinee, is driving the process forward. It is helpful to see quite a few concepts put forward in the text to better understand the SWG's thinking. However, for the final Annex text it will be important to only describe what will be in place at the time of implementation. For now, any issues still under discussion can be put in square brackets. FLEGT Asia can offer to provide more detailed comments and edits after today's meeting, which may include suggestions where text could be shortened or put into square brackets. For today's session it was suggested to focus on a few higher-level issues.

Consultant (Pawinee): The SWG agreed with this approach.

FLEGT Asia Comment: 3.3 - Confiscated Timber

FLEGT Asia FP: Suggested to make explicit in the text that confiscated timber will not enter the supply chain, and that FLEGT and THA-TLAS licenses will not be issued for confiscated timber. The text will need to clearly explain that segregation of confiscated timber is required starting from the place of confiscation, through transport, to storage at a secure site. The text will also need to clearly state that there is a process in place to avoid the re-entry of confiscated timber into the supply chain. In addition, it was requested to clarify what TH means by “governmental benefits”. As for natural deterioration of confiscated timber, text still needs to be developed.

Forest Certification Division, RFD (Mr. Methanee Seemuntara): explained that by “governmental benefits”, TH means that the confiscated timber can be authorized by the Director-General of RFD for public use such as renovation and natural disaster relief, confirming that the timber will not be sold. The confiscated timber will be stored and safeguarded by RFD’s agency. The timber will be taken out for public use by approval or left to deteriorate.

Consultant: There will be a system in place that guarantees separation of confiscated timber from other types during transportation and storage. We will add text to spell this out more clearly in the Annex.

FLEGT Asia FP: Offered to provide suggested language on this issue when sending the detailed comments for TH’s consideration.

FLEGT Asia comment: 4 - Legality Definition

FLEGT Asia FP: Asked for clarification what the SWG means by “other reclaimed wood”. This term is not described in the same way in the LD. It would be helpful to get more clarity on this for operators 1, 2 and 3.

Noted that once the discussions on import controls have been finalized, changes will need to be reflected in the TLAS Annex.

Consultant: The use of reclaimed timber is controlled under the Forest Act that is regulated only reclaimed wood from constructions or equipment. “Other reclaimed timber” is not under the control of RFD and the Forest Act.

FLEGT Asia FP: Understands that under the Forest Act reclaimed timber is referring to demolished buildings. Asked for an example where reclaimed timber is controlled outside the Forest Act.

Head of SWG TLAS/SCC (Director Boonsuthee): Other reclaimed wood is considered to be timber used in the daily lives of people, for instance timber used for livestock facilities, which is then sold for other purposes (e.g. home decoration) after the facilities are demolished or taken down. It could also be small pieces of timber used for carving or household tools. This type of timber is not harvested from newly planted trees and is not regulated under the Forest Act. The Forest Act only covers reclaimed timber from construction or equipment, and only if the timber is from a restricted species. Before dismantling, reclaimed timber controlled under the Forest Act requires a demolition permit.

Forest Certification Division, RFD (Mr. Methanee Seemuntara): Reclaimed wood is timber used in equipment or houses that are from a restricted species and whose transportation out-of-province requires a permit from the RFD Director-General or Provincial Governor. Generally, the timber must be older than 5 years (10 years for Teak). However, if it does not meet the legal age threshold then a transportation permit or certificate of timber product will be used for controlling the movement of the timber. On the other hand, transportation within the province is not under the control of the Forest Act. If the reclaimed timber is not from a restricted species, then it is not regulated under the Forest Act.

Consultant: The LD states that reclaimed timber is timber that will be reused. Reclaimed timber that is taken from construction or equipment, the verification must comply with the Forest Act. The LD corresponds to the Forest Act. Any other cases of reclaimed timber are not covered under the Forest Act. THA-TLAS describes both the verification for reclaimed timber under the control of the Forest Act and those not under the control of the Forest Act.

FLEGT Asia FP: It is still not entirely clear to us what is meant by “other reclaimed wood”, but it is understood that this is still an issue under discussion and that TH will propose a more developed concept, with more details on both terminology and how supply chain controls will operate.

FLEGT Asia Comment: 5 - Supply Chain Controls

FLEGT Asia FP: Asked whether the SWG could explain Diagram A in more detail.

Consultant: Walked participants through the diagram explaining its structure.

FLEGT Asia FP: Asked whether the diagram is currently displaying the current legal situation with regard to timber from public land (other than national reserved forest and protected forest). It is understood that at the end of last year there was a change regarding Sor Por Kor lands where timber from both restricted and unrestricted species is now allowed to be harvested by farmers without any restrictions. Thus, section 18/1 of the Forest Act is not demanded anymore for this type of land.

Further, the term certification may be misleading as it is used in the diagram. It was suggested to change the term “self-certification” to “self-declaration”.

It was noted that the first RFD checkpoint is singled out for unrestricted timber from public land (other than national reserved forest and protected forest) but that there are more checks done on timber at different places in the supply chain.

Consultant: Timber from Sor Por Kor land, as announced by the Minister, will not be restricted any longer and farmers do not need to apply for a harvesting permit anymore. However, if they move such timber out of the harvesting location, and the moving has to pass the first RFD checkpoint, they will need to ask for a transportation permit from the first RFD checkpoint and pay a fee. For timber from the national reserved forest and restricted species from public land (other than national reserved forest and protected forest), the transportation permit must be requested at the harvesting place, not the first RFD checkpoint. Therefore, the diagram does not show the checkpoint for those. One option

providing for farmers to control the transportation from Sor Por Kor land is 18/1. Another will be a self-declaration which is under discussion amongst the SWG.

It was agreed to replace “self-certification” with “self-declaration”.

Forest Certification Division, RFD (Mr. Methanee Seemuntara): There are currently 17 RFD checkpoints, most of which are close to the Thai border – export and import point. If unrestricted timbers from Sor Por Kor move through any of the checkpoints, applying for a transportation permit is required at the checkpoint in which the timbers pass through.

FLEGT Asia FP: It is understood that the first RFD checkpoint was included in the diagram to clarify that no harvest permit is needed for unrestricted species but that a movement permit is needed in case the timber is transported and passes a checkpoint.

Regarding operators 5 and 6, the diagram mentions in the yellow boxes that the activities of processors and traders are not subject to forest law. However, operators 5 and 6 are still subject to certain legal requirements.

Consultant (Ms. Pawinee Udommai): The Forest Act only regulates mills that use timber or processed timber as raw materials. Other producers that use raw material that is not timber or processed timber, for example a paper mill uses pulp as a material, are not considered as processing factories under the Forest Act. Yet they still have to obtain a factory license under the Factory Act. They also record and update inventories of materials coming in the factory, materials in the processing and products going out.

Consultant – Risk Classification Study (Ms. Piyathip Eawpanich): Pointed out that it will be difficult for farmers of unrestricted species from public land to go to an RFD checkpoint unless it is on the way to the mill. However, most RFD checkpoints are close to the Thai borders and hence are likely to not be located *en route*.

Consultant (Ms. Pawinee Udommai): If farmers wish to move unrestricted species from Sor Por Kor land they require a movement permit from an RFD checkpoint according to the Forest Act, section 25. They will have to declare the timber at the first checkpoint *en route*. Whether this is currently practiced will need to be discussed further. However, if the farmer does not pass an RFD checkpoint *en route* to the mill, they will not need to go to an RFD checkpoint.

FLEGT Asia FP: It is difficult to capture all possible options in a diagram. What is important is that when timber is moved there needs to be documentation that clarifies its source.

Wherever it says “not subject to forest law” in the diagram we suggest to indicate that the practices are still governed by law, such as the Factory Act, to avoid giving the impression that there is no legal basis for the SCC.

FLEGT Asia Comment: 6.1 - Institutional Arrangements

FLEGT Asia FP: It is understood that the Forest Economic Office (FEO) will house the Verification Institution (VI). In earlier versions the FEO was referred to as the Forest Economic Bureau (FEB). Which one is the correct terminology? Will a new sub-unit be established within FEO to host the verification function or will the task go to an existing unit? It was requested to confirm that the verification institution is independent from the actors described in the LD and SCC annexes.

It is understood that the Forestry Foreign Affairs Office (FFAO) will house the Licensing Authority (LA), and that it is in a different location within RFD than the VI. What is the Thai view on the need for capacity building and technical setup for the FFAO to issue licenses? How many licenses is FFAO expected to issue annually?

Requested the Thai side to explain the process indicated in Diagram B.

FEO (Director Tanongsak Nontapa, RFD): FEO is a newly established office under mandate of the RFD DG. Its responsibilities include promoting growth of economic forests, local site inspections, issuance of export certificates, as well as forestry standards. The VI will be the Forest Certification Division (FCU), under FEO. Local officials inspecting the land at source under section 18/1 of the Forest Act submit documentation to the officials in the TCU who then verify these documents to ensure compliance with relevant RFD regulations and issue export certificates under section 18/2 of the Forest Act.

TEFSO (Ms. Panjit Tansom): RFD will need to sign MoUs with other government agencies to share relevant information with the VI. FFAO is a new agency and issuing licenses will be a new responsibility. It will be necessary to first set up the VI before then defining the setup of the LA. TH expects to issue 300-400 licences per month.

Consultant (Ms. Pawinee Udommai): It was agreed that the Forest Economic Office be called an “office” rather than a “bureau” as FEO and FFAO are at the same bureaucratic level within RFD.

Explained diagram B.

FLEGT Asia FP: It may be useful to add the complaints mechanism in the diagram as described in Section 10, as well as mechanisms for how an exporter can appeal a decision made by the licensing authority. It is understood that additional checks by the VI and LA are possible. It was suggested to include these in the diagram as well.

During the explanation of diagram B it was mentioned that exporters can also apply for a licence at the provincial level. Will there be more than one licensing authority?

It is understood that the exchange of data with other agencies is still an area under discussion. What is needed for the TLAS Annex is language which represents the arrangements that will be in place at the beginning of VPA implementation, i.e. how information will flow between the VI and LA and other relevant agencies.

Note was taken that the first step is to set up the VI before defining the setup of the LA. The estimated number of FLEGT licenses that Thailand will issue is similar to the number of FLEGT licenses that Indonesia currently issues for exports to the EU. However, Indonesia also issues licenses to other markets, and the total number of licenses may be higher in TH too.

It is understood that the TCU under FEO will be the VI. Could Thailand clarify whether the TCU will be separate from the Checkpoint Unit under FEO? It is important that the VI is independent of the other agencies responsible for controlling the movement of timber and compliance with the LD.

FEO (Director Tanongsak Nontapa, RFD): The Checkpoint Unit and TCU are separate, despite both being within the FEO.

FLEGT Asia FP: Suggested to insert under section 6.1 a sentence that clarifies the independence of the verification institution.

FLEGT Asia Comment: 6.2 - Verification of Compliance with the Legality Definition: General Comments

FLEGT Asia FP: Chapter 10 of the TLAS Annex further describes complaints against the licensing authority but not towards the verification institution. Is there any intention to add the verification institution as one of the agencies that complaints can be directed to?

Consultant (Ms. Pawinee Udommai): Complaints against the verification institution can be submitted via the existing complaints mechanism of Thai government agencies.

FLEGT Asia FP: Understood that under section 10.1 complaints will be raised to local RFD offices or other government agencies involved in verification as described in the LD, but not to the FEO as the verification institution. Is that the correct understanding?

Consultant (Ms. Pawinee Udommai): Section 10.1 explains the existing complaint mechanism for Thai public agencies. A complaint can be filed through any channel but it will go to a central authority called the People Service Center.

FLEGT Asia FP: In that case, it was suggested to add the FEO to section 10.1 as the type of complaints are different from the normal complaint mechanism. Secondly, not the entire FEO will be the verification institution but rather the unit under FEO dealing with timber certification. It was suggested to specify this in the text.

Consultant (Ms. Pawinee Udommai): Acknowledged the comments and the text will be amended accordingly.

FLEGT Asia Comment: 6.2 - Verification of Compliance with the Legality Definition: Voluntary Certification

FLEGT Asia FP: During the last NEG, the EU raised concerns about the idea of using voluntary certification to demonstrate legality, and the extent to which legality verification under the LD and SCC may be outsourced to the private sector. However, it is understood that in the latest version of the TLAS Annex, the word “certification” is not used to describe certification by a private actor; on timber from private lands it rather indicates one of the pathways that can be used to demonstrate the legality of timber coming from such lands. We were wondering whether this needs to be described as a specific topic under the

TLAS or whether it is already covered in the LD and SCC Annexes as one of the three pathways to verify the source of timber from private land?

With regard to the Thai labour standards, which institution is fulfilling the certification/verification task? Is it a private actor or government institution, and how is this currently reflected in the LD for operators 1, 2 and 5?

Consultant (Ms. Pawinee Udommai): Certificates referred to under sections 18/1 and 18/3 of the Forest Act are already specified in the LD and SCC Annexes. We agree that they do not need to be repeated in the TLAS annex.

Regarding the labour standards, the type of certificate is used for verification of the LD for operators 1, 2 and 5. The SWG consulted with the Department of Labour Protection and Welfare when drafting the LD. When an operator has a labour standard certificate, it means they are compliant with all labour standards and have passed a labour inspection. The certificate's standards and verification follow the labor law describing in LD, such as labour protection requirements and occupational health and safety. Hence, if their practices passed the standards, they are compliant with the law. The certificate system is also promulgated by the Department of Labour Protection and Welfare (refer to attachment 2: Thai Labour Standard: TLS 8001-2020).

FLEGT Asia FP: Which institution is issuing the labour standard certificate? Could the certificate become a potential verifier in the LD?

Consultant (Ms. Pawinee Udommai): Department of Labour Protection and Welfare or a registered private business can issue these certificates. In case of the latter, the business needs to comply with regulations of the Ministry of Labour. Labour standards are generally voluntary, but the LD will only include mandatory requirements. That is the reason it has not been included in the LD yet, but in the THA-TLAS under the verification institution section. In case an operator has a Thai labour standard certificate, the verification institution can consider that the operator complies with the LD requirements on labour. In case an operator does not have a Thai labour standard certificate, the verification institution will check compliances with the indicators on labours as specified in the LD one by one.

FLEGT Asia FP: We will get back to this topic when providing more detailed comments.

FLEGT Asia Comment: 6.2 - Verification of Compliance with the Legality Definition: Concepts of information linking for verification of compliance of LD requirements

FLEGT Asia FP: Requested that TH uses square brackets in this part as it is still conceptual. Suggested to describe at a higher level that the verification institution has access to relevant information and how the information will flow via an electronic/paper-based system.

FLEGT Asia Comment: 7.2 - FLEGT Licensing: Concepts of issuing requirements on verification and licensing

FLEGT Asia FP: Asked how the regulatory regime will be adjusted to implement the FLEGT licensing system as licenses under section 18/2 of the Forest Act are still voluntary. It will be necessary to understand this via the next iteration of the TLAS Annex, ahead of the next meeting with the EU.

TEFSO (Ms. Panjit Tansom): this matter is still under the discussion of the SWG. The current idea is to have Ror. Mor. 8 (under 18/2) as a mandatory certificate while FLEGT license is voluntary. The operators will apply for Ror. Mor. 8 together with FLEGT license, if wish. However, this remains as a concept and will be brought to the AHWG discussion further.

FLEGT Asia FP: To whom do operators need to apply to obtain the certificate? What does it contain and how is it different from the FLEGT license?

Forest Certification Division, RFD (Mr. Methanee Seemuntara): There are clearly defined procedures for issuing certificates for timber exports in existing RFD regulations. Verification units are already using these guidelines to issue Ror. Mor. 8 certificates. If an operator wishes to apply for a FLEGT license, they need to submit an additional request as the FLEGT license format needs to follow the EU's standard.

TEFSO (Ms. Panjit Tansom): To obtain a Ror. Mor. 8 certificate, an operator needs to apply to FEO. The operator then uses this certificate to apply for a FLEGT license from FFAO.

FLEGT Asia FP: This explanation is different from what is described in the draft TLAS Annex. On what basis is a Ror. Mor. 8 certificate issued? Will it be based on verification by FEO?

TEFSO (Ms. Panjit Tansom): The Ror. Mor.8 certificate will be based on verification by FEO.

FLEGT Asia FP: What is the reason for changing what has been described in the TLAS Annex? Now the operator is engaging twice, first with FEO and afterwards with the licensing authority.

TEFSO (Ms. Panjit Tansom): The changes were discussed only the day before. They are not yet final and will need to be discussed with the AHWG first.

FEO (Dir. Tanongsak Nontapa): The issuance of the Ror. Mor. 8 certificate and timber export regulation was announced in the royal gazette. Making any changes to this regulation will take a long time. Using the Ror. Mor. 8 certificate will prevent delays in implementation.

TEFSO (Ms. Panjit Tansom): The FLEGT licensing form provided by the EU cannot be changed, therefore the SWG aims to address this issue by issuing the Ror. Mor. 8 certificate in parallel.

FLEGT Asia FP: Understood that the issue stems from TH trying to integrate the FLEGT licensing system into the Thai legal system without the need for legal adjustments. Asked TH to consider whether applying for two licenses – Ror. Mor. 8 and the FLEGT

license – may be too burdensome on operators. The way it is currently described in the draft TLAS annex would likely be acceptable to the EU.

Attachments: 1. Participant list

2. Thai Labour Standard: TLS 8001-2020 – Labour Corporate Social Responsibility: Requirements. Labour Standards System Development Group, Bureau of Labour Standards Development, Department of Labour Protection and Welfare, Ministry of Labour.

Participant list

1. Mr. Alexander Hinrichs Head of Asia Regional Office, European Forest Institute - FLEGT & REDD Unit
2. Mr. Mr. Peter Aldinger Forest Governance & Timber Legality Assurance Expert, European Forest Institute - FLEGT & REDD Unit
3. Mr. Björn Dupong Forest Governance Expert, European Forest Institute - FLEGT & REDD Unit
4. Ms. Somrudee Nicrowattanayingyong FLEGT Facilitator to Thailand, EU FLEGT Asia Programme
5. Mr. Somporn Khongthanakrittakorn SME Consultant, European Forest Institute
6. Mr. Sapol Boonsermsuk Director of the Forestry Foreign Affairs Office, RFD
7. Mr. Tanongsak Nontapa Director of the Forest Economics Bureau, RFD
8. Ms. Sudarat Kaolawanich Director of the Forest Research and Development Office
9. Mr. Rangsi Phongsawang Forestry Officer, the Forest Industries Permission Division, RFD
10. Mr. Ekkathat Woraniriphak Forestry Officer, the Timber, Forest Products and Chainsaw Permission Division, RFD
11. Ms. Rungnapa Wattanavichian Consultant, Thailand Forest Certification Council
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17. Mr. Jirawat Tangkijngamwong President of the Thai Timber Association

18. Mr. Karoon Krairawee Thai Timber Association
19. Ms. Atcharaporn Daisai The Regional Community Forestry Training Center for Asia and the Pacific
20. Mr. Sittiporn Rodprisom The Regional Community Forestry Training Center for Asia and the Pacific
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24. Ms. Promporn Sakulwatcharin Customs Department
25. Mrs. Siriporn Changkarn Standard Officer at Thai Industrial Standards Institute
26. Mr. Kirk Meemungkij Small and Micro Community Enterprise
27. Mr. Pingsun Wang Secretary-General, Thai Panel Product Industry Club
28. Ms. Konwilai Wongyot Reclaimed Timber Association
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32. Ms. Tippayarat Limsaisuk Operation Associate, Thai-EU FLEGT Secretariat Office
33. Ms. Supada Kongnakorn Project Assistant, Thai-EU FLEGT Secretariat Office
34. Ms. Pitinan Wongmakluekao Forestry Officer, Forest Standards Division, RFD
35. Ms. Pawinee Udommai Consultant – Annex Drafting
36. Ms. Pavinee Chapanon Department of Foreign Trade

Summary of SWG-FLEGT Asia Meeting on the Draft Supply Chain Control Annex

8 April 2021 – Zoom meeting

Introduction

Head of SWG TLAS/SCC (Director Boonsuthee Jeravongpanich, RFD):

Welcomed the participants and asked Ms. Pawinee to present an overview of the status of the development of the SCC Annex.

Consultant to the SWG on TLAS / SCC (Ms. Pawinee Udommai): Provided an overview of the structure of the SCC Annex and improvements in the text made since the last NEG related to:

- Controls of timber derived from forest conversion on public lands
- Logging of unrestricted species on public land (other than the national reserved forest and protected forest) which is a non-registered plantation
- Logging on private land which is a non-registered plantation
- Import controls
- Reclaimed wood controls
- Data management

In addition, she explained that the concept for the development of the RFD Single Window (RSW) has been included.

FLEGT Asia Focal Point for Thailand (Dr. Alexander Hinrichs): Thanked Ms. Pawinee for her presentation and suggested discussing FLEGT Asia's detailed comments one at a time.

FLEGT Asia Comments on the Draft Supply Chain Control Annex (Received on 27 March 2021)

Overall Comments

FLEGT Asia FP: Acknowledged the substantial progress made in developing the SCC Annex. The main issues raised by the EU during the last NEG have been largely addressed. There are still ongoing discussions, particularly related to reclaimed wood, self-declaration from private and public land, and import controls, where changes to the Annex are expected. FLEGT Asia will share detailed comments and edits on the Annex after today's meeting and highlight areas where concepts either need to be kept in square brackets or related systems and procedures further developed. It may also be possible to shorten the text in some parts.

Section 5 – Verification: CCP 1, Type 2: Timber from the national reserved forest which is non-registered plantation (For timber derived from forest conversion)

FLEGT Asia FP: Forest conversion is now included under CCP1, Type 2. Asked whether forest conversion should instead be included as a new control point type under CCP1 and CCP2, as conversion can also happen on other public land but possibly under a different set of procedures.

Consultant (Ms. Pawinee Udommai): Each type of land is covered under each critical control point (CCP). For each type of land there can be subcategories related to timber, including restricted species, unrestricted species as well as conversion timber. Conversion is listed under CCP1 Type 2 and Type 4, for which controls should be more reasonable.

FLEGT Asia FP: It is now understood that forest conversion is covered under CCP1 Type 2 and CCP1 Type 4, and that these are the only cases where conversion timber is identified. Agreed that no changes to the text are needed.

Section 5 – Verification: CCP 1, Type 4 – Timber from public land (other than the national reserved forest and protected forest) which is a non-registered plantation (For Unrestricted Species)

FLEGT Asia FP: The control options listed in this section are described as voluntary. Does this mean that one of the three options needs to be followed or that it is also possible to not follow any of them?

Also, our understanding is that the self-declaration (SD) process on public lands would only be applicable to Sor Por Kor lands, and only for planted species. If this understanding is correct, option 3 would need to clearly describe the cases where SD is applicable.

Consultant (Ms. Pawinee Udommai): The three control options are voluntary. Farmers do not need permission to harvest on this type of land, nor a movement permit for transporting the timber out of the harvesting area. However, timber will obtain a transportation permit and pay a fee when entering the first forest checkpoint (it is not mandatory for timber to pass through the checkpoint). The three control options aim to fill the control gap in the transportation from the harvesting point, ensuring traceability to the timber source. We will consult with the SWG on Public Land to better understand whether these options are feasible for operators.

FLEGT Asia FP: Our understanding is that one does not need a harvesting permit on Sor Por Kor lands anymore, but that processing mills will require documentation identifying the timber source – the same as is required under the SD process for timber from private lands.

We also understand that no harvesting permit on Sor Por Kor lands is needed for planted trees. However, if trees remain on Sor Por Kor land, which have not been planted by the use rights holders, would the RFD need to provide permission or would the district chief need to be involved, as in option 1?

Consultant (Ms. Pawinee Udommai): If unplanted trees remain on Sor Por Kor lands and they are a restricted species, then a harvesting permit is needed. However,

unplanted trees which are of an unrestricted species do not need a harvesting permit. If the transportation of timbers from the harvesting area have to pass the first RFD checkpoint, the use right holders will have to apply for a movement permit.

FLEGT Asia FP: It would be helpful to provide more details about the restrictions related to the use of SD in the text.

Section 5 – Verification: CCP 1, Type 6 – Timber from private land which is an unregistered plantation

FLEGT Asia FP: There are inconsistencies between what is described in the draft SCC Annex and the SCC Private Land concept paper. For example, the SCC Annex mentions the need for a wide-shot photograph of the plantation and the recording of the planting distance, whereas the concept paper describes the need to take photographs of individual trees and logs, and does not mention planting distance. It is important that the two documents are aligned.

Secondly, CCP1, Type 6, Option 2 says that timber owners will have to record geographic coordinates at the center of their land. Does this mean that the boundaries of the land do not need to be recorded?

Thirdly, the draft Annex refers to timber owners preparing a log list, which must accompany the transportation permit. The SD process also requires a log list, but there is no mention of the need for a separate transportation permit. Does the SD function as a de facto transportation permit?

Consultant (Ms. Pawinee Udommai): The information that was used to draft this section in the annex is derived from the draft guidelines for business operators which the SWG on Private Lands prepared with RFD in addition to the concept paper.

Regarding the geographic coordinates, the guidelines will reflect the practice described in the draft Annex.

The SD functions as a transportation permit. It will contain critical information about the plot and owner of the timber and will list the volumes/weights of the species harvested.

FLEGT Asia FP: It is understood that in addition to the concept paper the SWG PL has also developed draft guidelines for operators. It will be important that the two are aligned; it may be helpful to refer back to the SWG on private land on what evidence is needed under the SD.

It is understood that the SD will serve both as proof of source, and transportation permit.

Section 5 – Verification: CCP 1, Type 8 – Imported timber and timber products

FLEGT Asia FP: Once finalized, it will be necessary to update relevant information from the import control concept paper in this section.

Section 5 – Verification: CCP 3, Type 2: Factory which has a permit on establishment of processing mill under the law on forest

FLEGT Asia FP: The concept paper on SD for timber from Private Lands outlines the procedure that will be used by the mill to verify the legal source of the timber. Some of these activities described in the concept paper are not yet incorporated under CCP3, Type 2.

Consultant (Ms. Pawinee Udommai): There will be further discussions to advance the development of the SD and the procedures used by the mills to verify the legal source of the timber. Once the concept paper on SD has been finalized, all relevant changes will be incorporated into the Annex.

FLEGT Asia FP: The text refers to RFD or PONRE officers conducting checks on processing mills. Are these related to the annual checks for the renewal of mills' operating licenses?

Consultant (Ms. Pawinee Udommai): This refers to the annual checks on mills conducted by RFD or PONRE officers.

FLEGT Asia FP: Where would the SWG place the practice of onsite processing under CCP3? The current text only refers to registered mills but not to temporary ones.

Consultant (Ms. Pawinee Udommai): A temporary processing site does not require an annual license renewal. The SWG will add procedures for the temporary processing site at a later point. Note that the term temporary processing site should be used in place of temporary mill to avoid confusion as temporary processing does not require a mill permit.

Section 5 – Verification: CCP 5, Type 4: Export

FLEGT Asia FP: This section will need to be aligned with relevant sections in the TLAS Annex, SCC Annex and Annex IV on Licensing. FLEGT Asia will suggest edits in the detailed comments it is preparing.

Section 6 – Data Management

FLEGT Asia FP: It is understood that the RFD Single Window (RSW) system – the integrated data management system overseen by the RFD – is still being developed. The Annex will eventually need to describe how the Verification Institution (VI) accesses relevant SCC information through the RSW, for purposes of verifying legal compliance.

Also, Section 6.3 only mentions a paper-based system. Having a system that has a significant paper-based element is not, in principle, a problem. However, it should be clear how the VI will access relevant information when it is assessing whether or not there has been legal compliance. The Annex will need to describe the system which will be in place once FLEGT licences begin to be issued.

Consultant (Ms. Pawinee Udommai): The system of data collection for purposes of verification is currently paper-based. The FEO can access this information by submitting requests to local officers or receiving documents directly from the licence applicants.

FLEGT Asia FP: There is no mention of the SD in section 6.2. Is there any reason for this?

Consultant (Ms. Pawinee Udommai): The SD form will be added under section 6.2.

FLEGT Asia FP: Can TH provide some indication of when the RSW will be in place? To avoid delays it may be sensible to design a system that does not require full digitalization. It is suggested to remove the concept of the RSW from the Annex, as it describes something that is not yet fully developed. If possible, the principles of the system and the information flow should be included, which will provide a basis for further discussions with the EU about possible options for implementation in the next years.

Consultant (Ms. Pawinee Udommai): There is a need for an electronic system to issue export licenses. It is expected that the development of the electronic system will be completed before the end of the year.

FLEGT Asia FP: Will the entire electronic system be completed before the end of the year? The most important thing is for the text in the annex to describe the system that will be in place when FLEGT licensing begins.

TEFSO (Ms. Panjit Tansom): The system to issue electronic certificates will be launched this year. Paper-based certificates will be uploaded into the electronic system, while movement certificates are already issued electronically. There is a need to discuss with RFD and the IT outsourcing agency about further development of the system.

FLEGT Asia FP: It is understood that the system to issue electronic certificates for export licences will be launched this year. However, what is relevant for this section is that there is a system in place to manage the flow of information for purposes of verification and reconciliation. We take note that further developments are needed to build a full electronic system and that it will be helpful to have further discussions with IT professionals and RFD. It will be possible to come back to this issue at a later point. Moving forward we see two options: (1) to fully describe the electronic system with an understanding that the system will be launched in the near future; or (2) to describe a system that combines electronic and paper-based elements, with the assurance that all relevant and necessary data will be made available to VI.

Next steps

- FLEGT Asia will send detailed comments on both the TLAS and SCC annexes by 23 April.
- In accordance with the joint roadmap agreed during the last NEG with the EU, revised TLAS and SCC annexes will be submitted to the EU in June.

Attachments: 1. Participant list

Participant list

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