

General comments by the EU on the Thai draft Legality Definition (version 24 March 2014)

This document provides feedback on the draft Thai Legality Definition formally submitted by the DG of RFD to the EU on 24 March 2015.

Overall Comments:

- The principle and criteria structure is appropriate and generally responds to EU expectations. We took note that it closely follows the structure of the Liberian LD.
- All relevant thematic areas are covered on P&C level (see comparison in the Annex)
- Detailed legal references are listed on criteria level. References relate to different types of regulations, from basic laws, ministerial regulations to cabinet resolutions and announcements by implementing agencies. Regulations involve a broad range of agencies and seem to cover well the existing legal framework.
- The LD describes the tasks or status of an operator/an operation. There may also be areas where the government is responsible for a certain part of the LD. When developing the indicator and verifier level it is recommended to check if some legal requirements for relevant administrations also need to be included. This e.g. often occurs concerning the allocation of planting and harvesting rights or the control of timber movements.
- It is not clear to what extent the LD will cover areas that are currently not regulated (such as rubber, means to verify that imported timber has been harvested in accordance with the applicable legislation of the country of harvest, identification of the main entity/entities that will be responsible for verification and issuance of licenses)
 - o Regarding unregulated species, it may be useful to describe the envisaged requirements for the Due Diligence Exercise (DDE2556 as outlined in the supply chain control diagram shared with the EU in March 2013) in the Legality Definition even though it has not yet been translated into new legislation.
- The draft LD is suitable for detailed technical exchange that could focus on:
 - o Discussion on specific LD elements (e.g. how are unregulated species addressed, imports, areas that are currently not regulated)
 - o Guiding work on indicator/verifier definition - if possible in phases starting with less complex criteria
 - o Discussion on how stakeholder expectations concerning the adoption of new regulations and/or the simplification of existing regulations was addressed in the draft LD
 - o Discussion on roles of the different agencies in verification and coordination

Specific comments on Principle level:

- Principle 1:
 - o Separation between operators in forest areas and at mill sites, and possibly also between smallholder (farmers) and industrial growers may be needed.
- Principle 2:
 - o The criteria start with the existence of forest land permission. Prior to P2-C1, to what extent will the permit allocation process itself be covered?

- The covered regulations on forest utilisation rights on public land are broad.
 - When developing the indicators, one should focus on key requirements. It is acceptable not to include all legal references in the LD as a result of the stakeholder process and in order to ensure that verification is feasible.
 - When developing the practical verification mechanisms one should explore how elements build on each other to simplify verification.
- How forest utilisation rights on private land are included in the LD should be further clarified.
- Are changes to the way harvesting permits are issued proposed?
- Principles 3:
 - Principle 3 covers most relevant timber sources. However there is no reference to timber from conversion of forest land to other land uses, as well as confiscated timber (which may legally re-enter supply chains e.g. through public auctions etc.). To what extent are these sources relevant / regulated in Thailand?
 - P3-C3: describes current procedures for timber imports. However, on the EU side we would need to see in the VPA a clear mechanism for verifying that timber imported into Thailand has been legally harvested in the country of harvest, in addition to the current procedures of importing timber. If not covered by existing legislation, this will usually requires new legislation.
 - Are changes to the requirements on forest management proposed?
- Principle 4:
 - P 4-C2: is compensation and benefit sharing covered here?
- Principle 5 and 8:
 - Are environmental obligations and workers' rights, health and safety and welfare covered at the forest operation and also at the mill site? It may be practical to list environmental and social requirements for forest operation and mill operations under separate criteria.
 - What exactly are such obligations at the forest site and how are they checked?
- Principle 6:
 - There may be a need to describe the role of the government in the timber tracking part of the LD
- Principle 10:
 - There will have to be a procedures on the issuance of licenses (new procedure)
- Principle 11:
 - Note that each VPA has an Annex on "Public disclosure of information". Such disclosure is not only the task of the operators, it in fact is mainly the task of different government agencies. How transparency and general disclosure needs to be described in the LD should be further discussed.

Annex: Comparison of areas that are typically covered in a VPA LD with the draft Thai LD

Area typically included	Related Principle in Thai LD
Business registration requirements for operators	P1
Land title and permit (planting permission) allocation	P2 - unclear if the Thai sides envisages to include verification of the permit allocation process itself
Right to harvest	P2 –not clear how different requirements for different sources and actors are described
Forest management obligations	P3 – details still need to be explored
Community rights and welfare (related to forest operations)	P4 – unclear how compensation and benefit sharing is covered
Environmental obligations	P5 – unclear if environmental obligations applicable in forest operations as well as at mill sites are covered. The latter could also be part of P 7
Timber transport	P6 – there may be some placeholder needed for areas currently not regulated
Timber processing (mill sites)	P7 – see comment on P 5 and P8
Workers rights, health and safety policies	P8 – unclear if related obligations applicable in forest operations as well as at mill sites are covered.
Taxes and other statutory charges	P9
Trade and export	P10 – procedures for licensing still need to be developed and added
Import	P3-C3 –procedures to identify legality of imported timber at the country of harvest may still need to be developed and added. Interesting reference to specific requirements for timber imports in 2 provinces bordering Myanmar