

# **The Second Thailand-EU FLEGT Voluntary Partnership Agreement(VPA) Negotiation**

## **Meeting Minutes**

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**Ramada Riverside Hotel, Bangkok, Thailand  
19 July 2018, 9:00-16:30**

### **Participants**

The EU side (EU) was led by Chief Negotiator, Mr. Jorge Rodriguez Romero, Deputy Unit Head, DG Environment, European Commission, and comprised Mr. Luca Perez, Team Leader for International Forest Issues, European Commission, and Mrs. Sutthiya Chantawarangul, EU Delegation to Thailand.

The Thai side (TH) comprised the National FLEGT VPA Committee, led by Dr. Wijarn Simachaya, MNRE Permanent Secretary and Chief Negotiator, MNRE General Inspector Pralong Dumrongthai, and RFD Deputy Director General Atthapol Charoenchansa.

Support to the negotiations was rendered by Dr. Alexander Hinrichs and Dr. Sandra Nichols Thiam, EU FLEGT Facility, EFI, and Dr. Somrudee Nicro, Consultant to EU FLEGT Facility and National FLEGT Facilitator.

Observers included representatives of EU Member States, FAO EU FLEGT Programme, and RECOFTC. (See attached participant list.)

### **Session 1: Introduction**

**TH Chief Negotiator:** TH is pleased and honoured to host the second negotiation and expects the negotiation to be a success.

**EU Chief Negotiator:** Thankful to all who make the second negotiation happen. Thailand's commitment to supporting the VPA sends an important message on timber trade in the region. Stakeholder participation reflects their acceptance of the process.

### **Session 2: General updates**

#### **Update on Thai VPA process and recent forest related policy developments**

**TH:**TH presented a 20-year National Strategy, MNRE strategy and legal reform in forestry sector.

The 20-year National Strategy (B.E. 2560-2580/ 2017-2037 A.D.) has six strategies. Strategy 5, strengthening environmentally friendly quality of life, includes sustainable use of forest towards achieving sustainable development goals.

National forest policy encourages public participation, good governance and transparency in forest protection and reforestation. It prioritizes ending deforestation and increasing forest and green areas. TH government holds the belief that only when local villagers long living in the forest are legalised and have use rights over the forest land they reside on can TH prevent further deforestation. As such, TH is revising laws to address the long-standing forest encroachment and state-villager conflict over use rights of land and trees and to promote economic forest as a means to increase forest areas.

RFD also tightens enforcement through the boost of its Forest Protection Centres and patrol units while making use of satellite imageries and info technology to curb illegal logging and encroachment.

Thailand has 102 million *rai* (1 *rai* = 0.16 hectare) of forest area, accounting for 31.58 percent of the country's total land area. RFD oversees 65.03 million *rai* while DNP 36.97 million *rai*. The government has set as its target to have nation-wide forest and green area of 55 percent. It aims to increase forest area to 40 percent, 25 percent of which is for conservation while the remaining 15 percent for economic forest, mainly through plantings by farmers. An unprecedented shift in law is being witnessed. In the past Thai laws focused on *prohibition* of activities—to prevent illegal logging in forest areas. Under this government, laws are being issued for *promotion* of desirable activities—to increase private economic forests.

To promote planting of valuable trees, the government is in the process of amending Forest Act. Section 7 will be removed, enabling all species on privately owned land to become non-restricted and thus can be harvested, transported and traded freely. The revised Act will also authorise RFD officials to certify trees and timbers for the owners at their voluntary request. MNRE expects the legislative process to be completed by early 2019.

Three Ministerial Regulations to implement Private Plantation Act, revised in 2015, were recently issued. The Regulations are on registration of private plantations, setting up a processing mill on the registered plantation sites, and issuance of sustainable forest management certificate for registered plantations.

Meanwhile, Ministry of Commerce has initiated a Ministerial Regulation to allow standing economically valuable trees (58 species) to be used as a business collateral in loan approvals. This is to build an incentive to tree planting and to increase forest area. It will supplement the amendment of Forest Act.

To tackle encroachment and poverty, the Cabinet has passed Forest Community Bill, recognising villagers living in certain forest areas. The forest area under this Bill will include conservation zone and use zone. Within the use zone, villagers can cut the trees they planted for household use but are not allowed to cut trees for trade. Timber from forest communities under this Bill will not enter the supply chain.

National Parks Act, Article 52, will be amended to authorise DNP to allow long-time settlers (those who have lived in the areas before government announced the areas to become national parks, amounting to 2,700 villages in the entire 154 national parks), to continue to reside and earn their livelihood in the national parks. The revision is expected to be completed within this government's time.

National Land Policy Committee Bill is in the legislative process. This law will enable the committee to address landless villagers in dire poverty. It will involve land allocation for the villagers while enhancing their livelihood. Forest dwellers will be classified into 5 groups by their history with the forest land and will be allowed certain rights respectively. Group 6 was added to classify people living in public land outside forests.

MNRE will encourage synergies between FLEGT VPA and REDD+ as responsible agencies for both initiatives are under the Ministry.

An info technology system, national single window (NSW), has been created as part of the reform of the public administration. The NSW shall promote trade and will be linked to ASEAN single window to promote regional trade. To further promote economic forest and timber trade, RFD will initiate an Economic Forest Division.

In view that Thailand will chair ASEAN next year, MNRE will prioritise private economic reforestation and FLEGT VPA for ASEAN agenda, in addition to combatting illegal wildlife trade and marine litter.

TH has established a National FLEGT Committee, chaired by MNRE Permanent Secretary, and a Sub-Committee on FLEGT Negotiation Preparation, chaired by RFD DG. TEFSO was set up under RFD to serve as the VPA Secretariat Office. TH promotes good governance and stakeholder participation and has founded a multi-stakeholder Ad-hoc Working Group (AHWG) to prepare VPA annexes. The AHWG has five Sub-Working Groups (SWGs) to prepare and address specific issues: LD, TLAS and SCC, import control, SCC on private land, and VPA legal text. The VPA process has enjoyed supports from stakeholders and is moving forward at a good pace.

Website, Facebook and Line have been utilised for public communication on the VPA.

**EU:** Important to understand the ongoing legal reform, the timeframe and how the amendment/revision will impact the LD. Wish to learn about the conditions required for the standing valuable trees to be used as business collateral. Requested TH send EU the legal reforms in writing. Pleased to see TH attach importance of forest sector to TH's ASEAN chairmanship.

➔ *TH will send EU translation of bills and draft regulations after the Cabinet has passed the respective bills or draft regulations.*

### **Update on global FLEGT VPA and EUTR developments**

**EU:** Updated TH on the follow up of FLEGT Action Plan evaluation in 2016. It was confirmed that the FLEGT AP remains highly relevant and has delivered important achievements in combating illegal logging and improving forest governance. Nevertheless, it noted areas for improvement. In particular, prioritisation of support to countries especially for VPA negotiations and implementation was also recommended. EU is finalising a FLEGT implementation workplan covering until 2022 that will soon be published.

Regarding the VPA, EU has concluded 6 VPAs and is preparing ratification of EU-Vietnam VPA. Vietnam and TH face the same import challenges. EU and Honduras have just initialled the VPA. Indonesia is implementing FLEGT licensing, which is received very positively in EU market. Indonesia is working to continuously strengthen its TLAS, independent auditing and other safeguard and monitoring mechanisms.

As for the implementation of EUTR, which is a relatively young instrument (since 2013), there are more and more checks by competent authorities in recent years (about 3,000 checks on EU importers, many more thousand checks on operators dealing with domestically harvested timber). EU Member States (MS) are upscaling their actions. Several importers were found not in compliance

with the EUTR, especially on due diligence (DD), either it did not exist or it was not sufficiently robust. The info will soon be published. EU is working to have implementations in all 28 MS in uniform. The majority of timber in EU comes from domestic sources.

Meetings of FLEGT-EUTR expert group (EC/MS) is an important mechanism to ensure a coordinated implementation of the regulation across the EU. The group of EUTR competent authorities discusses issues such as risk assessment, relevant trade flow, analysis of data, best practice, development of additional guidance, DDS strengthening, etc. and provides info to private sector to increase their awareness.

The EU has commissioned to the UNEP World Conservation Monitoring Centre (WCMC) the development of country overviews of countries to support implementation of the EUTR. The first set of country fiches includes China, Russia, Brazil, Ukraine, and Myanmar. In addition, overviews for Belarus, Bosnia Herzegovina, Cameroon, Republic of Congo and Malaysia are also being developed. The country overviews will be useful to TH's work on DDS. First overviews will be published soon.

**TH:** Confirmed willingness to have LD completed by end of the year. As TH is going to have elections and a new government, policy change might be a possibility.

Wish to learn from experiences of Indonesia--lessons learned from the country's implementation of the VPA.

What are the problems of member states' implementation of EUTR? Wish to learn about results of the meetings of the FLEGT-EUTR expert group—how to keep informed.

**EU:** EU is working with Indonesia to document lessons learned. EU encourages bilateral dialogues and regional cooperation between countries, e.g. TH-Indonesia and TH-Vietnam. Challenges with Indonesia's implementation are of technical nature, e.g. cooperation between implementing agencies, how Customs classify goods (HS codes), etc. A key lesson being if a licence is issued too early, the info on the licence may not match the timber products in the container. Indonesia has had 40,000 shipments with FLEGT licences worth more than 1 billion EUROS. Only a small number had licensing problems.

Certain sectors/operators are affected more than others. Furniture production in Indonesia are mostly small scale and also due to the late inclusion under the scope of the TLAS they have been slow to adjust. The challenge SMEs face is to follow the required procedure. Capacity building is needed to reduce problem with licensing. Report on periodic evaluation of the TLAS is available to the public on both Indonesia and EU websites (<http://www.euflegt.efi.int/official-documents-vpa-indonesia>). Recommendations from this report are taken up by the Joint Implementation Committee (JIC) and working groups to improve the TLAS. Indonesia has put a lot of effort on civil society monitoring. The country ensures sustainable funding to support CS monitoring by initiating a trust fund. Overall, Indonesia has a robust system.

FLEGT-EUTR expert meeting reports can be found on

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3282>

## Session 3: Negotiator points

### Presentation of JEM4 results

EFI EU FLEGT Facility presented JEM 4 results and points for negotiation. Main conclusions from JEM4:

1. High level land and forest related policy developments in Thailand, including the 20-year MONRE strategy, the National Forest Policy and the Land Allocation Policy. High relevance for VPA / LD identified
2. Significant efforts by Thailand to address “people and forest issues” such as clarifying tenure rights and tree ownership on public lands, community forestry, and encouraging tree planting on private lands.
3. Significant progress on legality definition: all timber sources covered, field test recommendations categorized and addressed, work on social and environmental aspects. Implications of ongoing legal reforms in need for more clarity.
4. Remove Chainsaw Act from LD
5. Product scope decided by Thai stakeholders with the exception of the consideration of Bamboo and recycled materials.
6. A comprehensive description of the Supply Chain control procedures is being drafted, progress appreciated by the EU. Important to include all control points of the supply chain, data and document management at these points and links to the RFD NSW or other data management systems. More detailed comments will be provided by the EU FLEGT Facility on the SSC tables.
7. Supply Chain control procedures on private lands for unregulated species drafted, allowing the farmer to choose between e-tree and self-declaration pathways. Implications of legal reform for harvesting of restricted to be assessed.
8. Import control procedures: Concept note appreciated by the EU. Further discussions on institutional and technical issues as well as legal basis ongoing, field testing in preparation by Thai side.
9. Draft TLAS Annex: all relevant headings included, but further development of various sections needed.
10. VPA Legal Text: further internal consultations needed on the Thai side. Additional comments to be sent to the EU before next VC, if any. EU to share draft Annex III – Conditions for handling of FLEGT in the EU
11. Agreement on technical level on a 12 months detailed roadmap that includes technical missions, sharing of draft Annexes, 2 VCs and 2 JEMs, and NEG3 in June/July 2019

## **Discussion of specific negotiator points**

### ***Legislative developments/ new systems***

12. More information on the National Forest Policy Committee, the National Land Policy Committee, other high level and / or RFD based reforms to assure best consideration in the TLAS / VPA

➔ *TH will send translation of bills and draft regulations relating to legal reform in forest sector after Cabinet’s approval of the bills and regulations.*

13. Information on actions to ensure that FLEGT and REDD+ can be mutually supportive

➔ *TH will bring in Dept of National Parks and Wildlife Conservation (DNP) who oversees TH REDD+ to explore synergies between the two initiatives.*

➔ *EU will support a mission of the EU REDD Facility to help explore synergies between FLEGT and REDD+ in TH*

14. Sharing more insights on NSW, E-Tree and other data management tools and developments in RFD

**TH:** E-Tree is an online registration system for standing trees. People can load the application on their mobile phones and continuously update info about their trees. RFD officials will check the info people uploaded online and check the trees on site. People can inform RFD of their plan to harvest the registered trees online and print out the movement document. The QR code on the movement document will allow roadside officials to trace info about the trees including their source. RFD is preparing E-Tree manual to be released in August. An official launching of the E-Tree has been planned for 18 Sept, RFD anniversary day. In August-September, RFD will test the transfer of timber certifications to Foreign Trade Dept in digital files. Eventually, the transfer will be made on NSW.

E-Tree is linked to RFD Single Window, which in turn is linked to National Single Window and ASEAN Single Window, respectively.

➔ *TH will update EU on the E-Tree after the official launching.*

➔ *EU FLEGT Facility's mission to TH will follow up on the NSW and E-Tree.*

#### **Legality definition (LD)**

15. Significant progress has been made at technical level to develop and test the LD, and ongoing revision takes field test recommendations into account. To consider:

- Update LD in light of new legislative developments
- Strengthen environmental and social requirements by involving other agencies
- Consider capacity for verification inside and outside RFD
- Specific consideration on SMEs (size specific requirements?)
- Inclusion of CITES
- Conversion timber (for infrastructure) – how addressed in LD, data available?
- Recycled/reclaimed timber as timber source
- Thai side to update EU about progress on LD as work proceeds

**TH:** The revised LD will incorporate new legal and regulatory development as they unfold. The EU FLEGT Facility-supported consultant has been engaging other agencies on industry, environment, labour, occupational health and social welfare, etc., in revising the LD.

Ministry of Industry has size-sensitive regulations but Pollution Control Dept applies the same rules to all sizes of industry.

CITES will be included in the revised LD.

Before conversion, the respective agency will apply for a land conversion permit. FIO, the designated agency, will do the logging and put the timbers on bidding. Timbers will then go to sawmills. The process is under government control and traceable. Conversion timber accounts for about 20,000 cubic metre annually or 0.8 percent of total FIO timber production or 0.06 percent of annual import of logs and sawn timbers

TH has not yet decided whether to include recycled/reclaimed timber in product scope and expects to see recommendations from an EFI EU FLEGT Facility study on the issue in Northern Thailand.

Ministry of Commerce will review its import and export Act in light of ongoing discussions on timber imports.

➔ *TH will update EU on progress of LD revision.*

### **Product scope**

16. Product scope is broadly defined, further consideration of Bamboo and recycled material needed

- EU to regularly inform about discussions on possible changes to EUTR product scope
- Examples for exclusion of recycled pulp and paper products exist (IDN VPA)
- Scope of potential Bamboo inclusion - only for Bamboo from private lands?

**EU:** Most Bamboo products, and recycled paper are not included in EUTR product scope. Both Indonesia and Vietnam exclude Bamboo from the product scope. Indonesia does include reclaimed timber (timber from old houses) in its product scope if e.g. manufactured into furniture. If TH will include reclaimed timber, procedure of SCC needs to be described. If Bamboo shall be included in TH product scope, description in the LD and SCC will be needed, as well as clarification of legality of Bamboo imports. Is TH considering to include all Bamboo sources or just Bamboo from private lands?

➔ *TH will have internal discussion on recycled timbers and Bamboo and will inform EU of the decisions in due course.*

➔ *EU will update TH on EUTR product scope, if there is any revision.*

### **Supply chain control (SCC)**

17. Thailand drafted a comprehensive supply chain control description indicating data recorded and validated at each control point

- More clarity of available documents and role of RFD NSW/data management system
- Add descriptions of the various documents
- Assess level of data reconsolidation between each control point
- Assess information flow along the SCC

➔ *TH will further develop SCC table and description, incorporating the works on import control and SCC on private land and EU's above feedback.*

➔ *EU FLEGT Facility will send comments on the SCC table and have a mission to TH to provide technical support for the preparation of SCC and TLAS annexes.*

18. Supply Chain control procedures on private lands for unregulated species drafted, allowing the farmer to choose between E-Tree and self-declaration pathways.

- Implications of legal reform for harvesting of restricted species to be assessed: Some options need further specification if concept applied for all timber from private lands (CITES harvesting on private land, recognise different levels of risks)

- E-Tree roll-out and intended time lines for MoUs between RFD with RAOT and plantation cooperative to be confirmed
- Importance to maintain self-declaration (SD) concept
- Detailed assessment / field test of options supported by a consultant who starts in mid-August, taking the situation of the receiving side (mill/industry) and trade realities into account

**EU:** SCC procedures on private land based on SD concept prepared by TH is a suitable development. Adaption to level of risks important (e.g. considering CITES species). EU wants to be kept informed about planned MoUs with witnessing organisations.

**TH:** TH is a party to CITES Convention and pays attention to CITES timber. TH has bi-annual ASEAN conferences on CITES focusing on valuable timbers (such as rosewood) and wildlife trade, with participation of China.

In addition to E-Tree registration and self-declaration, a regulation has been issued to support third party certification of timbers from registered plantations. Forest Act will also be amended to authorise RFD officials to certify timbers on private land at the owners' voluntary request. These are mechanisms to strengthen SCC of high value timbers, i.e., teak, rosewood, *Dalbergiaoliveri* (*shingshung*) and *Pterocarpus macrocarpus* (*pradu*) from private land. At the same time, TH applies strict enforcement including patrol.

- ➔ *An EU FLEGT Facility-supported consultant will have a field test study of all the options and provide recommendations including on SCC of high value (high-risk) timbers.*
- ➔ *TH will have field tests of different options led by Private Forest Plantation Cooperative Ltd. (PFPC) and Federation of Thai Industry (FTI) and will inform the EU of progress on RFD development of MoUs with PFPC and Rubber Authority of Thailand (RAOT).*

### **Import control**

19. Agreement to further discuss and develop the import due diligence-based procedures that will be implemented by the private sector

- Consider accompanying DD with prohibition from importing timber illegally harvested in the country of harvest
- Need to further define DD concept and system, and template / guidance available for the affected operators
- Need to identify suitable legal basis involving MoC
- Effective, dissuasive and proportionate sanctions
- Agreement to conduct field test later this year
- Thailand to share more import data, structured according to importers (size), import frequencies and country of harvest, including data for HS 47/48

**EU:** Under EUTR, EU operators have double obligations. Operators need to exercise DDs and not to place illegal timber on the market (prohibition).

**TH:** Import of illegal timber is prohibited by Thai law.



- ➔ *Import control SWG, led by Thai Timber Association, will conduct a field test on the operational workability of the designed DDS-based import control system and capacity of importers, update the concept paper accordingly and identify suitable legal basis together with RFD and Dept of Foreign Trade.*
- ➔ *TH to share import data, structured according to importers (size), import frequencies and country of harvest, including data for HS 47/48. RFD to send Customs Dept a formal request for the data.*

## **TLAS**

20. Draft TLAS Annex has relevant headings included, but further development of various sections needed such as

- Consideration of import procedures and timber in transit
- More detailed description of LD and Supply Chain control
- Information flow between verification agencies and licensing authority
- Management of non-compliances and complaints mechanism
- Transparency measures

**EU:** The importance of info flow between different verification agencies, to enable the licensing authority to know the legality of the timber product was stressed. TLAS will also include management of non-compliance, complaint mechanism and transparency measures. The role of civil society organisations in the oversight of the whole system to make it robust and reliable was also emphasised.

- ➔ *TH to further develop TLAS annex addressing the above comments. An FAO EU FLEGT Programme-supported national consultant will assist TH in the preparation.*

21. Determination of appropriate Licensing Authority should take independence, information flow (including access to NSW) and capacities into account

- EU recommends develop TLAS further before deciding on LA.

22. Agreement on list of Annexes and when these will be discussed

ANNEX I: Product Coverage – ongoing

ANNEX II: Thai Timber Legality Definition – ongoing

ANNEX III: Condition for the Release for Free Circulation in the Union of Thai FLEGT-Licensed Timber Products - EU will share draft in August

ANNEX IV: FLEGT Licensing Scheme – after NEG 3

ANNEX V: Thai Timber Legality Assurance System – ongoing

ANNEX VI: Thai Supply Chain Controls – ongoing

ANNEX VII: Terms of Reference for the Independent Audit – JEM 5

ANNEX VIII: Criteria for Assessment of the Operational Readiness of the Thai Timber Legality Assurance System – after NEG 3

ANNEX IX: Public Disclosure of Information – JEM 5/6

ANNEX X: Functions of the Joint Implementation Committee – after NEG 3

➔ *TH and EU agreed on the Annex list and timeline.*

#### **Session 4: VPA legal text**

**EU:** VPA text is an international treaty and cumbersome to change. It needs to remain as concise as possible. Details will be specified in Annexes.

➔ *TH to have internal discussion and inform EU of any further comments before next VC.*

➔ *EU to send Annex III to TH.*

#### **Session 5: VPA negotiation roadmap**

23. Endorsement of a 12-month roadmap developed by JEM4:

- Technical work on Legality Definition, SCC, TLAS incl. Imports, and comments on legal text advance during July – December with Facility support
- Sharing of draft Annexes with EU in November / December
- VC 2/2018: December 2018
- JEM 5: February / March 2019
- VC 1/2019: May 2019
- JEM 6 + Neg 3: June/July 2019

➔ *EU and TH endorsed the Roadmap. JEM5 will include a 2-day meeting and 1-day field trip in Chiangmai, TH.*

➔ *TH will consider the possibility to have NEG3 in Brussels, budget-wise, etc. Field visit to Europe will enable TH to exchange with member states' competent authorities.*

#### **Attachments:**

- Participant list
- NEG2 Agenda