

The Fourth Joint Expert Meeting (JEM 4)

Thailand-EU FLEGT VPA

Meeting Minutes

17 July 2018

9:00-17:00 hrs

At Ramada Riverside Hotel, Bangkok, Thailand

Participants

Participants from the EU side (EU) included: Mr Luca Perez, EC, Mrs Sutthiya Chantawarangul, EU Delegation to Thailand, and Dr Alexander Hinrichs, EU FLEGT Facility, EFI. The Thai side (TH) included members of Thailand Sub-Committee on FLEGT and led by MNRE General Inspector Pralong Damrongthai, on behalf of RFD's Acting DG. The meeting was observed by FAO and RECOFTC. See full participant list attached.

Discussions

Discussions at JEM3 covered: national process and updates, legality definition (LD), product scope (PS), timber supply chain control (SCC), timber legality assurance system (TLAS), VPA legal text, and VPA roadmap, as follows.

Introduction

TH: JEM4 is to inform EU of FLEGT progress in TH including LD, PS, SCC, TLAS, PS, VPA roadmap.

EU: Mr Perez attended JEM4 as a stand-in for Mrs Helene Perier, who is on a maternity leave until Feb 2019.

Self-introduction of participants from both sides and observers. (See attached participant list.)

National Process and Updates

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: 1) promoting security, 2) increasing competitiveness, 3) developing and strengthening human resources, 4) creating opportunity and social equity, 5) strengthening environmentally friendly quality of life and 6) improving public sector management. Strategy 5 includes sustainable use of forest towards achieving sustainable development goals (SDG).

National forest policy encourages public participation, good governance and transparency in forest protection and reforestation. It prioritises **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 Units while making use of satellite imageries and info technology to curb illegal logging and encroachment. A national single window (NSW), a big data and info management system, is being promoted to facilitate national and regional trades, including timber trade.

Thailand has 102 million *rai* of forest area, accounting for 31.58 percent of the country's total land area. RFD oversees 65.03 million *rai* while DNP 36.97million *rai*. The government set as its target to increase forest area to 40 percent, 25 percent of which is for conservation while the remaining 15 percent for economic forest by 2037.

There are four forest-related laws implemented by RFD, including: Forest Act B.E. 2484, National Reserved Forest Act B.E. 2507, Private Plantation Act B.E. 2535 and Chainsaw Act B.E. 2545. These laws have never been revised until under the present government. Half of them is being revised now.

To promote tree planting, 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. The revised Act will also authorize RFD officials to certify trees and timbers for the owners at their request. The revised act will be submitted to the Cabinet that same week. MNRE expects the legal process to be completed by early next year.

Three Ministerial Regulations to implement Private Plantation Act, revised in 2015, were signed by MNRE Minister a month ago. 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 living economically valuable trees (58 species) to be used as a collateral. 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 forest area. The Bill is going for public consultations in the four regions of TH. The forest area under this bill will include conservation zone and use zone. Within the use zone, villagers can cut the wood 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 DG 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 in the national parks. The revised Act was to be tabled to the Cabinet soon and the revision was 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 dwelling villagers will be classified into 5 groups by their past relation with the land and will be allowed certain rights respectively. MNRE expected the Bill to be reviewed by the Cabinet within the month.

An info technology system, national single window (NSW), has been created to promote trade and will be linked to ASEAN single window to promote regional trade.

As Thailand will chair ASEAN next year, MNRE will prioritise private economic reforestation and FLEGT VPA for ASEAN agenda, in addition to marine waste.

EU: Actions undertaken by TH regarding policy and law reform are well-noted and appreciated. The reform needs to be reflected in the LD and the impact of various changes on the need to develop/adjust adequate supply chains controls mechanisms needs to be further discussed. TH's addressing non-restricted species on private land is an important action. Need to understand fully the legal changes relating to the use of land and timber, including Community Forest bill in order to keep the target date of LD completion by end of the year. Will TH revise or repeal Chainsaw Act? Wish to be updated on National Forest Policy Committee and timeframe for law amendment.

TH: National Forest Policy Committee has been established and held one meeting so far. The Committee is to make decisions on national forest issues. Update on legal reform progress will be made at AHWG meetings and integrated into LD. After the Cabinet passes the bills, TEFSO will translate them and send them to EU and EFI EU FLEGT Facility.

FLEGT Process in Thailand

Legality definition (LD)

TH (Leader of LD SWG): The field test report recommends that if legality of chainsaw has no effect on timber legality, then Chainsaw Act should not be included in the LD. The objective of this Act is to prevent illegal logging in state forest. At present, government encourages private reforestation. Operators suggest revising the Act in order that chainsaw will be registered for traceability purpose but transporting of chainsaw from one area to another should not be prohibited. TH has decided to remove Chainsaw Act from LD. With regard to progress on LD revision, indicators are classified and prioritised into 6 categories.

EU: Changes in law need to be captured in the LD. The on-going changes can be put on footnotes. All sources of timber, including conversion timbers, e.g. conversion for reservoir or road, needed to be included in LD and SCC. Need to check capacity of officials, not only RFD's, to undertake verifications. Hence, it is important to outreach to all agencies relevant to verification. The LD should reflect verifiers which are realistic and consider matters related to capacity for implementation. If it is not realistic for officials to verify every year, need to put it down in the LD. The chosen verifiers should recognise different type or scale of operators. In some countries, certain elements, e.g. relating to health, safety and labour requirements, are not required for household business or micro-business. LD and SCC documents should be aligned. As TH plans to finish LD document by end of the year, EU wishes to receive the updated LD in Nov so that comments can be provided in writing before the document is finalised.

TH: RFD will update AHWG regarding law amendments and incorporated them into LD.

Product scope

TH: No consensus among the Thai side yet if bamboo or selected HS Codes, recycled materials and recycled houses will be included in the LD. Also awaiting results of EFI's study on recycled houses in northern Thailand. TH asked if EU will accept the use of self-declaration for bamboo and wished to be updated on EU's revision of EU TR product scope.

EU: The EU is currently carrying out an impact assessment for potential changes to the EUTR product scope. The study is ongoing and a public consultation was completed in April 2018. An update will be provided in due course. Bamboo is currently covered under the EUTR (except for pulp and paper under chapters 47 and 48 of the WCO Harmonised System), however because bamboo is a low risk

species, EU would expect EU operators to use simple DD. If TH wishes to include bamboo in the PS, TH may want to have a simple but effective means of verification. Using self-declaration for bamboo from private land is simple. But do not want to encourage cutting bamboo from forest, or illegal bamboo. It is up to TH to include recycled and reclaimed materials or not. Indonesia excludes recycled materials but includes reclaimed materials in their PS. Asked if TH imports bamboo for processing and if the import is significant compared with domestic bamboo.

TH: Law (National Reserved Forest Act, Section 15) allows villagers to grow trees on certain forest areas such as degraded forest. But government promotes growing trees on private land.

TH (private sector): TH imports bamboo floor from China but difficult to get statistics on this as it falls into 'other' category.

Supply chain control (SCC)

TH (Timber Association): presented an SCC overview (see ppt). Processing mill is required to acquire a permit (*bai anuyad tham mai*). RFD check point will issue timber transportation license (*bai boek thang*) after checking the timber together with customs. The document will travel with timbers to amill. After processing, mill issues a sawn timber transportation permit (*nangsue kamkap mai prae roop*) to accompany sawn timbers from the mill to buyer. This document includes the transport license number (in addition to name of operator, company name, volume, name of recipient, plate license, name of truck driver, and route) allowing for traceability of timber, and can be used within only 24 hours. Extension can be requested. Mill is obliged to keep record of incoming logs and outgoing sawn timbers. RFD checks this timber account up to twice a year -- when the mill reapplies for its 1-year permit and a random check during the year. This procedure has been practiced since B.E. 2484. RFD single window follows this flow and traceability ensured. Timbers from registered plantations will have an additional document (*SoPo 15*).

EU: This SCC can be a different annex or annexed to TLAS annex. It overlaps with LD. This table has a specific purpose. It clarifies what doc is available, what is next in the supply chain, who does the checking, who issues the document, who validates, who keeps record. Interested to see how the NSW will be used to reconcile data and control. Expects EFI mission to provide further technical advice to TH.

EU FLEGT Facility: Proposed way forward. Would be useful to see where the SCC info will be in the NSW. Important to see if there is any step not yet covered in SCC, e.g. agents buying timber from farmers and keep it before selling it to the mill. Places where timber is stored such as log yard or depot ought to be covered in the SCC because mixing of illegal timbers could happen at these places. There is some overlap between what is described in LD and in SCC. The Facility will provide detailed feedback on the table the following week. Suggested adding to Roadmap that the Facility will meet with SWG and discuss the table, making sure all info is captured in the NSW—info about the process, analysis and data validation. Suggested TH write narratives by looking at the SCC table, NSW and the documents.

SCC on private land

TH: Leader of private land SWG gave a presentation on the newly structured paper basing on the earlier advice from the FLEGT Facility. Paper content remains the same as in previous draft. The proposed SCC on private land is based mostly on self-declaration (SD). RFD proposed E-Tree, a self-registration online system, as an option. Farmers have the following choices: 1) using an SD form witnessed by an organisation having an MoU with RFD, 2) using an SD form witnessed by any

organization or individual(s), 3) registering with E-Tree, 4) obtaining a third-party FM certification, or 5) requesting an onsite inspection by RFD.

EU: The concept paper refers to existing legal framework. In the advent of Forest Act amendment, there will be no more restricted species on private land. Monitoring and verification of timbers on private land will therefore become important. Equally important is to have a safeguard mechanism ensuring that timbers from forest will not enter the supply chain. Likewise, CITES procedures for species listed under the CITES annexes need to be followed.

Clarification about the diagram and the implementation of E-Tree system was sought: Don't farmers registering their trees with the E-Tree (option 4) need to fill a self-declaration form as well? Do farmers need to inform the system when they want to sell their registered trees? What are the implications of having an organisation signing an MoU with RFD? How will the E-Tree system affect the private sector? How will it reflect enforcement of laws that the private sector must comply with? What info will saw-mill operators receive? How will the saw-mill operators verify timbers? Will they report the verification info to the E-Tree system? What info regarding timber processing will be uploaded on the E-Tree? How will the E-Tree be linked to RFD single window and national single window? And why is on-site inspection shown on the diagram not linked to the E-Tree?

TH may want to consider the above details and how legal changes will impact verification of trees from private land. A consultant will be helpful in assisting TH addressing these questions. The consultant, supported by the EU FLEGT Facility, will come to TH either the 2nd or 3rd week of August for 3 weeks and have a couple of field trips. His work will be based on the concept paper. He'll meet stakeholders, especially saw-mill operators, and prepare a detailed description of SCC on private land and relate it to LD.

TH: The revised Forest Act will include authorising RFD officials to do on-site inspection as per farmers' voluntary request. E-Tree is a registration system covering timbers from sources to saw-mills---not after timbers are processed.

Saw-mill operators cannot access E-Tree as the system is only for registration of trees. After registration, farmers can continue to update info on their trees online. When farmers want to cut the trees for sale, they will inform the E-tree. RFD officials at district level will inspect the trees to certify their sources before farmers embark on the cutting. To move the timbers, farmers will upload info, e.g., about the timbers, their quantity, vehicle, origin and destination. A movement document will be issued online for farmers to print and use when moving their timbers. If checked while transporting, the QR code on the movement document will reveal information about the timber source. E-Tree is connected to RFD single window and national single window (NSW). Saw-mill operators are obliged by law to keep an account of incoming timbers and outgoing sawn timbers/lumbers. The operators will fill the info in the transport documents they will issue to buyers. If the buyers wish to export the lumbers and have them certified by RFD, they can upload the info on RFD single window.

E-Tree serves as an optional mechanism to support timber traceability. The system will be officially launched on 18 Sept and will thereafter be field tested to ensure that the designed system has no opening for mixing of illegal timbers. There currently are roughly 1,000 farmers registering their trees with E-Tree. RFD is in the process to develop MoUs with Private Forest Plantation Cooperative, Ltd., Rubber Authority of Thailand, Agricultural Office at district and sub-district levels (for fruit trees) and Sub-District Administrative Organisations [for *krathin narong* or wattle (*Acacia auriculaeformis* Cunn.exBenth) and *krathin thepha* or brown salwood (*Acacia mangium* wild), and eucalyptus] to have them help RFD check and certify the trees.

TH CS: All trees on privately own land are legal. No need to have any E-Tree. Self-declaration is sufficed. Growing papaya trees, farmers do not have to inform RFD. It is therefore unjust to require farmers to inform RFD if they grow trees of other species.

RFD presented linkages between RFD SW and NSW.

Import control

TH: Leader of import control SWG (Thai Timber Association) presented a concept paper. A field test will be conducted to check capacity of importers of various scales, including micro size. The multi-SH SWG has developed a draft DD form. It will be improved to become simple, user friendly and easy to fill and check. Risk assessment will be based on species and timber origin. Risk criteria for origin or country of harvest will not be based on a risk country list but will follow that of Australia's, which is based on the situation in the country of origin/harvest.

EU: Welcomed TH's commitment to take action to address import control. It took Vietnam 5 years to finally agree to develop its import control system, taking EUTR as the benchmark. VN regulations are yet to be decided and implemented. TH has explored the use of risk-based DDS for import control, which is similar to the approach EUTR entails. EUTR also includes prohibition of placing illegal timber in the EU market, which compliments and motivates operators to apply DDS.

- EU encourages TH to consider if TH legal framework foresees placing illegal timber in Thailand as illegal and, if not, to introduce a clear provision on this.
- It is important to the EU that legal instrument to set up the DD requirement is of a sufficiently high level in the hierarchy of laws, e.g., legislation.
- In case DDS is not properly carried out, penalties should be imposed to ensure the system's credibility. They should be effective, proportionate and dissuasive.
- In addition to requiring that timber was legally harvested, the concept paper should also define the scope of the legality for imported timber. EUTR defines 5 areas: forest management, environmental criteria, trade and custom, right of third party, tax and fee.
- Import control should be applied to the same products to be covered by TH product scope, i.e. products that will receive FLEGT license in the future. TH product scope includes pulp and paper; but they are not included in the import control concept paper. Similarly, there are some HS codes in the paper which are not included in the PS, e.g., HS codes 9401, 9404, 9406.
- Regarding control mechanisms, the paper suggests that Customs in cooperation with RFD will check import operators' exercise of DD. Need to assess capacity of Customs and RFD to undertake this responsibility. The assessment can be made against number of shipments in a month, for instance.
- Need to discuss criteria TH will use to identify high risk species and country of harvest, if TH will use high/low risk countries. TH can learn from VN's experience. However, EU and member states do not explicitly identify countries being high or low risk. It is operator's responsibility to do risk assessment and mitigation.
- Post-import check, mentioned in the paper, needs further clarification. What could be potential scale of the check? A balance is to be reached between the level of scrutiny, safeguards and checkpoints after imports, which may be doubled for high risk imports.

- Does TH suggest having an exception for minor importers as previously raised?

TH (Dept of Foreign Trade): Ministry of Trade's Announcement on import and export of timber is in the process. The committee needs more clarity from private sector. The importance of DD is recognised in principle. But the procedures remain unclear and are expected to become clearer after the field test. Thereafter, legal affairs office will be consulted. With regard to penalties and level of the legal instrument, the Dept is willing to support what the relevant governmental agencies and private sector deem appropriate. The check will be carried out by Customs and RFD. But the law will be in the domain of Ministry of Trade.

TH (TTA): The proposed import control will be enforced indiscriminately--regardless of the scale of import operator. All shipments will be checked with no exception. At present, import of illegal timbers are prohibited by law. Risk assessment will not be based on high or low risk, but on the situation of the area where timber was harvested or came from. The criteria would include whether the imported timbers: 1) are listed on any CITES annex, 2) are from a country in conflict, 3) has multiple transits, 4) are from a country with record of carrying illegal timbers. Importers of timbers that meet any of these criteria will be required to present additional documents.

Timber Legality Assurance System (TLAS)

TH (FCO, Lead of TLAS SWG) walked participants through the draft annex prepared by the multi-SH TLAS Sub-WG with earlier technical support by the EU FLEGT Facility.

EU: The outline of the annex flows nicely. All chapters to be included are already developed. The work on import control should be added to Chapter 2.1. Timber in transit should be mentioned and explained that it is outside the SCC. Chapter 5 on verification should elaborate more on the process and non-compliance. Chapter 5.3 on import control should be elaborated further and non-compliance described. Chapter 6 on licensing authority—too early to discuss what would be the best option for licensing authority.

There are three considerations for setting up the licensing authority: 1) The licensing authority should be independent from verification on the ground. 2) Flow of information in the supply chain control is important. How the licensing authority will receive verification information should be made clear. And 3) it should be practical. Setting up a new institution will take several years. Utilising an existing institution may be more realistic.

Chapter 7--Independent Audit, there will be an annex on this. 'Complaint mechanism' can be strengthened and include monitoring role of CSOs. The actions on complaints should be communicated to licensing authority. On transparency, there will be another annex outlining what info will be made readily available to the public.

VPA legal text

TH: TH had sent 14 preliminary questions to the EU and is thankful for EU's responses. The Legal Text Sub-WG is studying EU's replies and the VPA text itself. The multi-SH Sub-WG will continue to work on the VPA text in parallel with the development of Annexes and may send further comments/queries to EU. TH requested EU to share the annex on import procedure.

EU: The draft VPA legal text TH received is a model of FLEGT voluntary partnership agreement which is well established and concluded in 7 countries, including Vietnam (in the process of ratification in EU parliament). All VPA texts are based on a standard legal text with minor variations. The objective of the agreement is to set up a FLEGT licensing system, after which all exports with license can enter EU market.

The Agreement focuses on explaining procedural steps and governance mechanisms. Main governance body is the Joint Implementation Committee (JIC), of which both EU and TH will serve as members. Articles about dispute settlement and independent audit are also included in the text.

Country's specifics are in Annexes, each of which will be linked to the text. An indicative list of Annexes was presented. TH and EU can jointly agree to have more or fewer Annexes than suggested in the list. However, some Annexes are indispensable while others are as appropriate. Indonesia and Vietnam VPAs do not have some annexes which Africa VPAs have (Implementation Schedule and Direct Assistance Support).

- Annex on how EU will process the import of timber products with FLEGT license will not be changed while Annex on ToR for independent audit is a standard text.
- Annex on Transparency and Public Disclosure of Information is to ensure public access to documents and independent monitoring.
- Annex on TLAS assessment criteria sets out criteria jointly agreed to make assessment when Thailand's TLAS will be considered good enough to start FLEGT licensing.
- TH is welcome to raise more questions on the VPA legal text or even send a revised draft text or proposals for changes and suggest what annexes to discuss for next JEM.

Roadmap

TH presented a roadmap previously consulted with EFI and endorsed by TH National FLEGT Committee, covering the period between NEG2 and NEG 3, from 19 July 2018 to July 2019. TEFSO will prepare a workplan to implement the roadmap and submit it to AHWG.

During the period, TH will continue to revise LD and work on import control, SCC on private land, SCC, TLAS and VPA legal text. An international consultant, supported by EFI EU FLEGT Facility, will assist TH on an analysis of SCC on private land. A national consultant, also supported by the Facility, will continue to revise the LD basing on the field test results. Another national consultant, to be supported by FAO EU FLEGT Programme, will be recruited to assist TLAS & SCC Sub-WG prepare TLAS and SCC annexes.

TH will send draft Annex II (revised LD), description of import control procedures and draft Annexes V and VI (TLAS and SCC, including SCC on private lands) to EU for comment by Nov/Dec. TH will also send further comments, if any, on the VPA legal text to EU by Nov/Dec.

A stocking-taking video conference is planned for Dec to prepare JEM5. A two-day JEM 5 is planned for February/March 2019, tentatively in Chiangmai.

Another stocking-taking VC will take place in May, followed by a two-day JEM6 and 1-day NEG3 in BKK or Brussels in June/July.

There will be three EFI technical missions to TH in Aug-Oct, mid-Nov 2018 and April-May 2019.

Negotiation Points

TH and EU jointly prepared negotiation points after the joint expert meeting was concluded at 17:00 hrs and requested Dr Alexander Hinrichs to present them in NEG2 on 19 July. See attached.

ANNEXES

- JEM4 Agenda

- Participant list
- Roadmap
- Negotiation points