

The Third Joint Expert Meeting (JEM 3)

Thailand-EU FLEGT VPA

Meeting Minutes

21-22 March 2018

At Rama Gardens Hotel, Bangkok, Thailand

Participants:

Participants from the EU side (EU) included: Ms Helene Perier, 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, LD, Product Scope, Thai side's feedback on VPA text, unregulated species on private land, verification of imports, supply chain control, progress on TLAS development, and VPA Roadmap (see attached agenda), as follows.

National Process and Updates

TH updated EU on progress of negotiation preparation, including LD, product scope, supply chain control, TLAS development and their address of gap issues, including unregulated species on private land, import verification, and a few projects RECOFTC is undertaking relating to gaps identified. The Thai side also reported on budget contribution of EFI, FAO and RFD to the VPA negotiations in Thailand.

EU updated TH on EUTR implementation and enforcement. EU has concluded VPA with Cameroon, Congo, Central African Republic, Ghana, Liberia, Vietnam and Indonesia and is under negotiation with Cote d'Ivoire, DRC, Gabon, Guyana, Honduras, Laos, Malaysia and Thailand. Checks on the EU Timber Regulation are carried out by EU member states (MS) according to plans that are based on risk criteria. Checks are performed for both timbers harvested in MS and imported timbers. MS reports to EU on their EUTR implementation every two years. During March 2015 – February 2017, 2,704 checks were conducted relating to imported timbers, resulting in: 525 notices of remedial actions, 139 penalties, 286 other measures and 6 court cases concluded. There were several sanctions in Belgium, Denmark, Finland, Germany, Italy, Netherlands, Sweden, and UK, for imports from Myanmar.

To support implementation and enforcement, EU has built an **IT platform** for exchange of information (reports, articles, etc.) and established an **EUTR Expert Group** which meets every two months to exchange views on relevant issues, e.g. due diligence exercise, risk assessment, specific cases, etc. EU has contracted UN Environment World Conservation Monitoring Centre (UNEP-WCMC) to prepare **country overviews** for countries exporting timber to the EU and having high level of risk. The countries in Asia being overviewed include China, Malaysia and Myanmar.

TH is keen to receive advice from the EUTR Expert Group should there be questions regarding VPA preparation and implementation.

On **Thailand forest policy**, RFD DDG Athapol Charoenshansa informed EU that the National Council for Peace and Order (NCPO) has set a national policy to stop forest encroachment. And since 2014, forest area remains 32 percent, or 102 million *rai* [1 *rai* = 0.16 hectare]; no forest loss. The government sets a target for forest area at 40 percent. An important pathway to achieve this target is to promote economic forest or private plantations. Law has been amended; penalty is increased to a maximum of 2-million-THB fine and 20 years of imprisonment. Thailand's 20-Year National Strategy has been drafted aiming for the country to become a green and climate-friendly economy under the principles of 'security-prosperity-sustainability'. This Strategy will be enacted as a law to ensure its long-term implementation. [Note: Prime Minister Office Announcement on the National Reform Plan has been issued on 6 April.] As for timber flow info, NSW links info from all checkpoints.

TH is amending the Forest Act (1941) because it conflicts with the Constitution (2017) and to promote timber business. Public consultations on the amendment were carried out in the four regions of the country. Article 7 is revised so that there will be no restricted species on private land, allowing farmers to harvest their timbers on their land at their own will. Transport permits are still needed to move timbers out of the land. Measures, e.g. self-declaration, will be developed to deal with high and low-risk timber. Restricted species will be in forest (public land) only. And as logging concession in natural forest has been banned since 1989, there will no longer be private logging of restricted species. Legal sources of timber for business are plantations, private land or import only. Article 51 (Forest Act) requires that wood processing plants (mills) can receive only legal logs. Accountability rests with the mill operators whilst RFD officials can check the mills.

The amendment process of Forest Act is expected to be completed within one and a half year, i.e., by 2019. The amendment and the new procedures will be reflected in the VPA.

EU asked about rubber plantation and conflict over land ownership. At present, rubber wood plantations take up about 30 million *rai* [1 *rai* = 0.16 hectare] nationwide. Of this, 8.5 million *rai* is in forest (public land). However, not all rubber wood plantation in forest is illegal as government has allocated certain forest areas for poor villagers to earn their livelihood (particularly under *Khor Tor Chor* Program). These areas cannot be watershed level 1 or level 2 or steep-slope land, however. Violators are prosecuted.

- *EU is keen to learn of further update of TH's reform on forest sector, esp. the amendment of Forest Act and the advent of community forest law and how the changes and new technologies will be connected to the VPA, during NEG2.*
- *EU will share reports on countries overview which the EU has contracted UNEP-WCMC to prepare, when completed.*
- *EU will share EUTR expert group meeting website and is ready to receive questions by TH for the EU side to provide suggestions.*

Legality Definition (LD)

In response to LD field test results, TH Sub-Working Group (Sub-WG) on LD suggests: restructure the LD, remove Chain-Saw Act from the LD, separate verification from the LD, add indicators on laws relating to labour, occupational health, and the environment, add indicators on existing laws not yet

included in the LD and add a definition of 'wood/timber (*mai*).' RFD sent these responses to the consultants on 25 Jan 2018.

TH has several laws regarding labour: Labour Protection Act (also covering alien labour), Alien Labour Employment Act, Social Security Act, Compensation Act, etc. Ministry of Labour enforces these four Acts. Employers who fail to abide by them are subject to criminal penalties.

EU voices that LD field test was highly comprehensive and the consultants' recommendations quite lengthy. It is for TH to decide which recommendations from the LD field test to address beyond the 6 areas already identified such as social/environmental requirements, as there are several and not all of them are priority for the LD. Only priority issues need to be addressed in the short term. TH can refer to the suggestions of the EU FLEGT Facility [during EFI mission in Feb] on priority recommendations.

EU does not see it necessary to restructure the LD or taking out verification from the LD or separating the roles of operators and officials in the LD, as suggested by the consultants. Doing so will require too much work and would need to be carefully evaluated ahead of any future revision of the LD structure.

While consultants' recommendations are useful, it is not necessary to always follow them, esp. when they recommend creating something new, e.g. to invent certificate of compliance for labour requirement. TH needs to also keep in mind the implications of including any recommendations in the revised LD, i.e. that it will need additional capacity in RFD and other agencies to implement potential new provisions captured in the LD and carry out tasks in addition to current practice.

The consultants' important observation is twofold: 1) existing laws not included in LD, 2) intensity of verification of the competent agency, i.e., not systematic check but more on case by case.

TH raised that LD revision may take longer time than anticipated in previous Roadmap. EU suggested that further work to incorporate recommendations into the LD could be undertaken in the coming months, including through some support by a consultant (through EU FLEGT Facility).

- *It was agreed that TH will develop a table listing consultants' recommendations (including regarding harvesting on private land, import controls and size of operations / SMEs), and what follow-up it intends to give to each recommendation depending on its level of importance/priority. TH can refer to the suggestions of the EU FLEGT Facility [during EFI mission in Feb] on priority recommendations. Some recommendations will require engagement with other Ministries/Government agencies.*
- *EU offered to look into the possibility to provide additional support through the EU FLEGT Facility to address recommendations through assistance by a consultant.*
- *TH sees it useful to have another field test after LD revision is done.*
- *TH and EU will stay in contact with a view to preparing a short summary of the LD Field Test report and put it on TEFSO website so the public is informed that the LD has already been field tested and that the government is working on addressing the report's recommendations.*
- *EU suggested an update on LD revision during JEM4/NEG3.*

Product Scope (PS)

TH has now included furniture in its PS.

EU is having public consultation on the EUTR PS presented on the European Commission website and invites contributions by civil society, private sector, EU MS and other stakeholders. EU will then consider if they will revise the EUTR PS and will further inform TH during JEM4.

Indonesia excludes bamboo and some recycled products from its PS. PS needs to be part of supply chain control. TH can put in brackets [] sub-products of the HS group that will not be included in its PS.

TH will exclude bamboo from its PS as it is not under legal control. Will consider if some recycled products will be removed or not as there is no legal control of them either. In practice it is also difficult to check recycled materials. Recycled materials are used in wood pellet industry. TH will discuss this matter internally and bring it to JEM4. EFI highlighted that some furniture in TH is made of recycled/reclaimed materials and fruit trees, and that there may be paper made from bamboo pulp. Indonesia keeps recycled-material furniture in its PS. Need to find ways to check the material source. EFI will assist TH's discussion on the matter by providing info on practices in other countries.

- *TH will update EU on its PS in JEM4, whether TH will include some recycled materials, furniture made of recycled materials and fruit trees, paper from bamboo pulp.*
- *EU will report on EUTR PS, if there is any revision, in JEM4.*

VPA Legal Text

TH preliminarily raised clarification questions about the draft VPA legal text EU has prepared. They are about Article 10 on Independent Audit and Article 22 on Dispute Settlement.

Article 10 on Independent Audit, paragraph 4 states: "The Independent Auditor shall operate in accordance with a documented management structure, and with published policies, methods and procedures that correspond to internationally accepted best practices." TH asked for references for 'internationally accepted best practices'.

Article 22 on Dispute Settlement, paragraph 4 provides opportunity for Parties to settle dispute through arbitration. TH asked if there are any rules/requirements for the appointment of arbitrators, such as restriction on nationality or other qualification requirements.

Paragraph 4 of Article 22 states: "The Parties shall jointly appoint a third arbitrator within 60 days of the appointment of the second arbitrator." TH inquires in case Parties cannot agree on the appointment of the third arbitrator within 60 days, what would be the process for the next steps.

EU clarified that the draft main text follows that of Vietnam's and TH can adjust it to best suit TH's context. JEM is a technical meeting and not where VPA text is negotiated. The text is included in JEM3 only to learn in advance the comments TH may have so that EU can prepare for next NEG. First formal discussions on legal text will be done at NEG2 meeting. Normally, Joint Implementation Committee (JIC), (to be later established for the VPA implementation phase), the function of which is to be described in another Annex, can find solutions before resorting to arbitration. As for qualification of independent auditor in Article 10, normally ISO/IEC guidance, such as ISO/ICE 17021 or equivalent, serves as a reference.

- *EU invited written comments by May with a view to providing further clarifications during NEG2.*

Verification of Non-Restricted Species on Private Land

Sub-WG on verification of non-restricted species (ref. Article 7 of Forest Act) suggested a mandatory self-declaration (SD) system with options of having the SD (1) witnessed by Private Plantation Cooperative Ltd., or (2) by Thai Rubber Authority of Thailand (RAOT), or (3) having no witness at all, (4) registering with RFD E-Tree, or (5) obtaining an FM certification. Each option can also be linked with E-Tree, if the farmer so wishes. After having an MoU with RFD, the Cooperative and RAOT can have their databases linked with the E-Tree, which is not only a system to collect info but also enabling traceability, facilitating harvesting and transporting and certifying timber for export. RFD will start the test of E-Tree in September.

EU noted that the role and responsibility of intermediaries are to be clarified. In Indonesia, mill operators or industries have the responsibility to keep delivery notes and establish relation with farmers and agents from whom they buy timbers. Industries have the obligation to check on farmers and being checked by the authority. Industry needs to be aware of the E-Tree.

Under Thai law, mills can receive only legal logs. They are obliged to collect timber origin documents that farmers bring with their logs, prepare inventories of in-coming logs and out-going timbers and issue transport documents for transporting timbers. Officials can check at the mills.

As Article 7 of Forest Act is being removed, the title 'verification of non-restricted species on private land' may soon become irrelevant. New titles can be, e.g. 'timber harvesting on private land' or 'implementation of supply chain control on private land'. And because it will no longer cover only low-risk species (i.e., unregulated species) but also high-risk species on private land, EU suggested TH should consider having more control on high-risk species, e.g. SD with witness. EU also suggested making the industry well informed of the system.

The control process for timber exported directly by farmers with SD is as follows. Farmers register themselves as a juristic exporter, obtain a timber certificate from RFD, and only in case of timber and sawn timber, request an export permit from Ministry of Commerce. If farmers cannot present evidence of their timber source, RFD cannot issue a certificate for them.

- *The FLEGT Facility (EFI) will provide comments on the 'non-restricted species on private land' paper in writing and will follow-up on this with a technical mission before JEM4.*
- *A field test of all options for all species on private land with Forest Act amendment is to be undertaken within this year.*
- *TH will provide an update during JEM4.*

Verification of Imports

Import verification is important to the EU considering TH's timber importing role in the region. Learning from Vietnam's experience, TH Sub-WG on import control is exploring the possibility of adding risk-based DDS to the current timber import control, which has only red line – checking both documents and consignment of all shipments. Check is undertaken by Customs, together with RFD and Dept of Agriculture (in case of CITES timbers). (See diagram and description in folder.) To implement DDS, it should be mandatory to have uniform application. Likewise, a regulation on DDS needs to be issued because Customs requires a law/regulation to perform any function.

Foreign Trade Department, Ministry of Commerce, is revising timber import control law, together with all related government agencies such as RFD, Department of Agriculture, Customs Department and security agencies. Good timing to discuss a holistic picture of timber import control law, including DDS. Most agencies are supportive of requiring certificate of origin (CO) for the imported timber and some certain timber products from all countries, not only Cambodia and Myanmar, at the countries' own advice, as currently regulated. However, DDS is a new concept for governmental sector. Ministry of Commerce is cautious about its impacts on the private sector, esp. small operators. The government sees it important to have private sector's buy in. Therefore, it is necessary to discuss DDS in more details with all concerned stakeholders prior to imposing any new law or regulation. Thai Timber Association is supportive of a mandatory DDS and suggests applying DDS to domestic timbers as well to assure their legality. A field test of the practicality of the measure is sought and could be supported by FAO.

EU sees the attempt in a right direction while recognizes that the scheme is not yet a decision. Overall EU is supportive of a DDS, i.e. going beyond current certificate of origin verifications. Need to pay attention to operational mechanisms: how the officials will control the operators and check if the operators have DDS in place, how to do risk assessment, how to deal with import of high-risk timber, penalties, and capacity building for both operators and officials. The meeting agreed that DDS should be proportionate to the level of risks identified depending on species and countries of origin. However, Thai side will discuss on this matter with relevant agencies again. EU asked also about a few proposed processes, e.g. concerning country specific guidelines and mutual recognition agreements, and the need to ensure a sufficient level of control.

- *Sub-WG on import control will further design the operation of import control with the risk-based DDS.*
- *EU will share best practices, e.g. its guidance document on EU TR implementation.*
- *A field test will be carried out. Avenues could be explored as to potential support from FAO EU FLEGT Programme.*
- *Import control will be further discussed in JEM4 and NEG2.*

Supply Chain Control (SCC)

TH presented diagrams of supply chain control, showing three different sources: public land, private land and import. The diagrams do not yet integrate either the work of Private Land Sub-WG or Import Control Sub-WG. The amendment of Forest Act will certainly impact the diagrams as there will then be no restricted species on private land. Thai agencies are considering ways to streamline the control, possibly making it all paperless or consolidating the works of RFD, Foreign Trade Dept and Customs Dept into a one-stop-service, to ease the non-state sectors' compliance. SCC will be adjusted in accordance with law amendment and EU will be updated, accordingly.

EU raised some areas for further clarification: how to ensure that there will be no non-verified timber mixing with verified timber in the supply chain, how to integrate risk-based DDS for import control into the supply chain, what kinds of info are available at what step of the supply chain, who holds the info, description of data requirement at each step and validation process. The EU also asked about FLEGT licensing authority and where FLEGT licensing will be in the supply chain.

- *TH to update the supply chain control, taking into accounts results of private land Sub-WG, import control Sub-WG, development of DDS regulation, amendment of Forest Act, and EU's comments raised above.*

- *Will report progress in JEM4 and NEG2.*

Progress of TLAS Annex development

TH is preparing TLAS Annex, following the format of Liberia's. There is no decision on FLEGT licensing authority yet. Role of forest certification in TLAS is to be clarified. TH will further develop TLAS Annex and send to EU for comments. EU, via FAO, will support a national consultant to support drafting of this Annex. TH would like to see the consultant start the task soonest.

- *A national consultant to support development of TLAS annex is to be contracted soonest.*
- *TH to prepare a draft TLAS document and send to EU for feedback.*

Roadmap

A Roadmap until next JEM and Negotiation was concluded. There will be an **EFI technical mission** to TH in June to support the development of Annexes and a stock-taking **video conference** to prepare for JEM4 and NEG2 in June.

JEM4 will take place on **17 July** (1 day) in Bangkok. The EU side will be led by Mr Luca Perez. This will be followed by one day briefing on 18 July then **NEG2 on 19 July** (1 day), led by Mr Jorge Romero Rodriguez on the EU side. The two meetings will focus on VPA text, LD, Product Scope, import control, TLAS, Supply Chain Control and other Annexes.

Attachments:

1. Meeting agenda
2. Participant list
3. Agreed Roadmap