

REGIONAL WORKSHOP ON CAPACITY BUILDING NEEDS TO SUPPORT FLEGT IN ASIA

“FLEGT in Asia: Supporting good governance and
responsible trade for Asia’s forests”

Hosted by the Royal Forest Department of the
Kingdom of Thailand



WORKSHOP PROCEEDINGS,

*Bangkok, Thailand-
16 and 17 October
2013*

Co-organised by:



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List of Acronyms

APFNet	Asia-Pacific Network for Sustainable Forest Management and Rehabilitation
ASEAN	Association of Southeast Asian Nations
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CSO	Civil Society Organisation
DFID	Department for International Development
EIA	Environmental Investigation Agency
EFI	European Forest Institute
ESA	Endangered Species Act
EU	European Union
EUTR	European Union Timber Regulation
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
ITTO	International Tropical Timber Organisation
MO	Monitoring Organisation
NTFP	Non Timber Forest Product
PEFC	The Programme for the Endorsement of Forest Certification
PS	Private Sector
RAFT	The Responsible Asia Forestry and Trade Partnership
SMEs	Small and Medium Enterprises
TLAS	Timber Legality Assurance System
UNODC	United Nations Office for Drugs and Crime
VPA	Voluntary Partnership Agreement
WTO	World Trade Organization

Summary and key recommendations

This report summarizes important key messages emerging from the 2-day regional workshop on “**Capacity Building Needs to Support FLEGT in Asia**”. The regional workshop was co-organized by the European Forest Institute (EFI), the Responsible Asia Forestry and Trade (RAFT) Partnership, DFID’s Markets and Climate Programme of the Department for International Development Programme, GIZ’s Forest Governance Programme and the Food and Agriculture Organization of the United Nations (FAO), and was hosted by the Royal Forest Department of the Kingdom of Thailand. The event brought together 82 participants, including government officials, private sector and civil society representatives, donors, development partners and experts representing 18 countries in the Asia-Pacific Region and beyond.

The objectives of the workshop were to:

- Provide an overview of existing and emerging international market requirements for timber and timber products
- Present a number of existing programmes providing support in the area of Forest Governance, law Enforcement and Trade
- Identify key regional support priorities and capacity building needs:
 - In support of FLEGT processes, with an emphasis on stakeholder engagement;
 - Of businesses, especially SMEs, to meet existing and emerging international market requirements for timber and timber products;
 - To have support structures for TLAS development and implementation, including the legality of imports from third countries.

During the **first session**, government representatives or experts from Australia, China, the European Union, Japan, South Korea and the United States presented overviews of their country's or continent's market requirements for timber and timber products. This unique overview showed how the market is changing but also illustrated the diversity of demand and supply side instruments put in place by countries to curb illegality in the sector.

During the **second session**, Representatives from 7 different Forest Governance support programmes (EFI, GIZ, DFID, FAO, UNODC, RAFT, APFNET) shared information on their respective programmes and corresponding support made available to governments, civil society and private sector organisations. This information allowed participants to improve their knowledge and understanding of existing programmes and to see how these could address their specific needs. These presentations were also an opportunity to illustrate that consumer/donor countries are supporting timber producing countries to address market requirements put in place.

The **third session** was an opportunity for different stakeholder groups to identify priority needs for technical support and knowledge products. Government representatives identified a strong need for capacity building on FLEGT, sharing of information on the subject, support for regional learning platforms, stronger networking linkages and a greater emphasis on supporting law enforcement efforts. Support for the establishment of better information or baseline data on illegal logging was also suggested. Members of CSO highlighted the need to facilitate access to forestry sector and FLEGT related information for local NGOs. The need to mobilise additional political support for NGOs actively engaged in FLEGT and VPA implementation was identified together with the need to raise awareness among governments about the value of CSO involvement and to provide a secure environment to do so. The need to secure more continuous and sustainable support for local NGOs was also stressed. Representatives of the Private Sector requested a more accessible and tailored support focusing on SMEs and the establishment of networks among associations and their members. All participants confirmed that opportunities to address forest governance through trade measures and regional collaboration in Asia clearly exists. Critical is:

- creating and maintaining national / regional political willingness and ownership
- addressing complexity
- coordination and timing
- delivering on demand side measures
- capacity building / funding

During **forth and final session** participants discussed priority capacity building needs at country and regional levels focusing on implications for businesses, stakeholder management and TLAS development and implementation. Three groups were given an entire day to discuss these topics and to come up with detailed recommendations.

GROUP 1: Implications for businesses, especially SMEs, to meet existing and emerging international market requirements for timber and timber products

The group work was based on an initial situation analysis or introduction to SMEs across the region followed by an assessment of needs and opportunities. Country briefings confirmed the diversity within the SME sector across the region and the variable levels of federation/organisation. The last 5 years has seen a drop in the number of SMEs, especially those sourcing timber from natural forests, and consolidation into fewer and bigger companies. Government policies have also encouraged the use or import of lower risk or certified timber but also the stronger integration of supply chains. Both supplier and consumer countries have tried to streamline and harmonize their requirements for SMEs and are increasingly engaging through Private Sector Associations as the preferred intermediaries. Existing training institutions could be used to expand their scope to train in

legality and marketing. The group's recommendations on how to facilitate the implementation of legality assurance for small holder timber producers and SMEs included:

- Facilitation is required and support in organizing the SMEs.
- Ease of getting permits
- Better coordination between SMEs and governments.
- Better understanding of the markets is required.

GROUP 2: Support for FLEGT processes with an emphasis on stakeholder engagement, consultation and participation

The group work started with the identification of national and regional challenges and identified priorities for capacity building support. Major challenges identified by the group were:

- Raised expectations and how to keep the momentum going considering slow progress or possible lack of continuity and efficiency in government leadership
- Commitment to undertake reforms and engage CSO is variable
- Different levels of understanding but most stakeholders lack information and capacity to fully understand implications of VPA allowing them to get involved effectively
- Need to have a clear structure or platform for CSO coordination and more general stakeholder involvement

Main capacity building needs identified by the group were:

- Establishment of information clearing house, network or hub in-country and at regional level to provide consistent FLEGT related information and knowledge sharing
- Reinforcement of regional engagement and information sharing to combat environmental crime and improve customs collaboration
- Improvement or establishment of functional mechanism for stakeholder involvement and to create space for constructive engagement of CSO
- Proposal writing, fund raising, project management, effective staff development, information dissemination, conducting research.

GROUP 3: Support structures for TLAS development and implementation, including the legality of imports

The capacity building needs for TLAS development and implementation which were identified by the group predictable varied from country to country based on their level of engagement and advancement in the FLEGT-VPA process. These needs varied from assistance to initial cost-benefit analysis of VPA engagement, support to stakeholder mobilisation and establishment of VPA negotiation or TLAS development structures to support for information systems establishment and legal reform. Further discussions the group to identify needs for regional exchange and collaboration in support of TLAS related capacity building and to address the issue of legality of imported timber:



Introduction

In 2003, the European Union (EU) adopted its Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) with the aim to halt illegal logging and promote better governance. The negotiation and conclusion of a Voluntary Partnership Agreement (VPA) between the EU and a Partner Country has been the predominant tool, but there are many measures in the Action Plan to support improved governance. The ultimate objective of VPAs is to ensure, through a licensing scheme, that only legal timber is imported into the EU. Each VPA is dependent on the development and implementation of a Legality Assurance System (LAS) which includes a definition of legal timber, a verification system, a licensing system and an independent audit. Five countries in Asia have initiated actions to develop a VPA: Indonesia, Malaysia, Vietnam, The Lao Peoples Democratic Republic and most recently Thailand. Indonesia, which concluded negotiations in May 2011, is due to sign its VPA soon, and is making significant progress towards implementation of the VPA requirements.

The EU Timber Regulation became applicable in March 2013. The Regulation prohibits the placing of illegal timber and timber products on the EU market. The United States and Australia have both adopted similar legislation, completing a significant demand side incentive to enhance efforts to address illegal logging in supplier and processing countries. China, Japan and South Korea are contemplating the further development of policy instruments, including legal procedures, to curb the trade in illegal timber and timber products.

A number of programmes support regional and country level action to address illegal logging and to facilitate the implementation of these new trade related legal instruments. The executing agency of the EU FLEGT Action Plan is the European Forest Institute's (EFI) EU FLEGT Facility. Since 2007 EFI has been providing technical and financial support to VPA processes and other elements of the EU FLEGT Action Plan. Since May 2012 The European Union further strengthened its support with the EU-FAO FLEGT Programme, implemented by FAO. The programme supports local stakeholder groups in developing countries to put the FLEGT Action Plan into practice. In addition, the European Commission has thematic programmes such as the EU-ENRTP (Thematic Programme for Environment and Sustainable Management of Natural Resources) and country programmes that can support FLEGT related activities. Concurrently, substantial support is also provided by the UK Forest Governance, Markets and Climate (FGMC) Programme, ITTO's Thematic Programme on Tropical Forest Law Enforcement, Governance and Trade (TFLET), the GIZ Forest Governance Programme and the Responsible Asia Forestry and Trade (RAFT) Partnership and the Asia-Pacific Network for Sustainable Forest Management and Rehabilitation (APFNet) funded through the Chinese, Australian and US Governments.

The workshop co-organizers including the European Forest Institute (EFI), the Responsible Asia Forestry and Trade (RAFT) Partnership, DFID's Markets and Climate Programme of the Department for International Development Programme, GIZ's Forest Governance Programme and the Food and Agriculture Organization of the United Nations (FAO) agreed to bring together relevant stakeholders from around the region to:

- Provide an overview of existing and emerging international market requirements for timber and timber products
- Present a number of existing programmes providing support in the area of Forest Governance, law Enforcement and Trade
- Identify key regional support priorities and capacity building needs:
 - In support of FLEGT processes, with an emphasis on stakeholder engagement;
 - Of businesses, especially SMEs, to meet existing and emerging international market requirements for timber and timber products;
 - To have support structures for TLAS development and implementation, including the legality of imports from third countries.

Workshop participants included:

- Government, Civil Society and Private Sector representatives of current VPA countries (Indonesia, Malaysia, Vietnam, Lao PDR and Thailand) as well as the Philippines, Cambodia, Myanmar, PNG and the Solomon Islands;
- Representatives of EU Delegations of concerned countries;
- Representatives and resource persons from FLEGT related support programmes (EFI, UNODC, RAFT, DFID, FAO, GIZ and APFNet);
- Speakers or representatives from Australia, China, European Union, India, Japan, South Korea and the United States.

The workshop was divided into four main sessions:

Session 1 was a panel discussion covering existing and emerging international market requirements for timber and timber products. The session was moderated by Mr. Hugh Speechly, Senior Advisor Forest Governance and Markets, DFID, UK.

Session 2 included presentations by different Forest Governance support programmes. The session was moderated by Ms. Aimi Lee, Asia Regional FLEGT Associate, EFI, Kuala Lumpur, Malaysia.

Session 3 was comprised of group discussions aiming at the identification of priority needs for technical support and knowledge products. This session was moderated by Dr. Bernd-Markus Liss, Principal Advisor for BMU Projects, GIZ, Manila, the Philippines.

Session 4 (day 2) included 3 group discussions for the identification of priority capacity building needs at country and regional levels. This session was moderated by Mr. Bruno Cammaert, Forestry Officer, EU-FAO FLEGT Facility, FAO, Bangkok. The 3 group discussions included:

- Group 1: (Facilitator: Mr. Vincent van den Berk, Programme Coordinator EU-FLEGT Facility, EFI) Implications for businesses, especially SMEs, to meet existing and emerging international market requirements for timber and timber products.
- Group 2: (Facilitators: Mr. Tim Dawson, EU-FLEGT Facility, EFI, Ms. Pham Thi Bich Ngoc, Climate Change manager, SRD Vietnam and Mr. Hongthong Sirivath, Programme, Coordinator for Land for Land and Livelihood, Village Focus International) Support to FLEGT processes with an emphasis on stakeholder engagement, consultation and participation.
- Group 3: (Facilitator: Dr. Alex Hinrichs, Regional Advisor for Asia, EU-FLEGT Facility, EFI) Support structures for TLAS development and implementation, including the legality of imports from third countries.

Proceedings

DAY 1

SESSION 1: Panel discussions on existing and emerging international market requirements for timber and timber products

The Session Moderator Mr. Hugh Speechly introduced the session by emphasizing the fact that this was the first time FLEGT related experts and stakeholders from so many different countries were brought together to introduce initiatives and programmes and to share information. He introduced Session covering 2 batches of presentations followed by Q&A. The first batch of presentations by Australia (Mr. Tom Black), China (Dr. Zhao Jie) and the European Union (Mrs. Delphine Brissonneau) were followed by presentations by Japan (Mr. Daiji Kawaguchi), South Korea (Mr. You Younghun)



and United States (Mr. John Webb).

Australia:

Australia's action to combat illegal logging

Regional Workshop on Capacity Building Needs to Support FLEGT in Asia
Bangkok, Thailand – 29 October 2012

Australia has put in place a new law...

- November 2012 – Illegal Logging Prohibition Act 2012
- November 2014 – Illegal Logging Prohibition Amendment (Regulation) 2013

What are the regulated timber products?

8000	wood in the rough	4801	teleprints, in rolls or sheets
8207	wood sawn or stripped lengthwise (feet) for veneering (including those obtained by slicing laminated wood)	4802	unsized paper and paperboard
4408		4803	folded or bound loose sheets, loose or unbound
4409		4804	other unsized paper and paperboard
4410		4805	vegetable parchment, glassine or paper
4411		4806	
4412		4807	
4413		4808	
4414		4809	
4415		4810	
4416		4811	
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4493		4888	
4494		4889	
4495		4890	
4496		4891	
4497		4892	
4498		4893	
4499		4894	
4500		4895	

What is due diligence?



For more information...

www.daff.gov.au/illegallogging

illegallogging@daff.gov.au

China:



China's Policy Instruments to Curb the Trade in Illegal Timber and Timber Products

Zhao Jie

Center for International Forest Products Trade,
State Forestry Administration of China



China Forest Certification Council (CFCC)

- In 2009, China's forest certification scheme became applicable.
- 1 million ha forests certified.
(FSC: FM-2.88M, COC-3200 Co. in China now)
- In 2011, China became the member of PEFC.
- Endorsement in process.



Three guideline: To regulate oversea activity of Chinese forest enterprises

- A Guide on Sustainable Overseas **Forest Cultivation** by Chinese Enterprises (2008)
- A Guide on Sustainable Overseas **Forest Management and Utilization** by Chinese Enterprises(2009)
- A Guide on Sustainable Overseas **Forest Products Trade and Investment** by Chinese Enterprises (in 2013 start, *in process*)



China's timber legality verification scheme

- At present, China's timber legality verification scheme is still at the *study stage*.
- In 2009, we launched the study of China's Timber Legality Verification Scheme.



Framework of the System

There are **two options** in the proposed China's Timber Legality Verification Scheme:

- Sign bilateral agreements with production countries.
- Enterprises establish timber resource risk control system, the third party agency to assess, industry associations issue timber legality verification license.





**Thank you
for your attention!**

European Union:



EU "Timber" Regulation
(Regulation (EU) No 995/2010)

Regional Workshop on
Capacity Building Needs to Support FLEGT in Asia
16 October 2013

FLEGT Action Plan



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graph TD
    FLEGT[FLEGT Action Plan] --> FLEGT_Reg[FLEGT Regulation]
    FLEGT --> EU_Reg[EU "Timber Regulation"]
    FLEGT --> Public[Public procurement policies]
    FLEGT --> Private[Private sector actions]
    FLEGT_Reg --- VPAs[VPAs]
    
```


Frequently Asked Questions

- Under the EUTR no Customs checks or new Customs declarations. Checks will be made at premises of the operator first placing products on the EU market
- EU operators will not normally need information specific to each shipment of timber products but on a supply of the same products
- Third party verified systems eg FSC, PEFC, SVLK can be used as part of due diligence systems but not automatically = legality

Thank you!

Websites:
http://ec.europa.eu/environment/forests/timber_regulation.htm
<http://ec.europa.eu/environment/eutr2013/>



Q&A

Question from Papua New Guinea (CSO) for Australia

Q You mentioned that you are working on country specific guidelines. Will some assistance be given to help countries to come up with the guides? And are they to help government, industry or CSOs?

A Country specific guidelines are developed through extensive consultation processes in partner countries (trading partners), including government, industry and other stakeholders. Australia is also supporting capacity building initiatives.



Questions from Indian (Gov.) for Australia



Q Is the Australian Illegal Logging Prohibition Act 2012 World Trade Organization (WTO) compliant?

A Confident that it is WTO compliant.

Q You mentioned regulated timber products, can you explain further?

A Regulated products are listed in the presentation. More details can be found in the regulation.

Q Supply chains for importers are more complex and more difficult to track than domestic ones. How is this addressed by the Australian administration?

A Tried hard to ensure that requirements on Australian importers are the same as requirements imposed on domestic processing of logs. This is in line with WTO principles. So both domestic and imported products have the same requirements.

Q Has Australia consulted any stakeholders or producer countries in implementing this regulation?

A Has done consultations with trading partners, briefings in trading partner countries, and also in Canberra.

Question from Malaysian (Gov.) for the EU

Q *The fact that “using a Monitoring Organisation (MO) is an option for operators”, what does that mean?*

A MO is an option, you are not obliged to use the services of an MO. If operators are comfortable to do due diligence themselves, they can do it. It’s an option to facilitate the application of due diligence (especially for small operators, who might not have established their own due diligence systems), but it is up to EU operators to choose. If they have confidence in their own system, that is okay.



Question from Myanmar (CSO) for China



Q *What is the regulation at the moment for importing timber into China? Is there a verification system, especially at land borders of neighbouring countries, for checking timber legality?*

A China does not have requirements for imported timber. The guidelines are for operators overseas. There is no new regulation on imported timber; the importing policy is the same as before.

Q *How about the bilateral dialogues in comparison to the Voluntary Partnership Agreements (VPAs) between EU and timber producing countries? What major elements would be there in your thinking?*

A Bilateral dialogues can’t compare with VPAs. If we sign bilateral agreement with other countries we might include a joint definition on legality which is acceptable to both countries.

Comment from Australian (PS) participant

Encourages countries to continue to be involved and to stay engaged (e.g. PNG, Indonesia). Stakeholders should be involved in the developments of the country guidelines, so they can ensure these are acceptable and of the required quality.

Question from Thailand (CSO) for China

Q *Based on Chinese Guidelines, is the trafficking of illegal Siamese rosewood into China a problem for importers? It is a big problem for us as well as in Vietnam and Laos. The end market is China. Does the Chinese government recognise these problems? Will it be reflected?*

A I can’t give a specific answer about Siamese rosewood since the import policy is the same.



Questions from Indonesia (Gov.) for the EU and China

Q *How do you deal with operators that deal with small scale operations, same as big ones?*

A EU Timber Regulation (EUTR) is the same for small as well as large scale operators. Small operators are more likely to use the services of Monitoring Organisations (MO).

Q *EUTR came into force in March 2013. Has any enforcement taken place?*

A Checks have been done but primarily to help Competent Authorities to understand the systems. Most findings and identification of infringements came from NGOs and civil society.

Q *China is not just a consumer market, but also a processing hub. Can you share/recommend any legislation/regulation to stop laundering in other countries?*

A China has no plan to develop a law like EUTR or Lacey Act. China govt. emphasizes the importance to tackle illegal logging and encourages companies to meet requirements of EU/US with legality documents. So for law or legislation there are no plans for now.

Question from India (Gov.) for the EU

Q *Demand for agricultural commodities drives global deforestation. EU is a big market for these products. Does EUTR look at these issues or not?*

A There are other regulations referring to these issues (e.g. the directive on bio fuels).

Japan:

Slide 1: Promotion of Legality/Sustainability Verified (=Goho) Wood in Japan
 October 2013
 Daiji KAWAGUCHI
 Wood Products Trade Office
 Forestry Agency, Japan

Slide 2: Sources of Timber in Japanese Market

By Value (2012)
 Total: \$11,967mil
 China: 15%
 Other Countries: 85%

By Volume (2011)
 Total: 72,728 thousand m³
 Domestic: 24%
 Canada: 10%
 USA: 7%
 Australia: 7%
 Europe: 7%
 China: 7%
 Malaysia: 7%
 Other Countries: 21%

Slide 3: Milestone in Japan's Legality Verification
 Legality/Sustainability Verified Wood
 ||
 Goho-wood
 (Go for Wood)

- In 2006, the Government of Japan included "Goho-wood" in the Environmentally Friendly Goods List which are subject to "Green Purchasing Law".
- Forestry Agency introduced the "Guideline for Verification on Legality/Sustainability of Wood and Wood Products".

Slide 4: Outline of Law on Promoting Green Purchasing

Law Concerning the Promotion of Procurement of Eco-friendly Goods and Services by the State and Other Entities

Basic Policy
 Key principles to be followed in developing a green
 In 2006, Legality Verified Wood and Wood Products (Paper, stationary, bed-frame, office furniture, public work materials) were listed on Eco-Friendly Goods list.

Compulsory: Diet, Ministries, etc.
 -> Developing and publicizing a Procurement Policy
 -> Publicizing the result

Non-compulsory, but efforts required: Local Governments (Developing a procurement policy), Private Sector, Consumers (Selecting eco-friendly goods as much as possible)

<h3>Forestry Agency Guideline</h3> <p>3 types of verification method</p> <ol style="list-style-type: none"> Utilizing SFM (FSC, PEFC, etc.) Certification and CoC Verification conforming to Associations' Code of Conducts <p>(2007) 108 Associations 4,906 companies certified</p> <p>→</p> <p>(Aug. 2013) 145 Associations 10,366 Companies certified</p> Verification by Individual Companies' Own Systems 	<h3>Verification Conforming to Associations' Code of Conducts (Image Diagram)</h3> <p>Forest owner - Prepare approved of forest plan by the local authority - Prepare approval of harvest by the local authority - Prepare notice of harvest</p> <p>Logging company - Prepare certification - Process certification</p> <p>Sawmill - Prepare certification - Process certification</p> <p>Distributor - Prepare certification - Process certification</p> <p>Retailer - Process certification</p> <p>Legality - Wood is harvested in compliance with rules and control over a relevant forest area.</p> <p>Sustainability - Wood is harvested from forests under sustainable management.</p> <p>Industry associations - Formulate code of conduct</p>
<h3>Recent Development</h3> <ul style="list-style-type: none"> Implementation of "Act for Promoting the Use of Wood in Public Buildings" in 2010. <p><i>The Basic Principle of the Act strongly encourages to use Legality/Sustainability verified wood.</i></p> Making it prerequisite to use Goho-Wood in government subsidized projects. Implementation of <i>Wood Use Point Program</i> in 2013. <p>BOOST in the use of Goho-wood</p>	<h3>Further efforts...</h3> <ul style="list-style-type: none"> Promotion of Goho-wood <ul style="list-style-type: none"> Raising consumers' awareness through exhibitions, cooperation with retailers, media, etc. Improvement on credibility and transparency of verification system <ul style="list-style-type: none"> Monitoring Establishing database of suppliers

Websites for reference

- Law on Promoting Green Purchasing
<http://www.env.go.jp/en/laws/policy/green/index.html>
- Guideline for Verification on Legality and Sustainability of Wood and Wood Products
<http://www.rmya.maff.go.jp/policy2/how/gaidoraintop.html>
- Goho (=legal)-Wood Navi
<http://www.goho-wood.jp/world/index.html>

Thank You Very Much

The Republic of Korea:





Korea imports 84% of Wood Products. (2,552million USD, 2012)

- Logs (656 mil US\$) : New Zealand, Canada, USA
- Sawn wood(473 mil) : Canada, Chile, Russia, ASEAN
- Plywood(592 mil) : China, Malaysia, Indonesia
- Veneer(109 mil) : China, Malaysia, New Zealand
- Fiberboard(56 mil) : China, Germany, Vietnam
- Particle Board(134 mil) : Thailand, Romania



Legal Logging in Korea

- **Strict regulation for logging permit**
 - Ecologically healthy and sustainable forest management

Logging permit only for(general situation)

- The mature forest over the regulated harvesting age
- Not more than 50 hectare for clear cutting, etc.

- **Actually, there is no illegal logging in Korea**
 - Reasons : clearness of ownership, no profit, no use as a fuel

Efforts to prevent illegal logging

- **Preventing distribution of illegally-logged timbers**
 - Implemented law and regulation for the sustainable usage of timbers (May, 2013) : not practical but proclamatory regulation
 - the responsibilities for central government and regional authority to ban the distribution and usage of illegally-logged timbers
 - Guidance and propaganda for banning the distribution and usage
 - In the process of a research about illegal logging-prevention schemes of other countries(EU, Australia, USA, etc.)
 - After research, Korea Forest Service will consider comprehensive measures against illegal logging and trade
- **Support for and participation in International forestry cooperation**



United States:

<p style="text-align: center;">Lacey Act Protection for Foreign Plants</p> <p style="text-align: center;">Presented by John T. Webb Prosecutor, U.S. Dept. of Justice Emvritus</p>	<ul style="list-style-type: none"> • Century-old national law amended in 2008 to broadly cover almost all plants wherever found, including trees, to reduce global illegal logging and increase value of U.S. wood exports. • Lacey Act enforcement is fact-based, not document-based. No single document or group of documents, whether or not official ones, is absolute proof of legality and no U.S. compliance standard created. Beware meaningless documents with "ribbons and seals." • Level of plant protection not set by U.S., but determined by legal requirements of foreign countries as plants move from origin through intermediate processing countries to U.S. market. • Private sector and foreign governments develop own best compliance practices, not U.S. authorities, including how to use third party certification or verification. • 3 Key Features: foreign law incorporation, declaration requirement, and false labeling. • Foreign Law Incorporation – Prohibits trade to U.S. in plants and plant products, including furniture, paper, and lumber, taken (collected, harvested, cut, logged, or removed), possessed, transported, or sold in violation of any foreign law that protects plants, or regulates taking, payment of fees, or taxes, or places limitations upon plant exports or transshipments. • Prove what foreign law applies using any relevant material or source including testimony without restriction by rules of evidence.
<ul style="list-style-type: none"> • Foreign laws need not be criminal or actively enforced to apply. • No exception for wood harvested before Lacey Act amendments went into effect in 2008. • Hierarchy of penalties for violations: imprisonment, fines, and/or forfeiture. • Declaration requirement: Upon importation into U.S. must declare scientific name, value, quantity, and country of origin of plants. Does not apply to plant-based packaging materials used exclusively to import other products. Harmonized Tariff Schedule (HTS) used to identify wood and wood products covered by declaration requirement upon formal entry to U.S. Lacey Act still applies to plants not yet covered by declaration requirement. Unique declaration requirements identified for special circumstances. Chain-of-custody not required, but look at "due care" requirement and false labeling below. • "False labeling" prohibited. Statements and documents used must be truthful. Illegal to intentionally misrepresent wood or wood products upon importation. 	<ul style="list-style-type: none"> • Penalties: Criminal, Felony (maximum penalty 5 years imprisonment, \$500,000 fine for organizations/\$250,000 for individuals (higher amounts possible based upon pecuniary gain or loss) and possible monetary restitution to "victim" country whose resources abused. • Trafficking: Felony charges, the most serious, used when a person knows plants or plant products illegal and still engages in prohibited conduct. The trafficker does not need to be the one who violated the foreign law. Traffickers can be prosecuted in U.S. even when they never set foot there under international rules of "extraterritoriality." • False Labeling: When a person makes or submits false records, accounts, labels for or identification of plants in the U.S. knowing they are not true, the felony penalties above apply. Treated like a false statement prohibition. • Failure to File a Plant Declaration: Same felony penalty as above. • Penalties: Criminal, Misdemeanor (maximum penalty 1 year imprisonment, \$200,000 fine for organizations/\$100,000 for individuals). • Trafficking: Less serious charges used when a person in the exercise of due care should know plants are illegal.
<ul style="list-style-type: none"> • Due care: degree of care which a reasonably careful person exercises under the same or similar circumstances applied according to a person's degree of knowledge and responsibility. Use prudent business practices to determine legality. • No government checklist to satisfy due care inquiry. Industry-developed standards a suggested substitute. Similar to European Union "due diligence" requirement. Due diligence = due care. • Suspect legality when: goods cheaper than market rate; cash-only payment; missing, altered, questionable paperwork; transaction matches industry description of illegal trade; or supplier lacks clear answers to routine questions about product. • Forfeiture • Strict liability forfeiture (also called liability without fault) for illegal plants. • No "innocent owner" defense. "I didn't know plants were illegal" not a defense. • Burden of proof is "preponderance of the evidence" (more likely than not plants illegal) and a lower burden than required for criminal conviction, "proof beyond a reasonable doubt." • The U.S. Government has the burden of proof in all Lacey Act enforcement actions 	<p style="text-align: center;">How can foreign government's enhance Lacey Act effectiveness?</p> <ul style="list-style-type: none"> • Fight corruption – Indonesia response • Catalogue applicable laws and make them readily available in full text on the internet and elsewhere • Support industry self-regulation and seek assistance from non-governmental organizations • Cooperate with international partners to identify, investigate, and prosecute transnational plant traffickers • Impose domestic prohibitions on trade in illegal plants and plant products • Insure penalties are sufficient to deter and punish • Use full complement of national laws to prosecute domestic offenders, not just forest laws, and dismantle trafficking rings from harvest to market, not merely seize and forfeit illegal plants (review UNODC "Wildlife and Forest Crime Analytical Toolkit" available online) • The ideal Lacey Act enforcement model is one incapable of locating the necessary violations of foreign law to trigger U.S. enforcement

Q&A Session Continued:

Question from India (Gov.) for the US

Q Could you elaborate on place of origin? Are by-products legal, if the main source is illegal? Does the Lacey Act deal with this issue?

A What we have to demonstrate is that there has been a violation of one of the country's laws at some point in the entire supply chain, whether this was in the country of harvest, the country of processing etc.,. If there was a violation in the country of origin, even if the processing was entirely legal, it's still illegal under the Lacey Act.

Question from Indonesia (Gov.) for Japan and the US

Q *How do Japan and the US deal with timber that is harvested legally but traded illegally (e.g. export ban)?*

A Japan: Proof of legality is on the documentation provided by government that is exporting. Those documents are treated as proof of legality. For other countries, they have their own official government system. The Japanese system trusts other countries and third party proof which small importers are not capable of doing.

A US: violation of national law in one of the supply chain countries means a violation of the Lacey Act (violation along distribution line).

Q *How do you define legal origin? A product from China is for example exported to the US. According to the paperwork the species is Merbau which can only originate from Indonesia.*

A US: Failure to file accurate declaration requirement. Penalties apply when importers may have known that declaration is false. This generally only applies for commercial importers. Website reference given. But this can only be prosecuted when there is a knowing false declaration. They have to be false for the US to be able to prosecute.

Question from Australia (PS) for the US

Q *Forfeiture of shipments, how does that practically work? Port operations etc. Australia struggles with that.*

A Forfeiture was of great concern when developing this. Harsh remedy for someone who has no idea that there was illegality in the shipment. But this is the only way to remove those illegal goods from the market place. And importers can work with their contracts to protect themselves.

Question from EU FAO FLEGT Programme to all

Q *Has there been a reflection in Japan, South Korea, US, how will they perceive FLEGT licenses? Will they be recognised?*

A Japan: all legality documents from importing countries, including FLEGT licenses, will be accepted as proof of legality. So no change.

A US: all importers are urged to document their process.

A South Korea: Currently in stage of consideration regarding legality requirements. So no clear indication at this point.

A Australia: yes, recognises three timber legality frameworks. The Forest Stewardship Council (FSC), PEFC and FLEGT licensed timber.

A China: maybe in the future when FLEGT licenses are on the market we have some specifics. No legality documentation at the moment.

Questions from Europe (PS) to Japan

Q *The Japanese wood promotion system, how is that the same as Goho wood? At the moment FSC and PEFC don't seem to be recognised. Is there more information how it is going to be recognised?*

A No discrimination against foreign wood. FSC and PEFC also eligible. There are other requirements, such as species, resources etc. to collect points in the wood promotion system. There are discussions going on in Geneva that will bring more clarity on this issue.

Question from Indonesia (Gov.) to Japan

Q *Can Japan take action when there is indication of illegality from any stakeholder?*

A No, such rules and regulations could cause confusion. Even though there is no rule or regulation on that issue, the information on legality (independently from which source) is passed on to the importing companies for them to take action.

SESSION 2: Presentations by different Forest Governance support programmes

The session was moderated by Ms. Aimi Lee Abdullah who clarified that “programmes covered in this session didn’t represent all available support programmes and that there were more initiatives, especially among CSOs”. The session included presentations on EFI’s EU FLEGT Facility (Mr. Vincent van de Berk), the EU FAO FLEGT Programme (Mr. Bruno Cammaert), the RAFT Facility (Mr. Andrew Ingles), the UK Forest Governance, Markets and Climate Programme (Mr. Hugh Speechly), the GIZ Forest Governance Programme (Ms. Nora Heil), the Asia-Pacific Network for Sustainable Forest Management and Rehabilitation (Ms. Kong Zhe) and the UNDOC Programme on Combatting Illegal Logging and other Forest-related Crimes (Mr. Giovanni Broussard). Detailed presentations are included in Annex 4 but Tables 1 and 2 below provide an overview of the available support and the corresponding geographical coverage.

Table 1. Geographical coverage of Forest Governance Programmes in Asia

	EU-FAO	EFI	ITTO	RAFT	DFID	UNODC	GIZ	APFNet
Bangladesh	✓							✓
Bhutan	✓							
Brunei						✓		✓
Cambodia	✓	✓	✓			✓		✓
China		✓		✓		✓		✓
Fiji			✓					✓
Hong Kong								✓
India		✓	✓			✓		✓
Indonesia	✓	✓	✓	✓	✓	✓	✓	✓
Lao PDR	✓	✓		✓	✓	✓	✓	✓
Malaysia	✓	✓	✓		✓	✓		✓
Mongolia								✓
Myanmar	✓	✓	✓	✓		✓		✓
Nepal	✓							✓
Philippines	✓	✓	✓			✓		✓
PNG	✓	✓	✓	✓		✓		✓
Samoa	✓							
Singapore						✓		✓
Solomon Islands	✓					✓		
Sri Lanka								✓
Thailand	✓	✓			✓	✓		✓
Timor-Leste	✓					✓		
Tonga	✓							
Vanuatu	✓							
Viet Nam	✓	✓		✓	✓	✓	✓	✓

Table 2. Available technical assistance programmes and funding mechanisms in support of improved forest governance in Asia

<p>EU-FAO FLEGT Programme</p>	<p>Projects support is demand driven targeting VPA and Non-VPA countries using two financial support mechanisms:</p> <p>*Direct assistance (from 25,000 to 50,000 Euro grants for 1 year projects) to governments provides support to projects that contributes to an ongoing national FLEGT strategy.</p> <p>*Calls for proposals (100,000 Euro grants for 1 year projects) target specific forest governance challenges identified by government, civil society or private sector organizations.</p> <p>FAO provides technical and managerial assistance to Programme beneficiaries through regular backstopping by technical officers.</p> <p>The programme also provides Information services to increase the availability of FLEGT-related information and knowledge and to promote experience sharing among local stakeholder group.</p>
<p>European Forest Institute's EU FLEGT Facility</p>	<p>The EU FLEGT Facility provides technical assistance to FLEGT processes by meeting requests for support from the EU or from a VPA country. We commission studies, provide logistical and technical support, share knowledge, facilitate learning and communicate progress. The Facility gives direct assistance using its own experts or indirect assistance by contracting external services for specific assignments.</p> <p>The Facility does not administer funding mechanisms. We co-finance FLEGT initiatives under the guidance of our steering committee. We also help partners identify funding sources as part of our technical assistance to FLEGT processes. When requested by the EU or our steering committee, we provide short-term bridging funds to support VPA implementation.</p>
<p>ITTO's Tropical Forest Law Enforcement & Trade (TFLET) Thematic Programme</p>	<p>The ITTO Thematic Programme on Forest Law Enforcement, Governance and Trade (TFLET) operates through periodic proposal cycles (<i>calls for proposals posted on the ITTO website</i>). Depending on the funding available, limitations may apply in terms of maximum funding and project duration.</p>
<p>Responsible Asia Forestry and Trade (RAFT)</p>	<p>RAFT provides some financial support for selected buyer-supplier dialogues and international knowledge sharing events, but mostly provides technical assistance to governments, forest managers, wood processors, and buyers of wood products through its implementing partners that include The Nature Conservancy (TNC), the Institute for Global Environmental Strategies (IGES), TFT (The Forest Trust), the Tropical Forest Foundation (TFF), TRAFFIC – the Wildlife Trade Monitoring Network, and WWF's Global Forest & Trade Network (GFTN).</p>
<p>DFID / FGMC Programme</p>	<p>Support is provided through a range of instruments. These include direct financial assistance to governments, grants to not-for –profit organizations, memoranda of understanding with international organizations and contracts for service with prequalified companies in DFID's forestry framework.</p>
<p>United Nations Office on Drugs and Crime (UNODC)</p>	<p>Starting from an assessment of the current state of the criminal justice response to forest crimes, UNODC offers a range of services in the following areas:</p> <ul style="list-style-type: none"> •Review of the legal frameworks relevant to forest crimes •Capacity building for frontline law enforcement officers at land-

	<p>crossings, as well as air and sea ports</p> <ul style="list-style-type: none"> •Capacity building for mid- and high-ranking investigators and prosecutors on anti-corruption and anti-money laundering technique •Supporting cross-sectorial cooperation among agencies such as Police, Customs, Attorney General Offices, Anti-Corruption Commissions, Financial Investigation Units and key line ministries from the Forestry sector
<p>GIZ's Forest Governance Programme</p>	<p>Support is mainly given in form of:</p> <ul style="list-style-type: none"> •Policy Advice through Experts •Deployment of personnel •Individual assistance (workshops, trainings, publications, pilot projects) •Grant Agreements, local subsidies to local partners
<p>Asia-Pacific Network for Sustainable Forest Management (APFNet)</p>	<p>APFNet has allocated funding specially for the thematic training workshops that are held 2 or 3 times every year. It is open to our targeted economies and announced through APFNet's website.</p> <p>APFNet releases the annual call for project proposal on its website and one of the priorities is law enforcement and good governance for promoting sustainable forest management. APFNet will consider financial support according to its budget if the proposal has been recommended by the Project Appraisal Panel.</p>

Q&A Session

Question from US (Gov.) to all

Q Are you working together to make sure there is no overlap?

A EFI coordinates well. Regular contacts with UK and most other partners active in FLEGT landscape in Asia. Just started cooperations with FAO FLEGT. Jointly organised this meeting, good example of cooperation.



FAO working on mechanism where proposals submitted to FAO FLEGT will be shared with other partners for review and better coordination and funded by other partners (EU, EFI, GIZ) if FAO budgets are not sufficient. We want to avoid duplication.

Question from Indonesia (CSO) to EFI

Q What are the lessons learned from the African countries about their systems. Until today the Africans VPA countries have not started testing their systems. We need to have lessons learned. How can the systems be adopted in other countries?

A These are two questions. First one on systems in Africa. It is a learning process. There has been a lot of reliability on technology. It's not easy to do. Second question is on coordination between regions. EFI experts are involved in all VPA countries. They work together, share information etc. All VPA processes are receiving technical support from EFI. Not just active in Asia, but also in other regions. This mechanism may help to create a level playing field. Together with China, we are bringing concluded VPA countries to China to create understanding, talk about challenges, and to get appreciation from other consumer markets as well.

Question from RAFT to UNODC

Q ASEAN plans to have open borders from 2015 onwards. What challenges do you foresee?

A The movement of goods and people will increase in this region. More (human) capacity is needed at the borders where lots more capacity is needed to cope with this change. Border authorities in charge of identifying illegal movements only have basic equipment and too little staff.

Question from Thailand (CSO) to UNODC

Q Corruption is a challenge. How can you get the real information out?

A This is related to capacity on law enforcement. Corruption is a problem. We deal with it as with any other crime area.

Questions from Europe (PS) to all

Q Many of the support programmes are a mystery to trade. Tropical timber trade is declining. If timber trade is not there, how are you going to tackle deforestation?

A A by-product of deforestation is timber. FLEGT won't tackle the conversion part that drives deforestation. If the trade declines, the leverage decreases and FLEGT might not be the appropriate process. REDD+ would be an option, but Readiness processes are slow.

A Many donors are supporting sustainable (and legal) tropical timber e.g. through certification and FLEGT. There is a new Sustainable Tropical Timber Coalition [\[link\]](#) which addresses the declining trade with tropical timber and was launched in December 2012.

SESSION 3: Identification of priority needs for technical support and knowledge products

Workshop participants were split into 3 groups: government, civil society and private sector. Each group had a facilitator and a rapporteur to present the results of the discussion. Each group discussed the following three key questions:

1. To what extent do the existing support programmes match the needs of our group?
2. What kind of additional support or capacity building activities, knowledge/information products are needed in the region (regional or country specific)?
3. Recommendations on how to improve and better coordinate current FLEGT or Forest Governance support in the region?

Results of Group Discussions

Presentation Group 1 – GOVERNMENT

1. *To what extent the existing support programmes match the needs of our group?*

The participants agreed that the programmes already provide support in the areas of:

- Information sharing
- Capacity building
- Consensus building
- Top-level negotiations
- Strict Forest Law Enforcement
- Strengthening of verification systems

2. *What kind of additional support or capacity building activities, knowledge/information products are needed in the region (regional or country specific)?*

There was a strong focus on the need for increased regional exchange of information and knowledge. Participants pointed out that the establishing of a knowledge network would be useful. A related suggestion was that the EU should act as a facilitator for bringing countries together to exchange information and knowledge on the FLEGT subject. Participants also explained there should be support to develop a sense of ownership of the process. In terms of specific information products, the improvement of country baseline data on illegal logging was suggested. Additional support for the establishment of internal due diligence systems and better law enforcement was also suggested.

3. *Recommendations on how to improve and better coordinate current FLEGT or Forest Governance support in the region?*

The recommendations from the group included the establishment of a Timber Law Enforcement network, a learning network for ASEAN countries (e.g. Chatham House-like set up) and to accommodate the interests of other stakeholders.

Presentation Group 2 – CIVIL SOCIETY

1. To what extent do the existing support programmes match the needs of our group?

A lot of support for CS in the region is already available. Diversity of programs adds value, they all have a role to play (FERN supports to build CSO platforms; FAO provides grant and technical backstopping, EFI and GIZ technical assistance and analysis, etc.). However the level of support varies between countries. Support is difficult to access for some actors and would need to be more continuous.

2. What kind of additional support or capacity building activities, knowledge/information products are needed in the region (regional or country specific)?

The main need was related to the facilitation of regional exchange of lessons learned and region specific long-term support. Specific needs identified by the group were:

- The need to ensure sustainability beyond finance and external support
- Sharing of SEA specific FLEGT information and experiences
- Strengthen country level CSO coordination and inclusive multi-stakeholder processes
- Availability of FLEGT materials in the national language (local language)
- Help clarify and emphasize linkages between FLEGT-VPA and community livelihoods
- Foster political support to ensure safety and security of CSO engaged in FLEGT

3. Recommendations on how to improve and better coordinate current FLEGT or Forest Governance support in the region?

Conduct national risk and needs assessments (e.g. coordinated through donor harmonisation meetings on national level). Establish homepage, portal, email list for improved information exchange and networking on regional level. Alternative media: video, manga, radio, etc. Better use European advocacy groups (EIA, Global Witness, etc.)

Presentation Group 3 – PRIVATE SECTOR

The group expressed the need to receive more information on programs and projects occurring nationally and regionally to enable the PS to access information and support. Awareness of FLEGT and other policies are changing the environment of forest trade and the private sector is affected by these government level and international interventions but often without being consulted. Private sector actors want more stakeholder engagement when policy reform or programs are enacted. This increase in regulation will increase costs for suppliers as they must meet the numerous and detailed standards set down under the international acts and agreements. It was felt by one participant that there was a lack of common systems between the requirements of the Lacey Act, FLEGT and the Australian Illegal Logging Bill, except that they all have components of due diligence.

1. To what extent the existing support programmes match the needs of our group

There are support programs but they mostly engage at the national level and are yet to fully filter down to the private sector. Many people in the group did not know what programs are occurring and how they can get involved.

2. *What kind of additional support or capacity building activities, knowledge/information products are needed in the region (regional or country specific)?*

The supplier associations need strengthening and require more support in understanding national and international regulations. There needs to be a process or method to disseminate information to private sector actors. Producers need to understand market requirements to engage in regional trade and expand their businesses.

3. *Recommendations on how to improve and better coordinate current FLEGT or Forest Governance support in the region*

Trade associations should be consulted but also involved in the development of proposals for development projects. There needs to be support for project development and project implementation/management. The timber forum was developed to assist organizations with developing projects. There needs to be a coordinating body centralising the relevant information on activities in region to enable easy and centralised access to information. There should be a regional approach especially where countries share a common border. There should be an increase in networking between producer and consumer groups and small and medium enterprises groups such as furniture manufacturers to encourage working relationships. SMEs need additional support and enhancing networking and collaboration among PS associations would be very beneficial.

DAY 2

The second day of the workshop started with a summary of Day 1 presented by Dr. Alexander Hindrichs from EFI, followed by an introduction of Session 4

Summary of Day 1

Event documents spirit of cooperation

- 5 co-organisers, 1 local host, 15 countries, broad background of the participants, new and old faces

Session 1: Market requirements

- Presentations by Australia, China, EU, Japan, South Korea, US: illustrating a changing market
- Instruments of a different nature setup by different countries
 - ✓ Demand side: US, EUTR, Aus – Japan: PPP
 - ✓ Supply side: EU VPA, (private sector initiatives: certification)
 - ✓ Exploring (demand side) options: China and South Korea
- Issue of coordination and mutual acceptance

Session 2: Support Programmes

- 7 Programmes – but more actors are there
- Some programmes, e.g. by civil society initiatives or gov-to-gov projects not covered
- A lot in place and support opportunities from different angles

- ✓ Countries, beneficiaries and modalities clearly defined
- Informal coordination amongst programmes
 - ✓ Political collaboration on initiatives is handled by the involved governments

Session 3: Needs (defined by stakeholder groups)

- Government: support learning platforms, networking, law enforcement
- CSO: access and information for local NGOs, political support if CSOs shall handle defined tasks in the VPA, continuous and sustainable support
- Industry: programmes include private sector but access problematic (SMEs), tailored support (culture and needs), networking

Opportunity to **address forest governance through trade** measures and regional collaboration in Asia clearly exists. Critical is:

- ✓ creating and maintaining national / regional political willingness and ownership
- ✓ addressing complexity
- ✓ coordination and timing
- ✓ delivering on demand side measures
- ✓ capacity building / funding

Organisation of Session 4

- Group work (9:30 – 12:00 and 13:00 – 14:00)
 - ✓ 3 ½ Hours group work on thematic themes
 - ✓ Rapporteurs -> Powerpoints
- Plenary (14:00 - 15:30)
 - ✓ 1 ½ Hours group presentation and discussion/Q&A in plenary

Thematic groups:

- Market changes and implications for small and medium businesses
- Stakeholder engagement, consultation and participation
- TLAS development and implementation, including the challenge of imports

Task of each group

- Reflect on a specific theme relevant to FLEGT
 - ✓ Building on day 1
 - ✓ Mixed stakeholder representation in each groups
 - ✓ Identify priority capacity building needs related to your theme
 - ✓ What should be in place and what are the related challenges?
 - Ensure that SMEs are involved in providing FLEGT licensed timber, effective stakeholder engagement, targeted development and effective implementation of all TLAS elements
 - In the countries represented and in the region (to support country developments)
 - ✓ Capacity building to address related needs/challenges while considering the tasks of different actors
 - National actors, regional institutions (ASEAN)
 - International programmes and networks (existing, future?)

SESSION 4: Identification of priority capacity building needs at country and regional levels

Results of Group Discussions

GROUP 1: Implications for businesses, especially SMEs, to meet existing and emerging international market requirements for timber and timber products

The group work was based on an initial situation analysis or introduction to SMEs across the region followed by an assessment of needs and opportunities:

Introduction to SMEs across the region

1. Understanding the SME sector

Diverse across the region with variable levels of federation/organisation.

The wood industry is dominated by SMEs. They are important suppliers in the VPA supply chain. They are often small family businesses that lack access to information.

Vietnam: Most SMEs are individual and not in a federation. It is a village based enterprise.

Philippines: They are organized under the Department of Trade and Industry. They are highly organized.

PNG: They are many family groups supplying raw logs to mills and then use lumber domestically or for income generation. They cut about 5% of the total cut per year. They are allowed to cut 500 cu m per family. But not governed and some are members of the FIA in PNG.

Indonesia: incomplete permits and documents, they are uncomfortable with paper work and bureaucracy. SMEs must hire consultants to manage the paperwork (permits, timber administration). They need additional staff.

2. What has been the trend of the last 5 years, and how does the future look

Vietnam: There are 3000 companies. 900 companies have disappeared from the market. Companies disappeared but production is increased (companies incorporated). 90% are SMEs

Philippines: Many big companies have shifted operations to Vietnam and China. The SMEs have been affected by higher valued dollar and overhead costs (power, salaries). Companies relying on natural forests have disappeared due to lack of wood resource.

PNG: The smaller side processing industry has collapsed. The small businesses that owned sawmills have disappeared. This may be due to cost of operations or compliance measures. Larger companies have consolidated.

3. Are there any existing policies focusing on SMEs

Vietnam: The policy from the VN government is that the importers should get wood from endorsed/safe/non risk countries.

Philippines: They have good policies for the wood industries and they support FLEGT, but general processes of policy development are slow. The SMEs want to know about FLEGT and get involved in the process and they want to engage with the government on development this program in the country.

PNG: There are policies related to the industry and SMEs in particular. There is little information on trade policies. The change in the industry has been the move from tropical timber to plantation based timbers.

Needs and opportunities:

1. How can private sector in producer countries better engage with SMEs?

Vietnam: The large stakeholders understand FLEGT, Lacey Act and Australian regulations. They are relaying this information to the SMEs so they can trade wood and protect the environment. They also use FSC and CoC certifications.

Philippines: The trade associations are trying to build the capacity of the farmers by purchasing directly and streamlining their operations, through for example low interest loans and informing them of domestic and international regulations.

Trade associations to act as an information hub to and from Governments and SMEs. To simplify rules and regulations and the bureaucracy to help SMEs engage in the process

2. How can the private sector in consumer countries better engage with SMEs and support them? (inclusive of Governments, CSOs and FLEGT and FLEGT like support programs)

Australia, Japan, Europe, China:

- Help SMEs to be able to trade legally but the process needs streamlining
- Need training and support in the regulations and related paperwork
- Dialogue with industry associations is required.
- The consumer countries need to harmonize the market requirements, through collaboration. For instance, FLEGT license prove legality for all consumer countries.
- The changing access to the internet could provide good opportunities for information sharing.

China: The Government is raising market requirements awareness for medium sized enterprises and exporters.

The Global Timber Forum has been developed to ensure there is international collaboration and information sharing on the timber industry issues

Comment: New legality requirements are also seen as trade barriers.

3. What are the effective intermediaries to engage with SMEs?

Comment: Trust is an important issue (who can the SMEs trust?)

Associations could be good intermediaries

Existing training institutions (expand their scope to train in legality and marketing

Each of the participants shared the challenges faced in their respective countries. Based on these discussions, a number of regional needs based on recurring challenges in several countries were identified. These were then linked to sources of support, as well as further overarching needs identified by the group.

Recommendations on the implementation of legality assurance for small holder timber producers and SMEs:

- Facilitation is required and support in organizing the SMEs.
- Ease of getting permits
- Better coordination between SMEs and governments.
- Better understanding of the markets is required.

GROUP 2: Support for FLEGT processes with an emphasis on stakeholder engagement, consultation and participation

The group work started with the identification of national and regional challenges and identified priorities against available support:

Country Level- challenges:

- Raised expectations and how to keep the momentum going considering slow progress or possible lack of continuity in government leadership
- Commitment to undertake reforms is variable
- Most stakeholders need capacity building in organizational management, need to fully understand implications of VPA and need opportunities to get involved effectively
- Generally local NGOs are not consulted, governments involve INGOs
- Governments also need to understand how CSOs can play their roles
- Some countries do not only export timber and timber products, but also NTFPs (which are not covered by EUTR) which CSO is often engaged in (livelihoods)
- Lack of communications amongst agencies and departments
- Different levels of understanding – dissemination and roll/out of information
- Need to have a clear structure or platform for stakeholder involvement (government needs to understand)
- Sometimes complexity in the political set up makes it difficult
- CSOs need to be coordinated
- Government need to be coordinated
- Need for clear roles from government side and decision on who is the leading agency which should also ensure that the process is participatory
- Challenge of imported sources of timber
- Low awareness on FLEGT among CSOs, industry and government

How to address challenges at country level:

- Establish information clearing house in-country
- Awareness raising to every region in the country /roll out - dissemination
- Space for CSOs to engage with government in constructive dialogue
- Clarity regarding product coverage
- Functional mechanism for involvement of relevant stakeholders (incl. other relevant govt. agencies)
- Communicate structure of negotiations clearly
- Need for stakeholders are: proposal writing, fund raising, project management, effective staff development, information dissemination, conducting research.
- Agreement between stakeholders on how to approach the process

- Need for recognition within country on security issues
- how to select mandated CSOs
- Consultation map/design on how to engagement process

How to address challenges through regional level support:

- Regional clearing house for FLEGT related information
- Support for capacity building and coordination for stakeholders involved in FLEGT processes
- Regional documentation and sharing of lessons and experiences
- Regional network/platform
- UNODC regional engagement to counter environmental crimes
- Push security issue regionally, flag concerns
- Support on fighting environmental crime
- Enhance customs collaboration

GROUP 3: Support structures for TLAS development and implementation, including the legality of imports

After introductory presentations on TLAS and the successes and challenges of the Indonesian VPA process, participants were asked to discuss the three following guiding questions per country:

- 1) What are key things which should be in place in your country?
- 2) What are related challenges?
- 3) Which support is needed?

The results of the needs assessment per country is provided in Table 3 below.

Table 3. Overview of support needs for TLAS development

Country	Key things to be in place	Related Challenges	Support needed
Cambodia	<ul style="list-style-type: none"> *Government policy to support TLAS and VPA development *Starting study on timber flow *Need to develop official TLAS and VPA steering committee *Public consultation on TLAS and VPA 	<ul style="list-style-type: none"> *Willingness to get involved in the process *Lack of data and information *Not yet established, no funds *Lack of understanding 	<ul style="list-style-type: none"> *Political support, government budget *Technical and financial *Funds from government and EU *Capacity building for relevant stakeholders on TLAS and VPA
China	<ul style="list-style-type: none"> *Study stage of Chinese TLAS *Communicate and exchange ideas with importing countries *Successful VPA countries to easier export the products, increase speed 	<ul style="list-style-type: none"> *Final decision of government what kind of TLAS system wanted and needed *Dealing with import timber 	<ul style="list-style-type: none"> *Good licence systems *Exchange

Lao PDR	<ul style="list-style-type: none"> *Commitment from high ranking politicians (instead of department levels) *Set up of national negotiation team *Human resources *Strengthening forestry framework within ASEAN *EU and other donors should add more efforts in the process 	<ul style="list-style-type: none"> *Top down system *Weak coordination between stakeholders *Lack of capacities and understanding of FLEGT *Commitment from stakeholders *Consistent participation from relevant stakeholders *Involvement of CSOs *Enforcement issues *Capacities *Information sharing *Information dissemination *Low commitments from ASEAN countries *More on administration issues rather than facilitation and consultation in VPA process 	<ul style="list-style-type: none"> *Vice and prime minister *Identify clear TOR of relevant stakeholders *Need more trainings *Costs and benefits analysis/impact *Assessment of the VPA process. *More integrity and hardworking *Clear political view from the government *Consultations from neighbouring countries *Capacity building *Interpretation of documents in the local language *Financial supports *ASEAN Forestry committee, Information and experience exchange; more involvement of PS and CSOs *Play role as facilitator
Indonesia	<ul style="list-style-type: none"> *More SVLK and TLAS clinics to enable direct support for MSMEs *Improve the access right on information for IM *VPA JIC setup *Other bilateral and other VPA Import regulation 	<ul style="list-style-type: none"> *TLAS application and implementation for MSMEs *IM active role on monitoring and file complaint mechanism, cases and findings *Maintain stakeholder commitment and involvement in the implementation of VPA *Third country and imported raw material 	<ul style="list-style-type: none"> *Technical support (timber administration, forest management) access to finance and to market *Extent and maintain LIU portal services that provide direct access of information for IM along with procedures through public information disclosure units *TJPC meeting to prepare the JIC setup *Market dialogue, knowledge and experience exchange, bilateral meetings *Finalize the formulation and stakeholder consultation on import regulation
Malaysia	<ul style="list-style-type: none"> *Effective structure *Political will in supporting FLEGT VPA *Strong support and coordination through stakeholder consultation and documentation of the process *Strong information, database on progress of negotiation 	<ul style="list-style-type: none"> *Frequent changes, non-continuation process Gov *Level of priority in political support *Many stakeholders and government agencies involved *Provide information in negotiation process to EU 	<ul style="list-style-type: none"> *Strong support and cooperation from CS and industry *Internal support, top priority and commitment (federal and state ministries, agencies and head of department) *Coordination, regularly updates and more commitment *Internal support, different ministries
Myanmar	<ul style="list-style-type: none"> *Multi-stakeholder mechanism *MFCC Draft TLAS to be 	<ul style="list-style-type: none"> *Lack of consultation culture *Reluctance of Gov on the role of PS and CS 	<ul style="list-style-type: none"> *Political support *Technical and financial support *Awareness raising and

	<p>recognised and to have discussion on further development and consensus</p> <ul style="list-style-type: none"> *Common understanding on legality requirements *Communication and advocacy 	<ul style="list-style-type: none"> *Identification of stakeholders, getting their involvement, Involvement of Gov *Different understanding or interpretation of legal timber 	<p>communication *Financial support</p>
PNG	<ul style="list-style-type: none"> *Guidelines for importers e.g. Australia, China *Verification of legal compliance to meet to fulfil DD requirements *Add to the existing Export Permit system to manage the database possibly including complaint procedure. *Set up independent monitor 	<ul style="list-style-type: none"> *Lack of qualified and trained auditors *High costs associated with offshore auditors *Need to build on existing PNG Forest Service monitoring system. Good system but paper based with vital data often held at remote locations. *Staff training plus database needed. *PNG NGOs tend to focus on lobbying activities so may be difficult to act as professional independent monitor. *Functioning of system in practice *Whole MoF was terminated, totally new structures 	<ul style="list-style-type: none"> *Electronic data collection Connected to central database. Cover both Legality issues plus CoC data. *Data available for PNGFA management plus access for buyers. *Possibly employ an independent annual audit of system in consultation with all stakeholders *Access to information and results of restructuring on central level to all stakeholders
Thailand	<ul style="list-style-type: none"> *Establish FLEGT secretariat: office, staff and budget *Communication channels for government offices and agencies, stakeholders (eg rubber wood) 	<ul style="list-style-type: none"> *Bureaucracy in governmental agencies, allocation budget (secretariat and communication) *Poor knowledge and understanding of FLEGT process 	<ul style="list-style-type: none"> *Authority and access *International support to communication
Vietnam	<ul style="list-style-type: none"> *Verification Handbook *Centralized database Imported timber *Risk Assessment for categories of enterprises to determine frequency of verification 	<ul style="list-style-type: none"> *Qualification of personnel involved in collecting information *Gaps in existing laws (e.g. no clear procedure on plantations Circular 42) *Responsibilities are unclear (customs, rangers), no clear statements on high level 	<ul style="list-style-type: none"> *FOMIS Project *Laws revision *Dialog between high ranking officers from Laos and Vietnam; GIZ Laos and Vietnam

A final round of discussions allowed the group to identify needs for regional exchange in support of TLAS related capacity building and to address the issue of legality of imported timber:

Regional Exchange on TLAS development:

- Some fora for PS, but limited with other stakeholders
- Learn details of process from other countries
 - ✓ Best practices, lessons learnt, solutions
 - ✓ Publications, workshops
 - ✓ Improve access to information to other VPAs (TLAS)

- ✓ Implementation sharing, learning platform, etc.
- ASEAN platform for exchange between countries
 - ✓ Should bring Gov., PS and CSO together
 - ✓ Should bring different ASEAN platforms together (trade facilitation, forestry, customs)
- Pan-ASEAN exchange on timber legality (involve ASEAN member states, China, etc.)

Regional exchange on imported timber:

- Share country solutions
- Clarify documents on legality and traceability in each country
- Make timber legality definition available
- Identify countries you import from and initiate bilateral agreements with them (not only with consumer countries) listing elements of legality
- Learn from due diligence/due care
- Stimulate exchange between private sector initiatives in different countries (e.g. code of conduct)

Annex 1- Concept Note & Agenda

Regional Workshop on Capacity Building Needs to Support FLEGT in Asia
“FLEGT in Asia: supporting good governance and responsible trade for Asia’s forests”
Swissotel Nai Lert Park Bangkok, Thailand - 16 and 17 October 2013
Hosted by the Thai Royal Forest Department

Background

In 2003, the European Union (EU) adopted its Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) with the aim to halt illegal logging and promote better governance. The negotiation and conclusion of a Voluntary Partnership Agreement (VPA) between the EU and a Partner Country has been the predominant tool, but there are many measures in the Action Plan to support improved governance. The ultimate objective of VPA is to ensure, through a licensing scheme, that only legal timber is imported into the EU. Each VPA is dependent on the development and implementation of a Legality Assurance System (LAS) which includes a definition of legal timber, a verification system, a licensing system and an independent audit. Five countries in Asia have initiated actions to develop a VPA: Indonesia, Malaysia, Vietnam, The Lao Peoples Democratic Republic and most recently Thailand. Indonesia, which concluded negotiations in May 2011, is due to sign its VPA soon, and is making significant progress towards implementation of the VPA requirements.

The EU Timber Regulation became applicable in March 2013. The Regulation prohibits the placing of illegal timber and timber products on the EU market. The United States and Australia have both adopted similar legislation, completing a significant demand side incentive to enhance efforts to address illegal logging in supplier and processing countries. China, Japan and South Korea are contemplating the further development of policy instruments, including legal procedures, to curb the trade in illegal timber and timber products.

A number of programmes support regional and country level action to address illegal logging and to facilitate the implementation of these new trade related legal instruments. The executing agency of the EU FLEGT Action Plan is the European Forest Institute’s (EFI) EU FLEGT Facility. Since 2007 EFI has been providing technical and financial support to VPA processes and other elements of the EU FLEGT Action Plan. Since May 2012 The European Union further strengthened its support with the EU-FAO FLEGT Programme, implemented by FAO. The programme supports local stakeholder groups in developing countries to put the FLEGT Action Plan into practice. In addition, the European Commission has thematic programmes such as the EU-ENRTP (Thematic Programme for Environment and Sustainable Management of Natural Resources) and country programmes that can support FLEGT related activities. Concurrently, substantial support is also provided by the UK Forest Governance, Markets and Climate (FGMC) Programme, ITTO’s Thematic Programme on Tropical Forest Law Enforcement, Governance and Trade (TFLET), the GIZ Forest Governance Programme and the Responsible Asia Forestry and Trade (RAFT) Partnership and the [Asia-Pacific Network for Sustainable Forest Management and Rehabilitation](#) (APFNet) funded through the Chinese, Australian and US Governments.

Workshop Objectives

1. Learn about available support programmes and identify key regional support priorities;
2. Identify capacity building needs:
 - In support of FLEGT processes, with an emphasis on stakeholder engagement;
 - Of businesses, especially SMEs, to meet existing and emerging international market requirements for timber and timber products;
 - To have support structures for TLAS development and implementation, including the legality of imports from third countries.

Participants

- Government, Civil Society and Private Sector representatives from regional VPA countries (Indonesia, Malaysia, Vietnam, Lao PDR and Thailand) plus The Philippines, Cambodia, Myanmar, PNG and the Solomon Islands;
- Representatives of EU Delegations of concerned countries;
- Representatives and resource persons from FLEGT related support programmes (EFI, RAFT, DFID, FAO, GIZ);
- Speakers or representatives from Australia, China, European Union, India, Japan, South Korea and the United States.

Workshop Agenda:

DAY 1

Opening

09.00 – 09.45

- Opening remarks from Thailand Royal Forest Department (by Mr. Boonchob Suthamanuswong, Director General)
- Opening Remarks from EU Delegation to the Kingdom of Thailand (by Mr. Stefan Schleuning, Head of Development Cooperation)
- Presentation of workshop objectives and agenda by the FAO Regional Office for Asia and the Pacific (by Mr. Patrick Durst, Senior Forest Officer)

Session 1: Panel discussions on existing and emerging international market requirements for timber and timber products (Moderated by Mr. Hugh Speechly, Senior Advisor Forest Governance and Markets, DFID, UK)

09.45 – 10.15 Moderated panel: **Australia** (Mr. Tom Black, Agricultural Counselor, Australian Embassy in Bangkok), **China** (Dr. Zhao Jie, Associate Professor, Center for International Forest Products Trade, State Forestry Administration of China) and **European**

Union (Mrs. Delphine Brissonneau, Programme Officer, EU Delegation to the Kingdom of Thailand)

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| 10.15 – 10.35 | Q&A |
| 10.35 – 11.00 | Tea and coffee |
| 11.00 – 11.30 | Moderated Panel: Japan (Mr. Daiji Kawaguchi, Deputy Director, Wood Products Trade Office, Forestry Agency of Japan), South Korea (Mr. You Younghan, First Secretary, South Korean Embassy in Bangkok) and United States (Mr. John Webb, Retiree, Department of Justice). |
| 11.30 – 12.00 | Q&A Session |
| 12.00 – 13.00 | Lunch |

Session 2: Presentations by different Forest Governance support programmes (Moderated by Ms. Aimi Lee, Asia Regional FLEGT Associate, EFI, Kuala Lumpur, Malaysia)

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| 13.00 – 13.10 | EU EFI FLEGT Facility (by Mr. Vincent van den Berk, Programme Coordinator, European Forest Institute, Kuala Lumpur, Malaysia) |
| 13.10 – 13.20 | EU FAO FLEGT Programme (by Mr. Bruno Cammaert, Forest Officer, FAO Regional Office for Asia and the Pacific, Bangkok, Thailand) |
| 13.20 – 13.30 | RAFT Facility (by Mr. Andrew Ingles, Chief Technical Advisor, Asia Pacific Forest Program, The Nature Conservancy (TNC), Bangkok, Thailand) |
| 13.30 – 13.40 | UK Forest Governance, Markets and Climate Programme (by Mr. Hugh Speechly, Senior Advisor Forest Governance and Markets, DFID, London, UK) |
| 13.40 – 13.50 | GIZ Forest Governance Programme (by Mrs. Nora Heil, Forest Governance Advisor, Eschborn, Germany) |
| 13.50 – 14.00 | Asia-Pacific Network for Sustainable Forest Management and Rehabilitation (by Ms. Kong Zhe, Programme Officer, APFNet Secretariat, China) |
| 14.00 – 14.10 | UNODC Programme on Combating Illegal Logging and other Forest-related Crimes (by Mr. Giovanni Broussard, Programme Officer, UNODC, Regional Office, Bangkok, Thailand) |
| 14.10 – 14.30 | Q&A |
| 14.30 – 15.00 | Tea and Coffee |

Session 3: Identification of priority needs for technical support and knowledge products (Moderate by Dr. Bernd-Markus Liss, Principal Advisor for BMU Projects, GIZ, Manila, The Philippines)

15.00 – 16.00	Group discussions (3 groups: government, civil society and private sector)
16.00 – 17.00	Report back to plenary
18.30 – 20.30	Reception dinner

DAY2:

09.00 – 09.30	Summary of Day 1 and introduction to Session 4 (by Dr. Alex Hinrichs, Regional Advisor for Asia, EU-FLEGT Facility, EFI)
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Session 4: Identification of priority capacity building needs at country and regional levels (Moderated by Mr. Bruno Cammaert, Forestry Officer, EU-FAO FLEGT Facility, FAO, Bangkok, Thailand)

09.30 – 12.00	Group (3 groups) discussions based on preliminary introductions/presentations:
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Group 1: (Facilitators: Mr. Vincent van den Berk, Programme Coordinator EU-FLEGT Facility, EFI and Mr. Agus Djalaili, DFID Indonesia Multi-stakeholder Forestry Programme) Implications for businesses, especially SMEs, to meet existing and emerging international market requirements for timber and timber products.

Group 2: (Facilitators: Mr. Tim Dawson, EU-FLEGT Facility, EFI, Ms. Pham Thi Bich Ngoc, Climate Change manager, SRD Vietnam and Mr. Hongthong Sirivath, Programme, Coordinator for Land for Land and Livelihood, Village Focus International) Support to FLEGT processes with an emphasis on stakeholder engagement, consultation and participation.

Group 3: (Facilitator: Dr. Alex Hinrichs, Regional Advisor for Asia, EU-FLEGT Facility, EFI) Support structures for TLAS development and implementation, including the legality of imports from third countries

12.00 – 13.00	Lunch
13.00 – 14.00	Group discussions continued
14.00 – 15.30	Plenary with 3 group presentations and Q&A
15.30 – 16.00	Tea and coffee

Closing

16.00 – 16.30

- Summary of the workshop outputs and next steps by the FAO Regional Office for Asia-Pacific
- Closing remarks by the Thai Royal Forestry Department

Language

The workshop will be held in English. It is requested that only stakeholders able to work in English be recommended for participation.

Venue

The workshop will take place at the Swissotel Nai Lert Park Hotel in Bangkok, Thailand. Detailed information about workshop logistics will be provided to participants in due course.

Annex 2- List of Participants

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1	Australia	Mr	Tom Black	Counsellor (Agriculture)	Australian Embassy Bangkok	Government	Tom.Black@dfat.gov.au
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			Resource Persons				
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81	United Kingdom	Mr	Hugh Speechly	Senior Advisor – Forest Governance and Markets	DFID, UK FLEGT Programme	Government	h-speechly@dfid.gov.uk
85	Vietnam	Ms	Megan Graham	Programme Officer	TFT	INGO	m.graham@tft-forests.org

Annex 3- Reference Materials

- 1) [Guidance on the EU Timber Regulation: The EU Timber Regulation and Voluntary Partnership Agreements work together to combat illegal logging and improve forest governance](http://eeas.europa.eu/delegations/cameroon/documents/eu_cameroon/eutr_vpa_en.pdf)
(http://eeas.europa.eu/delegations/cameroon/documents/eu_cameroon/eutr_vpa_en.pdf)
- 2) [EU Timber Regulation - Frequently Asked Questions: Due diligence, certification and enforcement of the EU Timber Regulation](http://www.euflegt.efi.int/files/attachments/euflegt/faqs_eutr/faqs_eutr_endue_diligence-sept12_2.pdf)
(http://www.euflegt.efi.int/files/attachments/euflegt/faqs_eutr/faqs_eutr_endue_diligence-sept12_2.pdf)
- 3) [EU Timber Regulation - Frequently Asked Questions: Importing and exporting](http://www.euflegt.efi.int/files/attachments/euflegt/faqs_eutr/faqs_eutr_en-importingexporting-sept12.pdf)
(http://www.euflegt.efi.int/files/attachments/euflegt/faqs_eutr/faqs_eutr_en-importingexporting-sept12.pdf)
- 4) [A list of sources on the EU Timber Regulation](http://www.euflegt.efi.int/files/attachments/euflegt/publications_2013/vpa_eutr_sources_v5_1304_rcv.pdf)
(http://www.euflegt.efi.int/files/attachments/euflegt/publications_2013/vpa_eutr_sources_v5_1304_rcv.pdf)
- 5) [Fact sheet on FLEGT licensed timber](http://www.euflegt.efi.int/files/attachments/euflegt/publications_2013/fact_sheet_on_flegt-licensed_timber-en-april13-v3.3_ap_rcv.pdf)
(http://www.euflegt.efi.int/files/attachments/euflegt/publications_2013/fact_sheet_on_flegt-licensed_timber-en-april13-v3.3_ap_rcv.pdf)
- 6) [Booklet International Developments in trade in legal timber](http://www.euflegt.efi.int/files/attachments/euflegt/publications_2013/efi_lacey_act_eng_28pages_web.pdf)
(http://www.euflegt.efi.int/files/attachments/euflegt/publications_2013/efi_lacey_act_eng_28pages_web.pdf)
- 7) [The Lacey Act: Protecting the Environment by Restricting Trade](http://www.fas.org/sqp/crs/misc/R42067.pdf)
(<http://www.fas.org/sqp/crs/misc/R42067.pdf>)
- 8) [The Lacey Act: Compliance Issues Related to Importing Plants and Plant Products](http://www.fas.org/sqp/crs/misc/R42119.pdf)
(<http://www.fas.org/sqp/crs/misc/R42119.pdf>)
- 9) [Lacey Act FAQ-](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/faq.pdf) http://www.aphis.usda.gov/plant_health/lacey_act/downloads/faq.pdf
- 10) [APFNet—Proceedings of the 5th Workshop on Sustainable Resource Management \(17-18 October 2011\)](http://www.apfnet.cn/zh/uploads/publications/Toward_Sound_Forest_Governance.pdf)
(http://www.apfnet.cn/zh/uploads/publications/Toward_Sound_Forest_Governance.pdf)
- 11) [APFNet—Summary of APFNet’s Workshop on Sustainable Forest Resource Management \(17-18 October 2011\)](http://www.apfnet.cn/uploads/publications/Report_of_APFNet_Workshop_on_Forest_Resources_Management_October_2011.pdf)
(http://www.apfnet.cn/uploads/publications/Report_of_APFNet_Workshop_on_Forest_Resources_Management_October_2011.pdf)

Annex 4- Session 2 Presentations

1) EU EFI FLEGT Facility (by Mr. Vincent van den Berk, Programme Coordinator, European Forest Institute, Kuala Lumpur, Malaysia)

EU FLEGT Facility
 Building trust between trade & sustainability through governance

The EU FLEGT Facility

FLEGT support in Asia

Bangkok, 18 October 2013

EU FLEGT Facility
FLEGT in Asia

- 2001** East Asia Bali FLEG Declaration
- 2006 & 2007** Start of FLEGT VPA negotiations with Indonesia and Malaysia
- 2009** EFI's EU FLEGT Facility - Asia Regional Support Programme (FLEGT Asia) starts work in Asia
- July 2013** EFI FLEGT Asia work fully integrated under EU FLEGT Facility
- 2017** EU FLEGT Facility planning in Asia until 2017

EU FLEGT Facility
What we do

We support the European Union in implementing the EU FLEGT Action Plan in Asia.

This is done through:

- Support to stakeholders, partner country governments and EU institutions in bilateral **VPA processes**
- Regional support** to integrate FLEGT in regional institutions, networks and initiatives, share information, strengthen networking and build capacity
- Assist the EU by **facilitating FLEGT dialogues** in major timber trading and consuming countries such as China and India, but also South-Korea, Japan, Australia and New Zealand

EU FLEGT Facility
What we provide

- We provide **technical assistance** to FLEGT processes at the request of the EU or VPA countries.
- We provide support to **awareness raising** and **capacity building** at a regional level, and support the exchange between key market partners on all elements of the FLEGT Action Plan.

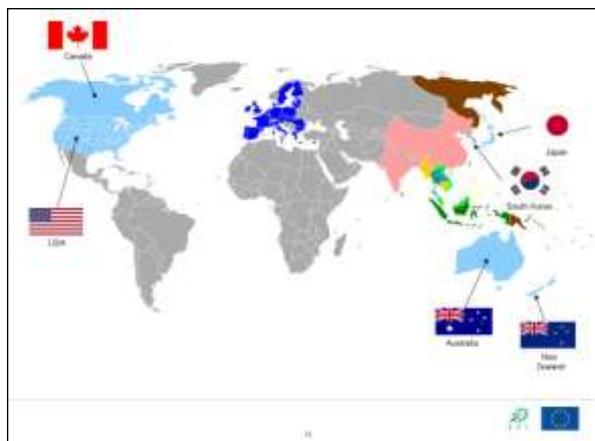
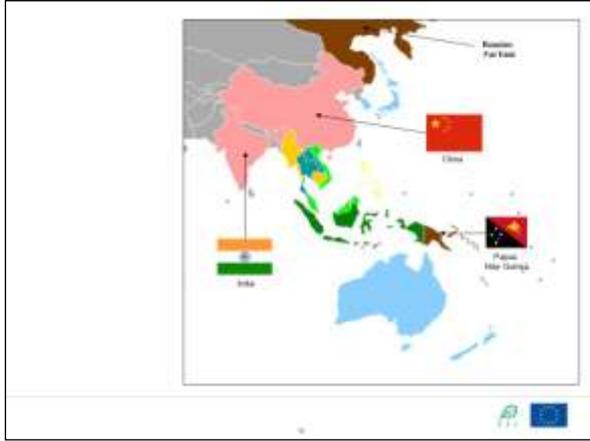
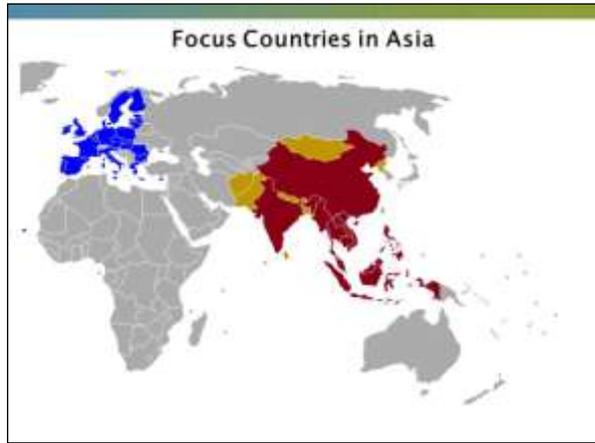
X The EU FLEGT Facility **cannot** provide grants (but contracts and (co-)finances activities).

EU FLEGT Facility
How we work

- annual workplan based on expectations from the EU
- Annual expectations discussed in Regional Advisory Group for Asia
- Workplan to be agreed by Steering Committee in Bi-Annual meetings
- Guidance of activities by the Steering Committee increases with the development of the VPA process

Voluntary Partnership Agreements
VPA Landscape

The diagram shows a horizontal timeline with four stages: Pre-Negotiation, Negotiation, Implementation, and Discontinuing. Countries are placed above or below the timeline to indicate their current stage. A large blue arrow points to the right along the bottom of the timeline.



EU FLEGT Facility
 Creating Legal Timber Trade & Monitoring Forest Governance

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 50450 Kuala Lumpur, Malaysia
 Telephone: +603-4251 1888
Wiscart.vanderberk@efi.int

Do you want more information?
 European Commission website on EUTR for EU operators
http://ec.europa.eu/eu_forest/euttr/
 EU FLEGT Facility website on VPA and FLEGT-forward timber
<http://www.euflegt.efi.int>

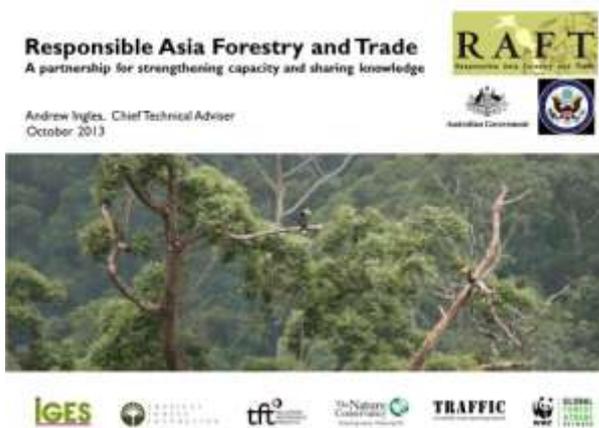
Visit more information
http://ec.europa.eu/eu_forest/euttr/ (English)
http://ec.europa.eu/eu_forest/euttr/ (Indonesian)
http://ec.europa.eu/eu_forest/euttr/ (Malay)
http://ec.europa.eu/eu_forest/euttr/ (Vietnamese)

2) EU FAO FLEGT Programme (by Mr. Bruno Cammaert, Forest Officer, FAO Regional Office for Asia and the Pacific, Bangkok, Thailand)

 <p>EU-FAO FLEGT Support Programme</p> <p>Presented by Bruno Cammaert Programme Coordinator for Asia-Pacific FAO Regional Office, Bangkok</p>	<p>EU FAO FLEGT Programme</p>  <p>EU FAO FLEGT Programme</p> <ul style="list-style-type: none"> • 4 year programme – May 1, 2012 • 10 million Euro – EC • Includes: Africa, Latin America and Asia • 3 Stakeholder groups: Gov., PS and CS <p><u>Specifically in Asia</u></p> <p>VPA countries: Indonesia, Vietnam, Malaysia, Lao PDR and Thailand</p> <p>Non-VPA Countries: Bangladesh, Bhutan, Cambodia, Democratic Republic of Korea, Myanmar, Nepal, PNG, the Philippines, Samoa, Solomon Islands, Sri Lanka, Timor-Leste, Tonga and Vanuatu</p>										
<p>EU FAO FLEGT Programme</p> <p>FLEGT Action Plan Thematic Priorities:</p> <ol style="list-style-type: none"> 1. Information support and developing national FLEGT strategies. 2. Improved transparency and independent 3. Support to local communities and community forestry activities 4. Support to improve national wood traceability, verification and control systems 5. Support to revise forest sector legal frameworks to better conform with best forest manage practices in the context of FLEGT 6. Support for private sector initiatives to participate in or comply with FLEGT / VPA / EUTR requirements 7. Support to address domestic and regional market topics 	<p>EU FAO FLEGT Programme</p> <p>Support eligible countries to put the EU FLEGT Action Plan into practice by:</p> <ul style="list-style-type: none"> • Grants: Providing resources to stakeholder groups to address locally defined FLEGT issues • Information Services: Supporting the collection, analysis and dissemination of FLEGT-related information and lessons learned among stakeholder groups 										
<p>EU FAO FLEGT Programme</p> <table border="1"> <tr> <td rowspan="2">VPA Countries</td> <td>Direct assistance to governments</td> <td>= 50,000 €</td> </tr> <tr> <td>Calls for proposals (all stakeholder groups)</td> <td>= 100,000 €</td> </tr> <tr> <td rowspan="2">Non-VPA Countries</td> <td>Direct assistance to governments</td> <td>= 25,000 €</td> </tr> <tr> <td>Calls for proposals (all stakeholder groups)</td> <td>= 100,000 €</td> </tr> </table>	VPA Countries	Direct assistance to governments	= 50,000 €	Calls for proposals (all stakeholder groups)	= 100,000 €	Non-VPA Countries	Direct assistance to governments	= 25,000 €	Calls for proposals (all stakeholder groups)	= 100,000 €	<p>EXAMPLES OF ON-GOING OR PIPELINE PROJECTS</p> <p>Nepal and Myanmar (non-VPA):</p> <p>What: Development of LAS systems for supply and CoC of timber produced by Community Forest User Groups. Includes IM by CSOs in Nepal.</p> <p>Objectives: Improve forest governance and support CF development</p>
VPA Countries		Direct assistance to governments	= 50,000 €								
	Calls for proposals (all stakeholder groups)	= 100,000 €									
Non-VPA Countries	Direct assistance to governments	= 25,000 €									
	Calls for proposals (all stakeholder groups)	= 100,000 €									
<p>EXAMPLES OF ON-GOING OR PIPELINE PROJECTS (Cont.)</p> <p>Lao PDR and Vietnam (VPA):</p> <p>What: Improve awareness and strengthen capacity of CSOs and forest-dependent communities to effectively participate into and contribute to the FLEGT VPA process</p> <p>Objectives: Contribute to successful VPA development and implementation by ensuring wide stakeholder participation and consultation.</p>	<p>EXAMPLES OF ON-GOING OR PIPELINE PROJECTS (Cont.)</p> <p>Indonesia and Malaysia (VPA):</p> <p>What: TLAS outreach and capacity building for implementation. Target beneficiaries are the small furniture industry in Indonesia and forest and wood based industries in Malaysia-Saba</p> <p>Objectives: Facilitate the wider implementation of the TLAS and ensure SME and small holder timber producers benefit from VPA implementation.</p>										



3) RAFT Facility (by Mr. Andrew Ingles, Chief Technical Advisor, Asia Pacific Forest Program, The Nature Conservancy (TNC), Bangkok, Thailand)



I will present a brief overview of the Responsible Asia Forest and Trade (RAFT) Program.

- Launched in 2007
- Designed to help Asia Pacific suppliers meet the growing demand for verifiably responsible wood products that benefit local and global economies, while preserving the environment and mitigating against climate change. RAFT has been providing capacity building services, technical support and networking opportunities, to help bridge the gap

between market and policy signals for responsible forestry and trade and the current standards found along key timber supply chains in the Asia Pacific Region.

- So far RAFT has invested more than US \$18 million in this work.
- Financed originally by USAID in phase 1 and phase 2 by Australian government and US Department of State. We thank the US and Australian Governments for their significant support over the years.
- RAFT's work on the ground has been concentrated so far in 6 countries: China, Indonesia, Lao PDR, Malaysia, Papua New Guinea and Vietnam, with others involved through regional dialogues and learning exchanges
- Directed by TNC and implemented by a group of partner NGOs. The partnership angle is critical because addressing these issues, in our view, requires working across the supply chain, linking public policy, corporate practice and community engagement across a large geographic expanse. This is an issue that is bigger than something a single organization can undertake and so the right partners are indeed necessary.

The goal shared by RAFT partners is : "To increase the proportion of internationally traded, legally verified wood products..... where those products are derived from responsibly managed forests, yielding reduced carbon dioxide emissions from land management and land-use change, compared to the 'business as usual' scenario"



By the end of 2015, we want to see a 25% increase in forest products derived from legal sources, a 25% increase in land under independently certified sustainable management practices, and a 35% reduction in CO₂ emissions from forest management & land-use change in affected areas compared to the business as usual scenario.



IGES: is an independent think tank and strategic policy research institute that contributes to sustainable development solutions in the Asia-Pacific region, and other parts of the globe. The IGES headquarters are in Hayama, Japan, and it maintains a regional centre in Bangkok and an office in Beijing. IGES partners with many international organisations, governments, research institutions, the private sector, environmental and social NGOs, and other groups on a wide range of issues, including climate change mitigation and adaptation, forest and biodiversity conservation, water resource management, sustainable consumption and

production, sustainable business, and land and resource use competition.

Its work for RAFT involves... (see slide)

TFT: Established in 1999, a global non-profit that helps businesses bring responsible products to market, products that improve people's lives and respect the environment at all stages of the product lifecycle. TFT helps more than 90 members worldwide build responsible supply chains, by identifying and addressing embedded social and environmental issues. Having established a strong record of achievement in timber supply chains, TFT has expanded its work into palm oil, leather, stone, sugar, coconut and charcoal. TFT has offices in 15 countries and an on-the-ground presence in many more.

Its work for RAFT involves(see slide)



Tropical Forest Foundation (TFF)

The Tropical Forest Foundation (TFF) is an international association of forest industry leaders, NGO's, and academic institutions committed to the concept of promoting and training of sustainable forest management with particular focus on reduced impact logging (RIL). TFF-Indonesia runs the SE Asia-Pacific program of TFF International and offers a suite of interrelated services to the Indonesian forestry sector and engages with the forest industry in the wider SE Asia Region.

Its work for RAFT involves(see slide)

TRAFFIC, the Wildlife Trade Monitoring Network

TRAFFIC was established in 1976 and has developed into a global network that is research-driven and action-oriented, committed to delivering innovative and practical conservation solutions. TRAFFIC strives to ensure that trade in wild plants and animals is not a threat to the conservation of nature. It employs around 100 staff based in nearly 30 countries.

TRAFFIC’s partner organisations are WWF and IUCN and its central aim is to contribute to the wildlife trade-related priorities of these partners. Timber and non-timber forest products are included in its work programs. Its work for RAFT involves (see slide).



WWF Global Forest & Trade Network (GFTN)

GFTN is one of WWF’s leading initiatives to combat illegal logging and drive improvements in forest management while transforming the global marketplace into a force for saving the world’s valuable and threatened forests. It was established in 1991, and is now the world’s longest-running and largest forest and trade program of its kind, providing structured support for a wide range of players involved in forest product markets. GFTN mirrors the global forest industry through its global-to-local, on-the-ground

presence in over 30 countries. It currently has more than 200 participants managing nearly 20 million hectares of credibly certified forests, and its trade participants trade more than 340 million m3 of timber and fibre per year.

Its work within RAFT includes (see slide)



The Nature Conservancy (TNC)

Founded in 1951, TNC has protected over 48 million ha of land and 8,000 km of rivers and operates more than 100 marine conservation projects worldwide. TNC now has more than 1 million members, over 4,000 staff and works in over 30 countries. TNC addresses threats to conservation involving climate change, wildfires, fresh water, forestry, invasive species, and marine ecosystems using a science-based approach, with over 700 scientists on staff. In every place TNC works, we pursue non-confrontational, pragmatic

solutions to conservation challenges.

Role in RAFT includes (see slide)



RAFT provides some financial support for selected buyer-supplier dialogues and international knowledge sharing events, but mostly provides technical assistance to governments, forest managers, wood processors, and buyers of wood products through its implementing partners that I have just described.

4) UK Forest Governance, Markets and Climate Programme (by Mr. Hugh Speechly, Senior Advisor Forest Governance and Markets, DFID, London, UK)

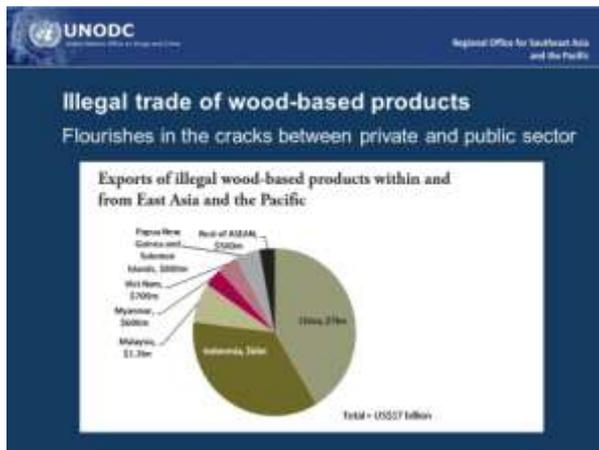
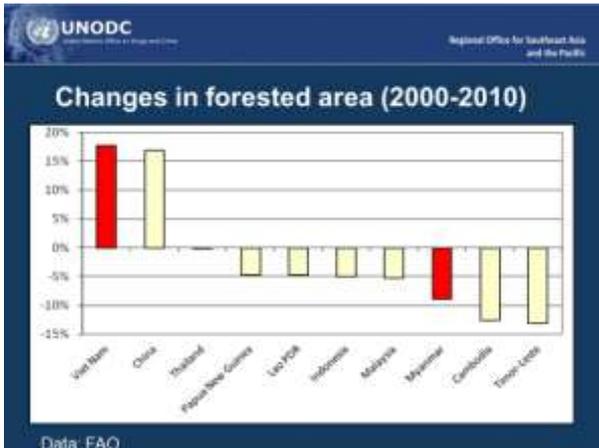
  <p style="text-align: center;">Forest Governance, Markets and Climate Programme (FGMC)</p> <p style="text-align: center;">UK Support for the FLEGT Action Plan</p> <p style="text-align: center;">Hugh Speechly (DFID)</p>	  <p>What is FGMC?</p> <ul style="list-style-type: none"> • £250-million 10-year programme • £79 million approved for period 2011-2015 • Follows 2 previous programmes, starting 2002 • Impact (the global change the programme contributes to): <p style="text-align: center;"><i>"Improved management of forests for poverty reduction, biodiversity conservation, and climate protection"</i></p>
  <p>FGMC – expected results</p> <ul style="list-style-type: none"> • Outcome (what will <u>change</u> and who will <u>benefit</u>): "Governance and market reforms that reduce the illegal use of forest resources and benefit poor people" • Outputs (direct deliverable <u>results</u>): <ol style="list-style-type: none"> 1) <u>Increased and sustained</u> engagement by multiple stakeholders in targeted producer and processing countries 2) <u>Adoption and implementation</u> of public policies and private business standards that tackle trade in timber and other commodities from illegal forest practices 3) <u>Increased</u> knowledge and momentum for change 4) <u>Improved</u> coherence between programmes on forests and deforestation at national and international levels 	  <p>What does FGMC do?</p> <ul style="list-style-type: none"> • Supports VPA implementation <ul style="list-style-type: none"> – Direct support via contracts and MoUs (£22.5 m) – Contribution to EFI (£8 m) – Additional funding (EU, NO, DFID country offices) • Tackles underlying governance and market failures, through advocacy, capacity building, research <ul style="list-style-type: none"> – Grants to CSOs (£36.2 m) • Programme coordination and facilitation • External Monitoring
  <p>FGMC country support</p> <ul style="list-style-type: none"> • VPA negotiation <ul style="list-style-type: none"> – Guyana • VPA implementation: <ul style="list-style-type: none"> – Ghana, Liberia, Indonesia, Republic of Congo • VPA Facilitation: <ul style="list-style-type: none"> – Indonesia, Ghana, Liberia, Cote d'Ivoire, Congo, Central African Republic, Guyana • Cooperation with Middle-Income Countries <ul style="list-style-type: none"> – FGMC China programme 	  <p>Grants to not-for-profit organisations</p> <ul style="list-style-type: none"> • Research and communications <ul style="list-style-type: none"> – Chatham House, Forest Trends • EU Advocacy, linking EU and south NGOs <ul style="list-style-type: none"> – FERN • Capacity building <ul style="list-style-type: none"> – CIDT, Proforest, Client Earth, Well-Founded, Rainforest Foundation, IUCN • Monitoring, whistle-blowing, advocacy <ul style="list-style-type: none"> – EIA, Global Witness • Tenure rights advocacy <ul style="list-style-type: none"> – Rights and Resources Initiative • Business-to-business trade links <ul style="list-style-type: none"> – European Timber Trade Federation
  <p>FGMC Funding opportunities</p> <ul style="list-style-type: none"> • Country support <ul style="list-style-type: none"> – Focus on VPA countries where DFID has experience and need is greatest (mainly Africa) – Direct support to government or through supplier contracts (e.g. support to the Indonesia Multi-stakeholder Forestry Programme) – Funding FLEGT Facilitators (e.g. Indonesia) – European Forest Institute contribution • Accountable Grants <ul style="list-style-type: none"> – Calls for proposals for FLEGT-related work • Contribution to international organisations <ul style="list-style-type: none"> – FAO FLEGT Programme 	  <p style="text-align: center;">Any questions...?</p> <p style="text-align: center;">h-speechly@dfid.gov.uk</p> <p style="text-align: center;">http://devtracker.dfid.gov.uk/projects/GB-1-201724/</p>

5) GIZ Forest Governance Programme (by Mrs. Nora Heil, Forest Governance Advisor, Eschborn, Germany)

 <h2 style="text-align: center;">Forest Governance Programme</h2> <h3 style="text-align: center;">Approach - Objectives - Partners</h3> <p>Nora Heil Division 47 Environment and Climate Competence Center: Sustainability, Forests, Natural Resources Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH E: nora.heil@giz.de</p>	 <h3>GIZ - Scope of action</h3> <p>Sustainable implementation on all political levels</p> <p>Concept of multilevel interventions: providing concrete experiences on the local and national level and feedback into national policy and international processes</p> <p>International level Shaping international instruments and multilateral agreements and supporting partner countries in international negotiations</p> <p>National level Policy advice of ministries in Germany through GIZ headquarters and of partner countries through country level support programmes</p> <p>Local level Support local initiatives (e.g. through development workers)</p> 
 <h3>Our approach to Forest Governance</h3> <ul style="list-style-type: none"> • Process/outcome of how forest resources are accessed and managed • Reference to national frameworks, processes and capacities in a country • Global dimension due to forest's impact • Potential for improvement through intern. initiatives (such as REDD+ and FLEGT) <p>→ Creates enabling conditions for sustainable forest management</p> 	 <h3>The Forest Governance Programme (FGP)</h3> <ul style="list-style-type: none"> • Project Duration: 2012 – 2018 • Budget: 10 Mio. EUR • Location: GIZ Headquarter, Eschborn, Germany • Objectives: <ul style="list-style-type: none"> • Assist partner countries in their efforts to improve institutional, legal and organizational framework conditions (forest governance) on the ground • Help to increase effectiveness of forest governance initiatives such as REDD+ and FLEGT and their interfaces on the global level with international partners (FCPF, PROFOR, EC, EFI, Forest Trends, RRI, TI, etc.) 
<h3>Country Activities of the Forest Governance Programme</h3> <ul style="list-style-type: none"> ■ Governance ■ Governance/REDD ■ REDD ■ FLEGT ■ FLEGT/REDD 	 <h3>Example from Vietnam – achievements so far</h3> <ul style="list-style-type: none"> • Strengthening and integrating the private sector <ul style="list-style-type: none"> - Expert dialogue on EUTR (SPOGA Fair, vTi Hamburg) • Preparing enterprises for FSC CoC Certification <ul style="list-style-type: none"> - Analysis (Working Security, Social Aspects) in saw mills • Training on Circular 1 <ul style="list-style-type: none"> - Workshop Circular 1, Training Anti-Corruption • Support TLAS Development <ul style="list-style-type: none"> - Study on Handicraft villages with Forest Trends - Development of Verification Handbooks 

6) Asia-Pacific Network for Sustainable Forest Management and Rehabilitation (by Ms. Kong Zhe, Programme Officer, APFNet Secretariat, China)

 <h2 style="text-align: center;">APFNet's Effort on Strengthening Forest Governance</h2> <p style="text-align: center;">Kong, Zhe Program Officer APFNet</p> <p style="text-align: center; font-size: small;">kong_zhe@apfnet.cn; apfnet@apfnet.cn</p>	 <h3>About APFNet</h3> <ul style="list-style-type: none"> • An initiative proposed and agreed by the APEC leaders in 2007; • Formally launched in Beijing, September 2008 <p>Our Mission:</p> <ul style="list-style-type: none"> • Help promote and improve sustainable forest management and rehabilitation through capacity building, information exchange, and support for regional policy dialogues and pilot projects.
 <h3>APFNet Programs on Promoting Sound Forest Governance</h3> <ul style="list-style-type: none"> • Capacity Building <ul style="list-style-type: none"> 8 thematic training workshops on promoting sound forest governance since 2008 • ASEM forest demonstration project will be launched in Lao (2014 - 2017) <ul style="list-style-type: none"> Aims to enhance forest management capacity and forest governance, and promote socio-economic development Focuses on forest law enforcement and cross-border forest resources management 	 <h3>Funding from APFNet on Forest Governance</h3> <p><i>2008 – Present</i></p> <ul style="list-style-type: none"> • \$720,000 for the 8 thematic training workshops <p><i>2014 – 2017</i></p> <ul style="list-style-type: none"> • Planned \$2,000,000 for the first phase of ASEM demonstration project • Continued investment for training workshops on promoting sound forest governance
 <h3>Priorities for Strengthening Forest Governance</h3> <ul style="list-style-type: none"> • Strengthen cooperation in the following area: <ul style="list-style-type: none"> • Establish mechanism to promote information exchange and sharing • Conduct research, exchange information and share experience on forest policy • Establish multi-sector coordination mechanism to address common issues • Capacity building for officials of forestry sectors and forestry technicians 	 <h3>Reflections on Strengthening Forest Governance</h3> <p>Key issues on preventing illegal logging and trading</p> <ul style="list-style-type: none"> • Political will and capacity of government; • Amendment of law and regulations to address the emerging issues; • Forest tenure, payment for ecosystem services, as well as operable policies and mechanism; • Coordination of forest law enforcement among international/regional organizations to reduce duplication.



Annex 5 – Presentation notes from the “Lacey Act Protection for Foreign Plants” presentation by John T. Webb, Prosecutor, U.S. Department of Justice Emeritus

2008 Amendment

With enactment of legislation in 2008, the Farm Bill (the Food, Conservation, and Energy Act of 2008), a century-old U.S. conservation statute, the Lacey Act, was amended to combat illegal logging and expand the Lacey Act’s anti-trafficking protections to a broader set of plants and plant products, including plants and plant products originating or processed in foreign countries.

The 2008 amendments were enacted to reduce global illegal logging and aid the U.S. timber industry. The House conference report describing the purposes of the legislation identified the following problems the amendments intended to address:

“[I]llegal logging undermines responsible forest enterprises by distorting timber markets with unfair competition and price undercutting. Illegal logging also threatens the conservation of forest resources, wildlife, and biodiversity, by facilitating forest conversion to non-forest uses and depleting or completely eliminating certain forest ecosystems or the habitat of certain forest dependent wildlife. Finally, illegal logging results in a loss of revenue when taxes or royalties are not paid that could otherwise be invested in sustainable forest management or economic development.”

H.Rept. 110-627 (May 13, 2008)

Definition of Plant

The definition of the term “plant” in the Lacey Act was expanded in 2008 to now include “any wild member of the plant kingdom, including roots, seeds, parts, and products thereof, and including trees from either natural or planted forest stands.” 16 U.S.C. 3371(f)(1). Before the 2008 Amendments, the Lacey Act applied only to those plants that were indigenous to the United States and listed under one of the following: the Endangered Species Act (ESA); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); or a state law to conserve species threatened with extinction. It did not expressly apply to plant products.

There are certain exclusions, including: (1) common cultivars (except trees) and common food crops; (2) live plants that are to remain or be planted or replanted; and (3) scientific specimens of plant genetic material to be used for research, except, in the latter two instances, for those species that are listed in an Appendix to the CITES, as endangered or threatened under the ESA, or pursuant to any State law providing for conservation of indigenous species threatened with extinction.

Prohibition on Trafficking

The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in foreign commerce any plant, with some limited exclusions already noted, involved in violations of foreign laws that protect plants or regulate the following: the theft of plants: the taking of plants from a park, forest reserve, or other officially protected area; the taking of plants from an officially designated area; or the taking of plants without, or contrary to, required authorization. 16 U.S.C. 3372(a)(2)(B)(i).

Additional prohibitions include foreign laws covering non-payment of fees or taxes, such as “payment of appropriate royalties, taxes, or stumpage fees required for the plant by any foreign law.” A final prohibition addresses foreign laws restricting export and transshipment of plants. 16 U.S.C. 3372(a)(2)(B)(ii)-(iii).

Plant Declaration

Beginning on December 15, 2008, the Lacey Act also required an import declaration for plants and plant products, except for plant-based packaging materials used exclusively to import other products. Importers must file a declaration upon importation that contains the scientific name of the plant, the

value of the importation, the quantity of the plant, and the name of the country from which the plant was taken. 16 U.S.C. 3372(f)(1), (3).

Several unique declaration requirements apply when either unknown species are used to produce a plant product, the actual country of origin is unknown and multiple countries could be the source, or paper and paperboard products contain recycled plant product. 16 U.S.C. 3372(f)(2)(A)-(C).

The declaration requirement is not fully implemented yet and is being phased in for plants and plant products using the Harmonized Tariff Schedule (HTS). Details and updates on what currently must be declared can be found at the website on the Lacey Act maintained by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service at the following website (APHIS Lacey Act Website): http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml. Lacey Act inquiries can also be made there.

False Labeling

The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant which has been or is intended to be either imported, exported, transported, sold, purchased, or received from any foreign country; or transported in foreign commerce, that is, commerce between a foreign country and the U.S. 16 U.S.C. 3372(d). This prohibition covers customs document packages submitted upon importation, including the plant declaration and any accompanying invoices or other documents.

Lacey Act Trafficking Offenses

Violations of the Lacey Act provisions may be prosecuted through either criminal or civil enforcement actions. 16 U.S.C. 3373(a)-(d). With respect to potential criminal penalties, a two-tiered penalty scheme exists, creating both misdemeanor and felony offenses, distinguished in part by a defendant's knowledge of the underlying law. For a Lacey Act violation involving foreign law to be a felony, the defendant must import plants in violation an underlying law or regulation, or engage in conduct during the offense involving the sale or purchase of plants with a market value of over \$350 knowing that the fish or wildlife or plants were taken, possessed, transported or sold in violation of an underlying law or regulation. A misdemeanor penalty requires proof that the defendant "in the exercise of due care" should know the fish or wildlife or plants were taken, possessed, transported, or sold in violation of an underlying law or regulation. 16 U.S.C. 3373(d)(1)-(2).

Anyone who imports illegally taken plants or plant products, including timber or lumber, into the United States, or attempts to, may be prosecuted. In any prosecution under the Lacey Act, the burden of proof of a violation rests on the government and in a criminal prosecution that burden is "proof beyond a reasonable doubt," the highest burden of proof in U.S. courts.

A person may be prosecuted for a Lacey Act offense who is not the one who violated the foreign law. Plants or timber, and the products made from illegal plants or timber, become "tainted" even if someone else commits the foreign law violation. The question is what the person now suspected of an offense knows about the foreign law violation. If the person knows, or in the exercise of due care should know, the plants or plant products are somehow illegal, a criminal prosecution may occur. The person can "know" the plants or plants products are illegal without knowing exactly what law foreign law or laws were violated. The U.S. never has to prove someone intended to violate the Lacey Act. But the U.S. does have to prove at least one or more foreign laws was both applicable and violated and those laws may be violations from different countries as the plants or plant products moved from harvest to market.

The U.S. does not maintain a library of applicable foreign laws, but relies upon each foreign country to maintain an inventory of those laws, as well as to provide information about those laws and any potential violations of them when the U.S. is involved and conducts an investigation. To detect violations the U.S. relies not only upon foreign government officials, but its own cadre of U.S. Government officials worldwide and inspectors at U.S. Customs ports of entry, industry watchdogs and competitors, data analysis, non-governmental organizations (NGOs/civil society), private citizens, and anonymous tips. When required to prove foreign law at trial, a procedure known as "foreign law determination," the court may consider any relevant material or source – including testimony – and is not bound by evidentiary rules. Federal Rules of Criminal Procedure, Rule 26.1; Federal Rules of Civil

Procedure, Rule 44.1. The preferred practice is to bring senior officials from foreign countries to explain their laws and how those laws were violated in this case.

Penalties

The penalties for criminal Lacey Act trafficking offenses are as follows:

Felony – Up to 5 years imprisonment and a fine of up to \$500,000 for organizations and \$250,000 for individuals.

Misdemeanor – Up to 1 year imprisonment and a fine of up to \$200,000 for organizations and \$100,000 for individuals.

These fine amounts are higher than what is shown in the Lacey Act itself because of the operation of the Criminal Fine Improvements Act. 18 U.S.C. 3571. The fine amounts themselves may even be higher than the amounts listed, up to twice the pecuniary gain or loss caused by the offense, as an alternative fine calculation. 18 U.S.C.3571.

False labeling offenses are divided into felony and misdemeanor offenses. False labeling is a felony if it involves either importation into the U.S. or the sale or purchase of plants with a market value greater than \$350. 16 U.S.C. 3373(d)(3)(A). False labeling involved in other unlawful conduct is a misdemeanor. 16 U.S.C. 3373(d)(3)(B). Unlike Lacey Act trafficking offenses, no violation of foreign law is necessary to trigger an offense, but the penalties are the same as those for trafficking.

Failure to file a plant declaration upon importation as required is also a felony and subject to the same punishment as felony trafficking.

Non-criminal monetary penalties exist, known as civil penalties. These provisions (not discussed here) usually require an element of knowledge of the illegal nature of the plant or plant product in question on the part of the party against whom an enforcement action is brought. 16 U.S.C. 3373(a)-(d). The administrative agencies, not the Department of Justice, are responsible for assessing and collecting these penalties

Due Care

The Environmental Investigative Agency (EIA) in a publication entitled *Setting the Story Straight, The U.S. Lacey Act: Separating Myth from Reality* identified both a set of “red flags” to raise suspicion about the legality of plants or plant products and suggested ways to demonstrate after the fact due care has been exercised.

Some “red-flags” to look for from suppliers who may be selling illegal plants or plant products include: products priced significantly below the going market rate; cash-only payments; bribes; offers at a lower price for goods without paperwork; prices that do not include legal tariffs or duties; incorrect, inconsistent or imprecise product labeling; invalid or questionable permits or paperwork; inability or unwillingness to answer questions about the product’s origin; and other unusual sales methods or practices.

Some examples of how businesses can demonstrate due care was exercised:

Keep complete records of their efforts at compliance

Develop a company compliance plan

Document how company compliance plan was followed in business transactions

Train employees — they are company agents

Visit suppliers

Ask questions based on any specific concerns in the source material’s region

Develop and follow industry standards

Ask overseas suppliers for genus/species information and any additional required to accurately file declaration

Confirm validity of scientific names

Check botanical resources (e.g. GRIN • Taxonomy)

Confirm geographic distribution

Check legality or compliance with Ministries of Agriculture, Interior, or Forestry

Confirm that source companies operate legally (licensed/certified)

Request pertinent plant protection, export, or transshipment laws from a government official in the country of harvest or export

Forfeiture

Plants or plant products imported into the U.S. in violation of the Lacey Act are treated as contraband and are subject to forfeiture on a strict liability basis, that is, without fault on the part of the importer. The Lacey Act forfeiture provision states, “[P]lants imported . . . contrary to the [Lacey Act] . . . shall be subject to forfeiture to the United States notwithstanding any culpability requirements [i.e., knowledge of illegality or lack of due care] requirements for . . . criminal prosecution. 16 USC 3374(a). Forfeiture actions are legal proceedings against the property, not a person. Anyone claiming an interest in the property subject to forfeiture can contest the government’s action.

If illegal plants or plant products are brought into the United States, they may be seized whether or not the person from whom it is seized knew or should have known of its illegal nature. Nonetheless, the government must still show that a plant, plant product, or wildlife has been involved in a Lacey Act foreign law violation. The burden of proof is lower than what required to prosecute. The U.S. need only show, by a preponderance of the evidence, that is, it is more likely than not the plants or plant products are contraband.

There is no so-called “innocent owner” defense, “I didn’t know it was illegal,” is unavailable as a defense to a Lacey Act forfeiture action, because the seizure is considered contraband.

Forfeiture not only removes contraband from the marketplace, but is a powerful deterrent to trafficking in illegal plants or their products. The lower burden of proof and the absence of proof required to show what the importer knew or should have known about any illegality makes such actions relatively easier to prove than a criminal prosecution. Millions of dollars of merchandise can hang in the balance and shipments containing commingled legal and illegal plants and plant products may be subject to forfeiture in their entirety.

How Can Foreign Governments Enhance Lacey Act Effectiveness?

This list is merely the author’s suggestions. But the lead recommendation is simply to fight corruption as Indonesia has. Too often, the complicity of government officials in the illegal activity insulates the perpetrators from official action and makes it difficult if not impossible to obtain the cooperation of the necessary government officials to pursue legal remedies at home or elsewhere.

Effective Lacey Act enforcement begins at home as a cooperative effort among the government and its citizens to insure compliance with domestic laws. The ideal Lacey Act enforcement model is one incapable of locating the necessary violations of foreign law to trigger U.S. enforcement. The Lacey Act is truly a last resort in play only when domestic enforcement elsewhere fails.