

EUFLEGT.EFI.INT

THE FOREST LAW ENFORCEMENT
GOVERNANCE AND TRADE TEAM
OF THE EUROPEAN FOREST INSTITUTE

THE FLEGT VPA NEGOTIATIONS PROCESS

Experiences from Malaysia

Aimi Lee Abdullah

European Forest Institute – FLEGT Asia
Kuala Lumpur, 17 November 2011

Malaysia - EU FLEGT VPA Negotiations

May 2003

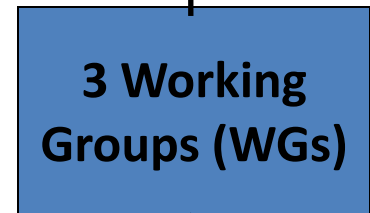
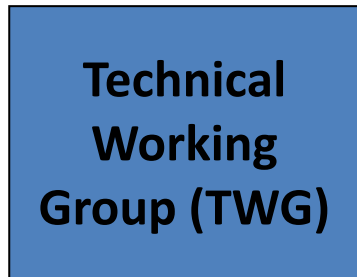
Minister of Primary Industries, Dato' Seri Dr. Lim Keng Yaik met with the European Commissioner for Environment, H.E. Mrs Margot Wallstrom and personally conveyed Malaysia's commitment to work with EU on the FLEGT Action Plan.

September 2006

Minister of Plantation Industries & Commodities visit to Brussels in September 2006. Signal start of formal negotiation on FLEGT VPA.

VPA Process

Malaysia-EU
Negotiations



**EU-Malaysia Netherlands FLEGT Meeting, June
2005**



The EU Approach:

- Bilateral negotiations on technical details of legal verification
- Uses regulations in the country concerned as a basis defining what legality is
- Multi-stakeholders must agree
- Commitment to provide resources for capacity- building

EUFLEGT.EFI.INT

THE FOREST LAW ENFORCEMENT
GOVERNANCE AND TRADE TEAM
OF THE EUROPEAN FOREST INSTITUTE



©European Forest Institute

1st Malaysia-EU SOM, January 2007



VPA Process

Formal negotiations announced September 2006

Negotiations through SOM supported by TWG;

2 SOMs and 8 TWG meetings held

Preparations by Malaysia

NSC - Mandate to the Negotiating Team

WG I - Legal drafting & General provisions

WG II – TLAS

WG III - Market Benefits and Capacity Building

Forum	Objectives of Forum	Remarks
Malaysian National Steering Committee (NSC)	<ul style="list-style-type: none">• To coordinate the national position• Review progress made in the Malaysia-EU FLEGT VPA negotiations• Establish, task & oversee activities of Working Groups to move the negotiations forward	<ul style="list-style-type: none">• Chaired by the Secretary-General of the federal Ministry of Plantation Industries & Commodities (MoPIC)• Involves the Ministry of Foreign Affairs, Ministry of International Trade & Industry, Ministry of Natural Resource & Environment, Sabah & Sarawak Chief Minister's Offices, Forestry Departments, Customs Department, National Institute of Occupational Safety & Health, Department of Indigenous Peoples' Affairs, etc



FLEGT Briefing Notes

FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE

Voluntary Partnership Agreements

1. What are Voluntary Partnership Agreements?

There is increasing recognition that the EU, as a significant consumer of wood products, shares responsibility with timber-producing countries to tackle illegal logging and its associated trade. However, there is currently no practical mechanism for identifying and excluding illegal timber from the EU market.

The FLEGT Action Plan therefore proposes the development of Voluntary Partnership Agreements between the EU and individual timber-producing countries (FLEGT Partner Countries). Legally produced timber exported to the EU would be identified by means of licences issued in Partner Countries. Timber originating in a FLEGT Partner Country and arriving at an EU point of import without such a permit would be denied entry. To enable EU customs authorities to exclude illegal timber, and thereby make Partnership Agreements effective, a new EU regulation is required.

The titles of the eight briefing notes in this series are:

1. What is FLEGT?
2. What does FLEGT mean for Member States?
3. What is legal timber?
4. Why the focus on legality, not sustainability?
5. Bilateral, regional and multilateral approaches
6. Verification of legality
7. **Voluntary Partnership Agreements**
8. What are the WTO implications?

2. What do Partnership Agreements contain?

Voluntary Partnership Agreements aim to reinforce Partner Countries' ability to control illegal timber production, and offer a mechanism to exclude illegal timber from EU markets. To develop these Agreements, the EU would discuss detailed elements with interested countries and, where applicable, regional organisations. During these preliminary discussions, the EU would seek producer countries' views on how to define and verify legality.



While the details of each Partnership Agreement would vary to take into account the conditions in each prospective Partner Country, some elements are likely to be common to all Agreements. All Partner Countries would need to agree a definition of legality (see Briefing note 3) and have (or be committed to developing) a credible legal and administrative structure with adequate systems to verify that exported timber is legal (see Briefing note 6). This implies a commitment to:

- ensuring that the applicable forest law is consistent, understandable, enforceable and supportive of basic sustainable forest management principles (see Briefing note 3);
- developing credible technical and administrative systems to make sure that harvesting operations conform with relevant laws, and to track timber from the point of harvest to the point of export (see Briefing note 6);
- developing procedures to license exports of legally harvested timber.

In some Partner Countries, meeting these commitments would require considerable institutional strengthening and capacity building. In addition, Partner Countries would need to carry out extensive stakeholder consultation in order to specify which laws or regulations should be included in a definition of legal timber. To assist Partner Countries in meeting these commitments, EU technical and financial assistance could be included in Partnership Agreements. The EU would also help Partner Countries ensure that FLEGT-related activities are integrated with other initiatives aimed at addressing sustainability in the forest sector.

The licences proposed in the Action Plan would initially cover a limited range of solid wood products (roundwood and rough sawnwood). This is because

of the difficulties of checking the origin (and therefore legality) of processed timber products. However, provision could be made to extend the scheme to other product categories, where practicable.

3. What advantages for FLEGT Partner Countries?

Implementing the Voluntary Partnership Agreements and licensing scheme would require capacity building and investment to ensure reliability and credibility without entailing excess cost or penalising legitimate business. In return, there are considerable advantages for FLEGT Partner Countries. These include:

- improved access to EU markets, as public and private procurement policies increasingly specify the use of legal timber and the exclusion of unidentified or illegal timber;
- increased revenue from taxes and duties that should exceed the costs associated with running the licensing system;
- priority for EU development assistance for FLEGT-related measures;
- additional enforcement tools to combat illegal activities;
- a foundation framework for mechanisms to support the tracking and verification of certified timber from sustainably managed forests.

Trade with countries that choose not to enter into Partnership Agreements will be unaffected by the framework being developed to exclude illegal timber from the EU. However, as purchasers increasingly adopt policies favouring procurement of verified legal timber, countries which have problems with illegal logging and which choose not to enter into Partnership Agreements may find their market share in the EU reduced.



Forest governance in Malaysia

An NGO perspective

A report produced for FERN by JOANGOHutan, September 2006



Recommendations for a Voluntary Partnership Agreement with the EU

Challenges:

- NGO concerns
- Market Access issues
- Level playing field
- 3 regions & sub-national variations in interest

Market Study

- Market study on impact of a FLEGT VPA between Malaysia and the EU by Forest Innovation Investment Ltd.
- Undertaken in 6 major EU markets
- Analysis of trade data and structured interviews
 - 80 Timber trade and industry companies
 - 21 Trade associations
 - 29 Government departments
 - 21 NGO's
- NGO's supportive of VPA but some concerns on Malaysian forestry
- Little willingness by EU private sector to pay premium for VPA timber
- Public procurement 25% of overall trade
- Potential for premiums

Market Benefits & Promotion

- Malaysia's request for market benefits and independent market monitoring
- Measures by EU
 - Communication on public procurement
 - Due diligence legislation
 - Initiatives with other major markets
 - VPA product visibility campaign
 - Capacity building assistance
- Mid-term review of VPA

Timber Legality Assurance System (TLAS)

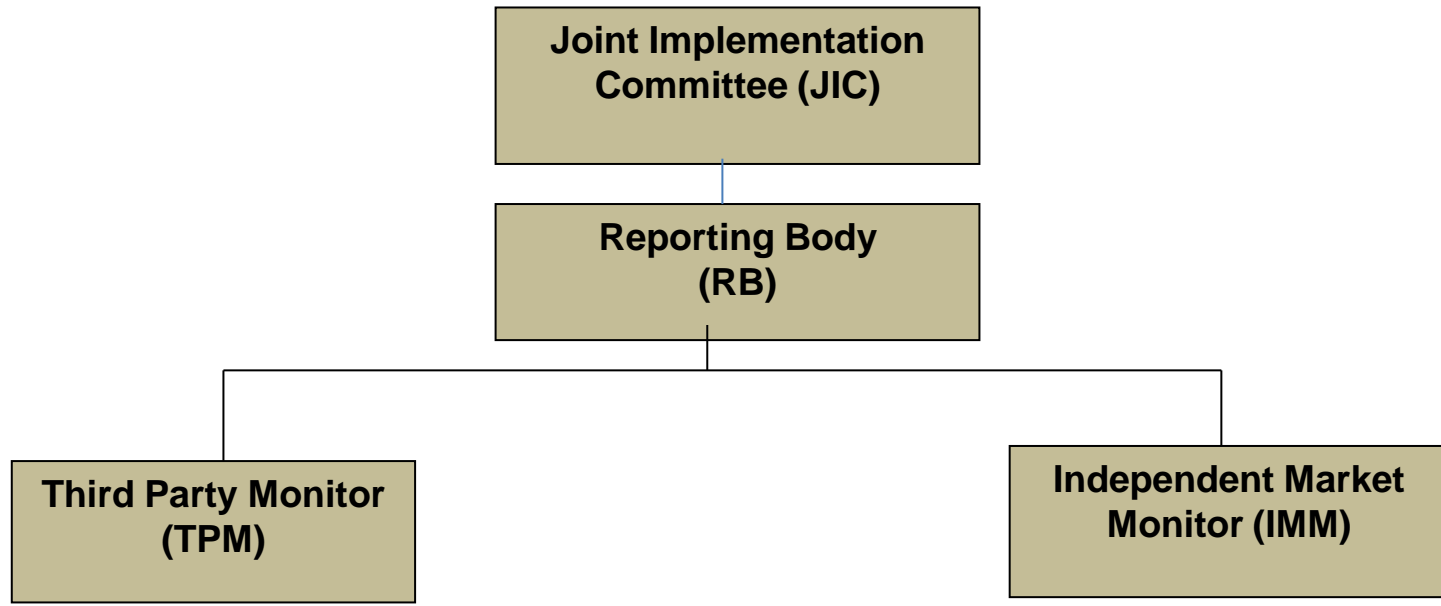
- Development of TLAS involved extensive discussions and consultations
- Components
 - Product coverage
 - Definition of Legal Timber
 - Principles and Criteria of Legal Timber (Annex A)
 - Control Procedures (Annex B)
 - Sources of Timber (Annex C)
 - Third Party Monitoring (Annex D)

Structure of TLAS

- Regional basis; Peninsular Malaysia, Sabah to Sarawak
- Annex A lists relevant legislation throughout the production chain to be complied clustered under 6 principles; Right to harvest, forest operations, statutory charges, other users' rights, mill operations, trade and customs; divided into criteria
- Annex B provides control procedures for each criterion in a tabulated manner indicating principle and legislation addressed, enforcement agency and means of verification
 - Peninsular Malaysia 18, Sabah 18 & Sarawak 16 tables
 - Annex C legal definition of forest lands
 - Annex D gives TOR of Third Party Monitor

Joint Technical Evaluation of TLAS

- 3 International & 3 Malaysian Consultants; 2 Sept – 9 Oct 2008
- Assess auditability, adequacy, capacity building needs, effectiveness TPM and cost implications
- Based on Consultants' Report, EU raised some issues to be addressed
- Malaysia in general agreement; the issues raised clustered into:
 - Issues addressed before signing VPA
 - Issues to be addressed with EU assistance for capacity building and agreed time-frame
 - Issues for further reflection



Implementation & Monitoring of VPA

- Licensing of VPA timber by existing authorities
- TPM to verify implementation of TLAS
- IMC to monitor market benefits
- Roles of RB and JIC
- VPA a 'living document'

Inputs by Stakeholders

- During implementation of TLAS
 - Public summary of TPM's reports
 - RB to seek and receive views from stakeholders on the TLAS and its implementation
 - Consideration of report by JIC
- Review of TLAS

FLEGT VPA Timeline



Phase 1: Information and pre-negotiations

Phase 2: Formal negotiations

Phase 3: System development

Phase 4: FLEGT licensing

Some Thoughts

- Strategic and catalytic role of VPA to achieve timber legality and SFM in the long-term
- EU approach; consultations, assistance for capacity building, market benefits
- VPA unprecedented and legally binding; steep learning curve, TLAS a living document
- VPA cannot solve all problems; some outside scope of VPA/forestry sector
- Success depends on stakeholder cooperation; enforcement agencies and market benefits