

FERN - Update report on FLEGT Voluntary Partnership Agreements

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Developments are moving fast, but will REDD undo all FLEGT's hard work?

Introduction

As part of the EU Forest Law Enforcement, Governance and Trade (FLEGT) programme, the EU is negotiating voluntary partnership agreements (VPAs) with a number of timber-producing countries. The FLEGT programme aims to ensure that VPAs are developed through an in-country multi-stakeholder process.

Key components of the VPA negotiation process include defining legality, developing a timber-licensing scheme and agreeing how to verify legality and monitor the system.

The overall goals are to improve forest governance, including strengthening local peoples' tenure rights, increasing transparency and the participation of non state actors and providing assurances to EU consumers about the legality of imported timber. All countries except Malaysia have included civil society and private sector representatives in their advisory bodies to guide negotiating teams.

Once VPAs are implemented and legality assurance schemes established, all timber products covered by the agreement and imported from that country will be deemed legal. The first FLEGT licensed timber is not expected to arrive in the EU before 2011.

Status of VPA negotiations

The first VPA with Ghana was signed in September 2008 and is expected to be ratified soon. Negotiations are currently underway with Cameroon, Indonesia, Malaysia and the Republic of Congo. Four other countries – Central African Republic, Gabon, Liberia and Vietnam – are in pre-negotiation stage. Countries that have expressed an interest in joining the FLEGT process, and whom the EU will exchange views with in the coming months include, the Democratic Republic of Congo, Ecuador, Ivory Coast, Madagascar and Sierra Leone. Papua New Guinea and the Solomon Islands have also apparently expressed interest in the process.

In Ghana the multi-stakeholder consultation process has worked well and a definition of legality has been agreed that specifies the need for written consent by communities before logging. The VPA outlines a process for forest law reform and identifies the areas of law that need to be redressed within three to five years. The agreement does not make any concrete proposals for the reforms themselves. All now depends on implementation; here, serious outstanding questions remain, notably in relation to the power given to the Forestry Commission to carry out the verification of legality. The timber legality assurance system includes over 12 control points and unannounced spot checks at various stages. The details of the independent monitoring remain unclear.

Cameroon expects to sign a VPA in spring, but outstanding issues include how to ensure civil society remains actively involved in the implementation and monitoring of the agreement. Cameroonian NGOs argue that the VPA must be seen as a tool towards forest law reform and a shift to truly sustainable and equitable forest management. Other remaining issues include: what to do with seized illegal timber, which according to Cameroonian law can be sold by auction (and can thus be recycled back into the supply of legal timber), and how to ensure rights of indigenous peoples are clearly articulated and objectively monitored. It is hoped that the Cameroon VPA will, like the Ghana VPA, also include a process for forest law reform that is more clearly defined than the Ghana process.

The quick pace of the negotiations between the EU and the Republic of Congo raises concerns regarding whether the different stakeholders are being given sufficient time to capitalise on discussions and participate fully in agreements. With the Government of Congo pushing to sign their VPA in the coming months, it is vital that the various actors involved take the time to reflect on the different components of the VPA, and that political space be given to them to raise and seek resolution to their specific concerns. The issue of indigenous peoples' rights



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has not been addressed adequately. The VPA must as a minimum include a clear commitment and define a structure to maintain dialogue among different stakeholders and rights holders in the implementation of the agreement

In **Malaysia**, serious outstanding issues must be resolved before a VPA can be signed. These include the lack of a genuine multi-stakeholder consultation process and the very limited recognition by the government of native customary rights. The Malaysian state of Sarawak, which has had the same Chief Minister for 27 years, is the biggest culprit. Indigenous leaders in Sarawak demand that timber from disputed lands not be considered as legal, and that a participatory process for demarcation of indigenous lands should start before a VPA is signed. Furthermore, a proper and fully transparent timber-licensing scheme, including transparent land allocation and chain of custody processes must be developed and implemented. An independent review of the Malaysian Timber Legality Assurance System (TLAS) showed that the existing system fails the FLEGT requirement in many different ways. Although it presently looks unlikely that these hurdles can be cleared, if solutions can be found, Malaysia could move quickly to implement its legality assurance scheme, as it is probably the country best organised to do so.

The **Indonesian** government has not progressed much in the VPA talks. The main reason for this seems to be that the government is still unsure about the draft definition of legal timber and systems to verify legality. As yet, no Timber Legality Verification System (TLAS) has been proposed to the EU.

Among the front-runners of the countries in the pre-negotiation stage is the **Central African Republic**. In mid-2007 the government requested the start of formal discussions and during 2008, several meetings took place and a FLEGT working group, including civil society representatives, was set up. Formal negotiations are set to start in spring 2009. It remains to be seen if a VPA can be a positive tool in a country that suffers from serious political instability and lawlessness.

Another front-runner is **Liberia**. After two years of preparatory stakeholder discussions, Liberia is set to start formal negotiation in March. The government proposes to establish a tri-partite multi-stakeholder steering committee (government departments, civil society, private sector) to develop the agreement. The decision to start formal negotiations has been welcomed by civil society and community level actors. An immediate concern are the poor relations between the concerned NGO coalition and the Forestry Development Authority, who disagree over the proposed community forest law, the application of resource allocation regulations, and registration of NGOs working in the sector. It is hoped the VPA will provide a good platform to work towards solutions and to identify necessary governance reforms. The first session will establish the broad objectives, the roadmap and initiate discussion on transparency, legality verification and

defining legality. Both the NGOs and the FDA agree that in this VPA process it will be essential to draw-in representation from community based organisations: the modalities for doing this remain to be developed.

The future of VPA negotiations?

At the EU level, a decision needs to be made as to the legal basis for VPAs, i.e. which article of the EC treaty should be considered as its legal foundation. If it is environment article 175 then the European Parliament and all Member States would have a say in whether a VPA will be accepted and all Member States would have to ratify the VPA individually as well as at Community level. If it is trade article 133, the Member States in the Council will take the decision and the VPA would be ratified once by the Community. It is widely expected within the Commission that trade will form the legal basis.

An open question is whether other importing countries, such as China and Japan will be interested in joining the process. This would have a very large impact, particularly in South East Asia and may provide incentives to challenge the broader illegal trade in timber. The developing dialogue with Vietnam, who also serves as a manufacturing hub, may help provide practical solutions that would influence both China and Japan.

China has indicated that it is interested in discussing this further with the EU, and several meetings have taken place since 2007 to bring different stakeholders together. On January 30 2009 the European Commission and China agreed to establish a "Bilateral Co-ordination Mechanism on FLEGT".

The impact of FLEGT on certification schemes will be interesting to watch. For example, some argue that the discussion on legality has put the debate about sustainability back a decade. However, it is clear that, in principle, FLEGT VPAs are much more comprehensive and far reaching than certification, at least in terms of national scope, standard setting and monitoring, including chain of custody. Certification schemes will have to up their game if they want to be considered to be playing a role in verification of legality as, under the FLEGT scheme, their processes may not be considered to be adequate.

Last but not least, FLEGT should keep an eye open for developments arising on the forest and climate front. There is increasing indication that all the attention focussing on Reduced Emissions from Deforestation and Degradation (REDD) – which promises large quantities of money to governments in forest-rich countries for keeping their forests standing – is starting to take away the political incentives to address failures in governance. This is discouraging, for if conservation and sustainable use of forests are the intended result of REDD, improved forest governance and the recognition of the rights to forests of local and indigenous peoples should be at its heart. REDD should therefore learn lessons from FLEGT and build on them.