

The Vietnam-European Union Voluntary Partnership Agreement: A Work in Progress

October 2020

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Above: Logging trucks transporting stolen timber from O'Tabok, Virachey National Park, Cambodia, 2017

Front cover ©EIAimage: Qui Nhon Port, Vietnam, 2015

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Overview

Vietnam's forest industry has had a negative impact on forests throughout South-East Asia and, more recently, in Africa. This is based on a model of importing vast amounts of often illegally sourced timber to drive its expanding forest industry with few controls as to the source of its imports.

The Vietnamese Government is, however, making efforts to address the problems caused by the country's insatiable appetite for timber.

One of the most notable initiatives is the Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA), a bilateral timber trade agreement between the European Union and Vietnam. As part of this, Vietnam issued a decree in September 2020 on the Vietnamese Timber Legality Assurance System (VNTLAS) to ensure that only legal timber enters the supply chain.¹

This briefing shares recent examples of the harmful practices of Vietnamese timber traders in Cameroon and Laos and provides an analysis of the VNTLAS, with attention to its weaknesses and implications for the Vietnamese forest industry as it attempts to move forward through the FLEGT VPA.

Above: The enormous sawmill at the Lower Sesan Dam site in Cambodia, 2018

Vietnam's reliance on imported timber

Vietnam is a timber-hungry country. This is mainly to feed its burgeoning forest industry, producing wood products for export around the world, as well as for its growing domestic market. The appetite for timber has significantly contributed to the loss of natural forests in neighbouring countries, especially Cambodia and Laos and, in recent years, also to forests further afield (text box 1).

For the past 20 years or so, the Vietnamese Government has increasingly viewed its domestic forest industry as a key pillar in the nation's economic development.² This focus has seen annual exports of forest products growing from \$3.4 billion in 2010³ to \$11.5 billion in 2019.⁴ The target for 2020 is \$12.5 billion⁵ and, despite the COVID-19 pandemic, it is on track to achieve this.

In order to produce the various timber products, especially furniture, the industry needs access to a massive amount of timber. Domestic sources are largely acacia and rubberwood, supplying the low value-added sector (e.g. wood chips), with the more lucrative furniture sector relying mainly on imported timber.⁶

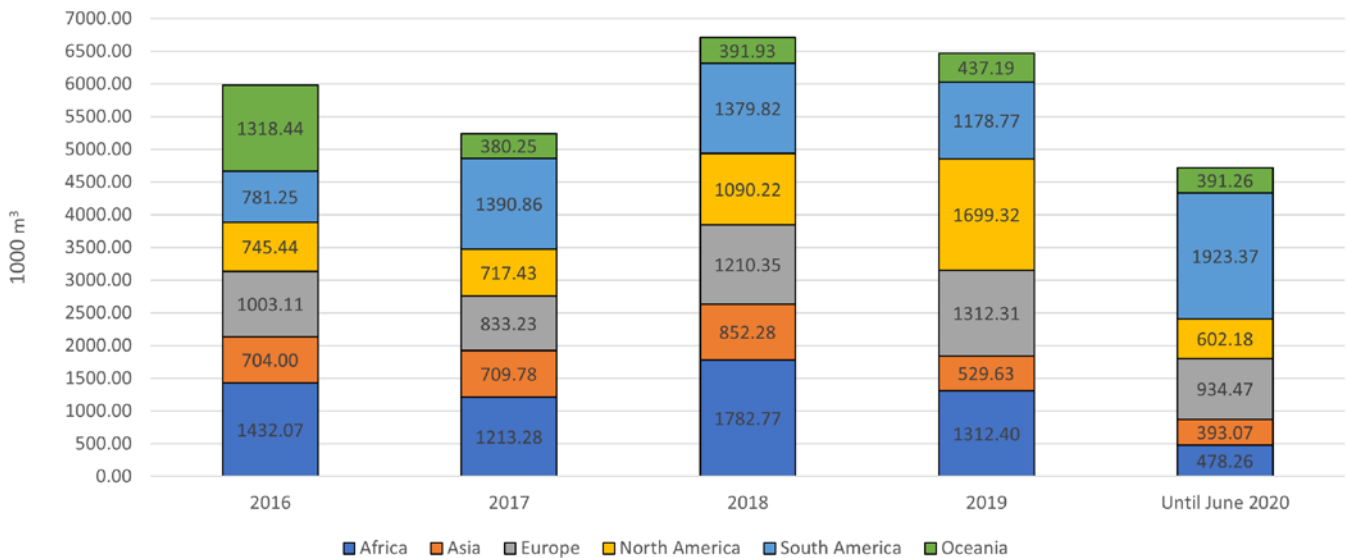
The concern about the imports of illegal timber has resulted in various NGOs, including EIA (text box 2), monitoring Vietnam's timber trade.

Text box 1: The changing sources of Vietnam's timber imports

Vietnam's main import sources of timber and sawn wood have fluctuated over the years (Figure 1). In recent years, there has been a notable reduction in imports from South-East Asia, especially Cambodia and Laos, and an increase in imports from China, the USA, Cameroon and the Republic of Congo. The industry sources large quantities of softwoods from Europe and from North and South America, while hardwoods are procured mainly from Asia and Africa.

In 2019, the declared value of timber products imported under the World Customs Organisation (WCO) harmonised code system chapter 44 (HS Code 44) into Vietnam was over \$2 billion, similar to the declared value of the imports in 2015. A large amount of the imported timber is perceived to be of "high risk of illegality". One estimate is that only 50 per cent of the total timber imports is clean, with clear legality.⁷

Figure 1: Changes in source region for Vietnamese timber imports (volume 1000m³)⁸



Text box 2: EIA's monitoring of Vietnam's trade in illegal timber

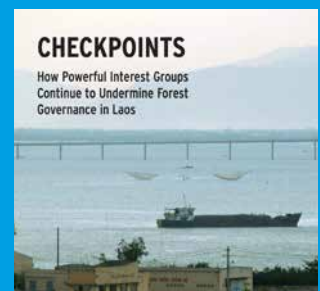
The Environmental Investigation Agency (EIA) has, for many years, been monitoring and reporting on Vietnam's trade in illegal timber. EIA's work included documenting in the report Checkpoints: How powerful interest groups continue to undermine forest governance in Laos (2012) how a large amount of illegal timber was being exported into Vietnam from Laos, including flouting Laos' log export ban. The Checkpoints report also highlighted the scale of corruption in both countries and how this facilitated the illegal trade.

More recent reports, namely Repeat Offender: Vietnam's persistent trade in illegal timber (2017) and Serial Offender: Vietnam's continued imports of illegal Cambodian timber (2018) both shifted focus to import of illegal timber from Cambodia.

The scale of the trade was enormous in terms of volume (300,000m³ from December 2016 to February 2017, 178,000m³ from October 2017 to March 2018), but also the destruction. The work again emphasised the vast level of corruption that enabled this trade, but also how the illegal timber was greenwashed when it crossed the border into Vietnam and became part of

the legal supply chain. Another 2018 publication Vietnam in Violation: Action required on fake CITES permits for rosewood trade highlighted the weakness of Vietnamese authorities, in this case the CITES Management Authority.

Below: Some of our reports on Vietnam's illegal timber activities





Above: A huge convoy of trucks carrying illegal timber waits at the La Lay border crossing between Laos and Vietnam, 2015

Laos

Vietnam's imports of timber and timber products from Laos have changed greatly in the past 10 years, growing from just over \$160 million in 2010 to nearly \$600 million in 2014, declining to just over \$34 million in 2018 and somewhat rebounding to just over \$55 million in 2019⁹ (Figure 2). During that period, 2010-19, the country lost an estimated 547,000 ha of primary forest.¹⁰

Reasons for the decline in timber imports from Laos to Vietnam in recent years include the Lao Prime Ministerial Order on "Enhancing Strictness on the Management and Inspection of Timber Exploitation,

Timber Movement and Timber Business" (also known as PM15), which was enacted in May 2016. PM15 banned the export of logs and sawn wood. It was introduced to halt forest loss in the country, as well as to encourage the development of the domestic forest industry.

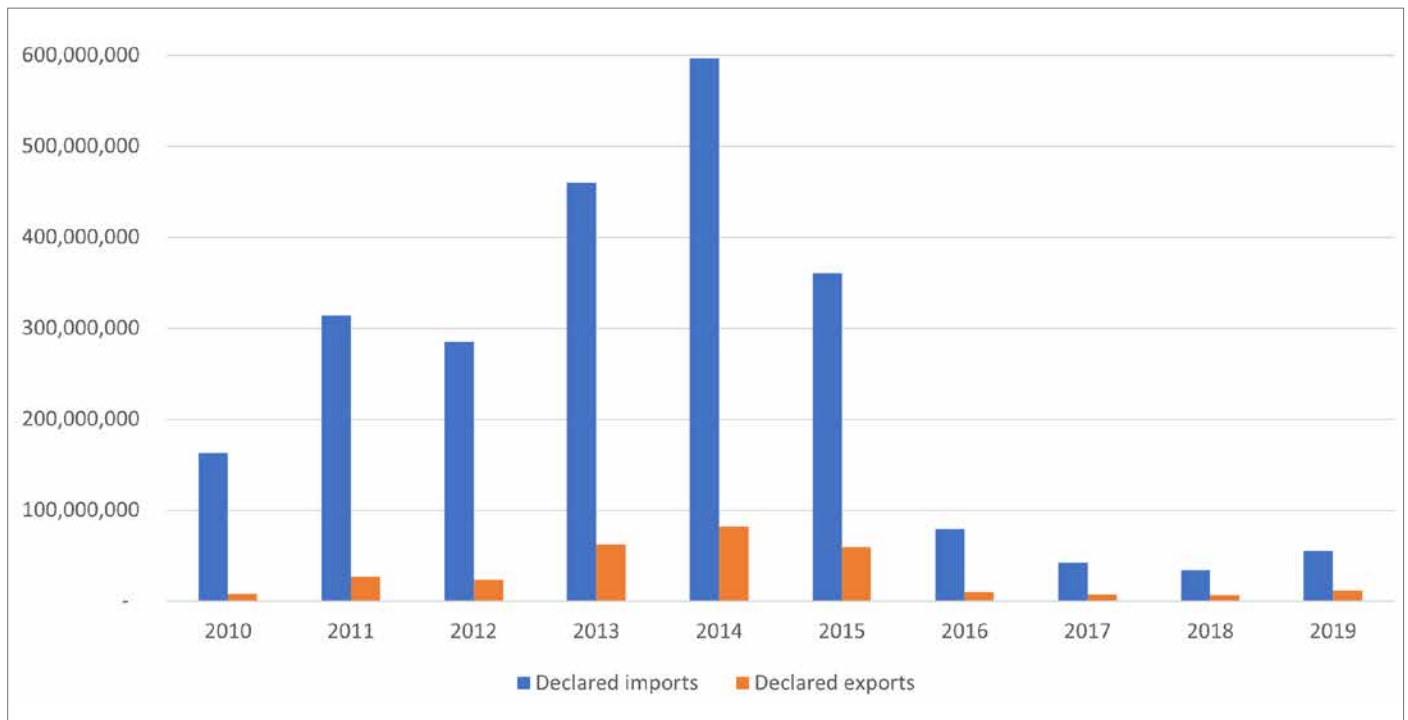
There is a notable discrepancy in the trade data which hints at the trade in illegal timber. This is based on the differences between the declared exports leaving Laos bound for Vietnam and those declared as arriving in Vietnam. For example, in 2010 the exports were declared at \$8.2 million, \$82 million in 2014 and \$11.7 million in

2019 – compared to declared imports of \$160 million, \$600 million and \$55 million, respectively¹¹ (Figure 2). In total during the period 2010-19, nearly \$300 million of timber and timber products (HS code 44) were declared being exported from Laos to Vietnam, while nearly \$2.4 billion was declared as imports from Laos by Vietnamese customs.¹² This gap is even starker in the timber trade between Cambodia and Vietnam – nearly \$8.3 million of timber and timber products being declared for export

during the period 2015-18, while Vietnam declared over \$885 million being imported from Cambodia in the same period.¹³

The trade data also reveals that despite the log export ban being in place since 2016, during the period 2017-19 just over \$2.3 million of logs (6,528 tonnes) was imported into Vietnam from Laos (HS Code 4403).¹⁴ Analysis of the data also highlights concerns regarding trade in endangered timber species (Text box 3).

Figure 2: Overview of value declared timber (HS code 44) trade from Laos to Vietnam (\$) ¹⁵



Text box 3. Trade in endangered timber species from Laos to Vietnam

The cross-border timber trade further raises concerns regarding the conservation status of traded species. While none of the top five traded species in 2019 were CITES-listed, three were listed as endangered under the IUCN rating. Cumulatively, these species accounted for 147,310m³ of timber worth \$105.26 million (Table 1).

Analysis by EIA of timber seizures data from the Lao Customs Department, which covered seizures during the period 2015-19, also highlighted this concerning trade. Of the 113 seizures where timber species was known, 21 were CITES-listed species and 91 were listed on IUCN's Red List of threatened species. Additionally, roughly a third of the seizures involved the arrest of Vietnamese nationals.¹⁶

Table 1: The top five imported timber species into Vietnam from Laos in 2019

2019	Genus	1000m ³	Million USD	Declared species	IUCN Listing	CITES
1	Sindora	96.34	57.00	Sindora Maritima	Least Concern	No
				Sindora Tonkinensis	Data Deficient	No
2	Pterocarpus	24.72	29.04	Pterocarpus Macrocarpus	Endangered	No
				Pterocarpus Pedatus	Endangered	No
3	Erythrophleum	15.92	11.94	Erythrophleum Fordii	Endangered	No
4	Azzeria	5.30	4.76	Pahudia Cochinchinens	Endangered	No
5	Tectona	5.02	2.52	Tectona Grandis	Not Assessed	No
Total		147.31	105.26			



Above: Log yard in Cameroon managed by a Vietnamese company

Cameroon

Vietnam's hunger for timber has had significant impacts on forests, forest peoples, governance and the economies of Cambodia and Laos and it is currently impacting various African countries, especially Cameroon. Vietnam's declared log imports from Cameroon have grown from just over \$30 million in 2010 to nearly \$160 million in 2017¹⁷, in which period Cameroon lost an estimated 387,100 ha of primary natural forest.¹⁸

For more than three years, EIA has been investigating the operations of Vietnamese owned/controlled companies sourcing timber from Cameroon and shipping it to Vietnam.¹⁹ The investigation found that since 2014, 20 Vietnamese companies have been at the heart of this trade, exporting hundreds of thousands of logs a year. The EIA investigation has found multiple areas of illegality in the trade.

The investigators were informed that Vietnamese companies have been buying illegal timber harvested from national parks and also found companies accessing and laundering illegal timber from the buffer zone of a UNESCO World Heritage site. Additionally, in 2019 several of the Vietnamese companies were directly involved in logging activities through the use of Cameroonian shell companies, in contravention of the national law.²⁰

The Vietnamese traders have made efforts to ensure that customs in Vietnam does not question the legality of the timber products when imported into the country. The companies ensure they have the necessary paperwork from Cameroon, even though it is not actually for the timber being exported. In most of the cases, the Vietnamese companies do not export the timber themselves, instead relying on Cameroonian agents

(known as "transitaire") to handle the entire export process, as well as any related bribes to the Cameroon authorities.

The traders also flout rules that are in place to support Cameroon's economy and protect its forests. A Prime Minister Decree in 1999²¹ created a partial log export ban based on species and levels of authorisation. EIA estimates that at least 132,000m³ of logs have been exported from Cameroon to Vietnam during the period January 2016 to July 2020 in breach of the partial log export ban. This accounts for approximately 11 per cent of the total volume of logs exported to Vietnam.²² The EIA investigation found that payments to individuals within the Cameroonian customs helped the Vietnamese companies get the timber out of the country. The Vietnamese companies were also found to be ignoring the Cameroonian law on maximum dimensions on processed timber for export. The export of the timber products failing to meet the size requirements is again being facilitated by bribes being paid to customs officials in Cameroon.

The impact of the trade in illegal and unsustainably sourced timber is not only resulting in the destruction of Cameroon's natural environment but is also severely impacting the national economy and the State's tax revenues. Like Cambodia and Laos, there is a massive difference in the declared timber exports leaving Cameroon bound for Vietnam and the declared imports into Vietnam. During the period 2014-17 the discrepancy totalled \$308 million.²³ The EIA investigation also found indicators of tax avoidance through the misdeclaration of value and volume of the timber products being exported.

A push for legality

EIA's work in Cameroon and Laos underlines the importance of Vietnam having an effective system in place to ensure no illegal timber enters its supply chain, which is effectively enforced. However, Vietnam is making efforts to combat illegal timber trade, mainly in response to key markets passing legislation calling for proof of legality of timber sources, such as the European Union Timber Regulation (EUTR) and US Lacey Act.

Vietnam is currently implementing a VPA. The EU maintains VPAs with 16 countries, including Cameroon and Laos, at various negotiation and implementation stages. Indonesia is currently the only country to obtain FLEGT licences and continues to engage within the VPA between the EU and Indonesia.

Voluntary Partnership Agreement

Vietnam and the EU began negotiating a VPA in 2010. The VPA process involves representatives of Vietnamese civil society organisations, the private sector, government ministries and agencies within a multi-stakeholder process. Vietnam and the EU signed the VPA in October 2018 and the agreement entered into force in June 2019, after it was ratified by both Parties. Vietnam has stated that it intends to have FLEGT licences by 2022.²⁴

At its core, the VPA requires a Timber Legality Assurance System (TLAS) capable of verifying the legality of timber products from source to final product. Once fully operational, such a TLAS will enable the issuance of FLEGT licences to accompany Vietnamese exports of timber products to the EU. Achieving this goal requires considerable commitments by the Vietnamese Government, including reform of its national legal framework, public disclosure of information and improvements to forest governance. This must be underpinned by comprehensive independent monitoring and evaluation mechanisms.

As part of the VPA, in 2017 Vietnam established a Multi-Stakeholder Core Group to foster effective communication, provide feedback on the implementation of the VPA and propose issues for the EU and Vietnam to consider in meetings of their joint bodies.

The Group's members include representatives of Vietnamese industry associations, professional associations, research institutes, government agencies and non-governmental organisations. EIA was invited to become a member of the group in 2018, using the opportunity to provide constructive feedback for the implementation of the VPA, including the Vietnamese TLAS.



Above: the first Indonesian FLEGT trial shipment timber export, to the Netherlands, on 23 October 2013

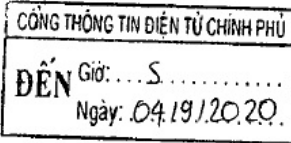
Below: Nguyen Xuan Cuong, Minister for Agriculture and Rural Development of Vietnam, with Federica Mogherini, EU High Representative/Vice-President, at the signing of the VPA in October 2018



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Số: 102/2020/NĐ-CP

Hà Nội, ngày 01 tháng 9 năm 2020



NGHỊ ĐỊNH

Quy định Hệ thống bảo đảm gỗ hợp pháp Việt Nam

Căn cứ Luật Tổ chức Chính phủ ngày 19 tháng 6 năm 2015;

Căn cứ Luật Lâm nghiệp ngày 15 tháng 11 năm 2017;

Căn cứ Hiệp định đối tác tự nguyện giữa nước Cộng hòa xã hội chủ nghĩa Việt Nam và Liên minh châu Âu về thực thi Luật Lâm nghiệp, Quản trị rừng và Thương mại lâm sản, có hiệu lực kể từ ngày 01 tháng 6 năm 2019;

Theo đề nghị của Bộ trưởng Bộ Nông nghiệp và Phát triển nông thôn;

Chính phủ ban hành Nghị định quy định Hệ thống bảo đảm gỗ hợp pháp Việt Nam.

The Vietnamese Timber Legality Assurance System (VNTLAS)

The Decree on the Vietnam Timber Legality Assurance System (VNTLAS) was signed on 1 September 2020 and will be effective from 30 October 2020. This Decree provides the framework for Vietnamese timber supply chain controls.

The VNTLAS Decree has undergone various rounds of consultations, with more than 70 concerns raised.²⁵ It is important to note that the approved version does not reflect a range of issues that should be addressed for improved supply chain control.

Effectiveness of import control and due diligence

Under the VNTLAS, those seeking to place imported timber into the supply chain²⁶ have to make a self-declaration regarding the legality of their timber. This is in lieu of a CITES or FLEGT license for any given timber import. It relies on the identification and mitigation of legality risks attached to a timber shipment (i.e. due diligence). Given the self-assessing nature of this burden of proof, clear guidance and a thorough legal implementation of a due diligence obligation is indispensable to constitute a meaningful verifier for such access. When import controls come into force on 30 October 2020²⁷, it will be de facto impossible to comply with due diligence obligations have yet to be published. The risk triggers are species risk²⁸ and risk associated with geographic origin of imported timber.²⁹

Above: Preamble of VNTLAS Decree

Furthermore, the chosen qualifier for geographic origin risk within VNTLAS is the perception index of government effectiveness (GE) as applied by the World Bank Research Group.³⁰ Government effectiveness is designed to capture perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation and the credibility of the government's commitment to such policies.³¹

EIA maintains that it is difficult to envision how a single theoretical concept (i.e. GE) is suitable as a qualifier for geographic risk level, given the political, social and environmental complexity of the timber legality nexus. It is questionable at best how GE will provide an indicator of the quality of documents issued in source countries – in the case of Cameroon, EIA has evidence of traders obtaining officially stamped paperwork certifying to legality by means of intermediaries and bribery. The extent to which this happens is not reflected in the GE rating. Cameroon will be classified as a non-low risk country, therefore additional documentation will be required. However, any paperwork provided must be considered as being high risk for illegitimacy and thus cannot mitigate timber risks as intended by the enhanced due diligence requirement.

An illustration of EIA's concern is that many countries with a severe illegal logging problem, such as Malaysia³² (especially Sabah³³ and Sarawak³⁴) and Russia^{35,36}, have relatively good rating for government effectiveness.

Therefore, if the timber species is not on the risk list no additional due diligence would be required for timber from either country. The combined timber imports to Vietnam from the two countries in 2019 totalled nearly \$90 million.³⁷

EIA acknowledges that relevant legislation in the country of timber origin will vary significantly, depending on the source country. EIA also recognises that a degree of flexibility is needed to cater for the broad sweep of possible scenarios which could potentially mitigate identified legality risks.

The essential issue of allowing additional documents is that no single document is inherently able to demonstrate sufficient legality in the spirit of due diligence and that any submitted proof of legality must be seen in an embedded meaningful context especially when originating from countries with known deficits in good forest governance and enforcement.

Acknowledgement, as well as legal implementation, of the fact that no single document can demonstrate sufficient legality in the spirit of due diligence will be central to the success of import legality controls. A wider contextual understanding should guide customs for the legality assessment of timber shipments and the need for enhanced controls also catering for cases of weak relevant regulation in the country of harvest. Without such contextual assessment any timber import form runs the risk of becoming a futile exercise in box-ticking.

The VNTLAS Decree further stipulates that an inter-ministerial working group will determine timber which is in “danger of extinction in the country of harvesting or of illegal trade”.³⁸ While it is a good addition to provide a flexible mechanism for assessing species risk, the decision-making processes are unclear, as are how grievances will be addressed should the working group not come to an agreement or list species as low risk despite available evidence to the contrary.

Further questions arise regarding how evidence can be submitted to the working group and whether such evidence will be acknowledged in the species risk assessment. It also needs to be clarified if the working group has the power to declare legal timber imports are not in line with due diligence requirements when a country has been found to pose an elevated risk to illegal trade or species extinction or has a history of falsified permits. The option of blacklisting a country deemed to be at elevated risk of illegal timber trade is not explicitly mentioned in the Decree.

Confiscated timber

Timber from confiscated shipments is exempt from FLEGT licensing³⁹ (i.e. trade to the EU) only. The Decree does not provide specific provisions on how confiscated timber should be treated for domestic consumption or export to non-EU markets.

The current interpretation of legal timber includes: “timber and timber products (...) confiscated (...) in accordance with Vietnamese law, relevant provisions of international treaties to which Vietnam is a signatory or

the relevant laws of the country where the timber was exploited for export to Vietnam”.⁴⁰ It follows that confiscated timber can and most likely will be consumed locally or in non-EU export markets as a legalised product under the stipulated legality assurance regulation. An official mechanism to legalise goods previously found unlawful, usually by way of State auction, presents a common weakness found in VPA texts. In Ghana and Cameroon for example, confiscated timber is recognised as a legal source via the agreed VPA. Different approaches are conceivable – Honduras chose to specifically limit the use of confiscated timber exclusively for social purposes, in particular for making school furniture.⁴¹ In general, any mechanism excluding confiscated timber from further commercial use is preferable to re-introducing such timber to the free market supply chain, whether harvested from domestic sources or imported.

For confiscated timber from import shipments, the VNTLAS should empower authorities to return the shipment to the country of origin or destroy the goods, as is the case with illicit wildlife products. Powers to carry out such remedial measures already exist in Vietnamese law⁴², specifically “(...)organizations committing administrative violations must bring out of the territory of the Socialist Republic of Vietnam or re-export goods, articles and means brought into the territory of the Socialist Republic of Vietnam, imported contrary to the provisions of law (...)”.⁴³

Given the likelihood that transgression of VNTLAS import control regulations will be handled as administrative violations, it would appear possible to apply such measures to timber shipments deemed non-compliant. The handling of illegal goods and attached remedial measures should be non-discriminatory – rejecting one product when imported contrary to the provisions of law while legalising and consuming another is questionable at best.

The importance of addressing the issue of confiscated timber is reflected in a seizure of 1000m³ of kosso (*Pterocarpus erinaceus*) in Ho Chi Minh City port in January 2020.⁴⁴ In theory, if this were to happen once the VNTLAS comes into force this shipment of confiscated illegal timber can enter the domestic and non-EU market, undermining the spirit of the VNTLAS to keep supply chains free of illegal timber. Furthermore, such timber could ultimately be re-imported via the FLEGT licensing scheme for timber imports destined for re-export, thus re-testing VNTLAS and, if undetected, it could end up on EU markets.

Inherently, any regulation which provides legalisation of previously non-compliant timber for further consumption, thus promoting commercial exploitation of timber from non-legal harvesting sources, fails to address the overall aim at the heart of the FLEGT VPA mechanism – to reduce illegal logging by eliminating illegal timber consumption and production. The decision to utilise such timber should not be left to the timber industry as a decision to purchase or sell certain timber products is usually determined by the price and not by the legitimacy or illegitimacy of the source and the way in which the product has been traded.

Domestic plantation timber to non-EU markets does not require verification

The standing of timber from domestic operators (e.g. small and medium enterprises (SMEs) and household timber producers) remain insufficiently addressed within the VNTLAS Decree. According to the agreed and applicable scope of timber control in the VPA, the VNTLAS should also control timber from domestic natural production forests and timber from domestic plantation forests, as well as timber from home gardens and farms and trees outside the forest.⁴⁵

Within the VNTLAS Decree, verification for domestically planted timber is deemed not applicable for non-EU markets⁴⁶ thus raising the question as to how timber can be compliant with the legality for export requirement⁴⁷ for these markets. Timber destined for export must be guaranteed legal⁴⁸ – it is unclear how this will be ensured for domestic plantation timber going to non-EU markets.

It seems inconsistent with the spirit of an effective timber legality control system to exclude a timber source i.e. domestic timber from verification for non-EU markets. Creating different regulatory frameworks for a resource introduces uncertainty for producers and enforcement authorities. A blanket requirement for the same level of verification of all timber sources would be a more desirable approach to combat illegality in timber sources.

In essence, the regulatory framework must not only be geared towards providing legal timber for the EU market while wilfully taking chances on the legal status of timber supplied to other markets. Using different benchmarks creates unnecessary complexity for stakeholders which ultimately introduces uncertainty and extra points of failure in the legality assurance system.

The FLEGT instrument is designed as a market access incentive. The lower export market barrier (no verification requirement) to non-EU markets could disincentivise trade from domestic sources under the FLEGT licensing scheme.

Scope of the Organisation Classification System

The Organisation Classification System (OCS) is specified as integral component of the risk-based legality verification within the ratified VPA text.⁴⁹ The central purpose of the OCS is to provide a risk level assessment of timber export and processing organisations and to keep a record of their compliance with export legality verifiers. Within the published decree version, the OCS has been relabelled as an Enterprise Classification System (ECS).⁵⁰

According to the definition of terms specified in the Decree⁵¹, enterprises are a subset of the term organisation, which in its entirety would oblige various other stakeholders besides enterprises to also conduct a self-classification when registering for the commercial export of timber products. By limiting the scope of the OCS to enterprises only, reach of this control mechanism has been significantly reduced. It is noteworthy, that the ratified VPA text clearly states "The OCS shall apply to all Organisations in the VNTLAS supply chain"⁵² – contrary to the published Decree version.

The result of appraisal based self-classification is important as this directly influences the allocation of a risk category to an organisation:

- Category 1: Organisations that are fully compliant;
- Category 2: Organisations that do not fully meet the criteria or newly established Organisations.

The assigned category in turn determines the level of scrutiny and frequency of additional controls by government authorities and further influences the necessary timber product dossier required for export activities.⁵³ For timber exports to non-EU markets, the OCS classification further serves as a verifier for risk category declaration in the Timber Export Dossier and is used to confirm that the timber packing list has been duly certified in line with the risk category status of the Organisation.⁵⁴

Even though the ECS will not become effective immediately, it is vital to clarify which entities are obliged to comply with the OCS (now ECS).

The role of civil society

Effective participation lies at the heart of the VPA, including its impacts. The role of non-state actors, especially civil society, in the implementation and enforcement of the VPA, including VNTLAS, is currently being clarified, for instance through the development of the VPA Monitoring and Evaluation Mechanism and the Impact Monitoring Matrix.

The roles and responsibilities of CSOs within these key areas of the VPA need to adhere to the spirit of the participation. This includes how submissions by CSOs to the Technical Review Panel, as part of the Impact Monitoring, are facilitated, and addressed in a systematic and transparent manner.

When Vietnam moves to issuing FLEGT licences, it is vital that there is a strong legal foundation for civil society to openly report on failures in the application of the VNTLAS, identify negative impacts and support processes to mitigate these.

Opposite page: Siem Reap forest, Cambodia



Recommendations

The benefits to the Vietnamese authorities having an effective VNTLAS in place would include not only more efficient access to the EU market, but should also support efforts to ensure access to other countries which are making attempts to address the trade in illegal timber.

The starkest example is access to the US market, which is currently Vietnam's most important export market. In 2019, Vietnam exported \$5 billion of timber products to the USA.⁵⁵ In October 2020, this access was threatened when The Office of the United States Trade Representative (USTR) initiated a Section 301 investigation (of the US Trade Act) into Vietnam's timber importing practices – specifically stating that a significant portion of the timber imported into Vietnam is harvested in ways which violate the laws of the source countries. The USTR has 12 months to conclude its investigation and if it determines that Vietnam's timber practices restrict US commerce, then tariffs or other import restrictions can be applied.

In order to ensure that a more robust VNTLAS is in place, EIA recommends that:

Vietnam should

- publish the list of countries deemed low-risk under VNTLAS before the regulation comes into effect
- exclude not only confiscated timber from FLEGT licensing, but also prohibit the export of confiscated timber and derived products to non-EU markets
- extend the verification requirement to include timber from domestic plantations
- acknowledge the role of NSAs in the independent monitoring mechanism and enshrine such a role in law

The EU should

- ensure that all ratified legality verifiers will be met before accepting FLEGT licensing
- actively promote and communicate VPA developments and the future "Vietnam timber" brand to the EU market



Above: Ekom Nkam waterfall, Cameroon

References

1. Timber legality assurance system which verifies that wood products conform to national laws. Once verified as legal, partner countries can issue FLEGT licences to timber products destined for the EU market
2. Joint Annual Report 2019: Implementation of the Viet Nam – EU Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade
3. <http://documents1.worldbank.org/curated/en/544891570456214844/pdf/Vietnam-Country-Forest-Note.pdf>
4. <https://vietnamnews.vn/economy/570493/wood-exports-to-hit-115-billion-exceeding-target-in-2019.html>
5. <https://vietnamnews.vn/economy/602457/forestry-industry-to-gain-export-value-growth-of-10-this-year.html>
6. Joint Annual Report 2019: Implementation of the Viet Nam – EU Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade
7. <https://goviet.org.vn/bai-viet/tong-quan-tinh-hinh-viet-nam-xuat-nhap-khau-go-va-san-pham-go-giai-doan-2015-6-thang-nam-2018-8850>
8. Based on EIA analysis of Exportgenius data. <https://www.exportgenius.in/>
9. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
10. <https://www.globalforestwatch.org/>
11. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
12. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
13. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
14. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
15. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
16. EIA analysis of Lao Customs seizures data for period 2015-2019
17. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
18. <https://www.globalforestwatch.org/>
19. EIA. 2020. Tainted timber, tarnished temples: How the Cameroon-Vietnam Timber Trade hurts the Cameroonian People and Forests
20. Section 41 & 42 of the Cameroon Forest Law n° 94/001/20, of January 20, 1994
21. Décret 99/781/PM du 13 octobre 1999 fixant les modalités d'application de l'article 71 (1) (nouveau) de la loi n° 94/01 du
22. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
23. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>



24. <https://vietnamnet.vn/en/business/vietnam-s-woodworks-prepare-for-flegt-licensing-667735.html>
25. Joint Annual Report 2019: Implementation of the Viet Nam – EU Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade
26. As specified in Appendix 3 of VPA Annex V.
27. VNTLAS Decree Art.28, 1
28. VPA Annex V, 6.3.7.4 & VNTLAS Decree Art.6
29. VPA Annex V, 6.3.7.5 & VNTLAS Decree Art.5
30. <https://info.worldbank.org/governance/wji/>
31. <https://govdata360.worldbank.org/indicators>
32. Hoare, A., 2015. Tackling Illegal Logging and the Related Trade. What Progress and Where Next? London: Chatham House
33. <https://preferredbynature.org/sourcinghub/timber/timber-malaysia-sabah>
34. <https://preferredbynature.org/sourcinghub/timber/timber-malaysia-sarawak>
35. <https://preferredbynature.org/sourcinghub/timber/timber-russia>
36. Wyatt, T. 2014. The Russian Far East's illegal timber trade: an organized crime? Crime Law Soc Change (2014) 61:15–35
37. Based on EIA analysis of UNCOMTRADE data. <https://comtrade.un.org/data>
38. VNTLAS Decree Art. 6, 1 (d)
39. VNTLAS Decree Art.3, 2
40. VNTLAS Decree Art.3, 2
41. EU - Honduras VPA 7.6
42. Law on Handling Administrative Violations - No.: 15/2012/QH13
43. Law on Handling Administrative Violations Art.32
44. <https://en.vnexpress.net/news/news/1-000-cubic-meters-of-rare-african-wood-seized-in-saigon-port-4040900.html>
45. VPA Annex V, 2.1.1
46. VNTLAS Decree Art.9, 1
47. VNTLAS Decree Art.8, 1
48. VNTLAS Decree Art.8, 1
49. VPA Annex V, 2.2.3.
50. VNTLAS Decree Art.3, 8
51. VNTLAS Decree Art.3, 4
52. VPA Annex V, 5.1
53. Section 7.1 of Annex V and in Annex IV
54. Annex V 7.1.1
55. [https://en.nhandan.org.vn/business/item/8189402-vietnam%E2%80%99s-wood-exports-likely-to-reach-us\\$11-billion-in-2019.html](https://en.nhandan.org.vn/business/item/8189402-vietnam%E2%80%99s-wood-exports-likely-to-reach-us$11-billion-in-2019.html)

