

## **EU considers future of illegal logging and deforestation policy**

During June 2017, two large conferences in Europe addressed policy issues in relation to deforestation and illegal logging. The conferences reaffirmed the EU's continued political commitment to trade related policy measures in response to concerns about illegal logging and deforestation.

The conferences also highlighted developments in EU policy on issues such as sustainable forest certification and green procurement with significant implications for future development the European market for tropical wood products.

The first conference, the "Illegal logging Update Meeting", is a regular annual event hosted by Chatham House in London. The second conference was organised by the European Commission (EC) to present an evaluation and future work plan for the EU Action Plan on "Forest Law Enforcement Governance and Trade" (FLEGT).

The EC meeting also included discussion of the potential for another EU action plan to address wider causes and solutions to deforestation – such as pressure from agricultural commodities and carbon financing.

### **FLEGT update**

The EC's own evaluation estimates public expenditure of €900 million on the FLEGT Action Plan, mainly derived from the EC budget, in the ten years of its operation prior to 2014. That figure is now likely to exceed €1 billion. Most of the money has been spent on support for FLEGT Voluntary Partnership Agreements (VPAs) with tropical countries which aim to develop legality licensing systems for all wood exported from partner countries.

The EU Timber Regulation (EUTR) was introduced in March 2013 primarily to give a market incentive for tropical countries engaged in the VPA process – FLEGT licenses are given a "free pass" through the due diligence requirements of EUTR.

At the meeting in Brussels in June, EC officials were candid about the progress of the FLEGT VPA process, noting that the results have been mixed so far. Seventeen tropical countries which together account for over 80% of global tropical wood exports, have either signed or are involved in negotiations towards a VPA. However, only one – Indonesia – has so far issued FLEGT licenses.

Progress varies widely in other partner countries. In some - like Congo, Ghana, Guyana, Honduras, and Vietnam - negotiations are very active. In others - like Côte d'Ivoire, Cameroon, the Central African Republic, DRC and Malaysia - negotiations have stalled or are proceeding only very slowly. There is considerable variation in the willingness of government authorities and industry in partner countries to engage in negotiations or to commit their own resources.

EC officials speaking in Brussels acknowledged that the development of licensing procedures has been considerably more complicated than first envisaged. However, they were also keen to emphasise that, even in the absence of licenses, there have been broader and potentially more significant benefits of the FLEGT process in many partner countries, notably relating to stakeholder participation and benefits-sharing, and in legislative reform and capacity building.

### **EU take a more nuanced approach to FLEGT**

The experience gained from the FLEGT process to date, and growing awareness of the diverse needs and expectations of different tropical countries, is encouraging the EC to take a more nuanced approach to the FLEGT process.

At the Brussels conference, EC officials said that in practice, negotiation of a VPA requiring implementation of a comprehensive legality licensing system for all exports into the EU is not necessarily the most appropriate tool for all tropical countries.

While no country will be '*a priori*' excluded from the VPA process in the future, decisions by the EU to begin negotiations with additional tropical countries will be based on careful assessment of a range of factors such as the level of political will, recognition of the rule of law, and institutional capacity in the partner country, together with the current and potential future level of trade with the EU.

EC officials noted that it may be necessary to establish and formally acknowledge an extended preparatory phase for some tropical countries where requirements for a full VPA are not met.

Options other than a full formal VPA may also be considered to deliver FLEGT objectives in some countries, for example specific forest sector support programmes, FLEGT structured-dialogues, and as a component of wider free trade engagements.

However, it was also stressed that the EU would retain the existing policy of only allowing EUTR due diligence checks to be avoided with FLEGT licences.

### **FLEGT shortcomings**

Speaking at the Brussels conference, EC officials acknowledged weaknesses in the FLEGT process even in countries where negotiations have been progressing. Specifically, it was noted that there needs to be more focus on improved monitoring of VPA impacts, reporting of activities, better understanding and more effective handling of domestic and informal markets in tropical countries, and wider engagement with the private sector.

A particularly critical need was identified to ensure SMEs are adequately consulted and involved during the development of licensing systems. The licensing system offers both challenges and opportunities for smaller operators and their engagement is central to success.

On the one hand, in many countries, smaller operators tend to be those most dependent on informal sources of timber supply and licensing procedures may therefore greatly reduce their access to raw material.

On the other hand, because FLEGT licensing must be applied to all operators, irrespective of size, it demands capacity building and the development of innovative new mechanisms for legality assurance that could improve smallholders access to international markets.

### **Changing context for FLEGT VPAs**

In considering the future of VPAs and the wider FLEGT Action Plan, EC officials at the Brussels conference said they needed to take account of the changing market and policy context. It was noted that the EU's relative weight in the global timber trade has fallen considerably since the Action Plan was first initiated in 2003, due both to the financial crises in Europe and the rapid growth in emerging markets.

EC officials also noted that concerns surrounding illegal logging are not limited to tropical countries, and that an important focus of future FLEGT-related dialogue will be with other timber-supplying countries like Ukraine, Belarus, and Russia.

At the same time, there have been major developments in other policy initiatives notably, in 2015, agreement of UN Sustainable Development Goal 15 (SDG 15) to halt global deforestation by 2020, and the Paris Agreement which places efforts to tackle deforestation and promote sustainable forestry at the heart of global carbon mitigation measures.

EC officials particularly emphasised the potential to link future evolution of the FLEGT Action Plan to the EU's External Investment Plan (EIP) which covers countries in both Africa and the EU's "neighbourhood" such as Ukraine and Belarus.

The EIP aims to encourage private investors to contribute to sustainable development in these countries, for example by providing guarantees for investments and loans to entrepreneurs and companies with viable business proposals meeting social needs in sectors traditionally regarded as higher risk. With a contribution of €4.1 billion from the EC, the EIP is expected to leverage more than €44 billion of investments by 2020.

### **Indonesia calls for strong focus on FLEGT market promotion**

Indonesia was a key focus of discussion at both the Chatham House meeting and the Brussels conference in June as participants were keen to hear about market impacts of FLEGT licensing during the first six months of operation.

In a presentation to the Chatham House meeting, Putero Parthama of the Indonesian Ministry of Environment and Forestry (MEF) reported that the FLEGT licensing framework now extends to 25 million hectares of forest and 3400 manufacturers in Indonesia.

Nearly 23,000 FLEGT licences were issued for shipments into the EU between 15 November 2016 and 31 May 2017, the leading destinations being Netherlands (5,009), UK (4,088), Germany (3,752), France (2,166), Belgium (2,152), Spain (1,429) and Italy (1,304).

Mr Parthama noted that while there have been teething problems during the first few months of operation, the licensing system is now working well. To date, there have been 95 cases of license infringements reported by EU import authorities involving 79 of 848 exporters that have sold products into the EU.

Most infringements have been for minor technical issues – such as the license being printed on the wrong paper or a failure to complete all sections of form. However there have been a few potentially more serious cases, for example involving submission of invalidated licences or products listed on the license not matching the actual content of the consignment.

While progress has been made on the supply side, Mr Parthama said that it's not yet possible to report any strong positive developments on the demand side. He noted that there is no sign yet of a price premium for licensed products and that international buyers typically still request other forms of certification. He emphasised that there is much work to be done to explain the role and value of the licensing system in the EU and other export markets.

This message was reinforced in the presentation to the Chatham House meeting by Robianto Koestomo of APKINDO. Comparing Indonesian monthly trade data during the period immediately

before and after implementation of the licensing system, Mr Koestomo observed that Indonesian plywood exports to the EU had yet to register any change in response to FLEGT licensing.

Mr Koestomo said that “FLEGT products are still not widely known” and expressed concern that FLEGT licensed products may be subject to greater costs and scrutiny at the EU border compared to non-licensed products. He called on the EC to do more to ensure that FLEGT licensed products have greater access to the EU market than non-licensed products.

Rudiyanto Tan of Samko Timber provided a more upbeat commentary on the immediate market impact of FLEGT licenses in his presentation to the Chatham House meeting. Samko Timber procures 95% of timber supply, comprising falcatta and rubberwood, from private and community owned plantations, mainly in Java.

Products offered by the company include plywood, LVL and decking, around 70% for the domestic market and 30% for exports. The supply base for Samko Timber is highly fragmented, comprising between 200,000 to 300,000 farmers, which has been a significant obstacle in efforts to achieve FSC and PEFC certification.

Mr Tan is hopeful that FLEGT licences will now offer an opportunity for the company to increase exports. The feedback he has had from EU customers on the license has been good, noting that it had provided reassurance that wood is not illegally harvested, eased the lengthy explanations required about the legality of Indonesian wood exports, and is reducing costs to clients by saving time and streamlining due diligence paper work.

However, Mr Tan also noted that FSC and PEFC are still the preferred option for many clients and few accept that FLEGT licenses offer the same level of assurance. He encouraged the Indonesian licensing authorities to collaborate with FSC and PEFC to harmonise auditing procedures and thereby reduce costs of certification to Indonesian operators.

### **EU demand side measures**

At the Brussels conference, the EC restated their firm commitment to supporting improved market access for FLEGT licensed timber in the EU. The main mechanism to achieve this is through implementation of the EUTR a process which, according to EC officials will remain an “over-riding priority” of the EU.

The EC reported that all EU Member States have now implemented enforcement sanctions regimes in line with their EUTR obligations and have begun checking compliance by EU operators. It was also noted that several legal actions have been initiated against EU companies for alleged failures in their due diligence systems, although so far only in a few Member States including Netherlands, the UK, Germany and Sweden.

The EC emphasised that the effectiveness of EUTR should not only be assessed by the number of court cases. More important is the extent to which it motivates behavioural change, which depends on a range of measures in addition to sanctions.

The EU is implementing a wide-ranging EUTR compliance and assurance strategy, which includes continuous upgrade of guidance documents, development of an information exchange platform between implementing authorities in the EU member states, and direct support for collection and communication of information on legal frameworks in producer countries and on best-practices in due diligence.

EC officials acknowledged that there continue to be enforcement challenges, notably strict limits placed on public expenditure in the EU since the financial crises. However, this is also encouraging regulatory innovation and a focus on “smarter risk-based approaches”.

Furthermore, there is strong support for EUTR from the private sector in Europe. Trade associations and individual companies are actively working alongside regulatory authorities to improve compliance. For example, both enforcement authorities and large retailers concerned about the risk of prosecution now regularly test the species content of “high-risk” products using DNA and isotope analysis alongside more traditional methods.

An active programme of impact monitoring is also underway. An analysis of EUTR compliance in the private sector, to focus particularly on SMEs, has been commissioned by the EC and is due to be undertaken in the next 12 months. This is an addition to the work by the FLEGT Independent Market Monitor (IMM), funded by the EC and hosted by ITTO, to assess the impact of FLEGT licensing on trade.

### **EU government procurement**

Alongside EUTR, discussion with government officials from various EU Member States at the Brussels conference highlighted their concern to ensure that, where possible, FLEGT Licenses are recognised alongside FSC and PEFC labels as sufficient evidence of “legal and sustainable” timber in government procurement policies.

Unfortunately, this is not something that can be imposed at EU level. While EU Directives for public procurement provide opportunities for recognition of licenses by public authorities in the EU, responsibility for this area of policy is with national governments.

At present, only three Member States – the UK, Luxembourg and Denmark – recognise FLEGT licenses alongside FSC and PEFC. There are now calls to extend this recognition to other Member States, particularly Germany, the Netherlands and Belgium which already have detailed green procurement policies and have been active in excluding anything other than FSC and PEFC certified wood from government contracts.

### **Global co-ordination of demand-side measures**

In addition to encouraging demand for licensed timber in the EU, the EC also hopes to encourage similar demand in other parts of the world. Regulations imposing legality due diligence requirements on timber traders have been in place in the US and Australia for several years. Japan’s Clean Wood Act came into force in May this year. South Korea will enforce similar regulations from March 2018. The timber legality assurance systems (TLAS) developed as part of the FLEGT VPAs should assist conformance to import requirements in all these countries.

Furthermore, many of the VPA countries are themselves becoming much larger importers of timber products. The TLAS implemented in Indonesia and Peninsular Malaysia, and planned for development in Vietnam, all include requirements for legality verification of imports as well as domestically harvested timber.

The EC is also engaged in a dialogue with China, both to support the development of timber legality assurance in China’s provinces and to explore options for trade measures giving greater recognition to verified legal timber in China’s huge market.

The EC is considering organising a large international conference next year to move forward these various trade initiatives.

### **“Zero-deforestation” policies demand innovation in certification**

The need for innovative approaches to demonstrate sustainability of “forest-risk” commodities was a key theme of the discussion in Brussels on how to address causes of deforestation other than illegal logging.

This discussion originated with an EC study from 2013 which considered just how much, and in what ways, European consumption of resources is contributing to deforestation. Working through the numbers, the report attributed only 200,000 hectares of total global deforestation of 232 million hectares between 1990 and 2008 to the EU's imports of wood products. This compares to 8.7 million hectares attributed to EU imports of agricultural cash crops and livestock products.

The study highlighted that policy measures in consuming countries targeting only the wood trade - whatever their merits in improving environmental and social performance in other areas - can play little or no role to prevent or slow deforestation.

The study led the EU to commit, in the Seventh Environmental Action Plan, to consider an Action Plan on Deforestation and Forest Degradation. It also encouraged, in December 2015, the Amsterdam Declaration towards eliminating all deforestation from European commodity chains by no later than 2020. The Declaration, which was endorsed by the governments of Denmark, France, Germany, the Netherlands and the UK, places a strong emphasis on more responsible private-sector management of supply chains and trade.

The Amsterdam Declaration parallels the New York Declaration on Forests released at the UN Climate Summit in 2014 which has encouraged 415 companies to make more than 700 public commitments to address “embodied deforestation” in their supply chains for four “forest risk” commodities; palm oil, soy, cattle and timber.

These commitments, alongside the UN SDG 15 on deforestation, are focusing minds on methods of verifying sustainability for a wide range of “forest-risk” commodities which are cost-effective, equitable and not in conflict with one another. It makes no sense, for example, to require tough standards for sustainable timber production if weaker standards are recognised for “sustainable” palm oil, cocoa or soy.

This would send out mixed signals and could even encourage more conversion. Furthermore, a lot of commercial cash crops in the tropics derive from smallholders and frameworks need to ensure these operators are not excluded from certification frameworks.

At the Brussels conference, a potential solution to these various challenges was identified in so-called “jurisdictional certification”. Frances Seymour, who chaired the conference, has been a keen advocate of this approach in her role as a Senior Research Fellow at the World Resources Institute, and she argued cogently that it should be given serious consideration in future forest policy development.

The aim of “jurisdictional certification” would be to link implementation of corporate commitments to efforts to reduce deforestation at the scale of political jurisdictions - districts, states, provinces, or even entire countries.

Multiple stakeholders—including companies as well as government agencies, smallholders, indigenous and civil society groups—would come together to agree on goals for better land-use, and how to achieve them.

Performance standards (such as “no deforestation” and “no exploitation”) would be then applied at the scale of entire administrative units rather than at the level of individual farms, plantations, or concessions. All “forest-risk” commodities from that region would then be recognised as “sustainable”.

“Jurisdictional certification” would better accommodate competitive interactions between land-uses than existing certification systems that focus on single commodities. It would be much more equitable for smallholders and the chain of custody would be greatly simplified as products need only be identified to region of origin rather than to individual management unit.

The jurisdictional certification concept could integrate well with the EU’s FLEGT licensing approach – which can be regarded as a type of national-level jurisdictional certification. There should also be opportunities for linkage of this form of certification to payments for eco-system services such as carbon storage and watershed protection.

Of course, there are many obstacles to widespread adoption of this approach. Many operators, service providers, and NGOs have invested heavily in existing certification frameworks and may resist moves perceived to undermine their market position.

However, the EU’s June conferences at least highlighted that there is growing recognition of the limitations of existing certification frameworks and of the need to find innovative solutions that more effectively target deforestation and are more equitable for small non-industrial forest operators and smallholders.