



## 3.2 Forest governance in Southeast Asia

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### Introduction

This article describes some of the forest policy changes that have taken place in timber-producing countries in Southeast Asia<sup>1</sup> over the first decade of the 21st century, and defines expected future challenges. In particular it examines the motivations for and impacts of relevant EU and ASEAN policies designed to tackle illegal logging.

Since the 1960s, Southeast Asia has lost 16 million hectares or 37% of its natural forests.<sup>2</sup> This was driven by the increased post-World War II demand for timber in both northern and regional economies; improvements in mechanization and logging technology; and the expansion of agriculture. Much of this conversion of forestland was planned, but losses also resulted from poor logging practices and from encroachment by landless people.

An erosion of government regulatory functions accompanied these developments.<sup>3</sup> Natural forests in Southeast Asia are predominantly state-owned; government agencies are responsible for their use. The value of the timber and land presented significant opportunities for economic rent capture, a situation that enabled industry interests to gain influence far beyond that of government agencies. This left enforcement officials powerless to act against breaches of the law. In the decade to 2000, 20% of the region's forest cover was lost and it was widely acknowledged that Asia's forests were in crisis.

Some countries had taken action. Log export bans — often aimed at stimulating domestic investment — were introduced in Indonesia, Peninsular Malaysia and the Philippines. In 1988, following devastating floods, Thailand banned logging in its natural forests, but this led loggers to set their sights on neighbouring Myanmar and Cambodia, in the latter case, prolonging the civil war there.

In the early 1990s the World Bank provided support to a number of countries to implement better timber control systems. A loan to the Philippines, for example,



ALTHOUGH THE TRADE DIMENSION OF FLEGT INTRODUCES LEVERAGE FOR ACTION IN TIMBER-PRODUCING COUNTRIES, KEY CHALLENGES REMAIN.

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introduced local Multi-stakeholder Forest Protection Committees, a form of monitoring which recognized government agencies' limitations.<sup>4</sup>

Sustainable forest management became a political goal in several countries. In 1990, the members of the International Tropical Timber Organisation, which includes most South-east Asia countries, agreed to strive for an international trade in tropical timber from sustainably managed forests by the century's end.<sup>5</sup> Despite these efforts, there was scant evidence that the management of forests was improving.

The collapse of dictatorships in the Philippines in 1986 and Indonesia in 1997 broke down the centralized patron-client relationships that had characterized the distribution of timber rights, but the resulting decentralization often simply transferred rent appropriation to the regions. Increasing democratization, however, also created space for political debate. The lack of action — or active connivance — by politicians and officials in permitting illegal logging could be discussed openly for the first time.

### The Bali Conference and its impacts

The Forest Law Enforcement and Governance (FLEG) Ministerial Conference held in Bali, Indonesia in September 2001 was made possible by this new political environment. Senior politicians admitted that illegal logging was a problem, and the Bali Declaration<sup>6</sup> stated: "all countries, exporting and importing, have a role and responsibility in combating forest crime, in particular the elimination of illegal logging and associated illegal trade."



The declaration — acknowledged by most Asian timber-producing countries and key importing economies — identified underlying causes of illegal logging and stipulated a range of actions. Uniquely in discussions on illegal logging at the time, it also gave civil society representatives a voice.

Although an Intergovernmental Task Force and a Civil Society Advisory Group that was mandated to prepare an action plan was only partially successful, the political space created gave impetus for other actions.

In 2002, for example, Indonesia and Japan established the Asia Forest Partnership<sup>7</sup> that provided a new multi-stakeholder platform for informal but frank discussions between regional actors. In 2007, the Association of Southeast Asian Nations (ASEAN) endorsed the ASEAN Declaration on Environmental Sustainability, in which they committed "to strengthening law enforcement, combating illegal logging and its associated illegal trade." An ASEAN Regional Knowledge Network on Forest Law Enforcement and Governance was established in 2008.

Meanwhile, Indonesia acknowledged that it had lost control over its forest sector and that log smuggling had become rife. Indonesia's Forest Minister called on importing countries to stop buying illegal timber and the government signed bilateral arrangements with

importing countries such as the United Kingdom (UK), China and Japan to combat illegal logging and associated trade. None of these, however, included provisions to regulate trade. Malaysia took the first trade-related action in 2002 by banning log imports from Indonesia.<sup>8</sup>

#### The EU FLEGT Action Plan and the EU Timber Regulation

In 2002 the European Commission (EC) presented a plan to tackle illegal logging. Its title reflected the need to incorporate the trade dimension by adding a “T” for “Trade” to the FLEG acronym. The resulting 2003 Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan<sup>9</sup> had five components. It focused on the negotiation of Voluntary Partnership Agreements (VPAs) with timber producing countries and a review of options for legislation to control the trade in illegally produced timber.

VPAs form the centrepiece of the Action Plan. They commit timber-exporting partner countries to develop Legality Assurance Systems that include verification of compliance with the defined laws, supply chain controls, issuance of FLEGT licences for exports to the EU and independent monitoring. VPAs have been signed with five African countries and Indonesia; four more are under negotiation.

The Action Plan has had a variety of impacts. The adoption and better supervision of public procurement policies in several EU member states provided a stimulus for traders to take action. NGOs drew attention to public building projects where they alleged illegal timber was being used.<sup>10</sup> Indonesia in particular was targeted, leading several UK importers to cancel contracts. Indonesian officials, however, claimed that the subsequent switch to Malaysian suppliers meant that these projects still used illegal Indonesian timber, now smuggled through its neighbour. This exemplified the growing market risks faced by Asia’s two biggest tropical timber producers and was a key factor that led them to consider the potential benefits of VPAs. In January 2007, Malaysia opened FLEGT negotiations, followed shortly afterward by Indonesia.

A key concern of both countries was that because of the VPAs’ voluntary nature, competitors not entering into a VPA would enjoy significant advantages by avoiding the cost of building and running the required systems. This concern, together with NGO claims that VPAs in themselves would not have a sufficient impact on the illegal timber trade, led to the adoption of the 2010 EU Timber Regulation,<sup>11</sup> which will become effective from March 2013 onwards. The regulation prohibits trade in illegally harvested timber and requires traders to use due diligence in placing products on the market. A key provision is the explicit recognition of FLEGT licences as evidence of legal production.

The EU was not the only major market to take action. In 2008 the U.S. amended the 100-year-old *Lacey Act* to make it an offence to trade illegally harvested timber in U.S. territory.<sup>12</sup> In 2011, the Australian government introduced a bill that will have a similar effect once it is enacted. The major markets for timber products have changed in a fundamental way.

Another essential change in the world timber trade has been the emergence of low-cost manufacturing in Asian countries, aimed at supplying finished timber products to northern economies. China, followed by Vietnam and Thailand, led this trend. Its imports of unprocessed timber soared from 38 to 112 million cubic metres (RWE) between 1997 and 2009. Awareness of the U.S. *Lacey Act* and the EU Timber Regulation triggered interest in FLEGT, and in 2010 Vietnam became the first processing country to start VPA negotiations.

### **Motivations for action in Southeast Asia**

Access to high-value markets in the EU, the U.S. and Japan remains the most important driver for actions against illegal logging. Markets increasingly require proof of legal and sustainable production. With the new legislation in key importing countries “nice-to-have” evidence of legality has become a “must-have” requirement.

A second reason — national image — is linked to accusations faced by politicians and high-profile companies of being associated with illegal logging and related trade. Governments and multinational corporations aspire to be seen as responsible partners and find it uncomfortable to be associated with deforestation, biodiversity loss, climate change, social injustice, corruption and criminal activity.

In some cases internal politics between the central government and the regions have played a role in triggering government action. In Indonesia, for example, the post-Suharto decentralization allowed provinces and districts to issue felling licences; this led to disputes with the Ministry of Forestry. Indonesia’s engagement in the governance debate can be viewed as an attempt by the ministry to reassert its control.

Whereas government and the private sector aimed at maintaining their reputation and market share, civil society organizations used the debate to draw attention to underlying forest governance problems. Recognition of tenure and use rights, participatory decision-making and transparency were key issues of concern. Particular attention was focused on the plight of forest-dependent populations, whose tenuous customary rights were often ignored and whose means of survival worsened as forests were being degraded.

The EU considers civil society involvement as an essential element of improved forest governance. A VPA cannot be regarded as credible and stable unless relevant actors have participated in transparent consultations. While this view is gaining acceptance in South-east Asian countries, it is not universal. Governments and the private sector generally share common interests, but the suspicion with which some of them regard civil society involvement has caused long-running conflicts.

### **Status of VPAs in Southeast Asia**

#### *Malaysia*

When negotiations started in 2007 Malaysia already possessed generally satisfactory control systems that, with few modifications, should have provided adequate evidence of

legality. An early VPA conclusion seemed possible. As negotiations advanced, however, it became apparent that there were differing views on stakeholder involvement, resource tenure and use rights and social safeguards.

There were also differences of interest within the Malaysian federation itself. Peninsular Malaysia and Sabah, which generally produce high-value timber products for discerning end-markets and which have made significant progress towards sustainable forest management, saw advantages in a VPA. These advantages, however, were less apparent to Sarawak, which produces most of the country's timber but primarily exports bulk products to less discerning markets. It is not clear when Malaysia aims to conclude VPA negotiations.

### *Indonesia*

The 2002 Memorandum of Understanding between Indonesia and the UK provided support to develop a unified definition of legality as a basis for auditing forest management. This sought to remove the confusion of overlapping and incoherent laws and regulations and the proliferation of private-sector legality standards. An intensive consultation process was started by Indonesian civil society. In 2006 industry and the government joined discussions in what was the first process of its kind in the Indonesian forest sector.

The resulting legality definition and audit system was ultimately accepted by government, industry and civil society alike and became the basis for Indonesia's own legality verification system (*Sistem Verifikasi Legalitas Kayu*, or SVLK), enacted in 2009. This system will ultimately cover the entire Indonesian timber sector. The SVLK is an integral part of the FLEGT VPA and Indonesian civil society played an important role in its negotiation. In May 2011, Indonesia became the first Asian country to conclude VPA negotiations.



The SVLK takes a certification approach, characterized by devolution of verification responsibilities to private-sector bodies and a strong monitoring function for civil society. Indonesian civil society's role is unique; the law grants any Indonesian citizen or civil society organization the right to file a complaint against timber producers or the organizations that verify the legality of company operations and exports. The VPA stipulates the types of forest-related information to be publicly available in the context of the 2008 *Freedom of Information Act*. Auditing the many thousands of operators against the requirements of the SVLK has started and the country aims to start issuing FLEGT licences by late 2012.<sup>13</sup>

### *Vietnam*

Vietnam is a processing hub that imports four-fifths of the raw material used by its export industry. Conclusion of VPA negotiations will require assurance that its imported timber has been legally harvested. Feasible solutions to this issue are still being worked out. A

further challenge is the limited advocacy role of Vietnam's service-oriented civil society organizations and their rudimentary engagement in policy and law-making processes. This may limit stakeholder involvement in the development of its legality assurance system.

In addition to these negotiations the EU has entered into preparatory discussions with Thailand, Cambodia and Laos.

In addition to formal VPA negotiations, the EU has been involved in a range of interventions in the region related to forest governance. These are undertaken by varying coalitions, comprising the EC and EU delegations, supporting EU Member States, trade federations, civil society organizations and several consulting agencies. The European Forest Institute, engaged by the EC to support VPA negotiations and other FLEGT-related activities, established a regional office in Kuala Lumpur in 2009.

### **The ASEAN criteria and indicators for timber legality**

In 2002 ASEAN senior forestry officials established an Ad-hoc Working Group to develop a pan-ASEAN timber certification scheme. The initiative has been supported since 2004 by the German-ASEAN Regional Forest Programme. In 2005 the working group agreed to a phased approach to forest certification. The first step is to establish the legality of forest operations and a set of agreed criteria and indicators to provide a reference framework for developing more detailed country-specific legality standards.

This work has elements in common with the VPA approach. It has established the need for a step-wise approach to certification, and acknowledged that sustainable forest management is not possible without tackling legality. The basic areas of legality adopted by ASEAN and those used in FLEGT are similar, allowing for a common understanding of the scope and underlying verifiers. Both initiatives recognize the need for credible chain-of-custody and independent third-party verification of private sector performance.

There are also differences. The ASEAN approach includes Myanmar; due to current sanctions, the country has been largely excluded from dialogue with the EU. A VPA is a legally binding trade agreement with clear commitments from both sides, including tackling underlying governance problems, while ASEAN's approach is limited to preserving fair and equal conditions for member country enterprises through adoption of common criteria and indicators. And while stakeholder involvement in defining legality and monitoring performance is a fundamental VPA requirement, this is not stipulated by the ASEAN guidelines.

The ASEAN process appears to have strengthened awareness that illegal logging deserves political attention. The resulting national standard setting processes have enhanced cooperation between governments, although it is too early to assess their impact on forest governance. This will to a large extent depend on the manner in which these standards are implemented.

### Conclusion

The advent of industrial-scale logging in Southeast Asia in the 1960s, combined with pressure for agricultural land, has taken a large toll on the region's natural forests. While forest loss has often been a consequence of development plans and in accordance with national laws, much degradation and conversion has also occurred because of disregard of legal requirements.

Over the last decade, greater tolerance of civil society action and political acceptance of the role of non-governmental organizations has seen an opening up of the debate on a sector whose reputation for integrity had plummeted to serious depths.

Actions developed by both producer and consumer countries are now starting to have an influence. New legislation — which for the first time prohibits trade in illegally harvested timber and timber products — is changing behaviour in timber-producing and processing countries. ASEAN leaders are now increasingly aware of the growing market demand for legal timber products and the need to take action.

VPA's with the EU provide one way for countries to meet new market requirements, but they will not apply to all countries. Although the trade dimension of FLEGT introduces leverage for action in timber-producing countries, key challenges remain. Solutions by which processing hubs can determine the legality of their raw material imports have to be developed. For countries such as Laos or the Philippines — which have little direct trade with the EU, or are running out of resources — additional levers to secure improved forest governance may need to be identified. The links between REDD schemes aimed at addressing climate change and overall governance issues related to land and resource use need much more attention.<sup>14</sup>

Whatever the next steps, solutions will need to take account of declining EU and U.S. influence. As Asian countries prosper and regional integration increases, developed-country markets will decline in relative importance and trade incentives will lose leverage. However, as the damage from illegal logging becomes more apparent, Asian civil society groups, companies, politicians, and citizens in general are likely to take up the cause of safeguarding the region's remaining forests.

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## Endnotes

1. They are Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Thailand and Vietnam.
2. W.A. Marzoli. *Tropical deforestation trends*. [www.nespole.net/ Papers/defotrends/DEFOTREND.htm](http://www.nespole.net/Papers/defotrends/DEFOTREND.htm).
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5. See [www.itto.int/feature01](http://www.itto.int/feature01).
6. See [www.illegal-logging.info/item\\_single.php?it\\_id=34&it=document](http://www.illegal-logging.info/item_single.php?it_id=34&it=document).
7. See [www.asiaforests.org](http://www.asiaforests.org).
8. See [www.mtc.com.my/issues/index.php?option=com\\_content&view=article&id=5:malaysian-government-ban-on-the-importation-of-logs-from-indonesia&catid=34:happening&Itemid=55](http://www.mtc.com.my/issues/index.php?option=com_content&view=article&id=5:malaysian-government-ban-on-the-importation-of-logs-from-indonesia&catid=34:happening&Itemid=55).
9. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003DC0251:EN:NOT>.
10. See for example [www.greenpeace.org.uk/media/press-releases/timber-protest-enters-second-day](http://www.greenpeace.org.uk/media/press-releases/timber-protest-enters-second-day).
11. See [http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm).
12. See [www.cbp.gov/xp/cgov/trade/trade\\_programs/entry\\_summary/laws/food\\_energy/amended\\_lacey\\_act](http://www.cbp.gov/xp/cgov/trade/trade_programs/entry_summary/laws/food_energy/amended_lacey_act).
13. See EU and Indonesia (May 2011) FLEGT Voluntary Partnership Agreement Between Indonesia and the European Union - Briefing Note. [www.efi.int/files/attachments/euflegt/briefing\\_note\\_indonesia\\_\\_en\\_.pdf](http://www.efi.int/files/attachments/euflegt/briefing_note_indonesia__en_.pdf).
14. See Saunders, J., J. Ebeling and R. Nussbaum. 2008: *Reduced Emissions and Forest Degradation: Lessons from a Forest Governance perspective*. [www.proforest.net/publication-objects/REDD%20and%20Governance.pdf](http://www.proforest.net/publication-objects/REDD%20and%20Governance.pdf).