

AIDE MEMOIRE

FIFTH SESSION OF THE JOINT MONITORING AND REVIEW MECHANISM

Accra, 28th – 31st May, 2013

Introduction

1. The fifth session Joint Monitoring and Review Mechanism¹ (JMRR) to facilitate the implementation of the Voluntary Partnership Agreement (VPA) between Ghana and the EU took place in Accra from 28th to 31st May 2013. The mission was co-Chaired by Ghana and the EU. The Ghana Delegation was led by the Honourable Alhaji Inusah Fuseini. The EU Delegation was led by Ambassador Claude Maerten.
2. The Ghana team included representation from the Forestry Commission (FC), Civil Society and the Private Sector. The EU team included representation from the European Commission, Member States and experts from the EU FLEGT Facility. A participants list is attached as Annex I to this aide memoire.
3. The JMRR discussed progress on key aspects of VPA implementation. It also discussed concerns raised by civil society and a report and subsequent press release by Global Witness, regarding the allocation of timber rights.

The following sections provide a summary of the discussions and decisions in relation to each of the areas concerned.

Legality Assurance System (LAS)

4. The LAS comprises a legality definition, a wood tracking system (WTS) and a system to verify compliance with the laws included in Annex II of the VPA. An Independent Monitor (IM) that conducts periodic audits to assure credibility of the system to verify legal compliance also forms part of the LAS.
5. It was expected that contract negotiations with the preferred bidder for the role of service provider to develop the WTS would be concluded by April 2012. However, in order to address the complexities of the LAS and capitalise on lessons learned from the pilot project, contract negotiations extended beyond the anticipated timeframe and a contract with a consortium led by Ata Marie Group (AMG) Limited was not signed until December 2012.
6. In order to accelerate the development of the system, the FC are working with AMG to fast track the WTS development process and are currently at a more advanced stage of system development than anticipated by the timeline agreed in their contract. The VPA implementation plan attached as Annex II to this aide memoire, provides details on key milestones and timelines for LAS development and roll-out.

¹ The purpose of the JMRR is described in Article 19 of the VPA

7. The verification protocols, which will provide guidance on the processes and procedures for verifying legal compliance, are being developed. Following an initial round of consultations, the structure of these documents has been revised and further stakeholder consultations will take place in June/July 2013. In response to concerns raised by civil society about the depth of consultations to date, the FC provided assurance of the intention to engage in focussed discussions with key stakeholder groups in line with their consultation plan and that timely notification will be provided for such consultations.
8. In relation to the appointment of an IM, following a competitive bidding process, the preferred bidder for this role has been identified and Ghana expect to have the IM in place no later than September 2013.
9. The parties agreed that to ensure that the development of the LAS does not encounter any further delays, it is essential that a clear understanding of what elements of work can be done in parallel is established as soon as possible.

Impact monitoring

10. Ghana and the EU have committed to working together to develop an impact monitoring framework that meets the needs of both parties. In this regard, the JMRRM agreed that Ghana would communicate to the EU, the work that they have already done in identifying their priority impact areas. In addition, each party would nominate their representatives to a joint working group that would be tasked with leading on the development of this framework. This working group will convene its first meeting no later than July 2013 and will seek the support of the European Forest Institute (EFI) for this work.

Rules of Arbitration and Procedure

11. Following the approval of the rules of procedure and arbitration at the fourth JMRRM, a further round of minor comments were provided by a number of Directorates within the European Commission and formally communicated to Ghana. Ghana confirmed their acceptance of the proposed changes and will formalise this acceptance through an exchange of letters between the parties. A final version of these documents will be made public through the websites of the European Commission and the Forestry Commission.

Amendments to Annex I of the VPA

12. A discussion was held on proposed changes to a number of aspects of Annex I of the VPA. These included the HS codes, the product description that accompanies these codes and the text describing the products that are included/excluded in the product scope of the agreement. It was agreed that the EU will clarify through a formal exchange of letters, what changes they think are necessary to Annex I and the rationale for these changes.

Timber in transit

13. During the fourth JMRM, the EU stated that with regard to timber in transit, once the FLEGT licensing is operational, all timber exports from Ghana that are covered by Annex I, will require a FLEGT license for entry into the EU, regardless of whether they originate from a third country.
14. In February 2013 a meeting was held between TAXUD at the European Commission and a delegation from the Government of Ghana, in which it was agreed that text would be required to describe how timber in transit would be exempted from the requirement to carry a FLEGT license. However, following discussion of this proposal at the level of Ghana's multi-stakeholder implementation committee (M-SIC), a decision was taken that such a revision was not necessary. After further discussion during this JMRM, the parties agreed that the Ghana is prepared to revisit this decision and the EU will provide further information to inform these discussions.

Update on policy and legislative review

15. As anticipated in the fourth JMRM, the FLEGT Legislative Instrument (LI 2184) was passed in July 2012. This LI provides legal basis for FLEGT licensing and establishment of Timber Validation Committee (TVC). Ghana confirmed that the TVC, which will have responsibility for oversight of the LAS and management of a complaints mechanism, would be established and operational by December 2013.
16. In relation to the membership of the TVC, civil society raised concerns that although they were identified as members of this committee in Annex V of the VPA, the term 'civil society' did not appear in the LI. The parties agreed that the provisions of the VPA should be consistent with any enabling legislation. FC stated their intention to include civil society in the Committee. In the medium-long term, a consultative process will be undertaken with the necessary authority to resolve this issue.
17. A new Forest and Wildlife Policy has also been approved since the last JMRM and includes provision for issues such as carbon trading and payment for ecosystem services. The Policy also places greater emphasis on the development ecotourism, shifting emphasis away from the management of the resource for timber production.
18. At the fourth JMRM, work on the consolidated forestry Act was foreseen for 2012, however it was subsequently decided that this should be postponed, pending the review of the Forest and Wildlife Policy. The parties agreed that a consolidated Act should be in place by December 2014.
19. A further area of work initiated by the MLNR in 2012 related to tenure reform that would address farmer rights of ownership and access to trees on farms and in plantations. Civil Society acknowledged the initiative taken in moving this process forward and urged Government to clarify the timeline for further work on this issue.

Government confirmed that resources for this process would be made available through Technical Assistance support from the World Bank in the coming months as this was an area of work that was also prioritised for both the REDD and Forest Investment Plan (FIP) processes. The parties agreed that there was a need to ensure coherence between any work on tenure reform that might take place under either the VPA, REDD or the FIP.

Transparency measures

20. Ghana's VPA does not include an annex on transparency measures and public disclosure. However, Article 20 includes details relating to required reporting of various information. At the last JMRM, civil society acknowledged the existing initiatives of the Government of Ghana to disclose information and during this mission, commended the FC on their decision to publish on their website, the details of all valid timber rights.

21. It was agreed by the parties that there may be additional information that would be useful to place in the public domain. The FC again invited civil society to provide them with a list of information that they would like to be made available so that a discussion could be held with all stakeholders and consensus reached on what information could be published.

Update on domestic market

22. The parties agreed that considerable progress had been made in the implementation of strategies for dealing with illegal logging to supply the domestic market and acknowledged that the collaboration between the FC and Tropenbos International, Ghana had been instrumental in this regard. Included amongst the measures being implemented are:

- Operational Rapid Response Units to strengthen and enforce forest law enforcement
- Training of fifty FC staff as prosecutors of forest offences
- The promotion of imports of timber from Guyana to meet domestic demand

23. The Public Procurement Policy (PPP) for verified legal timber has undergone inter-ministerial consultation and will be submitted by MLNR to Cabinet for approval by August 2013. In addition, a number of measures are being implemented to strengthen the regulation of illegal chainsaw operations,

Annual Report

24. A draft annual report for 2012 will be finalised by 17th June 2013 and published on the relevant websites no later than 30th June 2013.

VPA Implementation Priorities for 2013

25. In 2012, the FC developed a VPA implementation plan setting out priority actions and milestones to support effective implementation of the agreement. The parties reviewed and revised this document to reflect progress targets for implementation in 2013. A copy of this revised plan is attached as Annex II to this aide memoire.

Civil society concerns

26. To coincide with the launch of the JMIRM mission, Forest Watch Ghana (FWG) raised a number of concerns in a letter addressed to the Minister and copied to the Head of EU Delegation. Although a number of these issues were discussed at the JMIRM and are reflected in the relevant sections of this aide memoire, the Ministry confirmed its intention to formally respond to the concerns raised.

27. The JMIRM encouraged civil society to make effective use of existing mechanisms and platforms for raising such concerns. The Government of Ghana stressed the need for Civil Society to engage constructively to find solutions to the challenges arising in VPA implementation.

28. Ghana assured the EU that all permits were issued in accordance with existing legislation. The parties acknowledged the urgency with which such concerns need to be addressed in order to provide the necessary assurance that timber originating from Ghana is legal.

29. This session of the JMIRM again emphasised the need to convert existing leases to TUCs as a matter of urgency in order to demonstrate compliance of such timber with the provisions of Ghana's legal framework. Moreover, on the issue of Salvage Permits (SPs), the FC affirmed that all SPs have been issued in compliance with Ghanaian law. Allegations of abuse of this permit type are of serious concern to the parties and consequently the Chief Executive of the FC further encouraged anyone with information and/or evidence of such alleged abuses to bring it to the immediate attention of the FC.

30. Finally, it was acknowledged that 'Special Permits' issued under Act 617 sec. 20 are not included in the definition of legal timber in the VPA and therefore timber products from such sources will not be eligible for FLEGT licensing. In order to address this inconsistency, the following options will be explored:

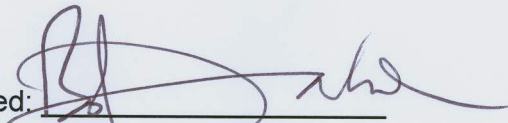
- 1) The possibility of amending Annex II of the VPA to include this permit type
- 2) The need to repeal and/or amend the relevant legislative text

Global Witness report and press release on alleged abuse of permit allocation

31. During the JMRM the issue of the Global Witness report and subsequent press release were discussed. The parties shared concerns about the perceptions that such reports create about the shared commitment to implementation of the VPA. The FC confirmed that it would publish a response on its website in clarification of the issued raised.

Date of the next JMRM

32. The next meeting of the JMRM is scheduled for October 2013 in Accra.

Signed: 

Hon. Alhaji Inusah Fuseini (MP)

Minister of Lands and Natural Resources

Signed: 

Ambassador Claude Maerten

Head of EU Delegation

Date: 31/05/2013

Date: 31 May 2013

Annex I

5th Ghana EU JMRR Session

Friday, 31 May 2013

Participant List- Formal Session

GHANA TEAM	INSTITUTION AND POSITION
Hon Alhaji Inusah Fuseini	Minister Ministry of Lands and Natural Resource
Hon. Barbara Serwaa Asamoah	Deputy Minister Ministry of Lands and Natural Resource
Mr. Samuel Afari Dartey	Chief Executive Forestry Commission
Mr. Musa Abu - Juam	Technical Director, MLNR
Mr. Tabi Agyarko	M-SIC, MLNR
Mrs. Gifty Mahama Biyira	Director of Administration, MLNR
Mr. Edward Obiaw	M-SIC, FC
Dr. Alhassan N. Atta	M-SIC, FC
Mr. Chris Beeko	M-SIC, FC
Mr. Agyemang-Prempeh Koranteng	M-SIC, FC
Mr. K.S Nketiah	M-SIC, Tropenbos International, Ghana
Dr. Richard Gyimah	FC
Mr. Oppon Sasu	FC
Mr. Kwame Mensah	Civil Society (Forest Watch Ghana)
Mr. Macdana Yunus	MLNR

EU TEAM	INSTITUTION AND POSITION
Bart Missinne	EU Delegation, Accra
Emilie Goransson	European Commission, Brussels
Marketta Juppi	EFI FLEGT Facility
Morne van der Linde	EFI FLEGT Facility
Clare Brogan	FLEGT Adviser to EU Delegation

Annex II
Ghana VPA Implementation Plan

	A	B	C	D	E	H	I	J	Y
		Policy Area		Main Activity		Key Milestones	Final Delivery Date	Expected Outcome	Responsibility
3									
4		1 Implementation of LAS	1.1	Operationalize TVD	1.1.1	TVD established and operational	Nov-13	LAS regulatory framework in place and FLEGT License issued	CE/TVD
8			1.2	Establishment of TVC	1.2.1	TVC established and operational	Dec-13		CE/TVD
12			1.3	Wood Tracking System (WTS) Rollout	1.3.1	WTS rolled out Nationwide	Oct-14		CE/TVD
16			1.4	LAS Business Processes rolled out	1.4.1	Business processes reviewed and implemented	Feb-14		TIDD, FSD, RMSC, TVD & CPME
17			1.5	Develop and Review MOPs	1.5.1	MOPs reviewed in line with LAS	Mar-14		TVD/ RMSC/FSD/TIDD
18			1.6	Establish Verification System	1.6.1	Verification Protocols established	Sep-13		TVD
19			1.7	Establish FLEGT License System	1.7.1	FLEGT License established and operational	Dec-14		TIDD/TVD
20			1.8	Operationalise Independent Monitoring (IM) in LAS	1.8.1	Independent monitoring in place	Sep-13		CE/TVD
22		2 Legal Reforms	2.1	Introduction of Subsidiary Legislation	2.1.1	Subsidiary Legislation Enacted	Achieved	Appropriate Legislation in place in support of the VPA	CE/LEGAL
23			2.2	Review and Consolidate Forest Laws	2.2.1	Forest Laws Consolidated	Dec-14		CE/LEGAL
24		3 Clean Production through Industry Re-structuring	3.1	Undertake Industrial Audit	3.1.1	Industry Audit Report	Dec-13	Investments into value added processing sector consistent with requirements under FIP and low carbon production system	TIDD
30			3.2	Facilitate the introduction of ISO 9000 and ISO 14000 QMS into industry operations and practices	3.2.1	ISO Certification secured	Nov-14		TIDD
37			3.3	Facilitate the provision of technical assistance to support Downstream Processing in the timber industry	3.3.1	Uptake of value added processing	Dec-14		TIDD

Annex II
Ghana VPA Implementation Plan

	A	B	C	D	E	H	I	J	Y
41	4	Domestic Market Development and Regulation	4.1	Enforcement of Forest Laws	4.1.1	Rapid Response Unit increased from 8 to 15 teams	Jul-14	Supply of legal timber to the domestic market increased (by 20%) and structured domestic market in place with FC (TIDD) and Ghana Revenue effectively monitoring payment of VAT	TIDD
45			4.2	Develop and Promote National Wood Procurement Policy - Domestic Market	4.2.1	Procurement Policy proposal (PPP) submitted to Cabinet	Aug-13		TIDD
53						Procurement Policy Legislative instrument in place	Dec-14		MLNR
54			4.3	Implement the Selected Option to address illegal lumber supply to the domestic market (Pilot mobile recovery teams)	4.3.1	Operationalise Measures to increase the % supply of legal lumber to the domestic market	Dec-14		FSD/TIDD
59			4.4	Promote Processing and Utilisation of LUS	4.4.1	Lesser Used Species utilisation increased	Ongoing		TIDD
63			4.5	Facilitate the Improvement and Modernization of processing techniques of wood including rubber wood, bamboo and rattan by SMEs	4.5.1	Build capacity of firms for production and marketing of high value bamboo and rubber wood products through the provision of Technical Assistance and promote the uptake of rubber wood products on the domestic market	Dec-14		TIDD
68			4.6	Facilitate creation and operation of timber depots in strategic locations	4.6.1	Timber depots Piloted	Jun-14		TIDD
72			4.7	Develop and Implement Policy on 100% timber yield removal	4.7.1	Policy operationalised	Dec-14		RMSC/FSD/TVD
79	5	Capacity Development for implementation of LAS	5.1	Training and Development of Public Sector Institutions in implementation and operation of the LAS and the Public Procurement Policy	5.1.1	LAS functional	Feb-14	Capacity of identified public institutions enhanced	TVD/HR

Annex II
Ghana VPA Implementation Plan

	A	B	C	D	E	H	I	J	Y
85			5.2	Training of SMEs including informal sector on the requirement of Domestic Market	5.2.1	SMEs sourcing timber requirements from legal sources	Dec-14		TIDD/TVD
89			5.3	Provision of logistics	5.3.1	Field and personal protective equipment procured	Jan-14		TVD/HR/FINANCE & ADMIN
92			5.4	Optimize ICT Infrastructure for Data Repatriation and Collation	5.4.1	ICT infrastructure enhanced	Jan-14		TVD/ICT
96	6	Communication, Trade Promotion and Awareness Creation	6.1	Develop and Implement Communication Strategy	6.1.1	Communication strategy developed and operational	Dec-14	Increased market share for legal timber for both domestic and export markets	TVD/TIDD/London Office
100			6.2	Promote FLEGT benefits/verified legal products	6.2.1	FLEGT-licensed products promotion operationalised	Oct-13		TIDD/TVD
106			6.3	Strengthen collaboration with trade associations in key export markets	6.3.1	Joint promotion activities organised with trade Associations in key export markets	Dec-14		TIDD/TVD
110	7	FLEGT VPA Coordination & Administration	7.1	FLEGT VPA Coordination & Administration	7.1.1	Improved coordination with all stakeholders and initiatives	Dec-13	A robust Intersectoral coordination system established	MLNR/FC HQ
115	8	Performance Framework for FLEGT-VPA	8.1	FLEGT VPA Performance Assessment	8.1.1	Impact Assessment Framework in place	Jul-14	FLEGT/VPA impact framework operational	CPME/TVD
121			8.2	Establish linkage of LAS with the FC overall Information Management System	8.2.1	Reliable and integrated data available for policy analysis, monitoring and evaluation	Dec-14		TVD
122			8.3	Conduct JMRM Sessions		Scheduled JMRM meetings held	Oct-14		CE/TVD