



The long road to timber legality

Taking stock of the EU-Vietnam VPA timber trade deal

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Eight years of often intense negotiations between Vietnam and the European Union (EU) reached a milestone in Brussels on 19 October 2018. Federica Mogherini, the EU high representative for foreign affairs, and Nguyen Xuan Cuong, Vietnam’s minister of Agriculture and Rural Development (MARD), signed a Forest Law Enforcement Governance and Trade – Voluntary Partnership Agreement (FLEGT-VPA) timber trade deal.

“Today marks the start of an important partnership through which the EU and Vietnam will work together to address illegal logging and its harmful effects,” said Mogherini.

VPAs¹ are part of the EU’s Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, a series of measures to tackle the root causes of illegal logging. To access the lucrative EU market, timber and wood product exporters must meet stringent legal standards, aimed at improving forest ownership and management.



More than 50 per cent of labour in the Vietnamese timber industry is conducted by women.

Many see the VPA as an innovative tool in the fight against illegal logging and a solution to the poor forest governance that has plagued Vietnam for years.

This briefing assesses how far the VPA has met its objectives and – as the deal moves into the implementation phase – what needs to happen for it to fully succeed.

This briefing – drawing on documents in the public domain as well as interviews with external experts and Vietnamese and Europeans who took part in the VPA process – assesses how the VPA has assisted the fight against illegal logging in Vietnam.

It also looks at what steps must be taken during the deal’s implementation phase, and before FLEGT licenses – guaranteeing that timber from Vietnam has been harvested, processed and exported legally – can be issued.



¹ In June 2016, the European Council described the EU FLEGT Action Plan (which the VPA is a component of) as “innovative” and stated that it has been valuable “in promoting and improving forest governance, especially through the establishment of effective multi-stakeholder participation processes, clarification of legal frameworks, policy reforms, increased transparency and accountability and awareness raising.” See: [http://data.consilium.europa.eu/doc/document/ST-10721-2016-INIT/en/pdf=](http://data.consilium.europa.eu/doc/document/ST-10721-2016-INIT/en/pdf)

The EU's timber trade deal with Vietnam: a brief background

Since introducing a “socialist-oriented market economy” in the 1980s, Vietnam’s economic growth has been turbocharged: the country has moved from being one of world’s poorest, to having one of its fastest-growing economies.²

This rapid growth has been mirrored in Vietnam’s forest economy and forest-based industries.³

Vietnam is “at the centre of the global timber products trade”: importing timber from some 80 countries, while also being the world’s fourth largest exporter of wood products.

Vietnam’s wood product exports increased by 10 per cent in 2018 and are on course to reach an annual turnover almost US\$9 billion. Exports to the EU, meanwhile, have remained “remarkably stable” in recent years.⁴

The stability of the international timber market – in contrast with the volatility of the markets for Vietnam’s other major exports (such as rice, coffee and rubber) – underscores the industry’s importance to Vietnam’s economy, and explains why protecting the sector’s reputation is crucial for its Government.

But the sector has been blighted by poor governance, so in November 2010, Vietnam began negotiating a Voluntary Partnership Agreement (VPA).

This came against a backdrop of a sector undergoing wholesale modernisation: logging in natural forests was officially closed down, and the country was moving towards plantations, mainly acacia and eucalyptus, and a timber processing industry.⁵

² Vietnam’s growth rate averaged 6.28 percent from 2000 until 2018. See also: Vietnam’s economic prospects improve further, with GDP projected to expand by 6.8 percent in 2018, World Bank press release, June 14, 2018. The lifting of the trade

³ The value of Vietnam’s wood product exports has risen consistently in the last ten years. UN COMTRADE data shows the value of exports from the country increased more than three-fold from around US\$2 billion to nearly US\$7 billion in the ten years to 2016.

⁴ Vietnam’s wood product exports to the EU rose in the first quarter of 2018 by 10 per cent on the same period in the previous year.

⁵ Vietnam’s forest cover increased from a low point of 28 per cent in the 1990s to nearly 40 per cent in 2013, primarily as a result of efforts at naturally regenerated forest and forest plantations. This was underpinned by a major shift in forest tenure over the last 25 years towards farm forestry. While pressures continue on the remaining areas of natural forest and protected areas, forest decline has stabilised in recent years as a result of a prohibition on exploiting natural forest. FAO report on State of the World’s Forests 2016 <http://www.fao.org/publications/sofo/2016/en/>

Moreover, the Vietnamese timber industry associations also took steps to establish their own due diligence systems in response to the EU Timber Regulation (EUTR), the United States’ Lacey Act, and importers’ subsequent requests for assurance of legality.

After eight years of negotiations, the VPA was signed in Brussels in October.⁶

Multi-stakeholder processes in Vietnam’s VPA

At the heart of the VPA is the requirement that negotiations – and just as crucially, the deal’s implementation – involve all stakeholders: this includes representatives from Government, the private sector, civil society organisations (CSOs), and forest-dependent communities.⁷



The Vietnamese NGO-FLEGT network ensures the views of poor communities and households across the country are heard by the Vietnamese Government and the EU.

Initially Vietnamese CSOs working on forests and related issues were not interested in engaging in the VPA; they predominantly focused on conservation projects and issues related to land use rights.

However, their awareness of the VPA and its potential to open space for CSOs to engage in policy dialogue progressively grew.

Nevertheless, in contrast to other VPA processes, Vietnamese CSOs did not have a formal seat at the negotiating table.

⁶ The Vietnam- EU VPA process is intimately tied to the wider Free Trade Agreement (FTA) between the EU and Vietnam, the conclusion of which was announced in December 2015.

⁷ There is a solid rationale for this. Getting the ‘buy-in’ of a broad range of people means the deal is less likely to be contested; it also reinforces support during its implementation. What’s more, there is ample evidence that if those with a stake in their nation’s forests are involved in shaping how they are managed, the better protected they will be.

In fact, only one international NGO, WWF, participated formally in the VPA technical working groups and face to face negotiations. The private sector was represented through the Vietnam Timber and Forest Products Association (VIFORES).

This is in stark contrast with all other VPAs signed and being negotiated and went against requests from local and international NGOs.

Aggravating this lack of formal participation in the negotiations, some representatives from Vietnamese CSOs were pressured by the Government for speaking too openly: their statements being described as anti-Vietnamese. Nevertheless, communication channels between CSOs, the EU, and the European Forest Institute (EFI)⁸, were opened through discreet meetings and stakeholder feedback sessions which followed the formal VPA meetings.

CSO engagement in the consultation process shifts official attitudes

While civil society was not officially involved in VPA negotiations, it was involved in the consultation process, through providing written comments on draft [VPA Annexes](#) and participating in stakeholder consultation workshops.

The group of Vietnamese NGOs, research institutes and development centres from universities which came together in 2012 as the Vietnamese NGO-FLEGT Network,⁹ have also fed into the VPA process by undertaking a [VPA livelihood impact assessment](#), ensuring the views of poor communities and households across the country were heard by policymakers and negotiators.

The livelihoods impact assessment was instrumental in improving the Vietnamese Government's recognition of local NGOs' role in negotiations. As a result, the Vietnam Administration of Forestry started to recognise the value of CSOs' input, specifically their knowledge and experience with forest communities, and their ability to get information not available from local administrations.

The advocacy work done by both Vietnamese and European NGOs, with the backing of the European Commission, has

⁸ The European Forest Institute is an international organisation, established by European States. It conducts research and provides policy support on issues related to forests. EFI hosts the EU FLEGT Facility which supports FLEGT-VPA processes in developing countries, related to the implementation of the EU FLEGT Action Plan.

⁹ This network currently has some 60 member organisations, and got support – notably through EU development aid – to conduct extensive fieldwork in different provinces, undertaking research and advocacy and producing a VPA livelihood impact assessment to provide an informed basis for engaging with the Vietnam Administration of Forestry (VNFOREST) on the VPA. Many of the VNGO Network members are sub-national organisations, not only Hanoi based. The network was also active in some provinces in relaying information about the VPA-FLEGT negotiation to sub-national actors more broadly (e.g. local authorities, local associations, communities...).

clearly paid off: the Vietnamese Government has improved the way it engages with non-state actors in the VPA implementation process compared to the negotiation phase by giving them a seat in the Implementation Core Group.

Moving into the implementation phase, a Multi-Stakeholder Implementation Core Group has been set up, including various representatives from CSOs, as well as the private sector, research institutes and development partners. The core group provides a forum to discuss issues around the implementation of the VPA Agreement and can propose issues for consideration by the Joint Implementation Committee.

It could potentially play a strategic role in influencing the quality of the legislative reforms, the way the annex on public disclosure of information will be implemented and the development of the monitoring system.

Legal timber in Vietnam

The first step in VPA negotiations was to define 'legal timber', meaning clarifying the legal framework, identifying what legislation should be referred to in the timber legality definition and the legal reforms needed.



Worker of a wood processing unit in Que Son district, Quang Nam province.

In November 2017 a new [Forestry Law](#) was adopted by the National Assembly, which will enter into force in January 2019.¹⁰ The new law regulates – for the first time – the processing and trade of forest products and refers to VPA commitments, notably the development of a nationally applied Timber Legality Assurance System (VNTLAS)¹¹, including a Timber Import Regulation, and the prohibition of

¹⁰ It replaces the Law on Forest Protection and Development from 2004.

¹¹ At the heart of each Voluntary Partnership Agreement (VPA) is a 'timber legality assurance system', which verifies that wood products conform to national laws. The five core components common to all VPA timber legality assurance systems are: the legality definition, supply chain control, verification of compliance, FLEGT licensing and independent audit. More information available at [EUFLEGT facility vpa unpacked](#).



Tens of thousands of small household producers survive by turning wood into timber products, mostly to be sold domestically.

illegal logging and transportation, importing, processing and trade in illegal forest products.

A legality definition for two target groups: business sector and households

The decision to divide the legality definition into organisations and households¹² is a significant social aspect of the Vietnam VPA.

Vietnam's forest sector is characterised by its diversity: ranging from household producers to small scale processing plants and major exporters. Tens of thousands of small household producers survive by turning wood into household items, construction items and other products, mostly to be sold domestically.

During VPA negotiations, the Government was particularly keen to create conducive conditions for smallholder tree farmers to harvest and sell their timber. The VNGO network's advocacy was persuasive in influencing some of the content of the legality definition, particularly for households.

As a result, different regulations on the sale, growing, harvesting, processing and transport of timber, apply to these two target groups – with the aim of streamlining and simplifying procedures and compliance costs for households and communities who harvest and sell timber.

The recognition of the households' difficulties in harvesting and selling timber according to regulations developed for business enterprises, has been facilitated by VNGO Network advocacy,¹³ and tallied with the Government's aim of enabling households to continue to benefit from the trade in timber.

Harvesting timber from home gardens, farms and dispersed trees

Trees in home gardens and farms, located on roadsides or along canal banks, represent a substantive source of timber in terms of volume for the Vietnamese domestic market. The VPA recognises the need to formalise these sources of timber despite those trees not being classified as concentrated plantation forests. This will allow households that depend on these scattered trees for their livelihoods to benefit from the legal supply chain. This will also facilitate the monitoring of the management of these trees, avoid communities' resources being captured by powerful local forest rangers, and stop the harvesting of protected and valuable species.

¹² First, organisations encompassing the formally registered business sector, as well as those which are state-owned and cooperatives. Second, households, which include village communities, household timber growers and timber processors

¹³ Policy recommendations: Ensuring legality of plantation timber at household level, VNGO-FLEGT network, 2016

Land use and forest use rights in Vietnam

According to Vietnam's constitution, land belongs to the entire population, with the state acting as their representative. Forest land is defined as a sub-category of agricultural land. The state can transfer land use rights to different stakeholders.

The new Forestry Law strengthens the provisions of equality before the law on forest rights, regardless of religion, beliefs, ethnicity or gender. It places communities on an equal footing with other categories of forest owners.

In reality, some categories have more power than others to access forest land. The forest land allocation process gives priorities to organisations, officers of state forestry enterprises, or specific individuals. Inequity also exists among different ethnic groups, with the Kinh ethnic group often receiving more land than other ethnic groups

The practice of land and forest allocation to village communities raises the question of what mechanisms for conflict resolution are available in case of conflicts over land and forest use between the community and other actors; and what mechanisms are available to ensure the fair sharing of benefits within the community. The new Forestry Law does not include a conflict resolution mechanism, and the Vietnamese court system is not really set up for it. Resolving a conflict can take up to 5-10 years and the outcome often depends on ones' resources and connections.



A government officer talking with local people about the importance of forest protection

Social safeguards

A flexible and inclusive approach to tenure rights

The Legality Definition includes up to 10 different types of documents or verifiers that timber growers can use to demonstrate the legality of land use and forest use rights, and thereby obtain harvesting and trading permission.

Most significantly, households that do not have any of the regular certificates/documents are able to obtain validation from the Commune Peoples' Committee that they are legally using the land.¹⁴

Labour rights

The VPA obliges enterprises and employers to respect fundamental labour rights, such as workers' rights to social insurance and the Vietnamese Labour Code. Union representation and Occupational Health and Safety are also guaranteed by the VPA.

During negotiations, the Timber Industry Associations were reluctant to include social safeguards in the agreement, advocating that such safeguards were not related to the legality of the timber's origin.

The value of having these social safeguards in the VPA is that they have now become something that companies need to comply with, enabling weaknesses to be monitored and addressed.

Initial baseline surveys carried out by the VNGO-FLEGT network in 2018 revealed that it will be difficult to ensure micro enterprises' or informal and seasonal workers' compliance with labour contracts and social insurance. This is because micro enterprises have a rapidly changing workforce and their business tax arrangements are unclear.

Complaint mechanisms and whistle blower protection

During negotiations, the EU worked hard to ensure that complainants would be protected. Annex V (which describes

¹⁴ The government recognised that formal Land Use Rights Certificates (known as Red Books) are not the only verifier of valid forest land use rights. Land Use Rights Certificates (Red Book Certificates) were first introduced through the Land Law of 1993.

Verifiers on land use rights and forest use rights introduced under previous regulations may still be valid according to the current Land Law.

Since 1993, the issuing of land use rights certificates has been progressively extended to all land users and all categories of land throughout the country. This process is still underway and there are some circumstances in which legal forest land users have not yet been granted Land Use Rights Certificates.

how the independent evaluation should be conducted)¹⁵ explicitly states that denunciators shall be protected and complaints mechanisms should assure confidentiality. This is an innovative element and not included in any other VPA so far.



This woman lost her arm at a wood processing plant. She now uses a prosthetic arm.

Gender in the Vietnam VPA

More than 50 per cent of labour in the Vietnamese timber industry is conducted by women. However, there is little examination of the differentiated roles, access, rights and benefits between men and women. There is also a lack of analysis of the various social groups who are engaged in the different stages of FLEGT operations, or the risks that modernisation and legalisation of timber value chains may pose to women and men. There have been efforts to include women's representation in negotiation meetings and core group meetings, and in some instances, targeted focus group discussions, risk assessments and capacity building were held with women's group. Due to these issues, VPA stakeholders want to improve women's participation in the VPA implementation. The Center For Forests and People (RECOFTC) – a South East Asian training and research organisation – highlights that while these opportunities exist, there are also challenges as there is no comprehensive study on the gendered impacts of the VPA/FLEGT so far.¹⁶

¹⁵ The VNTLAS will be evaluated by an independent organisation according to article 10 of the VPA. The independent evaluation is the periodic evaluation of the implementation, efficiency and credibility of the VNTLAS. Two evaluations will be carried out in the first year that FLEGT licensing commences and then one evaluation will be carried out per year. The JIC will publish the summary report and minutes of meetings of the JIC on reports by the Independent Evaluator.

¹⁶ <https://www.recoftc.org/projects/v4mf/stories/gender-and-flegt-nexus-and-options-viet-nam>

A specific complaint mechanism will be put in place by the independent evaluator. The effectiveness of this complaint mechanism will depend on both the capacity and willingness of the Independent Evaluator to use it and the quality of the remedies.

Impact monitoring

The VPA includes the need to assess the impacts of the agreement on ethnic minorities and local communities, to monitor the impacts, and to take reasonable steps to mitigate any adverse effects. Impact monitoring is a significant social safeguard. If negative impacts are identified during the implementation phase, they can be addressed by the Joint Implementation Committee who may adopt amendments to any of the annexes to the Agreement.

Thanks to the evidence gathered by CSOs, informed discussions on the potential impacts of the VPA on households and communities could already be discussed at the negotiation stage. This is unique among VPAs so far.

The VNGO-FLEGT Network has identified areas of impacts they want to monitor, such as poverty reduction, governance, and micro enterprises' and households' compliance with the VPA requirements. They have also started developing a system to monitor them. It will put them in a strong position when the EU and Vietnam formally agree on the impact monitoring framework.

Environmental safeguards

The EU negotiating position was that the three pillars of sustainability – economic, social and environmental – should be reflected in the VPA.

Environmental safeguards in the VPA must be followed by forest owners and processing industries. They reinforce existing legal requirements, which include the need to have approved sustainable forest management plans and environmental impact assessments and to comply with environmental protection regulations.

Before organisations or households can clear natural forest areas for projects, they must comply with regulations on changing land use, environmental assessment and measures on compensation. This is quite a strong requirement as the starting point for assessing the legality of conversion timber is the legal status of the decision process to change the land use category – not just the later permission for harvesting.¹⁷

¹⁷ See also Fern report "Catching it all" available at <https://fern.org/catchingitall>

Timber Import Regulation: a cornerstone and major achievement of the VPA

A red line for the EU was that Vietnam adopts a Timber Import Regulation, whereby timber importers must check the timber legality, in accordance with the legislation of the country of harvest. Vietnam imports timber from some 80 countries, including high risk ones such as Cameroon, Gabon and Cambodia. So, the EU knew this VPA would be weak without such a Regulation.¹⁸

The fact that timber smuggling is happening while Vietnam is committing itself to tackle the illegal timber trade through the VPA with the EU is alarming – but Vietnam has begun to take action, which has been reported in local media.¹⁹

At the beginning of VPA negotiations, Vietnam did not want to hear about timber import control,²⁰ arguing that asking about the legality of a product coming from another country would impinge on the country's sovereignty. Negotiations on this point were intensive and difficult. But in 2015-2016 the Vietnamese Government shifted its position and decided to include the development of a Timber Import Regulation based on due diligence. When the VPA enters into force – probably next year – Vietnam will be under the legal obligation to implement this Regulation.

The VPA commitments provide Vietnam with an incentive to improve its timber sector's reputation. Stopping the deal would close avenues of change and shut down the opportunity for reform. It would prevent Vietnam – which both produces and imports large quantities of tropical timber – from showing leadership on legality assurance. This would hinder the global fight against illegal timber, by ending the possibility of extending the approach to assuring legality of imported timber beyond the early adopters such as the EU and the USA to countries such as China and Japan.

Transparency

Information access

Transparency is a key element for a VPA's credibility. Previously hidden information, such as annual data on the investment in and revenues of the forest sector as well as

¹⁸ The signing of this VPA has been strongly criticised by CSOs outside Vietnam because of Vietnam's trade in illegally sourced timber, particularly timber harvested in Cambodia.

¹⁹ <http://www.nhandan.com.vn/phapluat/thoi-su-phap-luat/item/36754702-tang-cuong-dau-tranh-chong-khai-thac-van-chuyen-go-trai-phep.html>; 20/06/2018

²⁰ The Vietnamese system of timber import control was previously based on customs' clearance documents. Once timber consignments were cleared by the Vietnamese customs, the timber was considered legal, no matter where it was coming from and what the legal status in the country of harvest was.

some information from the Organisation's Classification System, will be made publicly available.²¹

The VPA also reinforces the need to publish information that presently has only limited accessibility, such as on:

- Forest land use planning and forest land allocation
- Forest management, (e.g. approved sustainable forest management plans, decisions on approving Environmental Impact Assessments (EIA); comments from the minister of Agriculture and Rural Development on EIA reports of projects impacting forest resources)
- Information on forest-related crimes and sanctions (e.g. number of violations of forest law related to forest destruction, illegal purchase and trafficking of forest products, and violations of forest product processing regulations, results of the legal response including administrative fines and criminal cases).

In 2019, Vietnam will assess the current degree of transparency in the forest sector and develop an action plan to implement this Annex in collaboration with the Implementation Core Group. This will be led by the Vietnamese Forest Administration, in collaboration with other ministries, who will also be responsible for making the data available (natural resources and environment, customs and statistics).

This will be a key challenge in several respects. First, responsibility and accountability to make information available has to be clearly defined because comparable information may be held by different ministries and agencies. Second, some data, such as sustainable forest management plans and maps are held at provincial level. Local authorities are generally behind in their readiness or capacity to implement public disclosure systems.

Independent monitoring

It is worth noting that there is a small entry point for independent forest monitoring, but not as explicit as in some other VPAs, such as those with the Republic of Congo, Central African Republic and Indonesia. In these countries, independent monitoring (for example, by CSOs) is designed as a formal or integral part of the Timber Legality Assurance System.

²¹ The purpose of the Organisation's Classification System (OCS) – a new system that is going to be developed by Vietnam as part of the future implementation of the agreement – is to assess periodically the risk level of all Organisations involved in the timber supply chain with regard to their compliance with VNTLAS requirements in order to apply appropriate verification measures in an effective, efficient and timely manner.



As great as the challenges are, Vietnam has already travelled some distance on the road to ensuring its timber imports and exports are legal. There can be no turning back now.



A community-level FLEGT-VPA awareness raising activity.

However, the mandate for the independent evaluator specifies that they should receive information from various sources, and the annex on public disclosure of information specifies that a mechanism must exist for the parties and relevant stakeholders to access key forestry-related information and that the functioning of the VNTLAS must be strengthened through making information available for independent monitoring.

Challenges ahead

Given the huge number of countries that Vietnam imports from, controlling the illegal timber that flows into Vietnam from abroad is a daunting task. Greater human and financial resources will clearly be required.

The VNTLAS decree is supposed to be developed in 2019, but there is no binding timeline and it may well take a few years before it will be operationalised. In Ghana, it is worth noting, the system is still not operational even ten years after the VPA was signed. It took several years for operators in the EU to understand how to define due diligence in relation to the EUTR. We should therefore not underestimate the time it will take for Vietnamese operators to carry out due diligence effectively.

Civil society space and capacity to monitor VPA implementation and its impacts, and ultimately FLEGT licensing, remains uncertain.

Capacity building of the verification agencies and the private sector, including the considerable household industry, to ensure compliance will be a major task. Moreover, as Vietnam has progressed in recent years to become a middle-income country, opportunities to get development assistance are limited.

Recommendations

- **Vietnamese civil society must be given the space to scrutinise the VPA implementation and provide recommendations to improve forest governance.**
- **A time-bound and transparent action plan must be developed to implement the VNTLAS.**
- **Sufficient resources must be allocated for effective implementation of the VPA.**
- **A long-term process to both support micro enterprises and monitor compliance must be developed.**
- **An effective complaint mechanism needs to be put in place by the independent evaluator.**



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