

COMMENTS TO THE DRAFT OF DECREE ON VIETNAM TIMBER LEGALITY ASSURANCE SYSTEM (VNTLAS)

1. Key findings

1.1 The necessity to formulate a Decree on Vietnam Timber Legality Assurance System

- Ensuring legal timber trade is an important point of the Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade (VPA FLEGT) between the EU and Vietnam. VNTLAS is stipulated in Appendix 7 of the Agreement.
- Effective development and implementation of VNTLAS will contribute to higher added value of the supply chain, from forest plantation, exploitation, import, processing, and trade. As a result, it will contribute to higher export value of timber and forest products in the economy.
- VNTLAS will promote the progress of transparency in national forest management and governance; increasing participation of stakeholders in the process of socialization of the forestry sector.
- VNTLAS contributes to more opportunities for international access, in terms of exploitation, processing and export of timber and forest products.

1.2 Some general views on the formulation and issuance of VNTLAS

- VNTLAS (referred to as the System) needs to generate a synchronized process from plantation, exploitation, transportation, import, export, processing, and trade.
- The system should be applied to all markets (domestic, EU, US, Japan, Korea...)
- Subjected to this system are not only timber importers and exporters, but also timber producers and processors.
- More than 1.2 million small forest planters in an area of approximately 2.8 million hectares of forest plantation should be mobilized and benefit from VNTLAS.
- The need to simplify and minimize paperwork for licensing, renewal, and replacement, by state agencies.

- Socio-political organizations, vocational and civil society organizations should involve fully and effectively in the independent monitoring of the operation of the System, especially the enterprise classification, licensing and independent evaluation of VNTLAS.

1.3 Strengths of the draft Decree

- The draft Decree has partially addressed the requirements regarding TLAS, as specified in the VPA FLEGT between EU and Vietnam.
- Requirements on import and export are quite simple and convenient for enterprises
- Criteria and procedure for classification of enterprises in group I and II are relatively clear and transparent.
- Timber dossiers and procedure for tracking origin prior to export are simple and easy to apply.
- Criteria and procedure for FLEGT licensing, renewal, replacement, re-licensing, and license revocation are quite clear.
- Tables, forms, and report templates are quite clear and easy to use (Except for the outline of the independent evaluation).

1.4 Weaknesses and limits

- The scope of the Decree only covers import and export of timber and forest products
- Subjected to the Decree are only domestic and foreign organizations and individuals involved in import and export.
- VNTLAS only addresses the requirements of the EU market, and not other markets such as domestic market.
- Enterprises involved in forest plantation and processing are not subjected to VNTLAS.
- Small forest planters are not subjected to, and beneficiary of this Decree.
- In the terminology section, there are some unclear or unsuitable terms with regards to the VPA such as VNTLAS, enterprise, timber owner, timber shipment ...
- Regarding timber tracking and verification, there is no mechanism to control for arbitrary and duplicated checks by forest rangers and Customs.
- The only FLEGT licensing agency is the Vietnam CITES agency.

- MARD is in charge of developing FLEGT licensing system, conducting independent evaluation of TLAS, and evaluating the operation and efficiency and reliability of the system.
- There is no mention of socio-political organizations; vocational and civil society organizations with regards to the task of monitoring state agencies in developing, implementing, and managing data and licensing.
- The tasks and responsibility of Customs Department in timber import and export are not specified.
- The relationships between VNTLAS and national or international forest certification schemes such as SFM, FSC, PEFC ... are not specified.
- The outline for the independent evaluation of VNTLAS is too simplified and unsuitable.
- There is no mechanisms for feedbacks and complaints regarding legal timber.

2. Recommendations

2.1 Add a chapter related to legal timber production and exploitation

- a. Legal timber production and exploitation by individuals and households in accordance with Vietnamese law, including:
 - Criteria for legal production and logging by small forest planters, either individuals or households.
 - Procedure for legal timber exploitation and transportation by individuals and households.
 - Paperwork for legal timber exploitation and transportation by individuals and households.
- b. Legal timber exploitation and production by cooperatives and cooperative associations
 - Criteria for legal timber exploitation and production.
 - Procedure for exploitation and transportation.
 - Exploitation and transportation dossier.
- c. Legal timber exploitation and production by enterprises
 - Criteria for legal timber exploitation and production.
 - Procedure for exploitation and transportation.
 - Exploitation and transportation dossier.
- d. Linking national and international forest certification schemes to VNTLAS
 - Linking sustainable forest management criteria in Vietnam to the System.

- Linking international forest certification schemes such as FSC, PEFC... to the System.

2.2 Modification of some articles

- Chapter 1: General rule

Article 1. Scope of the Decree. Recommend the following modification:

“This Decree governs the VNTLAS for production, import, processing, export, and trade of timber and timber products; identifying criteria, authority, and procedure for classifying exporters of timber and timber products to EU and other markets”.

Article 2. Subject to the Decree. Recommend the following modification:

“This Decree governs domestic and foreign organizations and individuals with activities related to the contents specified in Article 1 of this Decree”.

Article 3. Terminology

Terms such as legal timber, timber legality assurance systems, FLEGT license, shipment must be consistent with the terms defined in the definition section of the Agreement.

Enterprises governed by this Decree should include timber importers.

Timber owner as organization, household, individual (referred to as individual) governed in the Decree is inappropriate.

- Chapter II: Import and export dossiers

Article 5. Timber export dossier

The paper-based or electronic FLEGT license for timber exported to the EU market. What about license to export to other markets?

- Chapter III: Timber import and export management

Article 6, clause 2 about the management of exported timber. Recommend the following modification:

“a. Exported timber must go through regulated procedure, be subjected to inspection and supervision by Customs and forest ranger before exporting”.

- Chapter IV: Timber inspection, tracking, and verification

Addition to clause 5, Article 11: “The inspection and tracking of imported and exported timber must be subjected to the independent monitoring by socio-political organizations; vocational and civil society organizations in the area

“Clause 1, Article 12 should be modified as: “The agency to inspect and verify imported timber. In case of imported timber in the area of Customs, this agency shall assume the prime responsibility and coordinate with the local forest ranger; In case of imported timber outside the area of Customs, the local forest ranger shall assume the prime responsibility and coordinate with relevant agencies.”

Clause 1, Article 13 should be modified as: “The agency to inspect and verify exported timber. In case of exported timber in the area of Customs, this agency shall assume the prime responsibility and coordinate with the local forest ranger; In case of exported timber outside the area of Customs, the local forest ranger shall assume the prime responsibility and coordinate with relevant agencies”.

Adding the section about complaints and feedbacks in VNTLAS.

- **Chapter V: FLEGT license**

Adding clause 4, Article 21. Independent monitoring and evaluation of the FLEGT licensing administration.

“Socio-political organizations, vocational and civil society organizations are encouraged to engage in independent monitoring and evaluation of FLEGT licensing system development, implementation, and operation.“

- **Chapter VI: Implementation**

It is necessary to specify the tasks of the Customs Department in implementing the VNTLAS.

- **Appendix**

Form 12. Outline of the independent evaluation of VNTLAS. The independent evaluation of VNTLAS needs to be in accordance with Article 10 “Independent evaluation“ of the VPA.

Criteria for selection of independent evaluators need to be specified.

2.3 Some issues to be clarified

- The agency in charge of enterprise classification will visit the facilities directly or just use information provided by enterprises in the IT system as the basis for enterprise classification?

- If using information provided by enterprises in the IT system as the basis for enterprise classification, and even if an enterprise assumes the responsibility for its own declaration in the system, how to take measures regarding the discrepancy between self-declaration and actual condition in case it happens?
- Regarding type 1 enterprise, re-evaluation is conducted every 2 years. The agency in charge of enterprise classification will visit the facilities directly or just use information provided by enterprises in the IT system as the basis for enterprise classification?

If using information provided by enterprises in the IT system as the basis for enterprise classification, and even if an enterprise assumes the responsibility for its own declaration in the system, how to take measures regarding the discrepancy between self-declaration and actual condition in case it happens?

- This Decree governs the VNTLAS for the import and export of timber and timber products; criteria, authority, and procedure for classification of timber exporters. Regarding other enterprises in the supply chain of export (for example, exporting enterprises only manufacture and export tables, chairs, and planks to the EU with the timber material inputs provided by some other enterprises such as sawmills, board makers...), are they subjected to classification into type 1 or 2? Or how are they classified?
- Enterprises that provide timber supplies to exporters should also be classified. If these enterprises comply with the timber legality requirement, they need to be registered with corporate codes, and their names should also be publicly available on the website.
- The self-assessment tool is too generic, in addition to the criteria, there should be specific indicators for the processing enterprises.

2.4 Gender mainstreaming in VNTLAS

Gender mainstreaming in law formulation and enforcement has been stipulated in the Law on Gender Equality (issued in 2006) and the National Strategy on Gender Equality for 2011-2020 (issued in 2010) in Vietnam. Gender mainstreaming in the formulation and implementation of the Decree on VNTLAS must meet the following three objectives:

- Create equal opportunities for men and women to access VNTLAS, such as equal rights in business establishment, operation, management, access to information on domestic and foreign markets,

- Create opportunities for men and women to utilize their capabilities in the operation of VNTLAS,
- Ensuring the equal right regarding decision-making and benefits in the entire timber supply chain for both men and women,

Gender equality issues related to ownership / land use rights and forest rights, business rights, capacity building, benefits for men and women in the entire supply chain need to be integrated in relevant legal documents.

For VNTLAS, two issues related to gender equality need to be clarified, namely the power to sign documents related to the packing list and timber sale & purchase contracts.

Clause 3 Article 14 (draft 2) stipulates the required dossier to certify exported timber:

- a. The original request to confirm exported timber according to the form No.5 Appendix I.
- b. The original packing list.
- c. Copy of legal timber dossier in accordance with the law.
- d. Copy of the timber sale & purchase contract or equivalent document.

Clause 5 Article 14 specifies "Dossier and procedure for certifying exported timber for individuals are treated as if for type-II enterprise", in which individuals are meant to include households.

In order to fully exercise the rights on gender equality, the followings are recommended for the Decree:

1. Power to sign the packing list is the same for men and women, in the case of timber owner or forest owner who is household.
2. Power to sign the timber sale & purchase contract is the same for men and women, in the case of timber owner or forest owner.