



Cutting Down the Poor

How UK and EU aid is killing jobs in developing countries, wasting EU taxpayer funds and breaking international trade rules

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WORLD GROWTH

TABLE OF CONTENTS

	Executive Summary	3
1.	Introduction: The EU Actions	5
2.	Implementing the VPAs	7
3.	Social and Economic Impacts on industry	9
4.	Compatibility with international trade agreements	10
5.	Conclusions and recommendations	13
	Endnotes	15
	Annex	17

Executive Summary

The government of the United Kingdom and the European Union have introduced measures against illegal logging with their trading partners that are currently costing approximately €22.4 million annually. By the EU's own estimates these measures are likely to be ineffective and will:

- **cause job losses among the rural poor in developing countries,**
- **have little impact on illegal logging;**
- **have virtually no impact on deforestation, if any.**

The measures are also likely to put the EU in breach of international trade laws.

Timber exporters to the EU should consider trade retaliation. EU taxpayers should demand an inquiry.

Illegal logging first emerged as a campaign issue in 1998. The illegal timber trade was linked to global concerns over deforestation. Action against illegal logging in developing countries was supported by Western industries that were facing increased competition from timber and paper producers, particularly in China. It was also supported by environmental campaign groups that made unsubstantiated claims about the levels of illegal logging taking place globally.

However, there has been very little ground-based research on levels of illegal logging in many countries.

The emergence of the EUTR and VPAs

In 2003 the European Union (EU) first announced it would attempt to prevent the sale of 'illegal' timber on European markets through a combination of domestic legal instruments and international agreements. They are the European Union Timber Regulation (EUTR) and Voluntary Partnership Agreements (VPA) respectively.

These policy instruments have emerged following a long international campaign based on unsound data and emotive campaigning by Green groups and uncompetitive manufacturers in Europe.

Voluntary Partnership Agreements were introduced as the key policy measure for Europe to take action against 'illegal' timber. The VPAs were ostensibly introduced as a means for exporting nations to 'fast

track' timber products into Europe from nations that comply with European regulatory demands. The real purpose is to pressure developing countries that export timber products to apply standards determined by the EU to regulate exports, under the threat of import bans.

VPAs require the implementation of a licensing system for exporters wishing to export timber products to Europe that verify the legality of the product. For many developing nations this is a costly exercise.

Slow progress

VPA uptake has been slow. This has been in part due to a reluctance of developing nations to enter into trade agreements that propose conditions on non-trade items, such as environment and labour. The slow uptake and potential loopholes for non-VPA timber prompted European Greens to press for the introduction of the European Union Timber Regulation (EUTR) in 2008.

The EUTR is set to come into effect in March 2013. It threatens European operators with legal action if they sell 'illegal' timber in European markets and/or do not make efforts to mitigate the risk of selling 'illegal' timber on European markets. This risk can be mitigated with the implementation of tools such as independent third-party verification of timber being exported to Europe, distinct from the VPA licensing system. This is an expensive undertaking for many developing country exporters.

Licensed VPA imports were supposed to be exempt from the EUTR and considered risk-free once VPAs were operational.

In the case of a large number of VPA countries, VPAs have been signed and ratified, but none are functional. This has placed these countries in a double-bind, where they have ceded to Europe's demands on the VPA in order to avoid the EUTR – only to be slugged with the EUTR regardless.

High costs, negative impacts

This failure comes despite approximately €270 million in EU and UK spending on implementation costs over 12 years. Exporting nations have also had to divert funds into bringing their industries into compliance.

Both the VPA and EUTR will also have negative impacts on countries exporting to the EU. According to EU modelling, the measures will prompt significant losses in employment in the forestry

sector in exporting nations of around 14 per cent. The EUTR will have a concentrated impact on the rural poor in developing countries. The measures will also cause losses in forestry processing sectors in these countries.

Further, the measures are likely to have negligible impacts on illegal logging and deforestation. According to EU documents, the measures will reduce global illegal logging by – at most – 2 per cent, and deforestation by less than 0.01 per cent.

Despite the low impact and high expense of these measures – particularly for developing countries – the EU has pressed on regardless.

Both the EU and DFID have attempted to maintain that these measures will support livelihoods in developing countries. When the EUTR was introduced in 2008, part of the justification for the measure was that it would assist in reducing deforestation. Both of these contentions, in World Growth's opinion, stretch the truth. The EU has, however, been very careful not to state that VPAs offer any economic benefits.

When the EU's modelling on economic and environmental impacts of the measures was released in 2008 – on the same day as the EUTR was first proposed to European parliament – at least four countries had already entered into formal VPA negotiations. A number of others had already commenced informal negotiations.

Ghana was one of these countries. Subsequent analysis has estimated that reforms to the timber sector precipitated by the VPA will result in the loss of more than 100,000 jobs. World Growth has estimated that around 18 million micro-enterprises in Indonesia producing handicrafts and furniture will be affected by the EU measures.

Breaching international trade rules

The measures restrict trade in a way that multilateral institutions were designed to prevent. The upshot of the trade restrictions is they will end up favouring the EU's own industries. Subsequently many European businesses have backed the policies, despite raising their own compliance costs.

World Growth considers the EUTR measures to breach the obligation of EU member states as parties to the World Trade Organization (WTO) agreements.

Sadly, it is not surprising that the EU has pursued these wasteful and ineffective policies that ultimately act as a trade barrier for 'Fortress Europe'.

The EU has led the imposition of trade barriers on environmental grounds. The FLEGT policies follow a string of similarly targeted policies affecting chemicals, electronics and food that many developing countries have difficulty complying with.

Developing countries – VPA partners or otherwise – should demand better. There are grounds for action against the EU through the World Trade Organisation.

Developing countries should wholeheartedly reject new FLEGT agreements. The EU's trade policies are partly responsible for the direly uncompetitive state of European industry. No country should consider following this path.

European – and particularly UK -- taxpayers also deserve better. Most EU budgets are under strain. A total of €270 million is not a large sum in the greater scheme of things, but ineffective, wasteful and damaging policies should not be encouraged.

1. Introduction: The EU Actions

Introductory Note

This paper updates and expands on a World Growth briefing published in November 2012 that looked at the impacts of the EU-FLEGT program on the Indonesian economy. This updated version now covers the impacts on all FLEGT partner countries.

The European Union has attempted to prevent the sale of 'illegal' timber on European markets through a combination of domestic legal instruments and international agreements. These policies have emerged following a long international campaign based on spurious data and emotive campaigning. The introduction of these policies has been further supported by protectionist interests.

1.1 What is illegal logging?

Illegal logging has become a *cause celebre* for environmental campaigners over the past decade. Campaigners – particularly WWF and Greenpeace – have leveraged the issue of 'illegal logging' to pressure countries into adopting bans that restrict trade in tropical timber products.

The campaign against illegal logging is highly problematic. First, there is no single definition of illegal logging. Second, it is unclear exactly how much illegal logging actually occurs. Best estimates indicate illegal logging is a small environmental issue on a global scale.

NGOs have published a range of illegal logging rates, based on rough estimates and wide ranging definitions of what constitutes illegal logging. Analysis of these estimates shows that in many instances, NGOs have overestimated the phenomena by several orders of magnitude.¹

These biases have entered into the policy discourse to 'inform' comprehensive studies on rates of illegal logging.

The most cited study to date on illegal logging rates – commissioned by the American Forest and Paper Association and undertaken by consultants Seneca Creek – employs a range of unsupported NGO data.² Seneca Creek estimates that between 8 per cent and 10 per cent of produced and traded timber may come from suspicious sources.³ This number is still often

cited by environmental campaign groups and should be considered an overestimate.

The reliability and accuracy of underlying assumptions for estimates of illegal logging has been questioned by experts that have noted the high levels of anecdotal data and low levels of empirical data in much research – including the Seneca Creek report – on illegal logging.⁴

One of the more recent comprehensive studies on levels of illegal logging was published in 2010 by the UK-based Chatham House, which has been a vocal advocate for trade measures against illegal logging. Chatham House's illegal logging program has been funded by the UK Government. It stated that the level of levels of illegal exports to major importing countries had fallen by around 30 per cent over the past decade. It also noted that illegal logging rates had fallen by 75 per cent in Indonesia and around 62 per cent in the Brazilian Amazon. However, beyond the hyperbole of environmental NGOs, the rate of globally traded illegally harvested timber is by best estimates small.

1.2 The FLEGT Action Plan

Illegal logging first emerged as a developed world concept. It first appeared in the international policy debates at the 1998 G8 Summit in Birmingham as part of the G8's Forest Action Programme. The G8 committed to bring more attention to the issue and prompt other countries to take action on illegal logging.

The commitments made were in part response to major forest fires taking place in Brazil and Indonesia at the time, as well as a response to proposals for action that emerged under the Intergovernmental Panel on Forests.⁵ G8 countries subsequently found themselves subject to continued lobbying from groups such as Greenpeace on the subject at most subsequent G8 meetings.⁶

This developed into a regional intergovernmental process – Forest Law Enforcement and Governance (FLEG) – convened by the World Bank. A ministerial declaration for East Asia FLEG was signed in Bali in 2001. Indonesia as the host nation was a key party to efforts against illegal logging. Ministers agreed that voluntary bilateral agreements would form part of supplemental action to be taken against illegal logging. However, the UK pushed bilateral agreements as the only course of action.⁷

The World Summit on Sustainable Development (WSSD) in 2002 further stated that nations would ‘take immediate action’ on domestic forest law enforcement and the ‘illegal international trade in forest products’.

In 2003 the European Union published the FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan. This departed from previous measures in that it specifically emphasised demand-side measures to curb illegal timber.

The FLEGT Action Plan’s key proposals stipulated that timber exporting countries and the EU negotiate bilateral FLEGT Voluntary Partnership Agreements (VPAs). The Action Plan outlined efforts to provide capacity building assistance to partner countries to set up export licensing schemes, developed through VPAs. The plan also called for an examination of EU member states’ existing domestic legislation, and consideration of additional legislation to prohibit the import of illegal timber. The Action Plan also called on other nations – such as the US, Japan and Australia – to impose similar measures.

The Action Plan was produced within a broader context of the EU attempting to establish a free trade agreement with ASEAN. These talks eventually collapsed in 2008, when the EU attempted to incorporate human rights, labour and environmental provisions into the agreement.⁸

1.3 FLEGT ‘Voluntary Partnership Agreements’

Under the FLEGT Action Plan, Voluntary Partnership Agreements (VPAs) between the EU and exporting nations were proposed. The EU’s intended outcome of the VPA was to commit producer countries into implementing a licensing system designed to identify legal products and license them for import into the EU.

They are effectively bilateral agreements developed between EU negotiators and the producer countries. To date, a number of negotiations have begun; several have been completed, but none have been implemented by the EU or its member states.

The FLEGT VPA mechanism effectively allows the EU to regulate trade through legally binding bilateral agreements so that the measures proposed in the FLEGT system do not breach World Trade Organization (WTO) rules. By these means, measures that may constitute trade bans are legally removed from the purview of the WTO.

The producer country concedes to EU import authorities the right to determine if the national authorities of the exporting nation have implemented the terms of the bilateral agreement. This is a surrender of sovereign authority which cannot occur if both parties regulated their trade under WTO rules.

The EU has described the system as ‘voluntary’. That is, producers can choose whether to negotiate a VPA or not. However in practice, the EU has made quite clear that if developing countries elect not to participate in the ‘voluntary’ program, they will effectively be denied access to EU markets.⁹

The EU has commenced or completed formal negotiations with 12 countries: Indonesia, Congo, DRC, Gabon, Guyana, Liberia, Central African Republic, Cameroon, Congo, Honduras Vietnam and Malaysia.

1.4 EUTR and Due diligence regulations

In 2008, the EU acknowledged that developing countries were reluctant to participate in VPA negotiations. The Commission had flagged this possibility when the FLEGT Action Plan was published.¹⁰

The Action Plan also stated that the EU would “review options for ... further measures ... in the absence of multilateral progress.”

A public consultation for ‘additional options’ was commenced in December 2006. An impact assessment was commissioned in early 2007, which included consultations with exporting countries.

Concerned that FLEGT VPAs would only regulate products from the VPA partner countries and not address all potential ‘illegal’ timber imported in Europe, NGOs such as WWF, FERN and Greenpeace lobbied for additional measures, specifically legislated border measures against timber imports. This was supported by the European Greens Party.

The result was the continuation of the VPA process as well as the introduction of the European Union Timber Regulation (EUTR) on October 17 2008. The results of the impact assessment were published on the same day.

The EUTR was eventually passed in late 2010.

The EUTR imposes wide ranging obligations on timber and timber product trading entities within the EU. The approved law divides entities into two categories each with their own obligations:

“operators” and “traders”. “Traders” are people or organisations that sell or buy timber or timber based products already placed onto the EU market. They are subject to a “traceability obligation” under EUTR, which requires identification of their immediate timber suppliers and buyers.

“Operators” bear the greatest burden of responsibility under EUTR. They are people or organisations that “first place” timber on the EU market, including EU forest managers and importers of timber and processed wood products. Operators are required to implement a ‘due diligence system’ and are liable for prosecution under the law.

The ‘due diligence system’ requires operators to compile specific information so that they can assess and mitigate the risk of timber coming from an ‘illegal’ source. The due diligence system ensures that wood purchases are covered by documentation identifying the species, quantity, and country of harvest (and in some instances the region or concession of origin).

The due diligence system must also have procedures to enable the operator to evaluate the risk of illegally harvested timber being placed on the market. If the risk is ‘negligible’, then the operator need take no further action. If there is an assessed risk that the timber may come from illegally harvested timber, the operator must take steps to mitigate this risk. These can include independent third-party timber legality verification systems, or certification for sustainable forest management.

A stakeholder consultation was held in April 2011 as part of an impact assessment commissioned by the European Commission. No governments in exporting countries were consulted on the process with the exception of Canada. With the exception of the Malaysian Timber Council, industry and civil society stakeholders based in exporting countries were not consulted.

2. Implementing VPAs

Voluntary Partnership Agreements (VPAs) were introduced as the key policy measure for Europe to take action against ‘illegal’ timber. The VPAs were announced as a means for exporting nations to ‘fast track’ timber products into Europe. In announcing the FLEGT-VPA system the European Commission stated it would block imports unless nominated trading partners agreed to negotiate VPAs. However, VPA implementation has been slow.

2.1 The VPA ‘promise’

In an attempt to make VPAs a more attractive option for timber exporting countries, timber imported from a country with a VPA is exempt from the due diligence risk assessment under the EUTR. The EUTR ‘sweetened’ the VPA mechanisms by opening a ‘fast track’ for producer countries in partnerships to meet European policy requirements.

VPAs were initially sold to partner countries as a means to fast track timber imports into Europe. In practice, producer countries only opted to negotiate VPAs under trade duress. The European Commission has stated publically that it will restrict trade with trading partners if they do not negotiate a VPA.¹¹

In the case of at least four of the agreements, operational VPAs were effectively promised prior to the commencement of the EUTR commencement date in March 2013. By this date, companies involved in the timber and timber product supply chain must have introduced systems to ensure compliance with European regulations, or risk being denied market entry.

A number of developing countries have made significant efforts to meet these requirements by negotiating and implementing VPAs. Brussels recently delayed approval of the Indonesia VPA until February 2013, despite the two parties concluding the VPA in May 2011.¹²

2.2 VPA and EUTR implementation globally

The European Commission and the UK Department for International Development have been the primary funders of FLEGT implementation.

According to EC and DFID budget documents, spending on FLEGT has totalled approximately €171.1 million and £85.1 million on FLEGT

programs since 2006 – around €269 million or €22.4 million annually. This is higher than the total annual export value of the forest products from some FLEGT countries.

Of the ten countries currently engaged in VPAs, no exporting country has yet reached the “full implementation and licensing phase” stage of the agreement. Six timber producing countries have concluded their VPAs; none are operational.

FLEGT licensing is operational in a number of countries, yet no licensing systems are recognised by European member states.

It also appears that few European member states are prepared for their national obligations to receive licenced timber under the EUTR and FLEGT policies. According to a list of authorities tasked with implementing FLEGT in European member countries, 11 countries have not yet nominated an authority to process the licenced imports – let alone allocated resources or approval required to implement their obligations under FLEGT.¹³ According to media reports, Indonesian officials have commented that only four European countries out of 27 are prepared for FLEGT and can grant access to timber licenced under VPA agreements.¹⁴

The EU has effectively developed a system to restrict imported timber without finalising the mechanism to allow its entry. Despite this, the finalised the EUTR is scheduled to become operational in March 2013. This places many exporters in countries that have negotiated VPAs with the EU in policy limbo.

2.3 VPA Advocacy and Development Impacts

In addition to the intergovernmental negotiations, the European Commission has financially supported a number of initiatives to advocate for VPA agreements among officials and the public at large, as well as make grants to NGOs to lobby for specific social and environmental provisions within the VPAs.

The practice of partnering with civil society organisations by donors has been part of the international development landscape for close to fifty years. Gaining input from groups other than governments is an essential part of recipient countries taking ownership of aid programs.

Broad advocacy for FLEGT has generally been undertaken by NGOs such as the European Forest Institute, Dutch NGO FERN, and campaign organisation Global Witness.

According to published aid data, the UK has spent approximately £6.2 million on grants to NGOs and a further £770,000 on communications and outreach for the VPAs.

However, it appears as though the objectives of donor countries in establishing legality for the purposes of export markets has in a number of instances overridden development needs and livelihoods in partner countries.

This has particularly been the case where small-scale handicraft operations or artisanal logging operations that are primarily supporting a domestic timber market have found themselves operating illegally.

This has been noticeable in the case of handicrafts manufacturers in Indonesia, and in the case of artisanal logging permits in the Congo Basin.

In these and similar cases, support for civil society has arguably followed European environmental objectives by supporting environmental groups, and for the most part ignored partner country economic objectives by ignoring the economic and financial impacts of any agreements. In most cases, there has not been an effort by the EU to assess economic impacts for each country, but the agreements themselves contain a commitment to monitor for impacts. However, responsibility for monitoring is not specified.

2.4 Overview of VPA negotiations and implementation around the globe

The EU states that nations are either in the negotiation phase up until the signing and ratification of the VPA, which is described as the ‘system development phase’. The latter entails the development and implementation of the timber legality assurance system (TLAS) and the subsequent issuing of FLEGT licenses. Recognition of FLEGT licenses by EU authorities makes the system operational.

To date, there are no VPAs that are considered operational. On average, VPAs that are now in the system development phase have taken more than 4.5 years to the time of publication.

The EU’s projected times for operational agreements have generally been inaccurate, missing projected dates by almost two years in one case.

A summary of the progress of VPA negotiations and system development can be found in Annex I.

3. Social and economic impacts on industry

Forest and related industries are a significant contributor to many national VPA economies. In many cases there are millions of micro and small forest-based enterprises, producing small wooden items, furniture and timber for domestic consumption that also export to Europe. For many such businesses, implementing the systems required under the VPA is prohibitively expensive. The EU's own modelling has indicated it will have a detrimental impact on these industries.

3.2 The economic impact of the EU measures

In 2008 the European Commission undertook an assessment of the economic impact of its measures on a number of economies. The research found that the measures would have a range of negative impacts on producer countries, particularly developing countries.

Impact of VPA-FLEGT Agreements

The European Commission contracted consulting firm Indufor¹⁵ to assess the impact of imposing a EU-FLEGT licensing system with six countries -- Indonesia, Malaysia, Ghana, Cameroon, Gabon, and Congo Brazzaville. The system would impose export licensing conditions on all timber exports from these countries to the European Union. Indufor found that the imposition of the licensing system would result in:

- a decline in value added in these countries of 6.5 per cent in the first five years and 8.6 per cent in the following five years;
- this decline would be felt most acutely in Indonesia, with a 12.4 per cent decline;
- a 14 per cent decline in employment in forestry industries in these countries in the first ten years.

In relation to Indonesia, the assessment noted that the 'baseline scenario' of implementing a legality assurance system would cost operators EUR 0.23/m³. It further noted drops in value added from the Indonesian forest sector of 9.4 per cent and 12.4 per cent in the first and second five years of the program respectively.

The assessment also noted that:

- SMEs are especially at risk of being excluded from exporting to the EU;
- Rural people risk losing their jobs because of declining production and processing of wood products in VPA countries; rural areas are seldom able to offer alternative employment, at least in the short term.

The assessment further outlined the following risks to the VPA project as a whole:

- Delays in the establishment of the licensing system hindering legal exports to the EU;
- Efficient implementation and sustainability of the system require capacity building and technical assistance in the least developed countries.

Impact of the EUTR

The economic impacts modelled by Indufor note that in exporting countries small and medium enterprises are significantly at risk of being excluded. It also notes that employment losses in forest industries are likely to be concentrated in rural areas.

The introduction of the EUTR would require forest operators in exporting nations to introduce a private legality verification system by private operators.

The Indufor assessment provides limited information on the costs of these systems. It suggests a cost of EUR 0.23/m³ for roundwood, sawnwood, plywood and veneer.

It is possible that costs are higher than these estimates. Modelling commissioned by the Australian Government put forward a number of assumptions about costs of legal compliance systems based on work completed by the International Tropical Timber Organization (ITTO).

The estimates for a legality system for native timber harvesting by a small operator with undeveloped systems is USD13.14/m³ or 9.5 per cent of the log price. It should be noted that this is the cost for the forest operator; it is assumed that the costs will be passed on to the processor and/or exporter, who would also require chain-of-custody certification, estimated at USD 5.52/m³ or 5.52 per cent of the log price.

Simply, exporters would therefore be confronted with a 15 per cent increase in costs. For micro operators producing around 5000 m³ annually, this is

represents an an additional cost of more than USD65,000 annually for this system.

Similarly, Australian Government modelling noted that any measures to prohibit the sale of ‘illegal’ timber on the Australian market through due diligence procedures or similar would inevitably favour exporters and industries in developed countries.

The modelling nominated Canada, the EU, the US and New Zealand as the ‘winners’ from any measures imposed. It can be concluded that this is because of perceived lower risk profile of products from these countries.

The support of such measures from harvesting and processing industries in these countries – such as paper producers and hardwood processors – is therefore not surprising. Support from these sectors has emerged alongside trade measures such as anti-dumping measures and countervailing duties against forest product exports from these countries.

3.2 The environmental impact of the EU measures

The Indufor study also notes negligible environmental benefits of the EU measures.

The EU’s modelling states that the VPA baseline measures would reduce total illegal global roundwood production by approximately 2 per cent. This is making the assumption that the timber is not diverted to other markets or held for domestic consumption. The EU’s modelling further states that the impact of the EUTR would be roughly half that.

Any additional contributions to reduced levels of deforestation are likely to be negligible. Using FAO estimates, the percentage of global roundwood production that would be prevented from entering to EU would be 0.16 per cent. Roundwood removals are responsible for around 6 per cent of all global deforestation according to FAO and UNFCCC estimates. The total contribution to reduced deforestation would therefore be less than 0.01 per cent.

4. Compatibility with international trade agreements

The new EU policies are likely to have a significant impact on trade with partner nations. These impacts would ordinarily be obviated by legal obligations under international trade law and/or bilateral trade agreements. However, the legality of these policies under international trade agreements is questionable

4.1 EU Position on Trade and Environment

The European Union has for a number of years declared its commitment to support a global open economy, manifested through its member of the World Trade Organization. However, it has always been sympathetic to calls from NGOs to permit trade restrictions on environmental grounds.

For example, the EU’s current President, Juan Manuel Barroso, announced in 2007 that the EU planned to restrict greenhouse gas emissions by a minimum of 20 per cent by 2020 and that the EU should restrict imports from countries that did not similarly restrict emissions. The EU has also imposed discriminatory restrictions on imports of biofuels on environmental grounds. It is also in a trade spat with the US, India and China over imposing emissions charges on aircraft flying in European airspace.

EU officials were aware of the possible inconsistencies of its measures against illegal logging with international trade rules prior to the release of the FLEGT Action Plan. Its officials appear to believe that bilateral agreement with other countries exempted it from possible challenges under the WTO that its illegal logging trade controls breach its provisions. The UK first pushed bilateral agreements as a means of avoiding WTO inconsistency at the Asia FLEG meeting in 2001.¹⁶ Its position at the meeting was informed by European NGOs and think-tanks, specifically FERN and Chatham House, which produced a number of papers funded by UK government agencies.¹⁷

4.2 Consistency of VPAs with WTO rules

The World Trade Organisation (WTO) - the multilateral organisation responsible for guiding a free trade agenda accredited with raising global living standards – recognised that trade barriers can imping on national development. The WTO

generally does not permit abuse of trade power to advance non-trade goals.

To this effect, the WTO established regulations – specifically based on the principle of non-discrimination in trade – in order to ensure governments do not erect trade barriers under the guise of legitimate regulatory agendas.

Environmentalists and campaigners have never shown much regard for the institution, the free market economics that underpin it or the benefits that it can deliver to poor countries.¹⁸ Influential NGOs lobbied EU policy makers to develop the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan in 2003. This sought to ban imports of illegally harvested timber and obviate challenges from the WTO. This was to be achieved by completion of a VPA between the EU and the exporting nation to formalise trade controls based on the FLEGT elements. It is likely that the VPA does conflict with WTO rules (see Section 4.2).

VPAs are characterised as ‘voluntary’. However, the European Commission stated publicly that it would restrict trade with trading partners if they did not negotiate a VPA under the FLEGT Action Plan. The Report from the Commission to the European Council and the European Parliament in 2003 on EU strategies to a deal with illegal logging sets out an operational proposition that if developing countries don’t cooperate “voluntarily” the EU would reduce import access.¹⁹

VPAs oblige exporters of timber products to the EU to secure a FLEGT licence that verifies specified actions have been taken to demonstrate timber and timber products have not been procured in breach of the laws of the exporting country.

VPAs also establish procedures to be followed by exporting countries to issue licences. These are based on fairly standard procedures to demonstrate legality and, in the case of the Indonesian agreement, some sustainable practices. The Agreement requires compliance with ISO and related standards for monitoring conformity with the Indonesian standard. Under the terms of the Agreement, Indonesian authorities will not permit the export of a timber product unless a FLEGT licence has been granted.

Under the Indonesian VPA for example, EU member states reserve the right to restrict imports that are not licensed. The Indonesian VPA (Article 5) specifies that ‘competent authorities’ designated by

the European Commission and nominated by each member state shall verify that imports are covered by a valid FLEGT licence before released.²⁰ This is a formal condition of entry of imports. No such measure is authorized under WTO rules.

The VPA-FLEGT arrangement would appear to be discriminatory. The EU is insisting on conditions to apply to imports from some countries, but not others. The EU decides which countries need to provide a FLEGT licence before imports of specified timber products are permitted. It has not demanded this requirement of all timber exporters to the EU. It is therefore possible that identical timber products could be treated differently under the Regulation based on whether they are placed on the market by a country with a VPA with the EU, or not.

The VPA declares that the parties have accepted a legal obligation to implement the processes specified. It states in the preamble to the VPA they are taking into consideration the importance attached to their rights and obligations under the WTO Agreement and the need to apply them in a transparent and non-discriminatory manner.

The agreement does not state whether both parties consider they have agreed to set WTO rights aside in the terms of the VPA. This would seem unlikely since the VPA addresses issues that are subsidiary to the core commitments in the WTO -- not contrary or superior in principle to them.

4.2 Consistency of EUTR with international trade rules

The EU Timber Regulation²¹ (henceforth referred to as the Regulation) could also be problematic under international trade rules. It raises issues of consistency under the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation Agreement on Technical Barriers to Trade (TBT Agreement).

The key measure at issue prescribed by the Regulation is a prohibition on illegally harvested timber entering the EU. It prohibits illegally harvested timber, or timber products derived from such timber being ‘placed on’ the internal market.²² Illegality is determined based on compliance with laws in the country of harvest.²³ Placing on the market, as defined, encompasses timber which is imported into the EU and offered for sale by the importer.²⁴

The Regulation also requires operators to apply a due diligence system to minimise the risk of placing illegally harvested timber (or timber products containing illegal harvested timber), on the EU market. Information-gathering requirements, risk assessments of legality and mitigation measures to minimise this risk are prescribed.²⁵

The Regulation's prohibition is similar to that on the importation of illegally logged timber contained in legislation proposed by Australia.²⁶ A legal brief examining the consistency of the Australian Bill with international trade rules by Mitchell and Ayres²⁷ found the prohibition in the Bill to be inconsistent with the GATT. That analysis is relevant to interpretation of the EU prohibition. It supports the contention that the EU prohibition on illegally harvested timber could be inconsistent with WTO trade rules. The consistency of the due diligence requirements will largely depend on how the Regulation is implemented by member states and how obligations on importers are prescribed in national legislation.

Consistency with the GATT

The Regulation may be problematic under the GATT for discriminating in international trade,²⁸ primarily because the criterion in assessing whether timber is 'illegally harvested' for the purpose of determining compliance is the law of its country of origin. The particular method used to harvest the timber is not relevant.²⁹ Mitchell points out in relation to the Australian Bill, which includes similar criteria,³⁰ "this raises a strong possibility of discrimination because logging laws inevitably differ between countries. Thus, two identical products made with timber logged using an identical method would be treated differently if the timber in product A was from a country where that method was illegal and the timber in product B was from a country where it was legal."³¹ Discrimination could arise between products that could be identical in their physical properties, their end uses and their processes and production methods.³²

The prohibition in the EU regulation differs from the Australian Bill in that the country of origin is not the sole criterion for assessing compliance. Timber products which comply with relevant international conventions (CITES) and with VPAs are considered to have been legally harvested.³³

The regulation could also contravene WTO rules where it was found to restrict the importation of particular products.³⁴ Although it does not contain a

direct ban or quota, it may have the effect of limiting imports where the act of importation (or placing on the market) of illegally harvested timber is an offence. This may "cause operators to avoid importing products where they consider that there is a substantial risk that the products may contain illegally logged timber. It may limit imports of products that do not actually contain illegally logged timber as well as those that do."³⁵ The extent to which this is likely will depend on the nature of the offences for non-compliance as set out in EU member legislation.

The prohibition is unlikely to be legally justified under the GATT unless its discriminatory impact on trade is considered sufficiently connected to its policy objectives. While the objectives stated in the Regulation - to combat deforestation, mitigate climate change, address threats to the livelihood of forest dependent communities and encourage sustainable forest management - may be legitimate under WTO rules, the prohibition may be an overly trade restrictive means of contributing to them.³⁶ Further information on the impact of the Regulation, such as economic analysis on its effectiveness in addressing the problem of illegal logging, would need to be considered.

Consistency with the TBT Agreement

While it is not clear the TBT Agreement would apply, if it did, the prohibition could be held to be overly trade restrictive.³⁷ The prohibition may not lay down 'technical regulations', as defined in the Agreement,³⁸ though as pointed out by Mitchell in relation to the Australian prohibition, national measures implementing it which set out labelling or other identification requirements that importers might be required to comply with - such as information on timber species and quantity, could fall under the scope of the Agreement. Requirements for information-gathering and risk assessments on compliance of timber with national laws however are unlikely to.³⁹

5. Conclusions and Recommendations

This report comes to two main conclusions. First, that the UK and EU's blind pursuit of implementing these policies is a case of very bad policymaking. Second, and consequently, the policy will have little or no environmental impact, and is likely to harm developing economies and boost industries in the EU. World Growth therefore makes a number of recommendations to the EU and its trading partners.

This report concludes that the EUTR and VPA are a case of very poor policymaking.

The FLEGT Action Plan has not been evidence-based and has been poorly researched from the outset.

When the plan was formulated there were no reliable, field-based estimates of illegal timber harvesting, and there were no reliable estimates that substantial amounts of illegal timber were being imported to the European Union. Similarly, one of the objectives of the plan was to reduce deforestation; however, it is now widely recognised that timber exports are a relatively minor contributor to deforestation compared with local consumption and the agriculture sector.

The FLEGT Action Plan followed a 'scattergun' rather than a preferred approach.

The EU has attempted to implement both the EUTR and VPAs in tandem, creating overlap between the two programs.

The EU has placed VPA partner countries in a double-bind. It has asked timber exporting countries to sign on to a costly VPA process to avoid having to deal with the European Timber Regulation. However, the failure to implement a single VPA means that exports from these countries will still face the EUTR and not have their efforts towards the VPA recognised.

The policy has been poorly developed.

Both the VPAs and EUTR have paid little attention to obligations under existing trade agreements, as well as compromising future trade agreements.

The policy has not been inclusive.

The EUTR in particular has been developed and legislated without consultation with trading partners. The VPAs have been developed without adequate consultation with the private sector has been inadequate. There has been little or no assessment of the economic and social impacts for individual countries.

The policy has been poorly implemented.

The failure of the EU to complete a single functional VPA after almost ten years implies that the policy is unworkable. Moreover, the EU did not in the first instance attempt to complete a pilot VPA with a lone country prior to commencing implementation with other countries.

Policy changes have been poorly communicated.

There has been a friction generated by the failure of the EU to communicate delays in implementation and changes to policy with VPA partner countries. This has particularly been the case for Indonesia.

There are no firm commitments to monitor impacts and evaluate the outcomes.

Both the VPAs and EUTR have the potential to generate significant negative impacts in many developing countries, particularly on small enterprises. This appears to have been overlooked by policymakers in Europe.

This report further concludes that the implications of such a poor policy are that it will have both negligible environmental impacts and negative economic impacts.

Impact on illegal logging is small

The EU's modelling states that the VPA baseline measures would reduce total illegal global roundwood production by approximately 2 per cent. This is making the assumption that the timber is not diverted to other markets or held for domestic consumption. The EU's modelling further states that the impact of the EUTR would be roughly half that.

Impact on deforestation is negligible

Any additional contributions to reduced levels of deforestation are likely to be negligible. Using FAO estimates, the percentage of global roundwood production that would be prevented from entering to EU would be 0.16 per cent. Roundwood removals are responsible for around 6 per cent of all global

deforestation according to FAO and UNFCCC estimates. The total contribution to reduced deforestation would therefore be less than 0.01 per cent.

Impact on livelihoods is significant

The EU's modelling has noted that impacts on VPA countries will be significant in terms of reductions in employment, reductions in forest sector output and reductions in value-added in the forest sector. The modelling notes less pronounced impacts under the EUTR, but boosts for employment for Nordic EU member states.

With these conclusions in mind, World Growth makes the following recommendations:

The European Commission should

Impose a moratorium on all new VPAs immediately;

Fast-track the completion of any VPAs currently in the system development phase;

Commit to ongoing monitoring of the social and economic impacts of existing VPAs and impacts of the EUTR on trading partner developing countries.

Undertake an independent audit and review of all spending related to FLEGT.

VPA partner countries should

Call on the EU to commit to the above recommendations, and, failing that;

Consider taking pre-emptive trade retaliation in the event the EU does not 'fast track' VPAs and maintains its intention to adopt the EUTR, presenting a de facto intention to restrict imports of timber and paper products. Given that the EU would be acting in spirit contrary to its obligations as a WTO member, the Government of Indonesia would be entitled to consider restrictions on EU imports.

Non-VPA countries should

Consider trade retaliation through the WTO, citing inconsistencies of the EUTR with the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation Agreement on Technical Barriers to Trade (TBT Agreement).

Endnotes

¹ World Growth (2011), A Poison, Not a Cure – The campaign to ban trade in illegally logged timber, accessed at : http://worldgrowth.org/site/wp-content/uploads/2012/06/WG_Illegal_Logging_Report_5_11.pdf

² Seneca Creek Associates and Wood Resources International (2004), ‘Illegal’ Logging in Global Wood Markets: The Competitive Impacts on the U.S. Wood Products Industry, paper prepared for the American Forest and Paper Association

³ Seneca Creek (2004)

⁴ Centre for International Economics. (2010). A Final Report to inform a Regulation Impact Statement for the proposed new policy on illegally logged timber (Report prepared for Department of Agriculture, Fisheries and Forestry). Retrieved from http://www.theicie.com.au/content/news/Illegal_logging.pdf.

⁵ Alexander Horst (2001). ‘G8 Action Programme on Forests: Mere Rhetoric?’ in Palo, M., Uusivuori, J. and Mery, G. (eds.). World forests, markets and policies. Kluwer Academic Publishers, Dordrecht, Netherlands.

⁶ Greenpeace International (2000). Against the Law: the G8 and Illegal Logging. Greenpeace, Netherlands. Accessed at <http://archive.greenpeace.org/forests/reports/illegalog.pdf>

⁷ Hilary Benn (2001). ‘Forest Law Enforcement: what is to be done?’ Speech delivered to Forest Law Enforcement and Governance Conference. Bali, Indonesia 13 September 2001. Accessed at:

<http://siteresources.worldbank.org/INTINDONESIA/FLEG/20172329/Hilary+Benn.pdf>

⁸ European Parliament (2008). Committee on International Trade report on trade and economic relations with the Association of South East Asian Nations (ASEAN). (2007/2265(INI)). Rapporteur: Glyn Ford. Accessed at: <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=A6-0151/2008> and Xuan Loc Doan (2012). Opportunities and Challenges in EU-ASEAN Trade Relations. EU-Asia Centre, Brussels. Accessed at http://www.eu-asiacentre.eu/pub_details.php?pub_id=60

⁹ Cf fn 20

¹⁰ European Commission DG Environment Assessment of the Impact of Potential Further Measures to Prevent the Importation or Placing on the Market of Illegally Harvested Timber or Products Derived from Such Timber

Final Report Indufor, Finland in association with European Forest Institute (EFI) Nepcon, Denmark Markku Kiikeri Ky, Finland Helsinki January 21, 2008. Accessed at http://ec.europa.eu/environment/forests/pdf/impact_assessment.pdf

¹¹ A report from the Commission to the European Council and the European Parliament in 2003 on EU strategies to a deal with illegal logging sets out an operational proposition that if developing countries don’t cooperate ‘voluntarily’ the EU would

reduce import access. See EU, COM (2003) 251 Final – Communication from the Commission to the Council and the European Parliament – Forest Law, Enforcement, Governance and Trade – Proposal for an EU Action Plan, pp. 15 where the Commission indicates it will consider proposing

legislation to ban imports of illegal timber products if no multilateral arrangements for this can be negotiated (i.e. under the FLEGT system)

¹² The Jakarta Post (2012), EU Postpones approval of RI timber products, September 26, accessed at: <http://www.thejakartapost.com/news/2012/09/26/eu-postpones-approval-ri-timber-products.html>

¹³ European Commission (2012), List of nominated Competent Authorities for implementation of the regulation EU 2173/2005 (FLEGT Regulations), accessed at: <http://ec.europa.eu/environment/forests/pdf/LIST%20of%20CAs.pdf>

¹⁴ Kontan (2012), Penerapan SVLK akhirnya ditunda, 10 October, accessed at: <http://industri.kontan.co.id/news/penerapan-svlk-akhirnya-ditunda/2012/10/10>

¹⁵ Indurfor (2008), Assessment of the Impact of Potential Further Measures to Prevent the Importation or Placing on the Market of Illegally Harvested Timber or Products Derived from Such Timber, In association with European Forest Institute (EFI), Nepcon, and Markku Kiikeri Ky, for the European Commission DG Environment

¹⁶ Benn (2001). <http://siteresources.worldbank.org/INTINDONESIA/FLEG/20172329/Hilary+Benn.pdf>

¹⁷ Saskia Ozinga and Nicole Gerard (2001). ‘Strategies To Prevent Illegal Logging’ in ‘A Handbook of Globalisation and Environmental Policy’; Edgar Elgar Publishing Inc; 2005. Accessed at <http://www.fern.org/sites/fern.org/files/Strategies%20to%20prevent%20illegal%20logging%202010.pdf> and Duncan Brack and Gavin Hayman (2001). Intergovernmental Actions On Illegal Logging: Options for intergovernmental action to help combat illegal logging and illegal trade in timber and forest products: A scoping study prepared for UK Department for International Development. Accessed at: http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/intergovernmental_actions_on_illegal_logging_march_01.pdf

¹⁸ For example the EU had to secure a waiver from WTO rules to enable member states to implement the restrictions on trade in “conflict diamonds” as mandated in the “Kimberley Process” because WTO rules generally do not permit trade controls on how products are processed.

¹⁹ See EU, COM (2003) 251 Final – Communication from the Commission to the Council and the European Parliament – Forest Law, Enforcement, Governance and Trade – Proposal for an EU Action Plan, p 15 where the Commission indicates it will consider proposing legislation to ban imports of illegal timber products if no multilateral arrangements for this can be negotiated (i.e. under the FLEGT system); see also Commission Staff Working Document Agenda planning:

2007/ENV+/023. Accompanying document to the Proposal for a Regulation Of The European Parliament And Of The Council determining the obligations of operators who make timber and timber products available on the Market. IMPACT ASSESSMENT Report on additional options to combat illegal logging.

²⁰ It should be noted that as of October 2012, 11 of the 27 EU states were yet to nominate their competent authorities. See: <http://ec.europa.eu/environment/forests/pdf/LIST%20of%20CAs.pdf>

²¹ Regulation (EU) No 995/2010 of the European Parliament and of the Council of October 20, 2010 laying down the obligations of operators who place timber and timber products on the market, L 295/23.

²² See Article 4.1.

²³ See Article 2 (g).

²⁴ Refer Article 2(b). See also Buckrell and Hoare, Controlling Illegal Logging: Implementation of the EU Timber Regulation, Chatham House Briefing Paper, Energy, Environment and Resource Governance, June 2011, EERG IL BP 2001/02 at www.chathamhouse.org.uk.

²⁵ See Article 4.2, Article 6).

²⁶ Australian Government, *Illegal Logging Prohibition Bill 2011* (Cth)– Exposure Draft (18 March 2011).

²⁷ Mitchell and Ayres, The Consistency of Australia’s Illegal Logging Prohibition Bill with International Trade Rules, 2012.

²⁸ Under GATT Article I:1 (*Most favoured nation treatment*) the Regulation could be interpreted to confer indirect ‘advantages’ on products from some countries without according them to all ‘like products’ originating in the territories of all WTO members.

²⁹ See Article 2 (g).

³⁰ Under the *Illegal Logging Prohibition Bill 2011* (Cth)– Exposure Draft (18 March 2011), cl 5, “Illegally logged” means timber that was harvested ‘in contravention of laws in force in the place...where the timber was harvested.’

³¹ Mitchell and Ayres, above, p 7.

³² *Ibid*, p 9.

³³ See paragraphs 9, 10, and Article 3. The Regulation also refers to international standards and conventions in the context of defining what constitutes illegal logging. It implies an internationally agreed definition could be used as a basis for defining illegal logging in future. See also paragraph 14.

³⁴ GATT Article XI:1 prohibits prohibitions or restrictions on trade other than duties, taxes or other charges on the importation of any product.

³⁵ Mitchell and Ayres, above, p 12.

³⁶ Mitchell notes of the Australian Bill, it “discriminates between countries because it applies differently depending on the laws of the country where the relevant timber was logged. This discrimination is not rationally connected to the objective of protecting ‘human, animal or plant life or health’ under

subparagraph (b) of Article XX because harvesting practices with an identical impact on forests, animals and humans would be treated differently. Nor is it rationally connected to the conservation of ‘exhaustible natural resources’ under subparagraph (g), for the same reason. (p 18) The same reasoning could be applied to the prohibition in the Regulation.

³⁷ Mitchell points out (p 21) that if the TBT Agreement were to apply to the Australian prohibition, it would likely be inconsistent with TBT Article 2.2 which requires that ‘technical regulations shall not be more trade-restrictive than *necessary* to fulfil a *legitimate objective*’. It would be more trade-restrictive than ‘necessary’ to achieve its objectives for the same reasons that it is not ‘necessary’ to achieve them under (b) and (d) of GATT Article XX. The same reasoning could be applied to the EU measure however the outcome could vary given the based on the particular evidence presented.

³⁸ Given it does not concern physical characteristics for products, nor set out processes or production methods that relate to product characteristics with which compliance is mandatory.

³⁹ The legality of the way in which timber is harvested however, is not a ‘related’ non-physical characteristic because it does not relate to ‘the means of identification, the presentation or the appearance’ of the product. See Mitchell and Ayres, above, p 19.

Annex I: Summary of global VPA implementation

Below is a summary of the progress of VPAs that are in negotiation and system development phases. Also included is a summary of advocacy activities, as well as any estimates of any economic impacts.

Cameroon

Negotiations commenced: November 2007

Signed: October 2010

Ratified August 2011;

Projected FLEGT license issue: end 2012

Implementation

Ratification of the VPA instigated further reforms of land-use governance in Cameroon relating to the forest sector.

The government of Cameroon has established a joint implementation council (JIC) and joint monitoring committee (JMC). A National Monitoring Committee (NMC) with NGO representation is also to be established. A number of other processes have been instituted to move the VPA into operational stage that includes a revised forest code and a broader initiative against corruption.

NGOs have, however, noted that harvesting of timber (legal or otherwise) is becoming less important to forest preservation as agriculture and mining play a more growing role in the economy.

Advocacy

UK and EU-funded aid agencies have attempted to further influence the VPA process through a number of local and international NGOs, mostly under the auspices of FERN's 'Logging Off' program. These groups have called for broader legal reforms outside of the VPA process in order to achieve FLEGT outcomes.

Assessment of impacts

The economic impacts of the agreement have not been quantified. Baseline research has been commenced by CIFOR on the impact of the forest sector on the national economy. Results are yet to be published.

Research undertaken by the FAO's ACP-FLEGT support facility has noted that domestic operators face the largest barriers to obtaining legality assurance, and that this may hinder socioeconomic development.

Central African Republic

Negotiations commenced: November 2009

Signed 28 November 2011

Ratified July 2012

Projected FLEGT license issue: end 2014

Implementation

A joint implementation committee was established and met in September 2012. NGOs have described the JIC process as transparent. However, they have also complained that the original negotiation process was flawed, because although indigenous groups were represented, this representation was considered inadequate for an unspecified reason.

The EU has projected that the first FLEGT licences will be issued at the beginning of 2014.

Advocacy

EU-funded NGO reports have criticised the lack of application to the domestic sector. However, the FAO has noted that a great deal of domestic harvesting and consumption is for fuelwood and artisanal purposes. However, NGO advocates have also attempted to underline that the informal sector (community and traditional logging) should not be considered illegal.

Assessment of impacts

As with the Cameroon agreement, the CAR VPA clearly imposes significant barriers on local exporters. Specifically, the exclusion of community and traditional logging methods from the VPA means that exports of any artisanal products to higher-value markets will be illegal.

Ghana

Negotiations commenced: December 2006

Signed November 20 2009

Ratified: 19 March 2010

Projected FLEGT license issue: March 2013

Implementation

The EU initially projected that FLEGT licenses would be issued in December 2010. It has since shifted, and they are not expected to be issued until 2014. The EU had projected that Ghana's wood tracking system would be operational by December 2012. However, at time of publication this did not appear to be the case.

The government's timber validation division (TVD) is operational and likely be able to issue licenses by the projected date. However, NGOs have objected to

the TVD's operation, believing that they would ultimately have a level of oversight over the body.

Advocacy

The UK and EU have placed significant resources into transparency within the forest and other resource sectors. The STAR-Ghana program has delivered a number of grants to advocacy bodies throughout Ghana relating to FLEGT.

The management of the Star-Ghana program has been criticised heavily in an internal review of the program, which specifically cited an inability of the grant-makers to pay attention to on-ground concerns. Specifically a gender-issues in forestry element within the program noted that there were very few gender-forestry experts available to undertake the work.

Assessment of impacts

A report for the Ghana Forestry Commission stated that a widespread restructure of the forest industry necessitated by the VPA would result in the loss of employment for 68,000 people. Observers at CARE, an international NGO, have estimated losses in the vicinity of 100,000 people, with entire village populations of around 5,000 people being made redundant.

The redundancies would be precipitated by operators and downstream processors that were subsequently unable to harvest or were faced with a limited supply of timber for processing. It has been generally observed that the illegal chainsaw harvesters generally supply wood for domestic consumption and not for export.

The Committee stated that these people would be shifted into other occupations and industries through training and business grants.

However, according to FLEGT documentation, there appears to be no specific grant facility allocated for enterprise development.

Indonesia

Negotiations commenced March 2007

Not signed

Not yet ratified

Projected FLEGT license issue: March 2013

Implementation

Indonesia has completed VPA negotiations with the EU. It has issued a large number of licences for its timber legality assurance system (SVLK).

A trial shipment of Indonesian timber using the system has been undertaken. It was expected that the system would be operational prior to the commencement of the EUTR in March 2013.

However, a number of Indonesian officials expect further delays in the ratification and final operations phase of the agreement. The most recent projections are that the agreement will be signed in April 2013 and ratified in September 2013.

Advocacy

The European Union established the European Community Indonesia FLEGT Support Project in 2006. The project was a facility that was established to promote and support the establishment of the VPA. The facility was allocated a budget of approximately EUR15 million. Much of the budget allocation was given to the European Forest Institute.

Assessment of impacts

The potential impacts of the VPA on the domestic industry have been documented in previous World Growth reports. This has been based on modelling undertaken by Indufor, which projected a decline in value added 12.4 per cent across the industry and a 14 per cent decline in employment in forestry industries.

A more recent baseline study undertaken for the EU projected a "significant decline in demand of wood products from Indonesia." This decline was not quantified by the study's authors. However, the report did place particular emphasis on shocks to the furniture industry.

Liberia

Negotiations commenced: March 2009

Signed 26 July 2011 (not ratified)

Projected FLEGT license issue: end 2013

Implementation

Ratification of the VPA has taken place at the EU end; ratification from the Liberian side is still pending. According to recent reports a significant amount of technical work needs to take place for the completion of the legality assurance system (LAS) and subsequent FLEGT licenses. A needs assessment was projected to commence at the beginning of 2013.

A number of civil society organisations have taken issue with the issuance of a large number of private use permits (PUPs) in Liberia that were issued close to Liberia's national elections. A number of NGOs

have claimed that PUPs contain very little regulatory oversight.

Advocacy

Advocacy relating to forest law and reform in Liberia has largely been led by the Sustainable Development Institute. SDI's activities relating to the Liberian VPA have, for the most part, been funded by the European Union and DFID, directly or indirectly through FERN and Global Witness.

Assessment of impacts

There have been no attempts to quantify the potential impacts of the Liberian VPA on livelihoods. The EU has, however, committed to monitoring any economic impacts once the operational phase has been established. Establishing systems for monitoring of impacts in Liberia – as with other African nations – appears to be an afterthought.

Republic of Congo (Brazzaville)

Negotiations commenced: June 2008

Signed May 17 2010

Ratified July 4 2012

Projected FLEGT license issue: July 2011

Implementation

Since ratification, the government of the Republic of Congo has undertaken two tests of the legality definition with local timber companies, based on 162 legality criteria. A Joint Implementation Committee (JIC) and legality assurance system are yet to be established. However, according to reports, the revision of the Forest Code necessary for the operational phase appears to have reached an impasse.

Advocacy

Advocacy for the RoC VPA has largely been undertaken by FERN. Advocacy in the Congo Basin has largely concentrated upon the neighbouring Democratic Republic of Congo, which contains Africa's largest forest areas.

Assessment of impacts

As with the Liberian agreement, there has been no quantification of negative impacts, though the VPA contains a text to monitor any impacts.

According to the latest update negotiations have stalled.

Democratic Republic of Congo

Negotiations commenced October 2010

Implementation

VPA negotiations were suspended in September 2011 in the lead up to the national elections. Talks were resumed in October 2012.

A legality matrix for timber harvesting has been completed. However, FLEGT officials have announced they will establish a legality matrix for artisanal small-scale logging. This means that a legality assurance system will not be completed until this second matrix has been prepared.

Advocacy

DRC has been subject to intensive lobbying by a number of high-profile NGOs such as WWF and Greenpeace. This is primarily because the DRC contains Africa's largest forest area, and because DRC's timber exports (80 per cent) are destined for the European Union.

FERN, which has been leading much of the advocacy in DRC, has been operating in DRC on FLEGT since 2006. Its financial support since then has been provided by both DFID and VROM (the Dutch aid agency).

Assessment of impacts

The lack of progress on the DRC VPA has meant that any social or economic impacts of the VPA have not been assessed, nor requirements for monitoring of impacts finalised in an agreement.

However, caution should be exercised in determining the potential economic or environmental impacts of any future VPA. The World Bank and the government of the DRC completed broad reforms of the country's forest code in 2002.

Despite the lauding of the achievements set out in the new laws and regulations, actual implementation of the reforms have been slow and still far from complete more than a decade later.

Numerous commentators have also noted a major disconnect between policies made in the capital of Kinshasa and the practical and commercial realities of enforcement and the artisanal logging sector in the field.

Gabon

Negotiations commenced September 2010

Implementation

According to reports negotiations have effectively stalled since mid-2012. There is currently no VPA

focal contact point. One NGO advocacy group has stated that “The Government has seemingly lost any interest in getting an agreement signed.”

Advocacy

As negotiations have stalled advocacy activities have trailed off. Many environmental groups have been concentrating on large-scale agricultural investments in Gabon, particularly against companies from Southeast Asia.

Assessment of impacts

No impacts have been quantified to date.

Guyana

Negotiations commenced 31 May 2012

Assessment of impacts

No impacts have been quantified to date.

Honduras

Negotiations commenced April 2012

Assessment of impacts

No impacts have been quantified to date.

Malaysia

Negotiations commenced January 2007

Implementation

Negotiations relating to the VPA stalled for a number of years; they recommenced in April 2007. The breakdown in talks was a direct result of the position taken by the state of Sarawak, which is Malaysia’s largest timber producing and exporting state.

The Sarawak timber industry has questioned the development impacts of the VPA; it has also questioned fierce lobbying by European NGOs on the status of indigenous people in the state of Sarawak.

Negotiations appeared to re-commence in late 2012; news reports appeared to indicate that negotiations would proceed without the involvement of Sarawak.

Advocacy

FERN, which has received funding from the European Union to undertake FLEGT advocacy work, has been openly critical of Sarawak and its policies on indigenous communities and democracy,

as well as forest policy. It has referred to Sarawak as a ‘rogue state’ and to the Sarawak Chief Minister as ‘a dictator’.

The relationship between the UK and Sarawak has been exacerbated by the involvement of high-profile campaigner Clare Rewcastle Brown, sister-in-law of former British Prime Minister Gordon Brown.

Impacts

The impacts of a VPA upon the Malaysian forest sector have not been quantified. A study undertaken by DFID in 2008 did, however, note that market incentives for Malaysia to enter into a VPA were low due to: a relatively low level of domestic illegal logging; a lack of commitment to equivalent measures in China and Brazil; the existence and credibility of of MTCC certification; and a lack of clear market signals favouring VPA timber in the EU.

Vietnam

Negotiations commenced November 2010

Implementation

Negotiations have reached their third round.

Advocacy

The European Union has issued a call for expressions of interest from NGOs in Vietnam for grants that will contribute towards civil society involvement in the FLEGT process in Vietnam. This has been a particular point of contention among Western NGOs. However, it may provide problems for the Communist Party of Vietnam.

Assessment of impacts

Potential impacts have not been assessed.



About World Growth

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