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Legislation to prevent illegal imports into Asian Countries

The Role of (FSC) Certification

Australia, the European Union (EU), and the United States of America have legislation requiring due diligence from importers to avoid import of illegal timber and timber products. Effective enforcement of such legislation will help to reduce illegal logging and trade practices in exporting countries, and also improve conditions for those foresters and forest communities seeking to apply sustainable forest management.

However, over the last decade China has become the largest importer of tropical timber, and Japan and the Republic of Korea are also major players. Moreover, countries that better are known for exports, such as Indonesia, Malaysia, and Viet Nam, also import timber, which may enter these countries illegally in considerable amounts.

In the last few years, all these countries have taken initiatives to prevent illegal timber imports. These are in different stages and have different approaches. Certification may play a role. This is an overview, based (mainly) on a study published in *Forest Trends* in June 2017.¹

Summary

Indonesia and Japan have introduced due diligence obligations for timber and timber-product imports, within which certification is recognized as useful for risk mitigation. Viet Nam is expected to do the same in 2021. The Republic of Korea and Malaysia require documentation to prove legality, among which certificates are a self-standing option and separate country of origin information seems not to be required. China is slowly working towards legally binding rules for imports, in which certification is likely to play a positive role.

Countries with a (future) forest legality enforcement, governance, and trade (FLEGT) agreement with the EU

Indonesia and Viet Nam have Voluntary Partnership Agreements (VPAs) with the EU, which aim to fight illegal harvesting and trade. The Indonesian VPA is fully operational and exports from Indonesia to the EU now come with FLEGT licences, which are regarded in the EU as

¹ Norman, M., and Saunders, J. (2017) *Regulating the Trade in Illegal Timber: Asian Approaches Compared – State of Play June 2017*. Forest Trends Report Series. Forest Policy, Trade, and Finance. (Available at https://www.forest-trends.org/wp-content/uploads/2017/08/doc_5634.pdf, accessed 25 May 2018).



proof of legality (and for which no further due diligence from the side of the importers is required). Viet Nam is working to reach the same point in the next few years. EU negotiations with Malaysia on a VPA started in 2007, but have been stalled since 2014 because of lack of assurance that the agreement would fully include Sarawak.

All three countries have in the meantime introduced regulations that require due diligence from their importers (Indonesia, Viet Nam) or documentation of legality (Malaysia). While the Indonesian rules have applied since 2016 and those of Malaysia since mid-2017, those of Viet Nam, as mentioned above, are likely to enter into force only in 2021.

According to *Forest Trends*, the Malaysian regulation allows importers (and those further down the supply chain) preparing for export to the EU, an option “to demonstrate compliance through ... an internationally recognized certification scheme”. In practice this refers to “FSC, PEFC [Programme for Endorsement of Forest Certification], MTCS [Malaysian Timber Certification Scheme], and other credible [timber] certification schemes”.

According to *Forest Trends*, a valid certificate from such a scheme is by itself sufficient evidence of legality of imported timber and/or timber products.

In Indonesia and Viet Nam, any company that deals with imported timber must have a due diligence system that can be checked by government authorities.

The Indonesian VPA² requires imported timber that is used for export to the EU to have “import notification documents and information concerning the origin of the timber as well as documents certifying the legality of the timber and country of harvest”. One type of certificate originates from “a certification agency that applies [a] certification scheme on legality or sustainability of forest products along with the traceability”. According to *Forest Trends*, 80 per cent of the documentary evidence currently submitted is in fact forest and/or chain of custody certificates.

The Vietnamese VPA gives details in an annex on the Vietnamese Timber Legality Assurance System. It states that the Vietnamese authorities can recognize certification schemes, for forest management and chain of custody, after which these can become part of a due diligence system (while still needing evidence of origin).

It is to be expected that, as part of a future VPA with Thailand, another country in the region likely to import timber for its (export) industries, will have a similar arrangement.

² Council of European Union document 11769/1/13 Rev 1, 13 September 2013.



Association of Southeast Asian Nations (ASEAN) mutual recognition efforts

In 2002, ASEAN (comprised of 10 South-East Asian countries) set up the ASEAN Working Group on a Pan-ASEAN Timber Certification Initiative. Three years later, it was first decided to develop an ASEAN Timber Legality Standard. This led, in 2009, to ministerial endorsement of a regional reference framework for timber legality, the 'ASEAN Criteria and Indicators for Legality of Timber', and for timber tracking, 'ASEAN Guidelines for Chain of Custody of Legal Timber and Sustainable Timber'.³ Since then, the working group has been focusing on support for national schemes, training, and research on issues such as the contribution of voluntary certification schemes, without taking a firm position on these.⁴

Japan

Japan is one of the largest (after China) importers of timber and timber products in the world. In 2006, its Government launched a voluntary legality verification scheme linked to public procurement, called Goho Wood. A Green Purchase Network assigns 'Green Law Eligible Product' labels for companies complying with the due diligence requirements, making it useful also for private purchasers.

In 2016, the Act on Promotion of the Distribution and Use of Legally Logged Wood, or Clean Wood Act, was promulgated, and in May 2017 three implementing Ministerial Ordinances followed. The Act sets up a registry for importing companies, but joining it is not obligatory. However, for registration a company has to prove it has a due diligence system in place. It appears that certification will play a similar role in the risk mitigation phase, as in the EU Timber Regulation (EUTR) and Australian Act: a certificate (e.g. from FSC) can be used as an important document to prove a high probability that the origin is legal.⁵ However, as in Australia and the EU, such a certificate does not replace the obligation of due diligence, including the requirement to identify the origin and to conduct risk assessment.

Republic of Korea⁶

In 2012, the Republic of Korea introduced legislation on the sustainable use of timber, which includes provisions related to avoiding illegal timber. It was revised and passed in March 2017. The new Act on the Sustainable Use of Timber has more robust regulations on the import of illegally logged timber products. These changes should have entered into force in March 2018, but the Enforcement Ordinance is not yet publicly available.

³ EFI (2014) *ASEAN Timber Trade, Customs and Timber Legality, Scoping Study*.

⁴ See, for example, <http://www.euflegt.efi.int/es/tla-workshop-2016>

⁵ See also: EFI EUFLEGT Facility Briefing "A comparison of the Japanese Clean Wood Act and the EU Timber Regulation"

⁶ de Jong, M. (2016) Timber consumer countries should join forces and coordinate legislative measures to eliminate illegally sources timber from their markets.



It is a compulsory scheme with penal provisions. It requires legality documentation to be submitted before customs clearance. One option for such a document is “an internationally accepted certification standard as prescribed by the Director of the Korean Forest Service [KFS]”. FSC certification is likely to be recognized by KFS, but there is as yet no confirmation of this.

China

According to *Forest Trends*, the State Forest Agency is developing regulations with the provisional name ‘Administrative Measures for Strengthening the Legality of Imported Wood’. These will require due diligence, but it is not clear when they will become obligatory. So far, the Chinese authorities have focused on voluntary compliance with standards such as the China Timber Legality Verification System; however, for public procurement compliance with this system is obligatory. A due diligence toolkit was developed by the China Responsible Forest Product Trade and Investment Alliance and training activities are being organized. Timber associations have due diligence obligations, and the China National Forest Products Industry Association is working on a standard. Presentations at the annual Illegal Logging conferences at Chatham House indicate that forest certification is seen as a contribution to due diligence for imports into China.

Finally

This is a brief overview of existing and emerging import rules in Asia. I do not claim it to be complete and I do not comment on the quality of enforcement now or in the future. Where certification has a role, it is usually both for FSC and PEFC, and possibly others. I would like to receive feedback on the analysis presented and information about what happens in practice, to improve and complement this briefing.

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