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Europe's Forest Strategy in the Next Decade: Options for the Voluntary Partnership Agreements

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SUMMARY POINTS

- The world's forest sector has changed significantly in the last 10 years. This has implications for the negotiation and implementation of Voluntary Partnership Agreements (VPAs), making a review of progress timely.
- Key challenges for moving forward with VPAs are the decline in importance of the EU in the forest sector, growing pressure on forests from agriculture and mining, and increasing restrictions being placed on public finances.
- Further effort is needed to integrate VPAs into other policy agendas, in particular that of climate change. This will require broader assessments of the role of VPAs in improving governance and further analysis of the extent to which legal forestry is sustainable.
- Coordination of VPAs with broader trade policy is important. Strong environmental provisions need to be included in these agreements, including rigorous environmental impact assessments and detailed provisions for cooperation.
- Given the shift towards more accountable and focused aid, better communication of the impact of VPAs is needed. Donors need to be wary, however, of focusing too much on short-term, quantitative results.
- Criteria on timber legality should be integral to all investment decisions, and an assessment of the existing barriers to achieving this is required.
- A step-wise approach to VPAs should be considered. This could help to provide more tangible evidence that progress was being made, so helping to maintain political momentum and donor support for the implementation of these agreements.

INTRODUCTION

The European Commission is about to undertake a review of the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan, the EU's flagship approach to tackling illegal logging and the trade in illegal timber.¹ The Action Plan was agreed in 2003, and since then the forest sector has changed considerably. It is therefore timely to consider the lessons that have been learnt to date and also whether a change in tack is needed. There may be new opportunities as well as new challenges for successfully implementing Voluntary Partnership Agreements (VPAs).

An important element of the Action Plan has been the development of VPAs and these are the focus of this paper. These are trade agreements negotiated between the EU and producer countries under which only legal timber will be imported into the EU from partner countries. They entail the negotiation of national legality definitions through a multi-stakeholder process and the establishment of licensing systems for legal timber – 'FLEGT-licensed timber'. The first negotiations were launched in 2006 and six VPAs have been concluded, with a further nine countries currently in formal negotiations.² There is also a high level of interest from potential new partner countries, with at least 10 additional countries having expressed interest in pursuing this approach.

Assessments of the negotiation and implementation of these agreements suggest that they have resulted in a number of governance improvements, most notably broader participation in policy-making, improved transparency and legal reform.³ However, progress in implementing the licensing schemes has been slow – no FLEGT-licensed timber has yet been produced – and there is a need to consider what more could be done to facilitate progress in the coming years.

A CHANGING GLOBAL CONTEXT

There have been significant shifts in the global timber trade in the last decade. In particular, there has been a marked growth in the trade between and within developing and emerging countries owing to the increase in timber consumption in these countries. The growth in domestic markets in many timber-producing countries has meant not only that exports have declined in importance, but also that small producers (which predominate these markets) have become more important players. Another change in the timber trade has been the emergence of a number of countries as processing hubs, most notably China but also several other Asian countries. These countries are now important buyers of logs and sawn-wood, exporting processed products to Europe and other markets.⁴

Legislation that places new market requirements on timber importers has also come into force in the last decade, with the introduction of the EU Timber Regulation (EUTR) and the US Lacey Act Amendment.⁵ The impact of this legislation on the timber trade remains unclear, owing to the difficulties of disaggregating the various factors that impact on trade. There is anecdotal evidence, however, to suggest that the industry is changing its practices to increase traceability in supply chains, and also that some companies are turning away from countries and suppliers that are perceived as high-risk.

Pressure on forest lands has also grown rapidly over the last decade, as demand for commodities has increased to meet the needs of a growing and an increasingly affluent world population.

1 See European Commission, Environment, Forest, Illegal Logging/FLEGT Action Plan, http://ec.europa.eu/environment/forests/illegal_logging.htm

2 VPAs have been concluded with Cameroon, the Central African Republic, Ghana, Indonesia, Liberia and the Republic of Congo. The countries in formal negotiations are Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand and Vietnam. Details on the status of the VPA negotiations can be found at <http://www.euflegt.efi.int/vpa>

3 Bollen, A. and Ozinga, S. (2013): 'Improving Forest Governance. A Comparison of FLEGT VPAs and their Impact', Brussels: FERN, February.

4 Oliver, R. and Canby, K. (2013): 'European Trade Flows and Risk', Forest Trends & Forest Industries Intelligence Ltd, http://www.forest-trends.org/publication_details.php?publicationID=4085.

5 The US Lacey Act was amended in 2008; the EUTR came into force in March 2013. Australia has also introduced similar legislation, the Australian Illegal Logging Prohibition Act, which will come into force in November 2014.

Agriculture is now one of the main drivers of deforestation in many countries⁶ and this trend is set to continue. For example, it has been estimated that the world will need to produce 60 per cent more food by 2050 compared with 2005–07.⁷ While the conversion of forests to agricultural use may be part of a country's development strategy, all too often these changes are unplanned or illegal, and there is frequently no coordination between sectors or overall land-use strategy. Widespread forest conversion not only hinders efforts to place forest management on a sustainable footing but also means that any governance improvements that are brought about in the forest sector will be less significant in terms of tackling deforestation – if current trends continue, some countries will have relatively small areas of forest left in a few years.

Tackling deforestation has risen dramatically up the political agenda over the last decade, with increased awareness of climate change and of the important role of forests in climate processes – deforestation is estimated to account for about 10 per cent of global greenhouse gas emissions. Within the international climate negotiations, efforts continue to establish a mechanism that would provide incentives for countries to reduce rates of deforestation and promote conservation and sustainable forest use (through a 'REDD+ mechanism') and developing countries continue to elaborate Nationally Appropriate Mitigation Actions (NAMAs) aimed at reducing their greenhouse gas emissions.⁸ In relation to the broader 'sustainable development agenda', Rio+20 highlighted the need to establish green economies and called for the establishment of 'Sustainable Development Goals', and the role of forests is being considered within both processes. In parallel, there has been increased recognition among industry and consumers of the need to lessen the environmental footprint of the production of commodities.⁹ Consequently, there is growing demand in some markets for sustainable products rather than legal ones.

One final change to be highlighted is the availability of public finance for the sector – in terms of scale and flexibility. The global economic crisis has exacerbated the trend among donors towards focusing aid on the poorest countries, while also demanding relatively quick, and ideally quantifiable, evidence of results that can satisfy increasingly defined domestic agendas.

Implications of these changes for VPAs

One of the main implications of these changes is that the EU has become a less important player in the global forest sector. In particular, for many of the countries negotiating VPAs, or interested in doing so, the EU represents a small share of their exports. One of the assumed premises on which VPAs were originally based is that the desire to maintain access to the EU market would drive change in producer countries. However, as the EU market has declined in importance, this incentive has lessened and so potentially the negotiating power of the EU is also reduced. It has also meant that other incentives have become more important – such as accessing financial and technical support for governance reform, enhancing a country's reputation, and maintaining or establishing a niche market in the EU. These have been important factors for those countries that have concluded VPAs, although to varying degrees, but they are likely to be even more so for some of the new countries negotiating VPAs or interested in doing so. A good understanding of why countries wish to pursue VPAs will help determine the best strategy for engagement.

The fact that more FLEGT licensed timber will be coming to Europe through third countries, rather than directly from partner countries, increases the importance of the EUTR as a tool to tackle

6 European Commission, (2013): 'The Impact of EU Consumption on Deforestation: Volume 1 – Comprehensive Analysis of the Impact of EU Consumption on Deforestation'; Kissinger, G., M. Herold and V. De Sy (2012): 'Drivers of Deforestation and Forest Degradation: A Synthesis Report for REDD+ Policymakers', Vancouver: Lexeme Consulting.

7 Alexandratos, N. and Bruinsma, J. (2012): 'World Agriculture Towards 2030/2050. The 2012 Revision', ESA Working Paper No. 12-03, Rome: FAO.

8 NAMAs come from different sectors but some countries include forestry activities. See for example Costenbader, J. et al. (2013): NAMAs and REDD+. Relationship and Main Issues for Consideration – with a Focus on Southeast Asia, Bonn: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

9 For example, the Tropical Forest Alliance, a public-private partnership, aims to reduce tropical deforestation associated with key agricultural commodities – <http://www.tfa2020.com/>; and the Kingfisher group has a 'Net Positive Impact' policy, which includes the target to source 100 per cent responsible timber and paper by 2020, <http://www.kingfisher.co.uk/netpositive/index.asp?pageid=1>.

illegality. Whether this legislation will encourage countries to engage in VPAs remains to be seen, however – in other words, whether the incentive of assured market access for FLEGT-licensed timber is sufficient. This is something that will be greatly influenced by whether it is effectively enforced.

The increasing pressure on forests from other sectors means that some of the governance improvements that have been achieved could be undermined. One of the assumptions of the VPAs was that improving forest governance would help to place the sector on a more sustainable footing. However, widespread conversion of forests to other land uses has called this into question, or at least, has raised questions about the scale of their impact. Furthermore, the growing demand in some markets for sustainable products, rather than legal ones, raises the question of the extent to which efforts to establish legality can lead to sustainability.

The increasing restrictions that are being placed on public finances also present a challenge. Many of the countries that are important timber producers or processors are not among the poorest and so are not priorities for aid, while many of the interventions required in the forest sector take a long time to produce tangible results. One of the key strengths of the VPA process to date has been its flexible nature, with priorities for action and resulting funding needs being identified on the basis of the domestic negotiation processes. While there has been some mismatch between funding requirements and donor timetables and priorities, the need for greater accountability of aid budgets will exacerbate this challenge. Therefore, there may be a need to diversify funding strategies and it will become increasingly important to justify how funds are being spent and to give evidence of results.

VPAS IN THE NEXT DECADE

The new global context presents the following key challenges for the implementation of VPAs:

- Europe has become a less influential player in the global forest sector,
- public finance is becoming harder to access, and
- other sectors are now having a much greater impact on forests than previously, threatening to undermine the impact of governance improvements in the forest sector.

To avoid these factors impeding further progress with the VPAs, a range of strategies will be required. These include ensuring that the EUTR is effectively enforced and also increasing coordination efforts between the EU members and other consumer countries. Such coordination is needed not only between the 'traditional' consumer countries (such as the United States, Japan and Australia) but also among the emerging economies, including China, India, South Korea and Brazil, where timber consumption has seen a dramatic rise. Thus, it is to be hoped that these countries would recognize FLEGT-licensed timber in any relevant legislation, for example as part of national procurement policies, legality licensing schemes or if they were to introduce laws prohibiting the trade in illegal timber.

What will also be important is to improve linkages between VPAs and other policy agendas. This will help to ensure more effective use of resources and could enable additional funding to be mobilized. This is considered in more detail below, focusing on those agendas with the most direct links to the goals of the VPAs: low carbon and REDD+ agendas, aid and finance, and trade.

An alternative approach for some of the new countries negotiating VPAs could be to adapt the agreements: the proposal outlined here is for a step-wise approach to FLEGT licensing. This could help to show more evidence of progress which would be of value to donors while also helping to maintain political momentum in partner countries.

Improving linkages with other policy agendas

Low carbon economy and REDD+

The VPA process could and should make an important contribution towards a country's efforts to establish a low-carbon economy. Not only does illegal logging result in deforestation and forest degradation,¹⁰ but it is indicative of broader governance challenges that can hinder efforts to implement sustainable forest management and effective land-use planning. For this reason, tackling illegal logging is fundamental if countries are to succeed in reducing carbon emissions from the forest sector.

Therefore, the VPA process needs to be integrated into any broader national discussions related to climate change and low-carbon development. Ideally, the VPA would form one element of a suite of strategies aimed at reducing carbon emissions, with coordination of these different elements – alongside REDD+, NAMAs, Payment for Environmental Services and community forestry, for example, as well as measures in other sectors, such as climate smart agriculture, mining sector reform and land-use planning. This would help to avoid governance improvements in one area being undermined by developments in other sectors – for example, allocation of agricultural plantations or mining concessions on forest lands. It could also enable more efficient use of resources and expertise, with sharing of activities and the development of joint work programmes. Closer integration of VPAs with such processes could also open up more opportunities for funding of the necessary capacity-building and supporting activities related to VPAs, which has proved a challenge at times in existing VPA countries. There are additional resources available for reducing carbon emissions, in particular for readiness preparation for REDD+ and also for NAMAs. For example, over \$800 million was spent on FLEGT-related projects between 2003 and 2010¹¹ compared with an estimated \$7.2 billion that was committed to REDD+ between 2008 and 2011.¹²

Recognition of the links between VPAs and broader climate change mitigation strategies has increased in some countries, at least in discourse if not in practice. For example, Indonesia has identified the forest sector as one of three priority areas for the country to reduce its carbon emissions – both through reducing deforestation and forest degradation, and through promoting sustainable forest management – and the VPA process is recognized as an important element of this.¹³ In relation to REDD+, many countries have made reference to the need to tackle illegal logging and improve forest governance as part of their efforts to reduce deforestation, and also note the importance of building on FLEGT efforts.¹⁴ In a few countries, these statements have been translated into areas for collaboration and shared work programmes. For example, the Forest Code in the Republic of Congo is being reformed, a process that has been triggered by the VPA but that will also consider requirements related to REDD+ and the broader climate change agenda. Furthermore, in Indonesia, the possibility of carrying out joint audits for legality verification and for certification for the voluntary carbon market is being explored, while the experiences of establishing independent monitoring for forest legality are being used to examine options for a similar system for REDD+. However, such examples remain relatively few and far between, and further effort is

10 For example, see Megevand, C. (2013): 'Deforestation Trends in the Congo Basin. Reconciling Economic Growth and Forest Protection', Washington, DC: World Bank.

11 Crabbé, B. (2014): 'FLEGT Action Plan Review', Presentation at Chatham House, Illegal Logging Stakeholder Update meeting, 6 February 2014, <http://www.illegal-logging.info/content/23rd-illegal-logging-update-and-stakeholder-consultation-meeting>

12 Creed, A. and Nakhooda, S. (2011): 'REDD+ Finance Delivery: Lessons from Early Experience', Climate Finance Policy Brief, Washington DC; London: Heinrich Böll Foundation and ODI.

13 See, for example, the news report 'SVLK, Indonesian Icon in 4th APEC Expert Group on Illegal Logging and Associated Trade', 24 June 2013, <http://www.mfp.or.id/news/svlk-indonesian-icon-in-4th-apec-expert-group-on-illegal-logging-and-associated-trade/>.

14 For example, the Readiness Preparation Proposal (R-PP) of Cameroon states that 'FLEGT constitutes one of the bases of forest governance on which REDD+ will rely' and thus, that efforts will be made to capitalize on the lessons learnt in this process. Institutional links between the two processes are also outlined. The R-PP of the Republic of Congo also recognized the complementarities of these two processes, noting in particular that REDD funding could be used to support measures implemented under the VPA, including the timber traceability system and independent monitoring. Country R-PPs are available on the Forest Carbon Partnership Facility website, <http://www.forestcarbonpartnership.org/>.

needed, by both donors and partner country stakeholders, to identify potential linkages and to make these a reality.¹⁵

One reason for this is that different ministries and institutions are often responsible for forestry and climate change, while the number of sectors implicated further complicates coordination efforts. There has also been a lack of understanding outside the 'FLEGT arena' of the broader impacts that VPAs have had on governance, and so of their potential relevance to help in establishing a low-carbon strategy. For example, support for the legal and judicial services can help law enforcement across all sectors, not just forestry; while improved transparency over the allocation of forest-use rights is important for effective land-use planning. Therefore, there is a need for broad-ranging assessments of the impacts of VPAs as well as effective communication of their findings – work that is under way (in Ghana, for example, a monitoring framework is being developed).

There is also a need for more detailed analysis of the potential role of legal forestry in a low-carbon economy, including the balance between selective logging by large-scale or small-scale enterprises, and the role of plantations. In many countries, although sustainable forest management may be an objective of the law, the criteria for this are insufficient or have not been elaborated, and so legal reform may be required.¹⁶ Alternatively, if sustainability is already adequately addressed, then legal compliance will be a means to achieve this, opening up additional 'marketing' opportunities for the VPA and for FLEGT-licensed timber.

Linked to this, the relationship between legality licensing and sustainability certification also needs further exploration. Aligning these two approaches would mean that they could be self-reinforcing – legality licensing providing a step on the way towards sustainability certification and a means to strengthen the legal criteria of the latter; and certification providing systems or models that can be built on, so reducing the time and costs of establishing nationwide systems. In Indonesia, joint audits have been carried out for both legality licensing (now mandatory within the country) and sustainability certification, although this has only taken place on a limited scale to date.¹⁷ Cameroon and the Republic of Congo have been exploring how to integrate existing certification schemes into their national legality licensing systems. This approach has proved challenging because of the divergence in requirements between the various systems, but it could bring significant benefits if implemented with sufficient rigour.

Aid and finance

Aid is becoming increasingly focused, in particular towards the poorest countries, and there has been a shift towards greater accountability with increasing demands to show the effectiveness of interventions. In this environment, there is clearly a need to ensure that the available funding is used to maximum effect. Thus donor coordination will be an important element in helping to move forward with VPAs so that there is coherence among efforts. Because of the nature of the issues, coordination is needed not just within the forestry sector but across all sectors that have an impact on forests, such as agriculture, mining and energy. While the need for this is often highlighted, its practice remains elusive. This is partly because donors need to address their own domestic agendas and also because of the practicalities of coordinating efforts in a country where there may not be a comprehensive strategy and where ministries are competing for influence and resources. The latter is also not unique to recipient countries; donor countries also often demonstrate a lack of coordination, for example, between aid policies and trade and investment strategies.¹⁸ This is

15 Van Gisbergen, I. and Bollen, A. (2013): 'Update on REDD+ in the Congo Basin', EU Forest Watch, March, <http://www.fern.org/REDDupdate>

16 Cerutti, P. et al. (2010): 'Weak legal frameworks relating to sustainable forest management have been noted for both the Republic of Congo and DRC, see Resource Extraction Monitoring (REM), (2012) : 'Observation indépendante de la mise en application de la loi forestière et de la gouvernance (OI-FLEG) en appui aux APV FLEGT dans le bassin du Congo' ; REM, (2013) : 'Final Report. Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) in the Democratic Republic of Congo', <http://rem.org.uk/reports.html>

17 The Borneo Initiative, (2013): 'Newsletter: Boosting FSC Trade', May. There are eight FSC certificates under this project, totalling just over 900,000 ha.

18 See, for example, the Rainforest Foundation Norway and Friends of the Earth Norway, (2012): 'The Beauty and the Beast: Norway's investments in rainforest protection and rainforest destruction', Oslo: Rainforest Foundation Norway and FoE Norway.

where efforts to establish a green economy or tackle climate change should provide a means to link sectors and establish an overarching strategy – although if this is to be achieved, institutional ownership and commitment to these goals are needed at the highest level.

Greater accountability of aid spending is sensible. It brings the attendant risk, however, that initiatives that can show easily quantifiable and quick results are prioritized over those that will produce less tangible or longer-term impacts. Therefore caution is needed among donors to avoid over-emphasizing quantitative indicators of success at the expense of less easily quantifiable but ultimately more appropriate measures. Furthermore, the ability to make long-term commitments must be maintained – bringing about real, deep reforms in the forest sector will be a slow process given the nature of the issues that need to be addressed in many countries. At the same time, the recipients of aid do need to be better at communicating less tangible results and to highlight shorter-term achievements (an issue returned to below, in the proposal for a step-wise VPA). For example, the negotiation of legality definitions in VPA countries has been a major step, as it has opened up the legal framework for discussion and in some cases for reform, while also helping to clarify the laws. Furthermore, as noted in the previous section, linkages with other sectors and development objectives need to be highlighted more as this could help to diversify funding strategies. This has been happening to a degree – in particular, efforts have been made to highlight the applicability of efforts to tackle illegal logging to REDD+ implementation – but this could be extended.

In relation to investment, further effort is needed to ensure that this supports legal practices and good governance of resources, or at least does not challenge these and so undermine the objectives of the VPAs. This includes investment in the forest sector and in those sectors that have an impact on forests. Thus investment should ensure that only legal activities are supported, and evidence of legality, including FLEGT licensing, should be a requirement for investment or be used to assess investment risk. Thus it is a question not just of avoiding companies engaged in illegal practices but also of providing more favourable conditions for those that are implementing good practice. For example, countries with functioning legality assurance systems should be considered as lower-risk, while investment in companies could be limited to those that are verified as legal. This approach has already been adopted to an extent by some institutions – for example, HSBC requires that its clients have evidence that all their forest activities are legal, with at least 70 per cent certified as sustainable. The Indonesian government, in order to support its national legality verification system for timber (SVLK), signed a memorandum of understanding with the state bank, the latter agreeing to provide easier access to credit for those organizations that are verified as legal under this system. In the agricultural sector, Rabobank Brazil requires that those applying for loans comply with environmental legislation and are not involved in deforestation, and that they also apply a risk management system based on social and environmental criteria.¹⁹

Within the multilateral development banks, standards and criteria for sustainable investment have been developed, and increasingly these are considering the land-use impacts of investments. For example, the Sustainability Framework of the International Finance Corporation (IFC) includes standards for the sustainable management of natural resources, which call (*inter alia*) for the use of certification standards, locating agribusiness and forest activities on unforested land where feasible, and sourcing commodities from suppliers who can demonstrate that they are not contributing to significant conversion of natural habitat.²⁰

However, implementation of many of these policies has been problematic, as highlighted in the case of HSBC²¹ and of the World Bank Group, including the IFC.²² The experience of these

19 Natural Capital Declaration, (2013): 'The NCD Roadmap. Implementing the Four Commitments of the Natural Capital Declaration', <http://www.naturalcapitaldeclaration.org/>.

20 IFC's Sustainability Framework, see: http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_site/IFC+Sustainability/Sustainability+Framework

21 See, for example, Global Witness (2012): 'In the future, there will be no forests left', <http://www.globalwitness.org/hsbc>

22 The Independent Evaluation Group (IEG) reported on the World Bank Group's implementation of its 2002 Forest Strategy in 2013, including an assessment of the IFC, <https://ieg.worldbankgroup.org/evaluations/managing-forest-resources-sustainable-development>

institutions therefore needs to be built on, with a detailed examination of the barriers to implementation. This will enable the development of more effective policies to support legal and sustainable forest use and, equally importantly, ensure that they become integral to all investment decisions.

Free trade agreements

A key tool with which the EU pursues its trade objectives is the establishment of free trade and association agreements (FTAs). In liberalizing trade, these agreements risk increasing pressure on the environment. For example, a growth in the production of agricultural or mining products will increase the demand for land, which may result in deforestation; or an increased demand for wood products could encourage illegal logging. In recognition of this, many such agreements include chapters on sustainable development and the environment, and some have specific provisions on forestry. For example, these include commitments to non-derogation from environmental laws,²³ enforce multilateral environmental agreements (MEAs) and promote the sustainable management of forests, and improve forest law enforcement and governance.²⁴ Further, the cooperation provisions of the association agreements enable additional support to be offered to partner countries to tackle these issues.²⁵

Whether such provisions have served to mitigate the environmental impacts of the FTAs is unclear as there have been relatively few analyses of this question.²⁶ However, there is some evidence to suggest that cooperation provisions, when matched with clear institutional mechanisms for implementing activities and the necessary resources, have resulted in improved environmental legislation or levels of enforcement.²⁷ Therefore, such provisions on illegal logging are to be encouraged.

The case for including stronger references to illegal logging or VPAs, for example by including specific commitments to VPA implementation, is less clear. One risk is that this would change the nature of VPAs, as one of their important principles is that they are nationally shaped. In linking them with FTAs, implementation could become more about meeting EU demands rather than being a means to address domestic priorities to reform the forest sector.

Of more potential would be the strengthening of some of the broader environmental provisions within FTAs to help counteract the pressure from other sectors that have a negative impact on the forest sector. As noted earlier, the growth in other sectors and resulting competition for land is one of the key threats to establishing a sustainable forest sector; FTAs could exacerbate this, as has been highlighted in a number of environmental impact assessments undertaken for trade negotiations.²⁸ Assessments of the impact of an FTA on land-use change, in particular the risk of forest conversion, need to be provided in environmental impact assessments – that for the EU–Mercosur agreement is one of the most detailed, but the methodology for these needs further improvement.²⁹ These findings then need to be translated into specific provisions related to land

23 For example, the EU–South Korean FTA, <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2011:127:SOM:EN:HTML>

24 The EU–Peru and Colombia Trade Agreement, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>; and the EU–Central America Association Agreement, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>

25 For example, in the EU–Central America Agreement possible areas identified for cooperation include promoting policy dialogue and exchange of best environmental practices, experiences, and capacity-building; the transfer and use of sustainable technology and know-how; integrating environmental considerations into other policy areas, including land-use management; and strengthening environmental management, as well as monitoring and control systems. See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>

26 Bourgeois, J. et al. (2007): 'A Comparative Analysis of Selected Provisions in Free Trade Agreements'. DG Trade; George, C. (2011): 'Regional Trade Agreements and the Environment: Monitoring Implementation and Assessing Impacts: Report on the OECD Workshop', OECD Trade and Environment Working Papers, 2011/02, OECD Publishing. <http://dx.doi.org/10.1787/5kgcf7154tmq-en>

27 George, C. (2011): 'Regional Trade Agreements and the Environment'.

28 The EU–Andean Trade Sustainability Impact Assessment (2009) highlighted that the predicted growth in the agriculture and processed product sectors would place additional pressure on land. The same findings were made in the Sustainability Impact Assessment for the EU–Mercosur Association agreement (2009), where it was noted in particular that increased beef, soybean and sugarcane production could result in increased deforestation. See <http://ec.europa.eu/trade/policy/policy-making/analysis/sustainability-impact-assessments/assessments/>

29 Such a recommendation was noted in European Commission, (2013): 'The Impact of EU Consumption on Deforestation. Identification of Critical Areas where Community Policies and Legislation Could be Reviewed'. Report 2013-064.

tenure and governance, for example, related to cooperation on issues of land management and planning, or the enforcement of environmental regulations on land use. While this has been done to a limited degree,³⁰ the elaboration of detailed provisions would greatly facilitate effective action while also helping to monitor progress.

One consideration is whether to include sanctions for non-compliance with any such environmental provisions. While the existence of tough sanctions may be appealing, whether they will actually be used in the face of strong trade lobbies is questionable (for example, to date no sanctions have been applied for non-compliance with the environment provisions of the FTA between the United States and Peru). Thus the use of positive incentives may in fact be more effective – for example, through providing cooperation mechanisms and capacity-building. However, monitoring mechanisms are crucial to facilitate implementation – including a process whereby citizens can submit complaints and a central role for civil society – and they also need to be accompanied by adequate resources. Such mechanisms have been included in the most recent EU trade agreements, but their effectiveness has yet to be tested and needs monitoring.

Adapting VPAs: a step-wise approach

As noted above, VPAs are, by their very nature, nationally shaped, as they are the outcome of a multi-stakeholder negotiation within the partner country. This is essential, given the specificity of VPAs and the differences in the countries' forest sectors – in terms of the legislative and institutional frameworks, types of enterprises and their relative importance (from multinational corporations through to small community enterprises), patterns of forest ownership, relative economic importance of the sector, and specific governance challenges. However, a greater variety of approaches may be needed, given the diversity of the new countries coming on board. One option could be to implement a step-wise approach for FLEGT licensing, which would be designed in a number of different ways depending on individual countries' circumstances.

The VPAs concluded to date all cover a broad range of products, and establish that FLEGT licences will be required for all exports from each of the countries (not just those to the EU), and all (with the exception of the Central African Republic VPA) also include their domestic markets. This level of ambition is to be lauded, as it means that the VPAs will have a significant impact on the countries' forest sectors. However, the flip-side of such ambition is that it takes considerable time and effort to achieve these goals. This is clearly illustrated by the case of Indonesia, which signed a VPA with the EU in September 2013, six years after negotiations began, although in fact the development of a legality definition and verification system began even earlier, in 2003. Such lengthy processes may well be necessary, given the broad range of issues that need to be addressed in many countries as well as the need to ensure adequate consultation of all stakeholders. However, it does bring the risk that, in the interim, stakeholders in both producer and consumer countries lose interest or belief in the process. It is also difficult for donors to maintain support for such a long period.

An alternative would be to adopt a step-wise approach, targeting a smaller number of product types, a particular group of producers³¹ or a particular geographic region within a country (as is happening within Malaysia, for example, where Sarawak has decided to postpone the development of a licensing system for its timber). There are a number of situations where such an approach may be appropriate: if one region of the country expresses particular interest in adopting a VPA and engaging in forest reforms; if there is a high degree of decentralization, with differences in forest legislation at sub-national level; in very large countries where the governance challenges are

30 For example, the EU–Central America Association Agreement identifies 'integrating environmental considerations into other policy areas, including land-use management' as an area for cooperation.

31 Under EC Regulation 2173/2005, which establishes the FLEGT licensing system for timber imports to the EU, products requiring a FLEGT licence are identified on the basis of commodity codes. Therefore, targeting a group of producers would be likely only to be possible indirectly, for example through targeting a particular product type in cases where this was limited to a particular group of producers. Alternatively, the licensing system could only be extended to the target group, thereby excluding others from exporting to the EU.

significant; or if particular product groups are primarily exported to Europe. Targeting a particular type of producer, e.g. community foresters, could be appropriate if rural development is a priority, or if they are the main exporters to Europe.³²

The main benefit of such an approach would be that establishing a legality definition and functioning licensing system should be more straightforward for just a part of the forest sector. This would allow the system to be set up more quickly, enabling a relatively rapid delivery of licensed products on to the market. With more concrete evidence that progress was being made in the sector, donors would see the impact of their funding more easily and so would more readily continue their support. This should also help to maintain momentum and interest among national stakeholders – including industry, NGOs and government – facilitating the extension of licensing. Furthermore, setting up the licensing system relatively quickly would enable it to be tested at a relatively early stage so that it could be adapted before it was rolled out more widely. Testing the system in this way would also mean that it could be used as a means to identify remaining governance challenges within the country – for example, where governance reforms, institution-building or technical support may be needed. Thus it would become an integral part of the process of governance reform itself.

There are a number of challenges to adopting such an approach. The first is that it could create additional opportunities for laundering illegal timber as legal. It also risks creating a two-tier system within the country for legal and illegal timber, as has been seen in Ghana, for example, where pit-sawing is illegal. The continuance of illegal practices could slow progress in bringing about governance reforms and hinder the efforts of those operating legally, for example by depressing prices and reducing the resource base through unsustainable practices. Such a two-tier system could also disadvantage one group of producers relative to another – either those who were included in the system, who would have to meet all the costs of legality assurance and so might not be able to compete in non-European markets; or those excluded from the system, who might not be able to access the EU market. Perhaps a bigger danger is that if the initial focus for such an agreement were too narrow, it would no longer be given the same status as current VPAs, thereby undermining the ability to engage with high-level policy-makers and to bring about some of the more broad-ranging and fundamental changes that are needed.

These challenges would be lessened as the legality scheme was extended (to more products, producers or regions, depending on how the 'step-wise' approach was established). Even so, progress could grind to a halt after the first 'step' of legality assurance was achieved, without it ever being extended to additional products. Setting up a clear timetable for progress, with steps for review of the agreement and its extension, would help to lessen the risk of this happening. If progress did halt in spite of this, then it might be that a national system could not be justified – for example, if in licensing one part of the sector, significant governance improvements had been achieved, resulting in a marked decline in the levels of illegality elsewhere. In such cases, the expense of extending legality assurance might be considered too high. Alternatively, it might reflect an absence of political support for improving forest governance, in which case the feasibility of continuing with this approach to tackle illegality in the sector would be doubtful.

A slightly different approach could be to identify a stage or stages in the development of the legality assurance system that could be given formal EU 'recognition'. This would reassure EU buyers, who would be more likely to purchase timber from such a country once this stage had been reached because they would feel that they could meet the due diligence requirements of the EUTR, and of course those of the United States. Thus such an approach could help to maintain political support and momentum for the VPA process, with any resulting boost in demand establishing support for progress towards full FLEGT licensing. This is taking place through the marketing of Indonesia's and Ghana's legality licensing systems, but it may also be possible to identify other stages that could be promoted, such as the establishment of a national chain of custody system or due diligence system. Recognition of such a system by the EU and the fact that it had been developed

³² A proposal for a VPA that would target community and 'micro-scale' forestry is outlined in Saunders, J. (2014): 'Community Forestry in FLEGT Voluntary Partnership Agreements', Chatham House Programme Paper, London: Chatham House.

as part of the multi-stakeholder process established under the VPA would mean that it should be robust and have broad stakeholder acceptance.

The disadvantage is that, as with the other 'step-wise approaches' outlined above, the process could stall at this stage and no further progress be made towards producing licensed timber. However, this is not very different from the current situation before a country has established full FLEGT licensing. Such an approach could be valuable, and more realistic, in those countries with very weak governance where establishing full licensing will take a considerable time. Thus it would help producers who were following good practice to export to Europe, while allowing a more gradual process of reform to be implemented without undue pressure for the completion of a nationwide, comprehensive licensing system.

CONCLUSION

The VPA process is helping to drive change in the forest sector, but it is important to be realistic about what it can achieve and how quickly. Given the level of ambition of VPAs and the scale of the governance challenges in many countries, slow progress is inevitable and indeed necessary if the process is to be truly effective.

However, faster change could be facilitated through improved coordination between VPA-related activities and other forest interventions, including those being implemented within other policy agendas such as climate change. A requirement for legal timber, and for legal forest conversion, must also become integral to all investment decisions. This will help to support efforts to improve governance of forest lands and so reduce the pressure on forests from illegal or unplanned conversion.

Political realities also make it necessary to have evidence of progress in order to help maintain support and momentum for the process. This will require assessments of impacts and better communication of these findings. Establishing a more formal step-wise approach to VPAs could provide a means to help achieve this and should be given consideration.

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