

INTERNATIONAL TROPICAL TIMBER ORGANIZATION

**STUDY ON
DEVELOPMENT AND PROGRESS IN TIMBER
PROCUREMENT POLICIES**

CASE STUDY: MALAYSIA

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1. INTRODUCTION

1.1 What is Timber Procurement Policy?

Timber Procurement Policy (TPP) is a term commonly used when referring to the set of public rules and policies specifically on buying wood and wood products. TPP is an initiative of western markets in particular, the EU (European Union). There are also similar purchasing policies in timber importing countries such as Japan, Australia and New Zealand. It is a significant ingredient of the broader-based Green Procurement Policies that have been vigorously pursued internationally over the last decade. Green Procurement Policies send a strong message to the global consumers that they need to play their part in avoiding products that may have a damaging effect on the environment. In timber purchasing, the policy instils such awareness. There are strong evidences that illegal sourcing of wood products, which originates from illicit logging, upsets the stability of the forest ecosystem. The international community recognises that Green Procurement at public procurement level helps promote environmentally safe trading. This exemplary move paves the way to sustainable development.

The EU is working on legislative means of demanding proof of legal (or sustainable) origin of timber and wood products for central government purchases. Six EU member states namely, Belgium, Denmark, France, Germany, Netherlands and the United Kingdom (UK) are at various stages of adopting such legislation. Meanwhile, there have been many calls for a uniform national procurement policy for timber, for a more effective mobilization of market forces. In addressing these calls, the UK, the Netherlands, Denmark and Belgium have collaborated and exchanged experiences on timber procurement. They are considering opportunities to develop more harmonized approaches to defining legal and sustainable timber as well as setting needs for documentation. Other interested governments are working on a common template to compare national standards for legal and sustainable timber, and for assessment of certification schemes (CPET).

As inferred to earlier, there is an increasing government interest elsewhere, in the use of public procurement policies to build markets for legal and sustainable timber products. Japan had earlier supported the 1998 G8 Action Programme on Forests among others, on measures against illegal logging. Japan upholds the principle that consumers should not accept illegally harvested timber. In 2006, it introduced a similar approach to that developed by the EU. Japan is also developing technologies for timber tracking and forest monitoring, using satellite data. Australia and New Zealand, indeed, almost every timber-importing industrialized country already has a work plan for 'green' procurement, promoting the use of recycled paper, for example, or sustainable timber in building projects. It should be possible to adapt these frameworks to source legal timber and wood products. Norway has the most severe of Green Procurement policies by banning the use of tropical timber in public construction projects. (More of this, in section 5.2, Lessons Learned of Chapter 5: CONCLUSION).

Fundamentally, the issue in timber procurement is how buyers/consumers can identify legal from illegal timber, and TPP under EU's FLEGT VPA negotiations, (see section 1.3 below) confines itself to legality matters rather than forest sustainability.¹

1.2 Background

World concern over illegal logging and trade in illegal timber

Mounting concerns over the escalating problems associated with illegal sourcing of timber globally have prompted various consumer nations to develop TPPs. Lawlessness in logging can cause serious ecological imbalance, while continuing, unbridled exploitations can lead to outright deforestation. The

¹ This however, should not preclude FLEGT licensing of PEFC-endorsed certified timber. Forest certification schemes evaluate compliance to sustainability standards with indicators for forest security, including legality of harvesting. By WTO (World Trade Organization) ruling, EU timber procurement policies would have to admit entry of all wood products certified or otherwise, as long as there is no evidence of illegality.

world community attaches a great deal of value to the old-growth forests. Take for example, the tropical rainforests: monumental in their contribution to a country's landscape, these forests are noted for vigour and resilience, and are even more cherished for their biological wealth. But no forests can survive under extreme interventions such as mindless logging. Massive losses of forest cover deprive the world of its valuable carbon sink, encourage unmitigated climate change and help bring about environmental devastations. The general public is aware. The international community everywhere makes clear its sentiments against excessive exploitations of the world's rainforests.

Concerned environmental NGOs (Non-Governmental Organisations) add in a social element to the polemics – the dilemma of the forest dwellers and fringe communities who make a living from the forest. NGOs argue that illegal logging often disrupts livelihoods and affects the well-being of these forest-dependent people, compelling them to move deeper into the forest.

Trading in illegally sourced timber would mean helping to perpetuate these perils. In raising such concerns, the NGOs have acted in concert, pressuring the EU countries being major timber importers, to expedite policy measures to combat illegal logging. There is, they claim, an overwhelming public support in the EU countries, to do so.

Trade figures show that EU member countries are significant importers of timber and wood products from countries associated with illegal extraction of timber and trading such timber. In the report on illegal wood entering the European market, World Wide Fund for Nature (WWF, 2008) estimates that 16-19 per cent of wood imports in the European Union in 2006 came from illegal sources. In volume terms, it was between 26.5 and 31 million cubic metres. Illegal loggers it appears, have a distinct advantage in the marketplace over legitimate operators, as the latter would need to put in extra efforts and involve in higher investments, to comply with sustainable forestry procedures.

The G8 Summit of heads of state and government in 1998 recognised that illegal logging cost governments an estimated \$10 billion every year in lost revenues. It called for measures to address illegal logging problems, resulting in the formal adoption of an "Action Programme on Forests" (Wageningen University, 2009). Later, at the World Summit on Sustainable Development in 2002, the EU declared that it had already set out a strong commitment to combat the problems of illegal logging and trade, associated with illegally harvested timber. However, the EU could not find a common action until the 2005 G8 meeting, when ministers of environment and development decided to "encourage, adopt or extend public procurement policies that would favour legal timber" (Simula, 2006).

Implications and threats

There is widespread concern over the prevalence of illegal logging among timber producing countries. The following summarises Kenneth Rosenbaum's (2002) account of the implications and possible threats of illegal logging:

- a. **Environment:** Illegal logging could affect the quality of forests and the goods and services they provide: sustainable fuel and fibre supplies, wildlife habitat, water supplies, and other environmental values;
- b. **Commerce:** Orderly conduct of business depends on enforcement of property rights, honouring of contracts, and the even-handed application of the law;
- c. **Social welfare:** On the one hand, illegal logging can be a symptom of laws out of step with local needs; on the other hand, illegal logging can deprive people of access to their own forests. This will expose them to dangers in their work, and turn stable communities into "boom-and-bust, unstable communities". In the hands of rebels, criminals, or corrupt officials, income from illegal logging can support violence and repression;
- d. **Governance:** Illegal logging is a symptom of the failure to administer justice effectively, and it feeds corruption and organized crime;

- e. **Revenues:** Illegal logging has cost governments billions of dollars in lost taxes and forest owners billions of dollars of lost stumpage. Because illegal logging is often unsustainable, it robs communities of future income.

1.3 EU Forest Law Enforcement Governance and Trade Policy

The EU, as an important consumer of wood products, is obligated to discourage if not eliminate entirely, its trade in illegally produced timber, being fully aware of the implications to the forest and the environment. In May 2003, the EU released for adoption its Forest Law Enforcement Governance and Trade (FLEGT) Action Plan, to address these problems. In its FLEGT Briefing Notes, the EU explains that through the Action Plan, it provides for a policy to set out a timber export licensing system verifying the legality of timber exports from FLEGT partner countries to the EU. The EU has currently identified logs, sawn timber, plywood and veneer, as wood products to be subjected to FLEGT rules under the Action Plan.

Voluntary Partnership Agreements with producer countries

The core of the EU FLEGT Action Plan is the two-way Voluntary Partnership Agreements (VPAs) between the EU and the individual timber producing countries. In the VPA negotiations, the EU proposes that partner countries will set up a licensing scheme for purposes of timber legality verifications, mentioned above. An EU regulation would provide the means of implementation, allowing border control authorities to prevent the entry of illegal timber from partner countries into the EU market.

The EU will deliberate and seek the agreement of the partner producer country, as a matter of priority, on two matters that represent pillars to the VPA. Firstly, they are to reach a common interpretation of 'legality' (under the country's prevailing laws and policies), in timber production and trade. Secondly, on whether the partner country's existing timber legality assurance system (TLAS) is ready for immediate formalization or needs further refinement to meet the requirements for validation. The country's TLAS which is backed by the existing forest legislation will form the standards for deciding the legal status of its timber products. It is also the basis for approving the issuance of export licences for timber heading for EU destinations. Other major issues in VPA negotiations include partner country's consent to carry out independent monitoring of its TLAS and to use the timber-export licensing scheme as verifier system for legality.

The EU procedure

Under FLEGT rules, the EU will need to confirm the validity of harvested timber originating in the partner country through VPA licensing that provides for independent monitoring. On implementing VPAs and legality assurance schemes, and having confirmed the timber produced is legally sourced, suppliers will receive a licence as proof of legality of the product for export. Such timber will qualify as legal and can go to the EU as licensed products under the VPA scheme or to other destinations that follow similar arrangements. EU however, will declare illegal, any timber from VPA signatory countries that lands without VPA licence, and will disallow its entry.

Policy outline

In VPA negotiations, the EU will set out policy measures that will respond to the problems of illegal logging and trade in illegal timber, along the broad lines of action listed below:

- a. Providing financial and technical support to timber-producing countries to help:
 - Improve forest governance and transparency;
 - Institute (where appropriate), legal and policy reform and capacity building; and
 - (Where applicable), develop community-based forest management.
- b. Garnering the support of local people and assisting them in preventing illegal logging;
- c. Promoting trade in legal timber: development of VPAs and multilateral frameworks for international collaboration;

- d. Promoting public TPPs: encouraging EU countries to buy only legally produced timber;
- e. Supporting private sector initiatives;
- f. Setting safeguards for financing and investment;
- g. Using existing legislative instruments or adoption of new legislation to support the Plan; and
- h. Addressing the problem of conflict timber.

(Based on Wageningen University notes, 2009)

Clearly, such measures not only aim at ensuring only legally sourced timber products from the VPA partner countries will pass through the EU customs, but also aim to avoid worsening the problem, that is by discouraging EU companies from investing into ventures associated with illegal timber.

Definitions

'Illegally sourced' or 'illegally harvested timber' can simply mean logs and their resulting products, originating from trees felled in violation of the law of that country. Thus, timber produced from any unauthorized, therefore illegitimate felling is considered illegally sourced.

In EU VPA negotiations, 'legal timber' is generally defined as timber harvested under licence from approved areas, and timber and timber products exported in accordance with the existing laws, regulations and control procedures pertaining to forestry, timber industry and trade of that partner country.

In FLEGT Briefing Note Number 2, the EU expands the interpretation of legality to cover other related matters within the forest laws of partner countries, besides cutting of trees. It suggests the inclusion of legal right to harvest; forest administration that takes into account environmental and labour laws; other social protections; payment of prescribed charges; respect for legal tenure rights that cover NCR (native customary rights); and compliance with import and export requirements.

1.4 Policy Objectives

TPP serves as an instrument that will ultimately discourage deforestation and stimulate sustained yield timber production. These two goals are inextricably linked in the overall objective of sustainable management of the natural tropical forest. Success in regulated harvesting lies primarily in stringent control on the ground with proper monitoring, and in upholding the principles that determine decisions on the annual allowable cut. Subsequently, success in forest renewal process consists in diligent follow-up of the prescribed forest maintenance and rehabilitation work for each logged over area. This forms the basis for restoring forest health, and preserving the forest for the next harvest. Obviously, EU member countries develop timber procurement policies to minimize the dangers of deforestation and environmental degradation. TPPs are public policies which aim principally at damage control, while opening the door to 'clean timber' for all future trade. When addressing issues of legality of wood supplies, the EU sets its priorities on tackling illegal logging problems that continually beset tropical producer countries.

TPP, as it applies in the EU helps in "internalizing" the environmental impacts and implications in the government purchase of forest products. Many countries within and outside the EU, have already developed or are in the process of developing their respective TPPs to serve as "potential instruments to promote SFM and improve governance in producing countries" (Simula, 2006).

1.5 EU Initiatives

FLEGT Action Plan

Currently, in pursuing its FLEGT Action Plan to help tackle timber illegality problems, the EU is approaching several tropical timber producer countries in Central Africa and South-east Asia for

cooperation with EU member countries by two-way arrangements, with the attendant support programmes as incentives.

The goals to achieve are good governance in forestry, and assured legality of imported timber into the EU. NGOs insist that the VPA negotiations should evolve through multi stakeholder participation (FERN, 2009). Also, NGOs assert that consumers should persuade producer countries through VPAs, to observe local peoples' tenure rights, increase transparency and open the door to greater participation of "non-state actors." They must recognise that some of these demands go beyond the realms of national laws and policies.

The incentive to the partner country is that collaboration through the VPA will enable the partner country to strengthen its capacities for enforcement work and for improved vigilance in the field. This will go a long way towards attaining a permanent resolution to the illegal logging problems. There are several other areas that the partner country stands to gain from EU's support under the VPA: apart from capacity-upgrading and improved level of efficacy in forest control, there are direct market benefits to gain, with opportunities to develop a reputation in the trade as a consistent producer of 'clean' timber.

The operating mechanism under VPA comprises the following measures:

- a. The partner country will develop a robust and verifiable TLAS for adoption;
- b. The EU will study, and on mutual satisfaction, approve the proposed system;
- c. The partner country will designate an accreditation body with powers to appoint certifying bodies to confirm the legality of wood products;
- d. The partner country will carry out independent monitoring and set out a dispute settlement mechanism;
- e. An authorised body will issue licences for legally harvested timber, allowing customs authorities to clear legal shipments for export to the EU;
- f. The export licence indicating legality of product will be produced at the EU import points, and checked by customs authorities; and
- g. Customs will *only* accept timber from partner countries for import into the EU when it has the legality licence.

(Based on Duncan Brack, 2009).

Details of each voluntary partnership agreement will vary, but its principles will remain a common denominator among all partner countries.

Requirements for proof of legality

In spite of the above, questions still hang with some quarters, on the validity of the licensed incoming timber. See Justifications and Challenges in section 1.7, below. Analysts see three main options to set up legislation that may lead to eradication of illegal logging:

- a. Requirement for proof of legality for all timber imports regardless of origin
- b. Requirement for proof of legality at point of sale
- c. Legislation to make it illegal to import, market, or possess timber products produced illegally overseas

The Lacey Act and "Due Diligence" Regulation in Section 1.6 will address these issues.

Local laws to back-up Timber Legal Assurance System

TLAS, a key ingredient in VPA negotiations, is a set of management and control measures designed to curb illegal logging and associated trade. TLAS develops from the existing laws regulating forest planning, harvesting and protection; forest charges; log movements in transit; and licensing of log processing mills and timber export. At the behest of NGOs, EU has insisted on including laws that

relate to native rights and workers' safety and health. Compliance to TLAS will ensure that illegal timber will not enter the market. Only timber, harvested and processed according to the legislation in force will pass for export to EU destinations. A generic outline of TLAS includes the following key elements:

- a. **Definition for legality:** A standard derived from existing legislation, to set out requirements of sustainable forest management, in particular, with the needs for legality in timber harvesting and subsequently, timber transport, processing and trading, native rights and workers' safety and health;
- b. **Definition for controlling the supply chain:** Timber tracking and chain of custody auditing, backed by inventory management controls to prove the timber originates from legal sources;
- c. **Compliance and system verification:** Timber production complies with the legality definition, and timber moves along a well-established and properly controlled supply chain;
- d. **FLEGT licences:** Issuance by an authorised body, based on verification results, revocable on evidence of failures in compliance; and
- e. **Independent monitoring by a third-party:** To audit the whole length of TLAS system (its control, verification and monitoring functions), to determine its credibility.

Progress in VPA negotiations

The EU has begun formal contacts with several countries for Voluntary Participation Agreements and reached varying stages of negotiations, having concluded one with Ghana, as pointed out below.

Ghana – VPA concluded in 2008, awaiting ratification, before implementation.

Cameroon, Indonesia, Malaysia, and Republic of Congo – now engaged in formal negotiations.

Central African Republic, Gabon, Liberia, and Viet Nam – at pre-negotiation stage.

Côte d'Ivoire, Democratic Republic of Congo, Ecuador, Honduras, Ivory Coast, Madagascar, Nicaragua and Sierra Leone – have signalled interest.

(EC; FERN, 2009)

1.6 Other Initiatives / Forthcoming Legislative Measures

The US Lacey Act: Legislation against trafficking illegally sourced wood products

An amendment in 2008, to the hundred-year old law, the Lacey Act, introduced a ban on trade in illegally sourced plants and their produce — including timber and wood manufactures. The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of a U.S. State. It is also a violation of the Lacey Act to bring into the country a plant or its produce that has been taken, harvested, possessed, transported, sold or exported against an underlying law in any foreign country. **This constitutes an illegally sourced plant or its produce.** For forestry, the violation of law covers unauthorized timber harvesting in national forests. However, the Lacey Act may also extend to less obvious activities, such as transporting timber at night in violation of a curfew designed to prevent illegal timber trafficking. The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant. The Lacey Act does not impose U.S. law on other countries. "Illegally sourced" is defined by the content of sovereign nations' own laws.

This section of the new law is in effect, designed to prevent illegal logging practices. It addresses illegal logging and trade in illegal timber and other plant produce, in the following ways:

- a. Forbidding all trade in plant and plant-based products (for example, furniture, paper, or lumber) that are illegally sourced from any U.S. state or any foreign country
- b. Making it compulsory for importers to declare the country of origin of harvest and species name of all plants contained in their consignments.

This amended Act requires a new import declaration for the export of wood products into the US. The declaration requirement in effect from April 2009 includes declaring genus and species, value, quantity of plant, country of harvest. This declaration will cover a broad range of products, well beyond the EU FLEGT list. It includes the list of endangered species under CITES (Convention on International Trade in Endangered Species). Other examples of products requiring declaration are paper, furniture, flooring items, even picture frames.

According to US government sources, the newly amended Lacey Act places the burden of proof of illegality onto the US government, contrary to the requirement for legality verification as in a VPA.

The Lacey Act sets up penalties for violation of the Act; they include forfeiture of goods and vessels, fines, and imprisonment. (Gregg and Porges, 2008; EFI, 2009).

“Due Diligence” Regulation

The EU has not succeeded in concluding VPAs with the selected producer countries, except with Ghana. It is still some distance away from putting the agreement into action. Meanwhile, there is debate ongoing within the EU “about means to plug the potential loopholes” in the FLEGT licensing system (Chatham House, 2009). For many countries EU is just a marginal export market; they can drop out from the supply chains to this market altogether. It is also likely that some supplier countries to the EU will not be joining the proposed VPA immediately for reasons of their own, or will need time to be ready to do so. In such an event, the EU will face a dilemma as it does not have the legal means of barring the entry of alleged illicit wood products from these non-VPA countries. That is, until Due Diligence regulations come into force (see discussions on this, below).

NGOs and timber industry see this as a major flaw in the EU FLEGT licensing programme: despite having created the VPA, the EU still allows trading in illegal timber within the EU market. This enables wood products made from illicit timber to remain available on the market. It will prove disadvantageous to the timber business in VPA countries vis-a-vis that in the non-VPA countries.

The EU has considered adopting legislation to prohibit importation, purchase or marketing of timber produced illegally in foreign countries. This is similar in principle to the recently amended US Lacey Act (see above), which makes it illegal to handle products including timber, produced illegally outside the US. In this context, the EC announced the publication of a draft “due diligence” regulation in October 2008. This proposed regulation requires companies placing timber and timber products onto the EU market to adopt due diligence systems to ensure they exclude illegal products.

The draft regulation has reached the European Parliament and Council for debate. Reports (e.g. HKTDC, March 2009) indicate that the European Parliament’s environmental committee has approved EC’s Due Diligence regulation proposed in October 2008, but the committee also voted strongly for tougher rules on due diligence. Elements of Due Diligence system that the committee had approved are given below.

Operators will have to either establish a due diligent system themselves or make use of due diligence system established by a recognized monitoring organization. If operators opt for the former, their due diligence system will have to:

- a. Provide access to an array of information concerning the timber or timber products covered, as follows:
 - Description,
 - Country of harvest
 - Volume and/or weight,
 - Where applicable, name and address of the operator who has supplied the timber and timber products,

- Information on compliance with the requirements of the applicable legislation in the country of harvest (including legislation on forest conservation and management, and trade in timber or timber products related to forest conservation and management),
- b. Include a risk management procedure, and
- c. Provide for audits to ensure effective application of the due diligence system.

The Parliament's environment committee wants to see more onerous elements added. These include measures to ascertain the name and address of the operator who will be supplied with the products and the person responsible for harvesting, as well as the inclusion of a comprehensive traceability system.

Other elements the committee wants to add to the due diligence system include a detailed account of risk management procedure, and a higher level of due diligence for timber coming from high risk areas.

1.7 Justifications and Pitfalls

The justification for FLEGT VPAs is that the partner country, once legally bound to run a proper TLAS will be obliged to undertake the necessary measures to improve forest governance and upgrade its capacity for control on the ground. With a tight TLAS there will be no opportunities for illegal logging and the system will discourage all forms of forest infringement. Also, besides improving the security of the forest resource, a strong control system will facilitate conservation forestry and reinforce sustainable forest management efforts.

However, there may be impediments along the way likely to disrupt the orderly progress of the VPA, unless certain measures are taken proactively. For example, many tropical timber producing countries may not have attained the institutional make-up needed to cope with the problems of forest encroachment and illegal logging. Impediments could be in the form of a weak enforcement system and ineffective execution; lack of training; poor organizational infrastructure, or sheer lack of will. Inadequacies in the information and communication system can also create difficulties to get a smooth flow of evidence in good time, for purposes of verifying product legality. It would be premature to introduce VPA in such circumstances.

Further, the widespread extent of forest violations, especially illegal logging may present insuperable challenges to the EU in its FLEGT drive. Practical difficulties in setting up multilateral voluntary arrangements for timber legality licensing schemes will leave the EU with no other choice, but to seek the cooperation of separate individual producers. EU will have to wade into a whole series of bilateral negotiations before accomplishing its mission. At the moment, it is a slow-moving process and it does appear a daunting task for EU negotiators.

Besides, there are fears that for quite a while yet, VPA countries will lose out to non-VPA countries for the laundering of illegal timber and circumventing of FLEGT controls. It is quite possible for producer countries to use their own or imported illegal timbers, process them into final products, and have them exported to the EU. This is when the due diligence regulations need to begin operating. Nonetheless, NGOs remain sceptical about the effectiveness of the proposed Due Diligence system. The Due Diligence system is allegedly, vague and limited in coverage, having no clear and common sanctions to institute deterrent penalties (EIA).

The key countries identified as possible sources of "illegal timber" altogether hold nearly 60% of the world's forest (ec.eropa.eu). Illegal logging is allegedly common in countries in Central Africa, Tropical South America, South-east Asia, and the Russian Federation. These are significant players in international timber trade. In addition, People's Republic of China (China) exported to the EU in 2005, an equivalent of eight million cubic meters or more of all timber products, some 45% of which is

plywood. Observers have cited China as a popular destination for what they believe to be illegal timber (Global Timber.org.UK).

1.8 WTO Implications

The US and EU are taking the lead in controlling international trade in illegal timber in the effort to combat illegal logging, with the Lacey Act and FLEGT Action Plan, respectively. Several other countries have initiated public procurement policies of their own. Various forms of cooperation for trade in legal timber – from bilateral to multilateral and regional - and codes of conduct for timber importers are in place in countries like Japan, Australia and New Zealand. All these are prime examples of consumer countries' measures to exclude illegal timber from their markets.

The FLEGT Action Plan stresses the need for ways that will allow EU customs authorities to identify legally produced timber, and under VPA arrangements exclude illegal timber from the EU market. This is possible under VPA, when timber is declared and licensed as legal for entry into the EU. Customs authorities will identify timber as legal when it arrives at the partner country, with a valid licence issued under the VPA arrangements (EU Briefing Note Numbers 7 and 8, 2004). Questions arise whether this arrangement is consistent with international trade rules. Can this be challenged at the World Trade Organization (WTO)?

These measures are designed to alter the existing patterns of international trade in timber and timber products. They may interact with World Trade Organization rules governing international trade, thus raising concern whether measures like these are compatible with those rules. "Since the outcome of any possible dispute case would rest on the interpretation of various clauses of the GATT and other WTO agreements, and since there is no experience to date of WTO dispute cases dealing with similar issues, it is impossible to be definite about the outcome of such a case. Nevertheless, it is possible that if further measures similar to these are used to control trade in illegal timber, and they turn out to be trade-disruptive, it may make them vulnerable to challenge." (Duncan Brack, 2009).

At the moment, governments have plenty of flexibility to adopt measures designed to exclude illegal timber from international trade.

Back to the issue of FLEGT VPA, the EU argues the licensing scheme is a voluntary two-way arrangement between EU and the FLEGT Partner Countries. "It is inconceivable that a country which has entered such an agreement would itself mount a WTO challenge." Further, "WTO does not protect illegal trade." (EU FLEGT Briefing Note No. 8).

EU does not see what benefits partner countries will have in raising issues at the WTO. However, knowing well WTO's stand against discriminatory trading, perhaps, it is the lack of incentives from VPAs that may create the rift. Sceptical exporters still wonder whether the advantages of VPAs can ever outweigh the market edge that many exporters in non-participating producer countries may have over them. Trade figures compiled by Global Timber.org.UK, underscore this point. The statistics show high volumes of timber and timber products of disputable legality, currently entering the EU. Indeed, Global Timber expresses doubt that EU's present VPA arrangements could ever give enough impact in the effort to combat trade in illegal timber. It seems the EU would need to conclude similar VPAs with all other key timber exporting countries, and need do so quickly enough if it is to gain any measure of success. Perhaps it was this need to address such concerns that had led the EU to consider a more stringent version of the Due Diligence Regulation.

1.9 Major Issues to Address

Controversies over FLEGT

The Malaysian government has committed its support to the FLEGT Action Plan. The government's initiative in formalizing its TLAS to accommodate EU's Action Plan is controversial to both the NGOs

and the industry, but for the opposite reasons. International NGOs typically, have something critical to say on the matter. They are sceptical of the authorities' capability to control, regulate, function and execute TLAS to the letter, and to ensure industry's compliance at all stages of the supply chain. They cast doubts on the ability of some government agencies to meet with FLEGT's ideas about control and verification under TLAS, on grounds of conflict of interest. Some NGOs press for a more stringent system, others ask for participation of 'civil society bodies' (with EU's financial support) in monitoring the work, or possibly for representation on the Joint Implementation Committee (Nussbaum, 2007). The underlying message is that either TLAS is not robust enough or its implementation will not be effective enough.

On the other hand, the industry tends to view the system as both cumbersome and excessive. It will incur additional costs for the companies to reformat their log books and prepare for documentations required for submission to the authorities. Similarly, the industry has to subject itself to new methods of surveillance and auditing. Any form of technical upgrading in the field say, the use of RFID (Radio Frequency Identification) techniques, will automatically require the industry to bear its share of the cost.

Legislation on timber: industry's concern

The EC Legislature approved a new law in December 2005 sanctioning EU customs to apply VPAs stringently, and bar the entry of illegal timber. By arrangement under VPA, all timber imports into the EU regardless of origin would need documentary evidence of sustainability or legality, by verifiable declaration, on entry into the EU or at the point-of-sale. The use of instruments such as internationally recognised forest management certification, or VPA-sanctioned TLAS licence, or other equivalent documentation would be acceptable. This arrangement will need to be clearly stated in the Agreement. But rules to implement the legislation are still pending. The industry's concern is that this is far from final, there is more to come. The industry is aware of the new regulation on Due Diligence now being debated at the EU Parliament. Once it comes into force, the initial product list of logs, sawnwood, plywood, and veneer, may well extend to wood manufactures (for example, furniture, wood mouldings, wooden doors and flooring, etc.), something similar to the product coverage and operations under the US Lacey Act.

Assurance against illegal logging: the cost factor

Strengthening of TLAS with additional procedures will call for major institutional readjustments and structural changes. Malaysia, as a partner country will need UE's assistance to meet its obligations under the VPA. This includes targeted studies and analyses, support for the development of systems and processes, and use of electronic systems in data gathering and applications among others, for monitoring and control. (See details in section 2.6, below). Today, it is unclear to what extent the EU will be willing to help meet Malaysia's new requirements.

Stakeholder consultations

An important element in the negotiations is Malaysia's part in holding stakeholder consultations. This is to ensure that major stakeholders namely, the timber industry, the timber trade and the "civil society" (the environmental and social NGOs) are fully aware of the EU FLEGT VPA initiative that the government has agreed to participate in. The government is to share with the stakeholders, issues arising and their implications which would be relevant to the interest of all stakeholders. The government is to seek and consider stakeholders' views on TLAS and its implementation.

Better demand for FLEGT timber?

The key benefit out of the negotiations, as far as the timber sector is concerned is improved demand for FLEGT-licensed timber. This is one aspect that Malaysia will have to be clear about. The exercise will have significant impacts on timber trade and industry: on one hand, it will incur additional costs and regulatory burdens, and on the other perhaps, it will create market preference for FLEGT-licensed timber. The government will need to continue looking into the long-term interest of the timber sector.

2. SITUATION IN MALAYSIA

2.1 A Major Timber Producer

The forest resources

Malaysia is a tropical rainforest country noted for its Dipterocarp forests that produce the Meranti (*Shorea* species) and several other internationally known hardwoods such as Balau (the heavier *Shoreas*) and Mersawa (*Anosoptera laevis*). Another example of timber, very popular in Western Europe is the non-Dipterocarp Merbau (*Intsia palembanica*). The forests are also rich in plant species often used in traditional medicine but new discoveries have led to a worldwide interest in commercializing these plant materials or their extracts for pharmaceutical, aromatic or culinary purposes.

The country enjoys one of the highest percentages of forested land among developing countries such as Brazil, Indonesia, Philippines and Thailand (FAO, 2005). More than 59% (or 19.42 million hectares) of its land area is under forest with 5.88 million hectares in Peninsular Malaysia, 4.30 million hectares in Sabah and 9.24 million hectares in Sarawak. Of the total 19.42 million hectares of forested land, 74% or 14.29 million hectares are gazetted as Permanent Reserved Forests (PRFs) under the National Forestry Act 1984 and relevant state enactments and ordinances. Another 1.83 million hectares outside the PRFs are gazetted as National Parks and Wildlife Sanctuaries under various forms of legislation.

These 16.12 million hectares are forests to be maintained in perpetuity by law. This is a fundamental pillar of Malaysia's commitment to sustainable forest management (SFM). Within the PRF, 3.11 million hectares (22%) are designated as protection forest while the remaining 11.18 million hectares (78%) constitute production forest, where commercial harvesting of timber is permitted but within a predetermined forest area allowed for cutting for the year, or the annual coupe.

Beyond this, forested areas that are not gazetted as PRF are state land with a sprinkling of forested alienated land. All of them are destined for conversion to other forms of land use. However, this accounts for no more than 3.3 million hectares or 17% of the total forested area. (Forestry Departments: Peninsular Malaysia, Sabah and Sarawak, 2005).

Forest administration

All land matters fall under the jurisdiction of the individual state governments. The Forestry Department Headquarters in Kuala Lumpur therefore, do not govern national forestry, but in their advisory capacity, promote a coordinated and common approach to policy administration.

Basically, forestry policies are implemented through the provision in the forest laws enacted in the three regions of Peninsular Malaysia (the National Forestry Act 1984), Sabah (Forest Enactment 1968), Sarawak (Forest Ordinance 1958), and their respective amendments. The agencies responsible for forest management are the State forestry Departments in Peninsular Malaysia, Sabah and Sarawak, and the Sarawak Forestry Corporation. These are the implementing bodies for the country's SFM.

Forestry decisions in all regions of the country are nevertheless guided by the National Forestry Council (NFC). The Council is chaired by the Deputy Prime Minister, with the state *Mentoris Besar* or Chief Ministers as members, together with the two Ministers directly concerned with the forest resource or the utilization and marketing of its products, *i.e.* the Minister of Natural Resources and Environment and Minister of Plantation Industries and Commodities. The NFC serves as a forum for federal and state governments to discuss and resolve common problems and issues on matters of forestry relating to policy and administration, resource management and conservation, timber utilization, and trade. Major policy decisions rest with the Cabinet. The Federal Department Headquarters (Forestry Headquarters) and State Forestry Departments (the Forestry Department, or simply, the Department) attach great importance to environmental conservation and other such attributes of the forest as much as its commercial values.

Managing for sustainability

Managing the rainforests must follow closely the tenets of the earlier mentioned SFM (sustainable forest management). Timber production conforms to the sustained-yield principles, which impose area-volume control over harvesting. Forest harvesting within the production forests of the Permanent Reserved Forests, operates over prescribed cutting areas as allowed by the ten-year forest management plans of the individual states. The State Forestry Department determines the annual coupe (allowable cutting area) the available net production area of the state's PRF. For purposes of forest planning, the state's PRF constitutes the Forest Management Unit. It runs on an average forest rotation (felling cycle) of thirty years. The actual forest rotation for a particular forest may range from 25 to 35 years, depending on the inherent wealth of the forest stand and its timber species composition. The Department controls the volume of timber to be removed within each area licensed for felling to a maximum of 78 m³ of the available timber stocking, after setting aside a minimum number of commercial trees, prescribed as the residual stand. This residual stand will form the lead crop of the next rotation forest.

This is the basis of the current selective management system (SMS), which adopts a felling cycle of usually 25 to 35 years. But the felling cycle may extend to 40 years or more to cater for variations in the intensity and composition of the growing stock. Obviously, if the residual stand inherits a forest of predominantly slower growing species of medium and heavy hardwoods, its rotation will be considerably longer. Thang (2007) gives an average growth rate of hill forests (where most of the felling now takes place), at 2.0-2.5 m³ per hectare per year, yielding 45-85 cubic meters per hectare of net commercial timber at each round of felling.

The annual coupe for each forest management unit is revised every five years during the mid-term review of the forest management plan, coinciding with the preparations of the five-year national development plans. SMS centres on the rapid recovery capacities of the naturally regenerating and light seeking species following harvest, especially the commercially popular Dipterocarps. Where needed, the Department applies silvicultural treatments such as climber cutting or enrichment planting to expedite forest recovery. Another aspect of SFM deals with forest conservation measures and maintenance of protection forests for the perpetual security of the forest stand. In recent years, there have been more regular contacts and consultations with representatives of the forest-based communities as well as other stakeholders. Consultations have centred mainly on policies related to the utilization of the forest to preserve the interests of all levels of society.

Forest management certification

The underlying objective of forest management is to bring about continual benefits of the multiple roles of the natural forest to a broad group of stakeholders from local communities to industries, and the public at large. Indeed this is the basic principle of sustainable forest management or SFM, which is put to practice nationally. In carrying out SFM, the Forestry Department fulfils the requirements of Malaysian Criteria and Indicators (MC&I) 2002 – the current forest management standards developed by the Malaysian Timber Certification Council (MTCC), for its Forest Management Certification Scheme (MTCS). MTCS Forest Management Certification is a significant milestone in forest sustainability mission.

Raw material from the natural forest

Malaysia's annual log output from natural forests averaged 21.7 million m³ over the period of 2000 to 2007 most of which (12.4 million m³ or 57%) was produced in Sarawak. Malaysia's log production in 2007 was 22 million m³, while the estimated figure for 2008 is 20.7 million m³. The estimated volumes of production by region are: 11.9 million m³ in Sarawak, 4.9 million m³ in Sabah, and 3.9 million m³ in Peninsular Malaysia (Ministry of Plantation Industries and Commodities (MPIC), 2009).

Over the recent years, production of logs from Malaysia's natural forests has been decreasing steadily. This is attributed mainly to the implementation of SFM practices, including the imposition of tighter laws, policies and regulations governing forest harvesting. An export ban on logs originating from the natural forest in Peninsular Malaysia had been in force since 1970s to encourage local

processing, and promote value-added production. Correspondingly, in later years, log export quotas have been imposed by Sabah and Sarawak

Now, with sustainable forest management practices in cruising speed, the annual coupe will need to continue to be revised downwards. This is already planned for the coming 10th Malaysia Plan period of 2011-2015, and on to 2020, in line with the trend to buttress forest conservation efforts (Nik Mohd. Shah, personal comm.).

There will be a marked decline in log output into the next decade. Table 2.1, below suggests the present annual average log production of 19.4 million m³ from the natural forest could dive to 14 m³ and stabilise at that level during the 2016-2020 period. That is a drop of some 28% from the current level.

This anticipated fall in log supply, ought to give a strong signal to buyers in countries like Japan (by far, the largest purchasers of Malaysian logs), that the end of Malaysia's log export is in sight. The estimated output figure of 14 million m³ of logs will be just about enough to feed the mills in Sarawak and Peninsular Malaysia, at today's consumption.

Table 2.1 Malaysia - Projected Log Output from Natural Forests, 2006 -2020

Five-year period	Peninsular Malaysia	Sabah	Sarawak	Malaysia
	Average annual outturn (million m ³)			
2006 - 2010	3.8	4.1	11.5	19.4
2011 - 2015	3.0	2.5	10.0	15.5
2016 - 2020	2.5	1.5	10.0	14.0

Source: MPIC

Raw material from plantation forest

Supplementing log supplies from the natural forest will be timber from the fast growing forest plantation species of mainly, *Acacia mangium* (Acacia), *Gmelina arborea* (Yemane) and *Paraserianthes falcataria* (Batai). The forest plantation industry is relatively young, but the planted trees are expected to yield annually about 3.3 million m³ during the current five-year period of 2006-2010, rising to 11.8 million m³ within 2011-2015, and 16.7 million m³ for the 2016-2020 period (Table 2.2). In terms of volume, the expected production of plantation forest will be a significant contribution to the domestic industry. Indeed, some may be exported to help feed the region's pulp and paper mills. But in terms of value, there is no substitute to timber from the natural forest.

Table 2.2 Malaysia - Projected Log Output from Forest Plantations, 2006 - 2020

Five year period	Peninsular Malaysia	Sabah	Sarawak	Malaysia
	Annual average outturn (million m ³)			
2006 - 2010	0.8	0.5	2.0	3.3
2011 - 2015	0.8	0.6	10.4	11.8
2016 - 2020	0.9	0.8	15.0	16.7

Source: MPIC

Rubberwood as raw material

Malaysian Rubberwood is generally obtained from the old rubber trees (*Hevea brasiliensis*) in agricultural plantations which are due for replanting (or conversion to oil palms). It is a by-product of

the rubber estates, established for the production of the once highly demanded *Hevea* latex. Future supplies of Rubberwood however, are expected to come from high-yield plantations of rubber trees, grown principally for the timber. The country is actively pursuing new planting programmes – mainly in Peninsular Malaysia where Rubberwood is mostly consumed.

Malaysian *Hevea brasiliensis* would become significant in the future as a log producing species with latex as its by-product, instead. Projections of Rubberwood productions from the existing mature trees and recent replanting are: 2.1 million m³, for the period 2006-2010, two million m³ within the 2011-2015 period and 1.8 million m³ in 2016-2020 (Table 2.3). The apparent declining trend indicates “the changing of the guard” as the emerging crop is gradually taking over from the diminishing matured stock. The next rotation rubber trees (optimal between year 15 and year 20) should be offering much higher volumes.

Table 2.3 Malaysia - Projected Log Output from Rubberwood Plantations, 2006 - 2020

Five year period	Peninsular Malaysia	Sabah	Sarawak	Malaysia
	Annual production (million m ³)			
2006 - 2010	2.1	n.a.	n.a.	2.1
2011 - 2015	1.9	0.1	n.a.	2.0
2016 - 2020	1.7	0.1	n.a.	1.8

Source: MPIC

Combining the three main sources of the supply of logs in Table 2.1, Table 2.2 and Table 2.3 above, the projected average annual production of logs in Malaysia will be 24.8 million m³ for 2006-2010 period, 29.3 million m³ from 2011 to 2015 and 32.5 million m³ from 2016 to 2020. This excludes figures from Sarawak. Sarawak plans to increase its average annual production of logs from 13.5 million m³ during 2006-2010 to 25 million m³ for the period 2016-2020, largely due to its aggressive planting of fast-growing Acacia.

2.2 Future in Raw Material Supply

Logs are produced from Permanent Reserved Forests, state land and alienated land. Just as the volume of log output recedes gradually from the Permanent Reserved Forests, log supplies from state land and alienated land forests will dry up as most likely these lands will be cleared for conversion within the coming decade.

With 1000 over sawmills and 180 plywood and veneer mills in the country to feed, the industry, which has reached a creditable level of advancement is resorting more and more, to external sourcing. The exception may be for the case in Sarawak. For some years now, the industry has been supplemented with logs and sawn timber from neighbouring countries, such as Indonesia, Papua New Guinea, Myanmar and distant West Africa. But the recent banning of log exports by several traditional producers bucks the trend. Indications are that the industry will have to readjust further as competition heightens for commodity timber.

In recognizing this, MPIC has launched recently, a long-term credit programme to encourage the establishment of more large-scale forest plantations of shorter rotation crops, nationwide. The Ministry has set a target of 375,000 hectares for planting within the next fifteen years. The approved tree species include the fast-growing Acacia and Rubber trees.

2.3 Industry Performance

The timber industry is a major contributor to the national economy. MPIC's estimated export value of timber and timber products for 2008 is USD6.37 billion out of Malaysia's estimated total merchandise exports of USD191 billion. The industry provides employment to about 337,000 workers. Among commodities, timber industry's estimated share of export earnings in 2008 is about 20.3%, second to palm oil which is estimated to reach 56.2%.

Dependence on export

Timber export is pivotal to the industry's success. Figures_____ in the foregoing section indicate that Malaysia's timber enjoys a global market. That makes the timber industry vulnerable to changes in world demand. With a relatively small population of 27 million, Malaysia has a limited domestic market for timber. Local timber trade is worth around USD 1.5 billion a year, or 21 - 22% of export value (MTIB). This includes the cost of importing wood products for domestic consumption. Malaysia's timber sector is therefore by necessity, export-oriented.

Malaysia offers the world a wide variety of timber products, from sawn timber and plywood to value-added products, such as joineries and furniture. Currently, the main products exported are furniture of wood, plywood, sawn timber, logs, wood mouldings and joinery products, and fibreboard.

In 2008, furniture accounted for the largest share (31 per cent) of timber products exported with earnings totalling USD1.98 billion. Plywood followed at 28 per cent of exports with USD1.76 billion, with sawn timber (13 per cent) at USD850 million, and logs (10 per cent) at USD595 million. Other products like wood mouldings and joinery took eight per cent share of export at USD538 million, while fibreboard's share was five per cent at USD340 million.

Markets

Malaysia serves a broad market front. Japan remains the largest importer of Malaysia's timber products – largely, Sarawak logs and plywood. Japan accounts for 36% of Sarawak's, total timber exports by value. In 2008, timber exports to Japan totalled USD1.27 billion, or 20 per cent of Malaysia's total value of timber exports. **The EU was the next largest market with USD1.02 billion or at 16 per cent of the market share**, followed by the USA with USD822 million (13 per cent) and ASEAN, USD652 million (10 per cent). Other major timber markets included West Asia, USD510 million (eight per cent), and the Republic of Korea, the PRC and Taiwan, each at five per cent market share.

Export performance

In the export of logs, Malaysia has remained as the largest supplier of tropical logs in 2007. Compared with the other exporters of logs, Malaysia ranked either third, fourth or fifth largest supplier of logs since 2000. In 2007, Malaysia was fifth in the list of top exporters of logs with a total volume of 4.9 million m³. Other major log exporters were the Russian Federation, the USA, Germany and New Zealand all of which were suppliers of mainly softwood logs (see Table 2.2).

In plywood exports, Malaysia is the second largest supplier (at 3.28 m³) after Indonesia (Table 2.3). It is the eighth leading exporter of sawn timber at just over one million m³ in 2008 (Table 2.4). Malaysia is also the world's tenth largest exporter of wooden furniture (third, after PRC and Vietnam, in Asia), covering 160 export destinations.

Table 2.4 World's Major Suppliers of Logs by Volume, 2000-2007

No	2000		2002		2004		2006		2007	
	million m ³									
	World	118.0	World	119.7	World	123.5	World	136.7	World	138.5
1	Russian Fed ¹	32.0	Russian Fed	37.7	Russian Fed	41.8	Russian Fed	51.1	Russian Fed	49.3
2	USA	12.1	USA	11.2	USA	10.5	USA	9.7	USA	10.1

3	Malaysia	6.8	New Zealand	7.8	Germany	5.6	Germany	7.6	Germany	6.7
4	New Zealand	5.9	Malaysia	5.1	Malaysia	5.4	New Zealand	5.5	New Zealand	5.9
5	France	5.8	Germany	4.9	New Zealand	5.2	Malaysia	4.9	Malaysia	4.9

Note: ¹ Russian Federation

Source: MPIC/FAO

Table 2.5 World's Major Suppliers of Plywood by Volume, 2000-2007

No	2000		2002		2004		2006		2007	
	million m ³									
	World	18.0	World	20.7	World	24.5	World	28.5	World	29.9
1	Indonesia	5.1	Indonesia	5.8	PR China	4.6	PR China	8.5	PR China	10.1
2	Malaysia	3.4	Malaysia	3.6	Malaysia	4.3	Malaysia	4.9	Malaysia	4.8
3	Brazil	1.3	PR China	2.1	Indonesia	4.0	Indonesia	3.0	Indonesia	2.7
4	PR China ¹	1.1	Brazil	1.8	Brazil	3.0	Brazil	2.8	Brazil	2.5
5	Finland	1.0	Russian Fed ²	1.1	Russian Fed	1.4	Russian Fed	1.5	Russian Fed	1.5

Note:

¹ People's Republic of China

² Russian Federation

Source: MPIC/FAO

Table 2.6 World's Major Suppliers of Sawntimber by Volume, 2000-2007

No	2000		2002		2004		2006		2007	
	million m ³									
	World	112.4	World	118.2	World	132.1	World	137.5	World	131.5
1	Canada	36.4	Canada	37.3	Canada	41.1	Canada	39.0	Canada	33.1
2	Sweden	11.4	Sweden	11.2	Russian Fed	12.5	Russian Fed	15.9	Russian Fed	17.2
3	Finland	8.4	Russian Fed	9.0	Sweden	11.2	Sweden	13.2	Sweden	11.3
4	Russian Fed ¹	7.7	Finland	8.1	Finland	8.2	Germany	9.0	Germany	9.5
5	Austria	6.3	Austria	6.4	Austria	7.3	Finland	7.7	Austria	7.8
6	USA	5.1	Germany	4.8	Germany	6.2	Austria	6.8	Finland	7.0
7	Germany	3.9	USA	4.5	USA	4.4	USA	4.6	USA	4.3
8	Latvia	3.0	Brazil	2.9	Brazil	3.6	Chile	3.3	Chile	3.6
9	Malaysia	2.6	Latvia	2.8	Malaysia	3.3	Brazil	3.1	Brazil	3.1
10	Brazil	2.4	Malaysia	2.5	Latvia	2.9	Malaysia	2.6	Romania	2.3

Note: ¹ Russian Federation

Source: MPIC/FAO

2.4 Challenges and Opportunities

Pillars of rainforest governance

Europe's Timber Purchasing Policies serve to stimulate sustainable forest harvesting and contribute towards eradicating problems of deforestation. These are in fact, the twin pillars of rainforest governance. They are inextricably linked. There are parameters to observe for sustainable production. Firstly, the forest manager must confine harvesting within the limits of the forest's capacity to produce commercial timber (*i.e.* volume control), and this is guided by the inherent regeneration status. Secondly, there has to be consistency in considerations to determine the annual coupe (the extent of area allowed for felling each year), within that forest management unit (*i.e.* area control). But area-volume control alone will not bear much meaning if the forest is vulnerable to encroachment and

timber stealing. Therefore thirdly, there must be effective forest protection through regimented harvesting controls, to maintain viability to the next harvest.

Clearly, concerns on deforestation and environmental degradation have been the principal factor behind EU's move to set out timber procurement policies. These are challenges that the partner countries under the VPA must meet. EU's FLEGT Action Plan concerns chiefly on damage control, by opening the door to only 'clean timber'. In addressing issues of curtailing illegal logging, one can assume too, the EU will be equally obliged to partake in instituting measures needed to effectively address forest encroachment and illegal logging problems. At the same time, obviously the partner country (in this case Malaysia), will have to prove that it has the will and capabilities, to fulfil its side of the bargain.

Industry to upgrade or divest

The policy of several producer countries to ban the export of logs has an impact on the availability of wood on the international market. This has begun to hurt some of Malaysia's timber industry especially companies which had begun to thrive on imported timber to supplement their raw material needs. Furthermore, new developments emerge in the marketplace. Besides the phenomenal growth in timber export industry of People's Republic of China (China), there is intense competition from new players such as India and Viet Nam, seriously challenging Malaysia's share in the world timber market. This has spurred the government to push the industry to move away from the relative comfort of primary products processing and instead, proceed to high-quality wood manufacturing, targeting selected niche markets. This has actually been the government's campaign over the last couple of decades. The government offers incentives for industrial research, marketing research and promotion of secondary wood products overseas.

Feeling the pressure of competition for logs as the conventional raw material, the industry gradually readjusts itself by venturing into the use of alternative raw materials. There have been active trials recently, on the use of non-wood materials such as oil-palm trunks, fruit bunches and fronds for making panels and reconstituted wood products. There is also a growing tendency towards converting the otherwise, less-popular and non-durable timber species into high-value niche products, with the use of the latest technologies in wood engineering or impregnation.

At this late stage of development, and faced with the above challenges, the timber industry will need to redefine its business strategies, combining its wealth of accumulated knowledge and expertise with a flair for innovation. Naturally, strong operators with long-term guarantee of log supplies will dig in and continue to venture forth. Some companies may see a future in specializing on making customized wood products with designer features, recognizing the rising value of good quality solid wood. Others may see opportunities in the availability of new raw materials and new technologies in the use of non-wood fibre mentioned earlier, to manufacture high quality, durable products that can substitute or exceed the performance of solid wood. There may be other enterprising manufacturers with skills to readjust their tools from basic processing to value-adding semi-finished products as they raise their sight to a higher-level market. Unavoidably too, a number will see a better future in divesting themselves of timber business and perhaps, follow their predecessors in venturing into property development, etc.

Notwithstanding future gloom, the government has confidence in the future of the timber industry. The National Timber Industry Policy, launched early this year (2009) plans to work on reversing the current dominance of primary wood processing, 60%:40% by proportion, over secondary production to 40%:60% by year 2020.

Opportunities to gain credibility

Emerging consumer awareness of the importance of conservation forestry, presents a new opportunity for Malaysia to improve its image. Malaysia has not been bringing forth sufficiently to the knowledge of the world community, its various efforts in forest conservation. In terms of compliance with the law, good operators by far outnumber the bad, in this industry (see chapter on Impacts in section 3.1, below). The problem lies in importation of illegal timber rather than in domestic illegal logging, and the

'cleaning up' process will be enhanced by enforcement measures under the renewed TLAS. With consistency in control, through the implementation of a strong TLAS under VPA arrangements, Malaysia will be projecting to the world timber market its seriousness. A timber industry that typically produces legally sourced and sustainably produced timber will lend credence to the country and its policies. The objective is to get consumers to associate Malaysia with good governance and environment-friendly wood products.

Strong discipline and adherence to procedures are the requisites of good governance. As the Forestry Department strengthens its enforcement division it plans to install greater discipline among staff and industry. Forestry staff will have to abide by their ISO 9001:2000 procedures in the day-to-day execution of duties.

When subjected to chain-of-custody auditing, loggers and mill operators have to show accountability in their respective timber businesses and be ready with sufficient evidence of legality in timber sourcing and processing. Further, their operations shall not cause environmental degradation. Exporters must maintain legitimacy in their deals if they are to be free from any form of market restrictions. It is not beyond them to earn market's confidence and assume the mantle of leadership in tropical timber trading. This could set the beginning for some form of national branding for Malaysian timber.

2.5 TLAS - An Essential Element in VPA

Malaysia and the EU have held formal discussions since 2006, on developing a VPA under the EU FLEGT Action Plan. The VPA negotiations are in progress. The immediate focus is on the current control procedures and the underlying legislation, both of which form the basis for developing TLAS. The success of the VPA implementation hinges upon the dependability of TLAS. TLAS that Malaysia develops must be in line with the EU's TLAS framework (see Section 1.7), so that all verified logs, sawn timber, plywood and veneer will be declared in the export licence as valid products under VPA definitions. Having developed a robust TLAS in the eyes of the EU, Malaysia can then expect the EU countries will readily recognise Malaysian timber as a valid product for entry into the EU market.

The Malaysian TLAS

Malaysia's Timber Legal Assurance System or TLAS, on which the VPA is built, forms a framework of monitoring and control activities to determine timber legality status. Legality verifications may take place at any stage of production and product flow from timber felling, its extraction and transportation to the mill, and finally to the market, in the form of processed timber. TLAS is also founded on the existing system of collecting royalties and other forest charges. It involves validating custodianship and payment of dues to the owners, the government.

At the export end, the system will include export licensing of the four wood products listed by the EC previously namely, round logs, sawn timber, veneer and plywood. Under VPA arrangements, these products are deemed valid for FLEGT licensing where there is proof that the timber is sourced from licensed logging areas, operated by authorized persons, and that it is exported in accordance with Malaysia's trade procedures.

In its control procedures, TLAS bases timber legality on compliance with the following six principles, which are common to Peninsular Malaysia, Sarawak and Sabah:

- a) Right to harvest
- b) Forest operations
- c) Statutory charges
- d) Other users' rights
- e) Mill operation
- f) Trade and customs

TLAS draws on procedures of verifying the legality of logs and timber products at critical points along the supply chain starting from the tree stumps to the log yards in the licensed areas, forest checking stations, inspections during transit, mill stock yards, and export and import points for logs or processed products (J. Lounasvuori, et al. 2008).

The robustness of TLAS comes with consistency in the maintenance of forest law and order. As previously mentioned, under the Federal Constitution, Malaysia's thirteen states have sole jurisdiction over land matters. This includes decisions on land under forest, such as its management, sanctioning of forest harvesting and forest revenue collection. The Federal Government therefore, does not make decisions centrally on matters such as legality and legal verifications; enforcement of forest law and forest charges, but coordinates and provides advice and assistance to the State Forestry Departments. For example, the Forestry Headquarters have progressively in the past, provided services to the states (in Peninsular Malaysia), in enforcement and forest auditing work. There are plans to extend their services to legal assistance, enabling state officers to carry out more effectively, the process of prosecuting forest offenders. States in Peninsular Malaysia have achieved uniformity in forest laws and policy, while Sabah and Sarawak regulate their forestry sectors under their own similar enactments and ordinances. These include the Sabah Forest Enactment 1968 (amended 1992) and Forest Rules (1969); and Sarawak Forest Ordinance 1954 (amended 1999).

TLAS verification systems in Sabah and Sarawak however, have evolved separately. They reflect certain similarities and variations in policies and procedures:

- a. Differences in licensing - for example, states in the Peninsula, generally issue short-term logging concessions, while Sabah has moved to a system of 100-year Sustainable Forest Management Licence Agreements, and Sarawak, a mix of medium and long-term concessions;
- b. Variances in policy objectives – for example, Sarawak's monitoring and verification systems stress heavily on compliance with log reservation quotas in meeting the needs of the local processing industry for raw material;
- c. All the states use paper-based confirmation of legality, relying (among others) on routine overseeing of harvest practices, issuance of removal passes, periodic auditing reports of District Forest Officers, and returns from licence holders; and
- d. Sarawak has outsourced log output monitoring and log reservation quotas, to its Sarawak Forestry Corporation (using the latter's monitoring arm, Harwood Timber Sdn. Bhd.). There are no provisions for similar delegation of power in the states of Sabah and Peninsular Malaysia.

The Forestry Department considers third-party oversight of legal compliance is in effect provided for, through two unrelated, but complementary, certification systems:

- a. SIRIM (Standard Institute of Malaysia) Quality Management System auditing under the ISO 9000 family of standards. Auditing takes place periodically on routine forest administration, in line with government (Prime Ministerial) drive on administrative efficiency.
- b. Malaysian Timber Certification Scheme (MTCS) or FSC forest management certification. States in the Peninsula, where each state runs as a single Forest Management Unit (FMU), apply MTCS certification state-wide, while two forest concessions in Sarawak, totaling some 156,000 hectares in Ulu Baram and Tatau have been MTCS-certified. Sabah has one FSC-certified model concession in Deramakot Forest Reserve.¹

All three Forestry Departments of Peninsular Malaysia, Sabah and Sarawak as well as the Sarawak Forestry Commission are applying the Malaysian Standard (MS) ISO 9000 series, in the effort to develop consistency in their work procedures and standards. They are awarded with SIRIM's MS ISO 9001:2000 certificates for forest management operations such as forest inventory, forest harvesting,

monitoring and control of forest harvesting, quality procedures in sustainable production, and royalty collection. Similarly, agencies like MTIB (Malaysian Timber Industry Board) for Peninsular Malaysia and Sabah, and STIDC (Sarawak Timber Industries Corporation), obtain the same ISO licensing for tasks involving control of timber exports and licensing for export of wood and wood products.

¹ Sarawak sets a target of certifying its sixty-five Forest Management Units that practise SFM, as a means of satisfying EU's TPPs. Sabah is expected to do so after completing the impending GTZ-funded independent auditing programme over its FMUs (see below).

With the recent institutional rearrangements, MTCC now functions as a fully independent national governing body for forest management certification, running on an endowment fund provided by the Ministry of Plantation Industries and Commodities. Certification bodies accredited to the Department of Standards now handle all forest management and CoC (chain of custody) timber certifications developed by MTCC. These certifications fall under the Malaysian Timber Certification Scheme (MTCS). Europe's PEFC (Programme for the Endorsement of Forest Certification) has recognized MTCS certification since July 2008.

The Sabah Forestry Department on one occasion brought in an independent auditor to complement its own General Procedure for SFM Audit of licensees. There is monitoring and control, within certain defined limits, such as in revenue collection and log movement (by using Removal Passes). By introducing ISO standards and procedures Sabah Forestry Department sees greater consistency in the performance of its activities.

Sabah plans to implement third party auditing of long-term forest licences under the FMU over two years. The project among others, would audit the legal compliance of the licensee, including the approved FMP (Forest Management Plan) and AWP (Annual Working Plan) for each licensee as well as assessing the individual licensee's performance on the level of compliance based on the agreed checklist. It would cost about RM964,390 with the government of Netherlands and German Agency for Technical Cooperation (GTZ) contributing 193,673 (RM950,000) for the first year. Half of the cost in the second year's audit will be shared between the Sabah Forestry Department and the individual licensees.

2.6 Improving Tracking Electronically

There is a general move towards applying RFID (radio frequency identification) technology with the attendant use of advanced database software and mobile technologies, for practical tasks in the field. The system is based on the use of electronic chips in tree labelling for control of forest harvesting and tracking timber movement along the supply line from the stump to the mill, in chain of custody (CoC) auditing. The use of electronic chips may also apply to activities upstream, such as forest inventory and stock mapping. The system provides a network of communication link-ups between the field and the office through the use of hand-held computers, between the different states, and between the states and the Headquarters. The technology contributes significantly to the overall efficiency of the forestry system by:

- a. Providing greater precision in data gathering and processing;
- b. Transmitting in real time, field data and information such as stock analysis in the forest, the progress of log movement, and estimates of forest dues at source;
- c. Making prompt decisions on cases that call for early solutions, especially those related to auditing and enforcement; and
- d. Facilitating the control of timber movement throughout the supply chain.

Similarly, consistency and promptness of feedback to the Forestry Headquarters will enable the Headquarters to make analysis of current developments and publish its reports early. A modern system such as this will lend greater credibility to the Department. Manpower and time savings reduce

human errors and computerized data base management improves precision and timeliness of inputs, thus leads to the increase in organizational productivity. The Department expects such applications will have lasting impacts on forest security, and the quality of forest asset information. The costs of setting up the entire system as a project will be massive. The EC will be expected to contribute partly to the project, as the exercise is very relevant to VPA's work programme.

Current trials on the use of RFID chips in Peninsular Malaysia, involve 100% tagging of trees and their logs, to facilitate control in harvesting. At a later stage of full trials, the project may include the application of GPS (global positioning system) facilities for digital tree mapping. Further, by including GPS features and active RFID chips, it may be possible to detect wayward logging in licensed areas by tracking the movements in the forest, of machinery and equipment registered with the Department. Forest harvesting rules require each licence holder not only to register workers they engage but also each equipment and vehicle they use for logging within the licensed area. Logging license holders will be required to ensure that RFID chips that the Department has fitted to the equipment will remain secured to each unit of machinery and equipment, throughout the period of the licence. Any departure from this ruling will be tantamount to violating the conditions of the licence. It may suggest that the machines and equipment are used elsewhere without notification.

In implementing TLAS, RFID technology provides opportunities to develop greater accountability in forest harvesting by making it difficult, if not impossible to get away with illegal felling and log stealing. The system can revolutionise control systems to fight illegal logging and other unauthorized activities in the forest.

Sabah commits itself to doing the same. Sabah Foundation, for example, has initiated trials on the use of RFID technology including detection gantries, as a tool in supply chain management. Unlike in Peninsular Malaysia, its main function is on the accountability of logs in the passage from the stumps to processing mills or the port. Meanwhile, Sarawak has introduced conventional 100% tagging and set up a network system for asset tracking at the key stages of the logs' journey within and out of the forest.

Peninsular Malaysia and Sabah Foundation have completed the early stages of field trials. Under the current VPA arrangements, the EC may feel it incumbent upon them to provide financial facilities and technology to assist the country in undertaking some of these important tasks.

2.7 Strengthening Malaysian TLAS with MTCS and ISO Procedures

Europe's recognition of forest certification under MTCS (Malaysian Timber Certification Scheme) through PEFC endorsement (see foregoing section), provides the opportunity for Malaysia to complement its timber legal validation process under TLAS, with forest sustainability verifications under MTCS certification. The idea is to allow the inclusion of Malaysian timber certified under MTCS, into FLEGT licensing programme under VPA arrangements.

Recent studies suggested consolidating the country's timber legality assurance system by having a uniform set of policies and methods of handling timber importation in the three regions of Peninsular Malaysia, Sabah and Sarawak. Issues to consider include:

- a. Bilateral instruments for example, with Indonesia to secure verifiable chain-of-custody evidence for Indonesian timber at the Malaysian import (licensing) point, linking it to the source in Indonesia;
- b. Prohibiting the import of wood products to match with the export ban on the same products by the producer countries (for example Indonesia, Myanmar);
- c. Giving adequate notice to the customs authorities on plans to import any form of timber;
- d. Issuing transport permits (for example Transit Removal Passes) for legally sourced imported sawn timber or similar products, in the same way as imported logs, to ease checking.

Where legality verifications depend on cross-checks between the different verifications and auditing, it is important that these processes have compatibility features. Examples are:

- e. SFM auditing to comply with the latest MTCC standards of performance under Malaysian Criteria and Indicators for SFM, 2002 (applicable in 2005);
- f. Mills to have on-line data on imported timber available on request by the relevant authorities, instead of preparing production reports only when called upon during spot checks;
- g. Mills that fail to reconcile log input with mill output, will need proof of registered timber not accounted for, in the mill's production chain;
- h. The application of ISO standards and procedures to help structure and routinise internal checking and reporting by State Forest Departments, while ensuring that the ISO procedures are in line with, and support the parallel SFM audits.

The following suggested measures may add credibility to the current verification system:

- i. State Government giving guidelines on the extent of public access to the confidential results of forest management auditing, as well as the verification decisions reached by the State;
- j. State Government setting criteria to allow for third-party auditing, complementary to the existing forest management audits. (The Sabah Forestry Department's General Procedure for SFM Audit allows *ad hoc* third-party auditing);
- k. Clearer guidelines for public notice on forest gazettelement, and settlement of aboriginal/native claims in forest gazettelement processes;
- l. Establishing mechanisms to manage disbursement of compensations; and
- m. An effective public oversight of matters related to the rights and interests of forest-dependent aboriginal and native communities, including recourse to arbitration.

2.8 Developments on VPA with Malaysia

There has been a series of meetings since the start of a formal discussion held in the autumn of 2006 in Brussels, which was to agree on the terms for a FLEGT VPA between Malaysia and the European Commission (EC). Some reports indicated that discussions on the subject of an EU-Malaysia VPA emerged as early as in 2004, followed by "focused consultations". They continued for a couple of years resulting in the 2006 joint-statement (EU presentation, 2008). To this day, there is no conclusion to the negotiations yet, although both parties initially targeted to reach an agreement by the end of 2008. But negotiations are continuing at quarterly intervals. A Technical Working Group (TWG), representing the interest of both EC and Malaysia plays a key role in bringing about the conclusion to the negotiation. It studies all materials from the Malaysian working groups, holds discussions on each issue until both sides reach an agreement. The TWG then prepares all the agreed issues, for presentation at the final stage at the Senior Officials Meetings (SOM), co-chaired by leaders of both sides. A council of senior officers representing the EC and Malaysia makes up the negotiating group of Senior Officials. The forum for formalization of agreement or final negotiation takes place at the SOM (Senior Officers Meeting).

Meanwhile in preparation, Malaysia had set up three working groups (WGs) to consider materials for negotiation. The WGs are organised in the following manner:

- a. WG I, led by the Malaysian Timber Industry Board (MTIB) – **To deal with definitions of legality and legality verification system – TLAS;**
- b. WG II, led by the Malaysian Timber Council (MTC) – **To study implications for market access and capacity building needs;** and
- c. WG III, led by the Ministry of Plantation Industries and Commodities (MPIC) – **To handle legal drafting and general provisions to wrap up the VPA draft.**

The Malaysian side, headed by the Ministry of Plantation Industries and Commodities (MPIC) has held shareholder consultations on major issues of **TLAS**, including **its implementation, monitoring and market benefits derivable from the VPA**.

The National Steering Committee (NSC), set up by the MPIC provides the mechanism to consider the outputs of the three working groups. The NSC analyses the issues raised at the working groups, together with the feedback from the shareholder consultations, and develops from there, the substance for processing, where appropriate, at the TWG level. NSC also provides the mandate for a negotiating team to operate.

The Malaysia-EU VPA negotiations at the SOM hold deliberations on the reports presented by Malaysia, through the joint Technical Working Group (TWG) to finalise the agreement.

There are certain standard obligations that Malaysia, being a party to the Agreement has to meet. They form the essential elements of the EU – Malaysia VPA negotiation:

- a. As a producer country, Malaysia needs to develop a monitoring and control system to see that no illegally produced or imported timber and timber products (of agreed categories) will be allowed for export to the EU;
- b. Malaysia is to develop a licensing scheme to verify the legality of timber entering the export market, in particular, the EU;
- c. Malaysia needs to have a licensing authority responsible for verifying the legality of timber, overseeing chain of custody auditing in timber tracking, and issuance of such licences. These licences will allow customs officers at Malaysian export point and EU import point, to control timber products covered under this agreement;
- d. The VPA negotiations will consider issues raised and agreed during consultations with relevant Malaysian stakeholders at all levels, with evidence of having gone through an inclusive, participatory and transparent process;
- e. There will be independent monitoring to ascertain or ensure the system works as planned, and at the same time, secure credence to the government and the industry; and
- f. The negotiation may also include deliberations on work done on the possible CITES listing of commercial tree species.

2.9 EU Support

The FLEGT Action Programme aims principally at excluding the entry of illicit timber into the EU countries, the EU on its part will need to provide support to Malaysia, the partner country, in the effort to realise this. The other objective is to discourage in the long run, importation of timber from non-sustainably managed forests, although this would probably prove to be problematic under WTO ruling. The EU also has to ensure that VPA-related activities in Malaysia are integrated with other regional FLEGT initiatives and share similar objectives of addressing the problems of trade in illegal and unsustainably harvested timber. The EU's main obligation in this cooperation with Malaysia is to provide integrated support to develop the VPA. The support to Malaysia will be for appropriate technical and financial outlays in capacity building, to ensure long-term security of the forest asset and improvement in forest governance. EU's expected contributions will come in four packages:

- a. Process support to include institutional redevelopment especially in capacity building;
- b. Thematic and research support as well as technical assistance, to strengthen security of asset and other areas that may include chain of custody auditing; and
- c. Information and communication support to enhance marketability of Malaysian timber.

Immediate EC Outputs

Indications of immediate support will be in the areas of training, market reports, state of the art reviews, software, and advice. In what form these outputs will appear, and to what extent they will meet expectations, will only be known as the negotiation process continues forth. The intermediate and longer term assistance will deal more with the applications of GPS and remote sensing.

2.10 Work Plan and Scope

The EU-Malaysia VPA negotiations follow a work plan in three (but not necessarily consecutive) phases, each covering a selection of topics for deliberation, as mentioned earlier:

- a. **First Phase:** WGI's definition of legality and legal verification system – TLAS;
- b. **Second Phase:** WGII's presentation on market access and capacity building needs; and
- c. **Third Phase:** WGIII's work on legal drafting and general provisions for the preparation of the final Agreement draft.

Considerations on stakeholders' inputs will prevail throughout the deliberations. These will relate mainly to the building of TLAS, touching on its implications to natives' welfare and their customary rights, market impacts on the timber industry, as well as the continuing call for NGO's participation in the negotiation process.

The following will be the principles to base on for an early conclusion to the Agreement:

- a. Using existing regulations concerning control in taking of forest produce, licensing procedures, etc. to frame Malaysia's Timber Legality Assurance System in line with EU FLEGT requirements;
- b. The existing laws are adequate for the purpose, without amending current laws or enacting new legislation;
- c. Malaysia to gain market benefits from the VPA;
- d. Malaysia to get adequate EU support for capacity upgrading to meet FLEGT requirements under the VPA; and
- e. Arising circumstance may require the VPA to run on stage-to-stage basis.

2.11 The VPA Negotiations

Work in Progress

Up to the middle of 2009, two SOMs and eight TWG meetings had taken place since the September 2006 joint statement on the VPA. As negotiations are ongoing, it is not possible to make out immediately, details of the progress achieved but clearly, both sides have issues that are yet to be resolved. The negotiation process is still some distance away from conclusion.

In the meantime, a joint EU-Malaysia independent team carried out in September, 2008, a technical evaluation study of the current control systems, the precursor to Malaysia's VPA TLAS. Deliberations on the report took place at the 8th TWG meeting in January, 2009. The meeting took note of the report's recommendations, and has begun working on some of the issues raised. The issues included the need to arrive at harmonized figures of timber flows within the supply chain; addressing the environmental impact assessment findings in the field; and the importance of running third-party auditing. Equally important were comments to have a common interpretation and level of understanding of laws and policies of the three regions in the country, specifically on forest harvesting, mill licensing and forest conversion. Possibly, negotiators would need more time to study in detail, the Joint Technical Evaluation Report, and seek the help of the Forestry Department for further clarifications. In this way both sides could come up with fair perceptions of the technical problems in the field, and arrive at fair suggestions on how the control system can be made more manageable. Both sides will have to agree on the final make up of TLAS for the VPA. Also to be resolved are complexities over other user rights, as these have led to a perennial conundrum over NCR issues.

Topics for negotiation

While it would be preemptive even to guess how far negotiations have progressed, it is appropriate to list some of the basic issues likely to be brought up for discussion.

a. Establishing Malaysia's TLAS

- Malaysian TLAS is to be drawn under the existing laws and procedures applicable to Peninsular Malaysia, Sabah and Sarawak, and to base on the existing licensing systems for forest harvesting, timber processing and timber trade.
- Malaysian timber reaching EU countries is to be accompanied with a licence issued by a sanctioned body as proof of legality, based on verifications under the pending Malaysian TLAS.

b. Ingredients of TLAS

- *Product coverage*

Currently, logs, plywood, veneer and sawn timber.

- *Principles and criteria of legal timber*

The EU has introduced six principles of legal timber and eighteen criteria. The six principles are: (1) Right to Harvest; (2) Forest Operations; (3) Statutory Charges; Other User Rights; (5) Mill Operations, and (6) Trade and Customs. These are the same principles Malaysia has agreed to adopt as basis for its TLAS (see section 2.5 above).

- *Definition of legal timber*

Legal timber is defined along the following line of interpretation: "Timber harvested under licence in approved areas, and timber and timber products exported under the laws, controls and procedures pertaining to forestry, timber industry and timber trade in Malaysia." See also definitions in sections 1.3 and 1.5, above.

(EU has included criteria on environmental management to Principle (1), and workers safety and health, to Principles (2) and (5). These criteria overlap those of SFM that appear in the standards for the MTCC certification. Malaysia has expressed earlier that VPA process should not include elements of SFM. If Malaysia agrees these criteria are to be incorporated within the set of six principles, the definition of legal timber may need to expand accordingly to reflect the two criteria).

- *Control procedures for TLAS*

To ensure continuity of timber export to the EU market, with smooth transition towards meeting EU countries' Green Public Procurement Policies on timber. Malaysia bases its TLAS on the existing systems and procedures on timber harvesting and control, timber transportation, export and import licensing, etc. in the three regions of Peninsular Malaysia, Sabah and Sarawak. Malaysia believes the TLAS that it is developing conforms to EU FLEGT's six principles, and as it is today, it applies largely to the eighteen criteria set against those principles. Malaysia is working on the more controversial criteria on user rights by the Aborigines or natives so that they may be fully resolved soon.

- *Sourcing of timber*

The forest resources of Malaysia comprise Permanent Reserved Forests, State Land and Alienated Land. The three make up the sources of domestic timber production.

The industry also imports logs, sawn timber, plywood and veneer, mainly to supplement domestic processing needs. Malaysia's TLAS is to include procedures to verify legality of sourcing for imported timber.

c. NCR-related issues

In the meantime, both parties are to consider amendments to the existing TLAS in the interest of NCR. Definition of legal timber is to incorporate elements of custom (*adat*) as codified in the existing legislation. Examples of relevant laws for reference are:

- Principles related to Land Ordinance 1958 (Sabah Cap 68),
- Principles related to Aboriginal Peoples Act for Peninsular Malaysia.
- Forest Ordinance 1954, amended 1996 (Cap 126)

d. Market benefits

The Malaysian delegation would want to seek:

- Full acceptance of Malaysia's FLEGT-licensed timber
- Trade preference for the country's FLEGT-licensed timber over that of non-VPA countries with facilities such as duty-free access, green premium, etc.
- Automatic acceptance of MTCC certified timber, and
- Visible promotion of Malaysian FLEGT-licensed timber in the EU.

Negotiations on market benefits

The 6th TWG meeting in September 2008 discussed specially on market benefits. The EC assured that all FLEGT-licensed timber would be recognized as legal and is allowed entry into EU's twenty-seven member states. In recognizing that MTCC timber certification exceeds FLEGT requirements, EC agreed that such timber should be given similar FLEGT-license.

There will be an independent market monitoring body to observe timber price movements in the EU market. Both parties agreed that Malaysia run a campaign to promote FLEGT VPA and Malaysian FLEGT-licensed timber.

Issues on tariff however, would need a separate discussion under ASEAN-EC Free Trade negotiations, GSP (Generalized System of Preferences) or other similar trade forums.

Negotiations on capacity building requirements

Under the technical support programme of the VPA, Malaysia is proposing several projects that relate to capacity building. Half of them are for implementation at the Forestry Headquarters, while the remaining projects are to be distributed among the states according to their respective needs. The Forestry Headquarters-based projects deal variously with setting up of a secretariat for the EU-Malaysia VPA to coordinate and oversee VPA programmes in action. The Headquarters will also be developing guidelines and procedures for data management, and organising their enforcement team for internal field auditing, as well as coordinating independent monitoring. There will be studies on TLAS costing and states' capacity to cope with the licensing tasks. Other projects involve establishment of a FLEGT website, detection of illegal felling, monitoring workers' occupational safety and health, and improving public relations and public awareness.

Examples of state projects are studies of costs and manpower requirements for timber tracking work; confirmations of PRF and licence boundaries, tree enumerations and digital stock mapping, field checks to comply with TLAS requirements, and training of TLAS field workers.

The EU recognizes that Malaysia would need to strengthen further its capacity to reinforce the weak links identified during the recent discussions on the current TLAS. The EU has in fact, initiated assistance for similar purposes under the German-Netherlands pre-VPA and EU post-VPA Funding. Malaysia requests the EU to study Malaysia's fresh proposals to meet its expanded needs to further capacity building.

Negotiations on the legal text for the Agreement

It is too early at this stage, to draw inferences from the outcome of the on-going negotiations. However, negotiators will need to seek consensus on the text of the final draft to ensure a sound and lasting agreement. Additional matters may arise as side-issues in the course of the discussions; issues which both sides may feel bound to consider. They could include:

- Forest certification vis-a-vis VPA. Both deal with matters on the legality of timber production and share a common objective of contributing to forest sustainability. But they are two different processes with separate approaches. Basically, forest certification is a voluntary

process, while the VPA has obligatory functions as it will be legally binding. Malaysia therefore requested that there would be no need to deliberate on forest certification or forest sustainability issues in VPA negotiations.

- As MTCC forest certification is recognised by PEFC as a validation of an SFM process, it is logical for the EC to accept MTCC certified timber in the same manner as FLEGT-licensed timber. After all, this is what EU's TPP and the Green Procurement Policies look forward to ultimately: a marketplace of sustainably produced timber;
- Environmental management and safety and health of workers – two SFM criteria used in forest management certification – have moved into the VPA domain. Should environmental and safety and health factors come into play in defining legality of timber? What relevance do they have in timber stealing?
- To clarify officially, stakeholders' involvement in VPA negotiation process: consultations or participation?
- The industry asks: What tangible 'market benefits' could result from the VPA?
- TLAS as basis for validating timber for export – to agree on the mechanism for licensing legal timber and certified timber. Its relevance will be more apparent when Due Diligence regulations come into the picture.
- Long-term implications of commitments to a durable VPA.

Negotiations on stakeholders' views

The main purposes of holding stakeholder consultations were:

- To create stakeholder awareness of EU FLEGT VPA and important issues to address in the negotiations with the EU;
- To introduce TLAS and clarify the significance of TLAS as the key element in the VPA and discuss its implications to Malaysian forestry, and possible impacts on the timber industry and trade;
- To seek and consider stakeholders' views on the proposals for TLAS and concerns about entering EU FLEGT VPA as a whole;
- Where appropriate, to refine TLAS, taking into consideration stakeholders' views.

MPIC held five stakeholder consultations to deliberate on the VPA and its implications; the last session took place in August, 2008. Consultations began with an introduction on EU-Malaysia VPA negotiations. In later sessions, discussions moved to the drafting of TLAS, independent monitoring, and market benefits. The Ministry also held special briefing sessions with the timber industry and sought their reactions on the matter. These discussions were to ensure the industry would be fully aware of the EU FLEGT VPA and the importance of formalizing Malaysian TLAS. The industry could then assess the implications of FLEGT VPA to the timber sector. The Ministry had noted the following major issues brought up by NGOs and timber industry as stakeholders, and listed them as items for inclusion in the negotiation process:

- Environmental and social impacts of illegal logging;
- Natural forest conversion to agricultural plantations;
- A review of native customary rights (NCR) - beyond the scope of the VPA;
- Inclusion of Land Ordinance 1958 (Sabah Cap 68) and Aboriginal Peoples Act (Peninsular Malaysia), in Principle 4 ("Other User Rights") of the Principles and Criteria of legal Timber;
- Ongoing conflicts over NCR in Sarawak;
- Provision for *adat* (customs) in the definition of legal timber;
- Standards developed to reflect multi-stakeholder consultations;
- Non-inclusion of NGOs in VPA negotiation process
- Inadequacy of legislation on labour: a call for amendment.

2.12 Joint Implementation Committee

In preparation for the anticipated implementation of the VPA, EC and Malaysian negotiators have agreed to set up a Joint Implementation Committee (JIC), which currently is to oversee and coordinate the work in progress. Initially JIC will have two major tasks to conduct. One is home-based, observing the running of TLAS and the other, is market-oriented, assessing the progress of Malaysian FLEGT products on the EU market. For each occasion, Malaysia will be engaging an independent, third-party monitoring body to carry out the tasks.

3. IMPACTS ON MALAYSIA'S FOREST SECTOR

Clearly, it is premature to make any definite assessment of the impacts on Malaysia – its timber market, forest management and socio-economic development - until the FLEGT policies and the ensuing VPA are in place. Until then, one can only draw inferences and speculate on the possible impacts.

3.1 Forest Administration

Progress towards SFM

In its practice of sustainable forest management, the Forestry Department applies a forest harvesting system known as SMS or the Selective Management System. SMS which began in 1978 is silviculture-based and operates on area-volume control. It was probably the pioneer of the much promoted RIL (reduced impact logging) techniques for tropical natural forests. RIL is an SFM imperative. But sustainable forest management efforts will also be enhanced with the introduction of a solid TLAS. The development of Malaysian TLAS for FLEGT will no doubt help fine tune and strengthen the existing set of controls in RIL over timber harvesting, which also covers other forest conservation measures, in line with the requirements for SFM. Furthermore, by curbing illegal and injudicious felling, forest encroachment and other violations of forest and environmental laws, TLAS will at the same time reinforce the Department's other protection efforts and together, will help advance sustainable forestry.

The ban of illegal logging

Illegal logging in the country is on a decline (Blakeney, and Forestry Headquarters reports) with the second increase in the severity of penalties for violations since the 1993 amendment to the National Forestry Act, 1983. In strengthening the Department's control over forest encroachment and illegal logging, the maximum penalty for the commission of forest offence is now doubled to RM1million (200,000 or USD 280,000 approximately). The mandatory imprisonment of not less than one year but not exceeding twenty years has now been raised to a five-year minimum jail sentence with three strokes of the cane. The Forestry Departments in all states are now intensifying measures to raise the security level of the forest by strengthening their respective enforcement divisions. In Peninsular they have the benefits of back-up manpower and legal advisory services from the Forestry Headquarters. There is a provision for assistance from the police or the army nationwide, to counter the increasingly ruthless tactics of organized crime groups in some states.

It is difficult to measure the success rate of combating timber stealing especially when such violations tend to surge whenever there is a jump in the price of the commodity. But the level of damage is visibly kept low, and there is a general sense of optimism for further decline, in view of the government's seriousness in wiping out the problem. The average annual volume of illegal timber confiscated is around 0.11% of the outturn in Peninsular Malaysia, 0.15% in Sarawak and 1% in Sabah. These volumes are insignificant in proportion to that of the total log output. Critics will say that this is scratching the surface, but through the Department's improved capabilities and the robustness of its TLAS it will be possible soon to determine the actual extent of the problems and how this can be tackled. There has to be much higher prevalence of timber theft and forest encroachment cases, before they can get close to altering the above percentages.

However, a bigger challenge lies in the control of cross-border movement of stolen timber. Reports by WWF allege that Malaysia exports to the EU 280,000 m³ of raw wood equivalent, illegally sourced, and that one third of its furniture exports to the EU is made of illegal wood. This is hardly conceivable when at least 75% of the wooden furniture it exports is made of rubberwood. Malaysia imports an insignificant amount of rubberwood from Southern Thailand. The rest is locally sourced and there has not been a known case of rubberwood theft in the country. At 280,000 m³ of so-called illegal timber, Malaysia is behind twelve other countries in Asia, Eastern Europe, Africa and Latin America that export “illegal timber” to the EU. Their exports apparently range from 4.2 million m³ down to 380,000 m³ each. In redefining its monitoring and control strategies in the name of TLAS, the Department can move towards not only improving the forest security situations within the country but also preventing timber smuggling across the national boundaries.

Developments through institutional and policy reform

With EC support, the development of TLAS and its implementation as well as other obligations under the VPA will inspire the Forestry Department to make the changes that it had previously planned or initiated. In particular, there will be organisational changes and policy reform that it had long needed to do, to mount serious measures to protect the forest. Changes may be incremental to begin with, as funding and manpower may not be available all at once. But the final outcome should be evolutionary and permanent. The Department will need to make considerable investments on manpower, technical expertise and time, etc. to build up the necessary infrastructure and facilities for a computerized system of communications and networking. For more effective monitoring and control, it will be using writeable electronic chips for labelling of trees and later, using GPS features for tracking timber movement and stock mapping. Eventually there will be possibilities of enhancing security measures by detecting forest violations through remote sensing.

Good governance

The basic administration of TLAS to field forestry is already in place. There are three volumes of the Forestry Manual that deal with all aspects of field operations in Peninsular Malaysia, and these are well reflected in procedures laid out in the ISO 9001:2000 document. Sabah and Sarawak adhere to similar ISO certification and field manuals. The Forest Department may find it useful to run a fresh review of the chapter on ENFORCEMENT in the ISO document, benefiting from some of the suggestions made in the latest reports on TLAS evaluation nationwide, and subsequent discussions with the EC. ISO procedures form an excellent basis for good governance. By adhering to ISO procedures, and instilling discipline and professionalism in the work, the Department will see a positive impact on the standard of its forest governance.

3.2 Forest Industry

Improved stock accountability through supply chain management

One of the benefits of TLAS is that it facilitates monitoring of timber flow along the **wood supply chain**. Wood supply chain involves several stages of activities that begin with tree felling in the forest, log transportation within and out of the forest, and ends as final wood products at the processing mills or the export point. The chain of custody (CoC) will trace the custodial sequence that occurs as the wood products change hands along the supply chain. CoC is a very useful instrument in TLAS implementation for work involving verifications of the timber's legality status and validations for licensing.

Supply chain management in forest industry is commonly practiced in industrialized countries. Large timber concessionaires like Sabah Foundation that handles several forest management units, require a good control of their supply chain to avoid timber losses through carelessness or pilferage. A well-run timber supply chain system using proper labelling and tracking methods can facilitate the detection of log stealing at source or in transit. (It was for this purpose that Sabah Foundation started trials in the use of RFID chips for timber tracking). But, according to Dykstra, et al. (2002), preventing log theft is only one function of chain of custody systems. “More importantly, they provide information that is

considered essential for proper management of the wood supply chain. In modern forest products manufacturing, managers need to know where their wood comes from, where it is at any point in time, where it is intended to go, and when it is scheduled to arrive there. To close the loop they also require information on whether the wood arrived at its intended destination, when it arrived, and its condition at the time of arrival. Although such information can prevent or expose log theft and can thwart efforts to add illegal logs to the wood mix, its primary use is to enable cost-effective management of the supply chain itself. Forest managers require similar information to meet contractual obligations for wood supply and also to sustainably manage the forest itself.” Supply chain management brings about greater accountability and efficiency in timber production.

The benefits of having a systematic supply chain management through electronic methods of monitoring and control are that there will be time saving through computerized stock taking, and minimal loss of timber attributed to carelessness, errors in stockkeeping, or pilferage.

3.3 The Market

In search of level playing field

There are negative implications on competitiveness. Rupert Oliver, 2008, in a recent survey, indicated Malaysia’s timber industry expresses strong sentiments against EU’s FLEGT VPA, as summarised below:

- a. The industry sees little prospect of market advantage, instead there is concern about the extra costs of compliance, when existing regulations are tough enough to cope with;
- b. There are uncertainties over the level of costs and impact of timber legality definitions on timber supply, particularly with the introduction of native rights issues. Even 1% or 2% increase in production costs can push producers away from the breakeven point (for example, furniture gross profit margin is only around 8%);
- c. There are doubts over getting price premiums for FLEGT-licensed timber;
- d. The industry seeks stronger incentives, such as tax waivers from the EU;
- e. The industry is pessimistic about the prospects of competing with non-VPA producer countries which are free from FLEGT controls.

Risks of circumvention and diversion

Reflecting the concern of many NGOs findings of the survey confirm the possibility that non FLEGT-licensed wood products will find their way via other channels to EU countries, or else will head for new markets:

- a. Should the costs of VPA and FLEGT licensing exceed circumventing costs, there is possibility exporters will go for trans-shipment of non FLEGT-licensed timber to non-VPA countries;
- b. New VPA regulations will lead exporters to divert wood products to other more accessible, growing economies.

Certainly, an early imposition of “Due Diligence” regulations that control the entry of non FLEGT-licensed timber would help encourage a speedy participation in VPA among producer countries, and domestically, remove some of the scepticisms prevalent in the industry. Besides, it is a matter of time before other major consuming countries will take similar, tough measures against illegal timber.

Active discussions continued but to outlaw the entry of non-FLEGT-licensed timber to the EU market would violate WTO rules. Nevertheless, the EC’s proposed legislation on “Due Diligence” Regulation would require EU traders to show proof of legality of the timber they brought in. (This new regulation brings EU restrictions closer to the US Lacey Act, see discussion in section 1.6, above). The proposed Due Diligence regulation once introduced would exempt FLEGT-licensed timber from requirements on proof of legality. This should facilitate FLEGT-licensed timber entry into the EU and perhaps benefit from market’s preference for its ready availability. EU has also developed guidelines for its member states to use legality of timber as the minimum standard in their Green Public Procurement Policies.

Price and cost implications

Timber prices are likely to rise significantly if there is a concerted international move to eradicate illegal logging. Success in these efforts will mean eliminating from the market, trade in stolen timber and timber products with price advantages. Price increase will benefit most the producer countries that already have effective controls in place. Malaysia should be able to meet VPA requirements with relative ease as it needs to make only minor adjustments to its current control systems. It is unlikely that additional costs incurring the government will significantly filter down to the private sector. One can only make inferences of the additional costs to the industry and trade in implementing VPA.

The National Timber Policy encourages the timber sector to gather strength and gain a competitive edge by developing proficiency in production through innovation and technology. The industry will need to make greater investments on modern processing and administration systems, R&D, strategic marketing, etc. – as persistently reminded by the government. A strong timber sector would be able to retain its leadership in the marketplace as it is in a better position to absorb the costs of coping with the changing demands of consumers.

Meanwhile, Malaysia still has more work to do upstream, piling further responsibilities to the Forestry Department. For example, Malaysia has prepared thirteen project proposals on capacity building in four clusters for EU assistance. These will cost some 1.16 million (Malaysian Ringgit or MYR 5.445 million). All of them relate to the fulfilment of VPA requirements.

In addition, the Forestry Headquarters have planned under the institutional restructuring programme, projects costing about MYR14 million (close to 3 million), focussing on law enforcement, largely to safeguard the forest resource. These four projects cover investments on infrastructure alone, including the use of helicopters for air surveillance, ground logistics and setting up of a forensic base. There will also be strengthening of the enforcement division to assist the states: services of in-house solicitors, prosecutors and forensic experts to counter the increasingly sophisticated *modus operandi* of syndicates involved in violations of the forest laws. There will be parallel proposals in the states to increase manpower and facilities for the enforcement teams, as well as recruitment of forensic science specialists. These proposals will appear in the deliberations for the forthcoming Five-year Malaysia Plan (2011-2015).

Table 3.1 Average Unit Cost of Harvesting

Activity	MC&I Compliance		Conventional Practice	
	RM/M ³	%	RM/M ³	%
Management Plan	1.17	0.59	0.24	0.21
Pre-Felling Activities	17.68	8.91	4.67	3.99
Road Construction	33.57	16.91	3.86	3.30
Felling and Related Operations	78.65	39.61	55.10	47.07
Taxation	67.18	33.84	53.18	45.43
Additional Training on MC&I Compliance	0.29	0.15	0.00	0.00
TOTAL	198.54	100.00	117.05	100.00

Source: MTC (based on Shahwahid; Awang Noor, et al.)

Table 3.2 Average Present Value Cost of Harvesting Activities

Activity	MC&I Compliance		Conventional Practice	
	RM/ha	%	RM/ha	%
Management Plan	37.92	0.59	8.10	0.21
Pre-Felling Activities	572.00	8.91	157.70	3.99
Road Construction	1,086.54	16.91	130.24	4.30
Felling and Related Operations	2,545.30	39.61	1,860.26	47.07
Taxation Additional Training	2,174.26	33.84	1,795.42	45.43
Additional Training	9.51	0.15	0.00	0.00
TOTAL	6,425.53	100.00	3,951.70	100.00

Source: MTC (based on Shahwahid; Awang Noor et al.)

It is appropriate that the EC will play its part in assisting Malaysia to relieve it of the full burden of bearing these additional costs. As it is now, SFM activities are done and costs are borne by the government except for the costs of boundary marking and such ancillary activities, which are carried out at the cost of the licensees. Costs incurred for SFM work are shown in Table 3.1 and Table 3.2 above. The figures indicate the average costs at harvest under SFM, compared with conventional felling. The increase is quite significant at 69.6% per cubic metre of wood. The corresponding increase in costs per hectare will be at around 62.6%.

Other glimpses of costs involving Forest Management Certification, Chain-of-Custody, and Independent Monitoring of TLAS are as follows:

FMU (Forest Management Units)

Nine states in **Peninsular Malaysia** – three large states of Pahang, Perak and Kelantan, and six smaller states (in terms of forest area) of Selangor, Negeri Sembilan and Melaka, Kedah, Pulau Pinang and Perlis.

In **Sabah**: 27 FMUs (Forest Management Units) each consisting of 100,000 hectares.

Sarawak has 65 FMUs

MTCS field auditing: cost of each FMU, at RM60,000 - RM 70,000 (average 13,000),

CoC (Chain of custody) auditing costs between RM 3,000.00 (600) and RM 6,000.00 (1,200) covering 1022 sawmills and 180 plywood mills

Independent Monitoring of TLAS costs Sabah over RM960,000.00 (192,000) to cover a year's work all FMUs.

3.4 Other Developmental and Social Impacts

Resource and environmental security, forest sustainability

Malaysia believes that participating in the EU-initiated VPA will also contribute to improving its green credentials through evidence of good governance. It will add momentum to the ecotourism wave especially when the world develops a more favourable perception of Malaysia's conservation forestry practices. There is growing evidence of the global love for nature, and support for national policies on the conservation of the tropical rainforests. Malaysia is encouraged by the steady increase in domestic as well as international visitors to its forest parks throughout the country. If the country is seen to be exemplary in forest conservation practices, supported by a proper execution of TLAS, it will be in a strong position to showcase to the world, the unique features and the immense wealth of its rainforests.

Social equity, well-being and welfare

This is an area that has yet to find consensus in stakeholder consultations, particularly agreement between the government and the various groups of environmental and social NGOs on issues of land

ownership and logging rights. The government has gone a long way in compensating and re-settling forest dependent communities affected by logging operations. There is an ongoing policy to exclude from licensed areas, known native (and aborigines) settlements and their immediate surroundings, especially cultural sites and burial grounds. It is compulsory for logging companies avoid as far as possible, access within these areas when transporting out the timber. The communities are duly compensated for any inconveniences that befall them out of these logging activities. Further, the forest communities find good employment as forest workers in recognition of their valuable knowledge of the environment.

The unending arguments over NCR (natives' customary rights) and demands for greater participation and decision-making in forest licensing however, remain a complex issue that cannot be resolved immediately. Some of them may not be within the ambit of the existing state legislation and policies to handle.

4. KEY SUCCESS FACTORS

US Lacey Act and Due Diligence regulations

Based on findings and discussions in the foregoing sections, it is clear that EU's initiatives in combating illegal logging by way of FLEGT VPAs have limited chances of durable success, in view of loopholes that would conflict with WTO rulings on international trade in timber. There are however, laws in importing countries that prohibit the intake and utilization of illegal timber, like the US Lacey Act and the proposed Due Diligence regulations (now pending at the EU Parliament). Such legislation could underpin the relevance of VPAs.

What remains is for other major timber consumer nations to give their support and tighten up their respective green policies. Otherwise, international forestry will have to face the spectre of continuing asset losses and environmental damage caused by illicit logging and related trading.

Forest governance

Producer countries will set about policy and institutional reforms and provide the requisites for a sound and well structured TLAS. These will improve the capacity to function, guided by operating and technical guidelines, as well as systematic control and monitoring systems. There will still be a need for integrity and discipline build-up to advance greater professionalism in forestry. Adherence to work ethics and proficiency in field forestry will do justice to TLAS. There will be good forest governance, and with ensuing discipline among the timber community. All these will contribute to the success of VPAs.

Level playing field for exporting countries

The effectiveness of VPA lies in visible reductions if not outright elimination of illegal sourcing of timber. Its lasting success will depend on the positive impact that VPAs will bring to timber industry and trade. There cannot be a net loss of competitiveness in international trading of the validly produced timber at the sacrifice of complaisant suppliers. Indeed, if VPAs succeed in getting market perception of dealing only with legitimate suppliers, and rejecting the bad apples, the timber industry could be drawn into supporting the programme.

5. CONCLUSION

5.1 General Considerations

Sustaining rainforest integrity

Illegal logging is a universal problem. Most NGOs focus on the equatorial belt, alleging 'rampant' deforestation that poses a serious threat to the survival of the rainforest. But WWF's reports of widespread illicit felling elsewhere in the world, such as Eastern Europe as well as the Siberian region, draws the world's attention to the globality of the problem. Undeniably, illegal logging and timber thefts

are the bane of forestry. But they are manageable as far as Malaysia is concerned, as is probably the case with many other affected countries. But it is incumbent on the government to act quickly. It is its primary duty to do so. The government must preserve the integrity of its rainforests, and remove all threats and dangers surrounding this unique natural resource: the Malaysian rainforests must have the assurance of long-term security.

Malaysia commits itself to being a party to EU's Timber Purchasing Policy programmes by entering into negotiations for the VPA with the EC, under the FLEGT Action Plan. In this way it will contribute actively to the elimination of illegal logging.

Need for Due Diligence

FLEGT Action Plan and its VPA are no panacea to problems of trade in illegal timber. The arrangement provides the benefit of ready access of legal timber into the EU market through FLEGT licensing, but the EU cannot stop trade in non FLEGT-licensed timber, even if the product comes without proof of legality. The EU has to contend with this loophole early enough so that the entry of timber of dubious origins will not scuttle all the good work put into the VPA process. One solution that comes to mind is supplementing the policy by applying early, the presumably forthcoming Due Diligence regulations.

TLAS and forest certification

TLAS is a pragmatic instrument in promoting timber legality. Through the VPA, and with EU's support for capacity building, Malaysian forestry will have the wherewithal to effectively eradicate illegal logging, and with the collaboration of the Royal Customs, bar the entry of contraband logs and other wood products. Implementing TLAS goes beyond legality verifications. TLAS may also serve as a strategic instrument to advance SFM by facilitating forest management activities. Its functions in monitoring and control of forest operations help to develop the desired code of conduct in the field and in the course, meet a number of criteria for SFM. It will not only concern forest safety from illegal activities but also cover certain aspects of environmental protection and social wellbeing. By application, it is another form of forest management. It even touches on environmental impact assessment. Since the enforcement functions of TLAS help in forest management auditing, certified timber ought to qualify also for FLEGT licensing. Further, forest management certification follows the path to SFM and is therefore, best suited to meeting the objectives of green policies.

Stakeholder consultations

As Malaysia sets out its VPA TLAS process, it carries out the important task of holding a series of consultation with stakeholders. TLAS bases itself on the national as well as state legal and policy framework. But it also takes into consideration relevant issues in the interest of the timber industry and the society at large.

The system is open to independent third-party verifications for compliance with timber legality requirements. In its state of near-readiness, Malaysia could take the lead in the early implementation of VPA, and put itself in good stead among the rainforest countries in demonstrating its commitments for good forest governance and forest law enforcement.

Development of TLAS will be obligatory to the partner country and is therefore a different process from forest certification. There is however, a common denominator: both must not allow the perpetration of timber thieves. In this sense, certified timber should automatically be awarded licence under FLEGT. As mentioned earlier, forest certification is a stepping stone to forest sustainability; it naturally fulfils the objectives of Green Purchasing Policies.

5.2 Lessons learned

Problems of illegal logging prevail worldwide; their solution calls for global undertaking. The EU has taken a big initiative towards prohibiting the passage of illicit timber to its member countries. But FLEGT Action Plan may offer a part-solution in addressing the issues of illegal logging. NGOs tend to

be critical of its efficacy in view of the loopholes in the system. Almost in one voice, critics insist that the EC impose tighter restrictions and look forward to the introduction of the Due Diligence regulations. USA has its Lacey Act which is another way of discouraging trade in illicit timber products. Other major consumer nations could move as one, perhaps co-ordinated by ITTO, along the lines of the EU or the USA.

Import bans are not the answer. It is unfortunate that Norway has decided to prohibit the use of tropical timber in public buildings. It is not to the interest of tropical countries to be prevented from seeking out markets for their legitimate timber products. Norway writes off the hard work of tropical countries in developing forest management certifications. This raises questions about the consistency of its green purchasing policies, as there are reports of high volumes of uncertified, even illegally sourced temperate wood, continually entering Europe. It is possible that such dubious timbers may also find their way to Norway.

A country like Malaysia which is geographically divided into three separate timber producer regions, naturally has varied timber processing patterns, oriented towards different markets. Peninsular places importance to the EU timber market more than Sarawak and Sabah, whose major markets are in the East Asian region. Since timber industry is naturally averse to new regulations and market requirements, it may take time to persuade timber industry people in Sabah and Sarawak to join in and enter into VPA. It may be more practical for Malaysia to do so in phases.

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