

Study tour report

05-09 November 2018

1. General information

The delegation has paid a visit to different government agencies who are responsible for handling timber and timber products imported to EU, either under VPA FLEGT scheme or EUTR scheme. An overview on how FLEGT Competence Authority (CA), CITES Management Authority (MA), Custom cooperate and communicate to be able to manage the goods imported have been shared with the delegation. Besides verification of the FLEGT license done by the FLEGT CA, inspection to imported goods carried out by the custom and CITES MA at sites also gave the delegation a better understanding on the roles and responsibilities of each agencies when handling with import goods.

The discussion with Independent Market Monitoring (IMM) body has given some insight about their roles in monitoring the trade flow changes after VPA FLEGT came into effect. IMM survey results showed that, importers from EU found it easier with FLEGT license compared to the DDS they have to do under the EUTR. The meeting with an importer has confirmed the finding when there is a shift in responsibility of proving wood legality from importer to exporting country. IMM has also carried out a research on impact of the VPA FLEGT to trade flow, however, they did not present the findings during the skype call. However, from the report shared by IMM, it is found that there is not much changes in the trade flow from VPA countries to EU, and no significant increase of export from Indonesia to EU after FLEGT is issued.

In the following parts of the report, findings from the study tour will be presented and some follow-ups are identified for each stakeholder after the study tour.

2. Findings on FLEGT and EUTR

2.1. How FLEGT license is handled?

✓ Importers:

- Receive original FLEGT license (in yellow paper) and 2 copies (in white paper) from its exporter
- Submit digital application on its import (via CLIENT – as in the Netherlands, or fill in data into FLEGIT¹)
- Submit original license to FLEGT CA

¹ an IT system with database related to FLEGT license. It is accessible to all EU Member States and operators communicate (provide/collect) information from FLEGIT through window interface (web-based). However, it is not linked with Customs system or VPA Countries.

- Includes one copy in the import declaration for customs clearance
- ✓ **FLEGT Competent Authority (BLE as in Germany)**
 - Verifies authenticity/validity of the license (e.g. License Number, Date of expiry, Signature and stamp, security marks ...).
 - Comparing the original FLEGT license with the specification² in the Indonesian database³ (SVLK) and the data registered in FLEGT IT (or Client as the case of the Netherlands).
 - FLEGT CA approves the license in FLEGT IT (or Client in the Netherlands) if all information is correct.
 - FLEGT CA sends notification⁴ to importer and Customs Authority on (non)approval of the license.
- ✓ **Customs Authority**
 - Customs Authority check the status of FLEGT license in the database (FLEGIT)
 - Check if the specification in the import declaration matches with FLEGT license
 - Goods are released when all information is correct, and when FLEGT license has been approved by CA.
 - Once a FLEGT license is used, it is recorded as used in FLEGIT (or Client)
- ✓ **Workload:** Depending on each harbor, the workload can vary.
 - In Rotterdam, the CA receive about 250 FLEGT license a week. About 95% are approved, 5% percent are problematic and required additional verification, none rejected.
 - In Germany, 9% of the FLEGT license needs additional verification, small amount rejected.
 - FLEGT statistic 2017 showed that, the Netherlands received the largest number of FLEGT licenses, followed by Germany, and then France, UK and Belgium. However, number of additional verification required are highest in Germany, followed by Austria, UK and Belgium.
 - Additional verification is required when any problems identified during the checking/validating of the FLEGT license.

² FLEGT CA in each country is provided access to information on licenses related to goods that enter to the country only

³ SVLK database includes signatures of Indonesian FLEGT issuing bodies, and an official pdf copy of FLEGT licenses issued by Indonesia.

⁴ In the Netherlands, Customs has access to Client (a national system), when goods arrive at the port, Customs will check in Client and see if FLEGT CA has approved respective FLEGT license yet.

2.2. FLEGIT

- Importers or forwarding agents (interactive): Enters information on the license into FLEGIT (Submits hard copy of the license to FLEGT CA)
- EU Competent Authorities (Interactive & System): Electronic notification on approval to Customs Authority and Electronic notification on approval or non-approval to importer
- EU Customs Offices (Interactive & System) : check if FLEGT license is approved by CA, however they use a separate system for customs clearance
- Exporting Countries (presently no access)
- EC-ENV (interactive and read-only access)

2.3. What are the problems faced during handling FLEGT license?

- ✓ **Mismatch in HS code:** HS code doesn't match the GN code in the import application
 - When a mismatch in HS code is found, email will be sent to importer to ask for clarification and communication between exporter and importer helps to clarify how different HS code applied by the two. The reason is mainly due to different interpretation of the definition of the HS code. In general, it is no big deal and issues have been resolved and shipment has been cleared at the end.
- ✓ **Mismatch in volume/number of pieces⁵**
 - When a mismatch in volume/number of pieces happened, email will be sent to importer to ask for clarification. Most of the time, it is due to false planning while loading the container. At the time of application for FLEGT license, the exporter agrees with the importer on the volume/number of pieces for export. However, when actually container filling, due to some space availability, they put some extra pieces (parts of furniture such as arms of chair...). In this case, Statement Letter by Licensing Information Unit is required to explain the circumstances. Competence Authorities can then adopt the net weight or number of pieces and validate the data in the system.
- ✓ **Mismatch in the country of import:** The FLEGT license is for goods to arrive in one country (Germany for example) but for some reasons, the goods arrive in another country (the Netherlands for example).

⁵ It is allowed for +/- 10% discrepancies on the weight of the shipment for shrinkage and moisture absorption reasons, not for increase in number of pieces of product or any increase in volume/weight intentionally.

- When a mismatch in the country of import is identified, the CA in the Netherlands will contact the Germany CA to get a copy of the original FLEGT license. They also ask for support to check the information from the SVLK.
 - However, the importer has to fill in import application (using Client) and the CA from the Netherlands will compare the information from the FLEGT license (a copy received from German CA) with the information from the import application.
 - The importer should also justify the situation to the Netherlands CA to get the license approved.
- ✓ Other common problems:
- FLEGT license is lost or not sent
 - Wrong or misspell FLEGT number in the application (FLEGT IT or Client)
 - “Copy for EU Customs” sent instead of original FLEGT license
 - Importer failed to fill in FLEGT license information to FLEGIT (No Client Import application sent in case of the Netherlands)

2.4. What happens when there is a problem with the FLEGT license?

- When there is a problem with the FLEGT license or the application (mismatch in code, description, amount in kg, pieces, ...) then CA will contact the Customs Authority to request for inspection.
- Besides inspection made based on problems identified from FLEGT licenses, based on data exchange between EU member states and risk-based sampling have also used to check on species and/or origin.
- Partial deliveries may cause the mismatch in weight when import application is made. In this case, only when the last part of the shipment is declared to the customs, then the whole shipment is cleared. This will incur cost to operator as all earlier deliveries are stalled. It is advised that FLEGT license is issued for individual delivery⁶.
- In case further verification is required, custom clearance is stalled. All cost occurred is at operator's responsibility.

2.5. What happens when consignment is not accepted? Penalties!

As mentioned earlier, the additional verification varies in different European countries. In 2017, the largest numbers of additional verification required is in Germany (more than

⁶ The situation is also applied in case of one license for different shipments. It is not possible to split the license for individual shipment

500), followed by Austria (close to 300), UK (about 250), Belgium (more than 150). However, the number of shipment rejected are very small.

In FLEGT regulation, Article 5(8) requires “each Member State shall determine the penalties to be imposed where the provisions of the FLEGT regulation are infringed. Such penalties shall be effective, proportionate and dissuasive”. Therefore, each member state will have their own penalties that suit national context. Penalties are including:

- Administrative charges: 6 Member states (from 30 Euros upto 24 million Euros)
- May impose criminal charges: 8 Member States
- Both administrative charges and criminal charges: 14 Member States
- Imprisonment is possible for infringement in 16 Member States

In line with Article 5(7) of FLEGT Regulation: customs may suspend the release of or detain timber products where they have reason to believe that the licence may not be valid. 25 Member States reported that they may seize timber products.

Germany: If import without FLEGT License or with invalid FLEGT License BLE may seize products and:

- Order that products must be brought back (no FLEGT License within one month)
- Sell products and confiscate the money for the state (false statements or falsification of documents)
- Order that products must be destroyed (intended only for products that should not be at all place on the market)

2.6. What are the fees for handling FLEGT license

Member States may charge fees for the processing of FLEGT licenses, as per Article 5(6) of the FLEGT. However, currently 22 Member States are not charging any fees.

However, fees are charged by Austria (105.9Euro), Finland (70), Greece (100), Italy (50) UK (9.6GBP) and Belgium (50). This wide range of the fee may reflect different admin cost associated with the processing of the FLEGT licenses, or different estimations of the related workload.

2.7. How to handle products under the EUTR

All goods coming to EU will go through the customs risk-based assessment⁷. For timber and timber products, CA gets details information from Customs⁸ such as names of operators, import products, volume, values, origin... Based on the information provided

⁷ In the Netherlands, it is called PRISMA, which is a risk-based system with more than 70 risk indicators, developed from 400y risk management experiences and information received from other authorities.

⁸ MOU signed with Customs with annexes dealing with different legislation

by Customs, a risk-based assessment is carried out by CA that is based on a number of criteria such as:

- ✓ volume of product imported: large volume
- ✓ source of origin: from high risk countries – defined annually based on reports from third parties such as NGOs reports, journalist reports, country reports on illegal logging or unsustainable forest management, ect.
- ✓ History of operators
- ✓ Due diligent system of the operators

From the risk assessment, annual plan is developed for verification of the imported timber and timber products. Due to limited resources, in Germany, about 250 operators are picked up for further document verification (of their DDS) by BLE and for investigation by Customs Authority for high risk source of origin products and high-risk operators. 50 operators are revisited the next year.

In case that the authority has doubt about the goods, operators are given more time to prove that the goods are legal. If their DDS is not adequate, then the shipment will be sent back to the origin. In case the timber cannot be proved its legality (very high risk) but the government authority cannot prove that it is illegal, the government can seize the timber and sell it (see further in session 2.4). Any operators who failed to do an acceptable DDS, will be checked again and again on their DDS.

Once selected for verification, operators are supposed to provide DDS of earlier shipments upon request. If failed to provide adequate DDS for such shipment, total equivalent value will be seized.

Customs Authority apply its own risk management system, which not only cover timber and timber products, but also others in different sector such as security, health, environment, ect.

2.8. Challenges under the EUTR

- ✓ Complex and diverse legal situation in producing countries, in different languages: Challenging in getting the right information from the country of harvest, what are the applicable laws and what forms/documents are required, plus changes in legislation in the country.
- ✓ Lack of tracking mechanisms: Matching the timber in the yard with the import data and documents is difficult, no marks on the timber from sawmill to timber yard (or beyond).
- ✓ Long supply chains / processed goods leading to complex DDS
- ✓ Risk mitigation measures often not sufficient
- ✓ Distinction between legal and illegal timber difficult
- ✓ Many operators still don't know about the EUTR

2.9. Possible solutions under the EUTR – lessons learnt

- ✓ Sound knowledge of the legal and forest management situation in the country of origin is required (through NepconSourcing Hub, Country Profiles from WCMC etc.)
- ✓ Increasingly use certification schemes, however COC and/or FSC/PEFC only are not sufficient to prove legality
- ✓ Access to up to date customs data is important
- ✓ Dissuasive penalties are needed for (some) operators to change their behavior
- ✓ Information campaigns are needed to get operators informed about their obligations

3. Questions:

- Conversion rate? No concrete definition and no regulation from EU side on this. However, it should be reasonable and based on company's history of operation as it depends on many factors: species, original type of timber (log, sawn), type and quality of final products, quality of processing facilities, ect. The acceptable range is 40-65%. However, if an operator provides recovery rate of 65%, they should have a good justification for that. There is
- Under the EUTR, who defines high risk countries and high risk species? The Operators are responsible to assess risks for his products along the supply chain and make decision whether the country of origin and along the supply chain is high risk or low risk. The assessment should include level of illegal logging in the country of origin, corruption level, how forest management is implemented. The role of government authority is to try to follow the thinking of the operator and do further assessment to make decision on whether such DDS done by the Operator is acceptable or different from the government's assessment.

4. Vietnam initial assessment

- ✓ FLEGT license: Consider issuing one original FLEGT license only and send electronic copy to CA and Customs in EU.
- ✓ Though FLEGIT is available, not all countries are using FLEGIT. Develop a system to comply with different IT system from EU side should be further assessed as it is not yet obvious
- ✓ For importing timber, Vietnam is considering applying similar DDS as described under the EUTR and the responsibilities will be with operators who import the timber. Vietnam will apply 2 filters (country of origin and OCS) to do the assessment. Government will play similar role as EU Member States' role under the EUTR, namely to do risk-based verification and investigation based on Customs data.

- ✓ On HS code issue, Customs confirmed that it is not the problem of different understanding between the Customs in different countries. HS code is declared by operator when filling the form. Customs doesn't verify all shipment and therefore doesn't identify the case when a wrong HS code is used. It is important for operators at the two ends (export-import) to communicate and agree with one HS code before applying FLEGT license.
- ✓ Remaining issues to be considered:
 - Changes in destination and/or volume/unit after applying FLEGT license
 - Traceability: None reliable traceability is available. FSC is developing a system/platform that encourage operators to provide information for quantitative reconciliation, incl. recovery rates, however it is still at early stage. Vietnam will need to learn further from Indonesia and Ghana and see how other countries setup their systems.

5. Conclusion and follow-ups

The study tour has helped understanding how FLEGT and EUTR have been handled from EU side, including roles and responsibilities, coordination between different government authorities, how FLEGIT is applied and roles of the IMM. Experiences from government authorities in managing EUTR has helped identifying the challenges as well as resources required for both operators and government authorities when managing timber import as well as FLEGT licensing is implemented.

Discussion with FSC and Dekker (an importing company) has clearly showed the challenges to operators and government authorities in collecting and managing information related to reconciliation of the timber trading between companies, as well as the establishment of the DDS.

The study tour to Europe has helped identifying gaps to be learned further from the FLEGT license authorities, which will be covered in the field trip to Indonesia in the coming time.

After the study tour, the government will develop concrete action plan. Based on concrete action plan, the government will coordinate for all supports from different stakeholders.

GIZ will base on the concrete plan to identify its technical support accordingly, a number of TA support are identified but not limited to:

- Identify options for FLEGT licensing system
- Collecting country profiles on applicable legislation, documents required for harvesting, transport and export, recommended options to mitigate risks etc. and make it understandable
- Provide comments on the draft regulation

ViForest: Raising awareness for operators (importers) on the necessity to do DDS?
How to do DDS? Desk study? Guide?

Annexes:

Annex 1: List of participants

Annex 2: Visiting program

Annex 3: All presentation