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Policy brief

CLASSIFICATION SYSTEM FOR VIET NAM'S TIMBER EXPORTING AND PROCESSING ENTERPRISES





Introduction

This policy brief makes the point that the current system of classification of timber exporting and processing enterprises is considered an important factor determining the operation of the Vietnam Timber Legality Assurance System (VNTLAS). It is a key step towards establishing a strong VNTLAS, even before joint assessment by the EU and Vietnam in the framework of The Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade (VPA FLEGT) implementation. The VPA FLEGT between the European Union (EU) aims to improve forest governance and promote trade in legal timber and timber products exported from Vietnam.

Although the current Enterprise Classification System (ECS) described in Vietnam's legal system with its focus on timber exportation and processing has some differences with the Organization Classification System (OCS) as described in the VPA FLEGT, the ECS contributes to speeding up the implementation progress of the VPA FLEGT in Vietnam. Champion enterprises fulfilling all requirements of the OCS (i.e., belonging to category I) are able to showcase their compliance and commitments to clean value chains. These are best placed for supplying to the EU market as well as other major markets in the world. At the same time enterprises (i.e., category II) that are not yet fully complying with the provisions of the Vietnamese law, will be subject to stricter verification and inspection.

Clearly, these steps aim to achieve the overall goal against illegal timber harvesting, processing and trading. After the implementation of the classification system for timber exporting and processing enterprises, the Government of Vietnam needs to expand the system to all actors along the supply chain – such as importers, manufacturers, and other actors – in the coming time to ensure full alignment with the commitments under the VPA FLEGT.

The current ECS allows enterprises and Vietnam to create trust in their business model and promote the image of the timber industry. At the same time, the stepwise approach helps to reduce the overall workload of verification and inspection by competent authorities in the future once Vietnam's FLEGT licenses are issued.

Background

Vietnam and the EU signed the VPA FLEGT in 2018 and it took effect on June 1, 2019. It is a legally binding trade agreement, which is also associated with Chapter 13 of the EU – Vietnam Free Trade Agreement (EVFTA).

Implementing Article 69 of the Law on Forestry after the signing of the VPA FLEGT, the Government of Vietnam is setting up its Timber Legality Assurance System. The first step has been realised with Decree No. 102/2020/ND-CP dated September 1, 2020 (Decree 102), as it further defined: i) Imported timber management, ii) Exported timber management, iii) Classification of timber exporting and processing enterprises, and iv) FLEGT license and independent assessment.

The subsequent Circular No. 21/2021/TT-BNNPTNT dated December 29, 2021 (Circular 21) guides the verification agencies and timber operators on the implementation of the Enterprise Classification System. The circular took effect on May 1, 2022. Since then, Vietnam has applied a risk-based classification for concerned enterprises. Thus, enterprises are classified into two types: Group I and Group II. Although the implementation of Circular 21 has been presented in several national workshops to authorities and timber associations, key aspects of the classification system, its implementation and implications, as well as required actions, are yet to be fully known by the general public and many timber operators. In this context, the project "Supporting the implementation of VPA FLEGT in

Vietnam" supported developing the policy brief and making it available to the public.

Timber exporting and processing Enterprise Classification System (ECS)

Purpose of the ECS

Circular 21 describes which information enterprises have to declare and how to do so, in the Enterprise Classification System as well as the role and tasks of the forest protection agencies and relevant agencies in verifying, inspecting and classifying enterprises. The Circular concretizes the provisions of Decree 102. It supports favourable conditions for enterprises to show their compliance in a methodical manner.

The ECS aims to (i) assess the risk level of all timber exporting and processing enterprises regarding compliance with VNTLAS requirements; (ii) assess the legal compliance of timber exporting and processing enterprises according to static and dynamic evidence as described in the legality definition, and (iii) reduce administrative procedures. Eventually, this allows for effectively and promptly implementing appropriate verification measures and encourages the enterprises to strictly comply with the law.

Scope and object of adjustment

Circular 21 covers the classification of timber exporting and processing enterprises only while the provisions of the VPA FLEGT cover all "Organizations" in the timber supply. Specifically, the VPA FLEGT states that "forestry companies, state forestry companies, protection forests management boards, special-use forest management boards and enterprises and cooperatives participating in any stage of the supply chain and having business registration" (Appendix V, Section 2.2.1). Thus, the adjustment scope of the ECS is currently narrower than that of the OCS

Classification criteria

Classification criteria according to Article 12 of Decree no. 102 and documents proving compliance with the criteria for the classification of timber exporting and processing enterprises according to Appendix II issued together with Circular No. 21 are detailed at <https://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=143869> and <https://vbpl.vn/bonongnghiep/Pages/vbpq-van-ban-goc.aspx?ItemID=152020>

Figure 1: CLASSIFICATION CRITERIA OF TIMBER EXPORTING & PROCESSING ENTERPRISES



Source: Compiled by the author

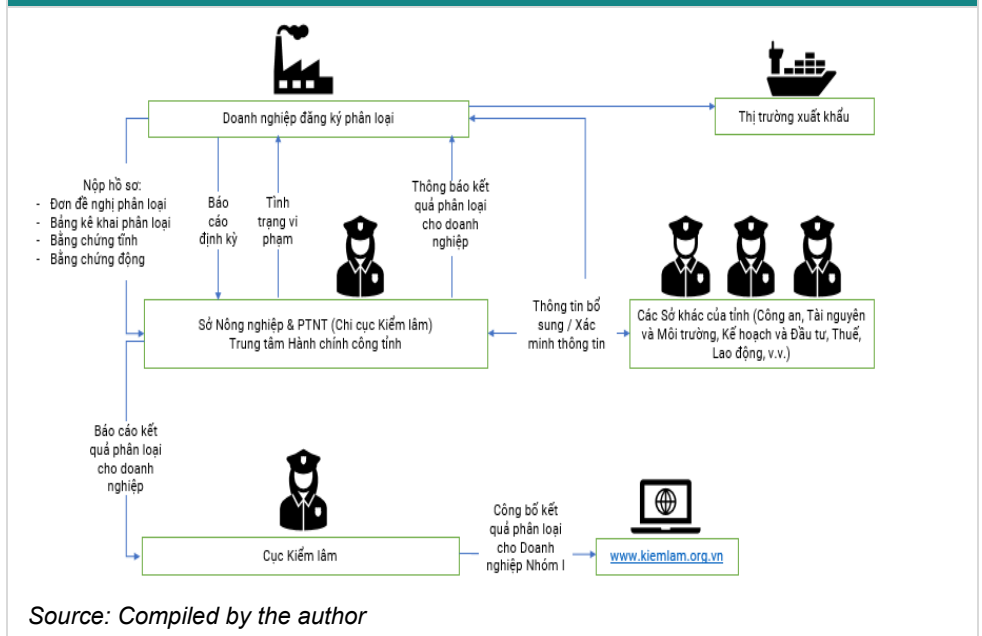
Group II enterprises are enterprises that have not yet met one of the criteria in Article 12 of Decree 102.

Procedure for classification

According to Clause 1, Article 11, Chapter III, Decree 102, the classification of enterprises must be done through the Enterprise Classification Information System (ECIS).

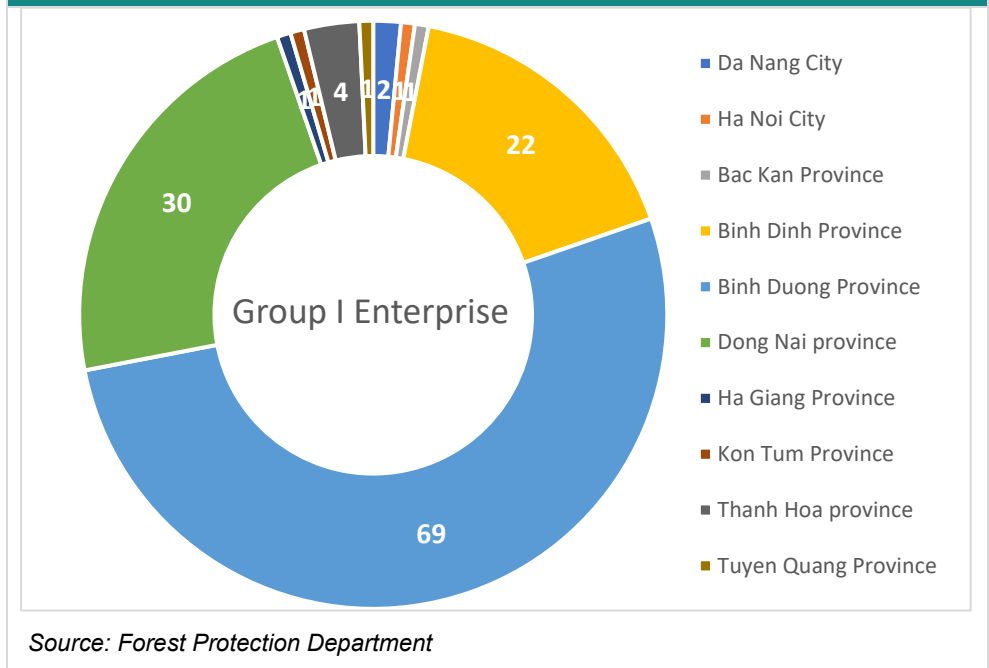
Since May 1, 2022, the central and provincial Forest Protection Departments have classified enterprises using an analogue system. Figure 2 shows implementation procedures for the classification of timber exporting and processing enterprises.

Figure 2: IMPLEMENTATION PROCEDURES FOR CLASSIFICATION OF TIMBER EXPORTING & PROCESSING ENTERPRISES



The results are published on the website www.kieklam.org.vn. As of September 8, 2022, the country boasts 132 enterprises in 10 provinces and central cities that have been recognized as Group I timber exporting and processing enterprises. In Binh Duong province, 69 enterprises – accounting for 52% of the total number of enterprises – are classified as category I; followed by Dong Nai province with 30 enterprises (accounting for 23%); and Binh Dinh province with 22 enterprises (accounting for 17%).

Figure 3: RESULTS OF CLASSIFICATION OF TIMER EXPORTING AND PROCESSING ENTERPRISES AS OF SEPTEMBER 8, 2022 (Unit: Enterprise)



Up to now, there are no statistics on the number of timber exporting and processing enterprises that have submitted their dossiers to FPD and have been categorised as group II.

Challenges and roles of stakeholders in classifying timber exporting and processing enterprises

- **Competent authorities: Forest Protection Department, Provincial Forest Protection Department, District Forest Protection Department and others**
 - The main responsible agency for classifying enterprises is the Provincial Forest Protection Department (FPD) which has available information on the forestry sector, wherein the criteria for the classification issued together with Circular 21 and Decree 102 are related to many different fields and is regulated through many legal documents (on Fire Prevention, Land, Environment, Investment - Business, Labor, Trade Unions, Social Insurance, Tax, Trade, Customs ...). These broad criteria require the development of regulations on the coordination of inspection, supervision, and the information exchange between different state agencies to all be smooth and aligned.
 - For implementing Circular 21, many provincial FPD have directed district FPD and forest rangers to inspect, guide and prompt timber exporting and processing enterprises to follow the requirements and initiate self-assessment, and then to submit this information to FPD. Since this is a sizable task, Provincial FPDs have yet to gain experience with the process and some FPDs are yet to be trained in the content and practicalities of Circular 21.
 - In addition to posting on the website, FPD is yet to transfer the results for group I enterprises to the Customs office for inclusion in the risk management database so these enterprises could benefit from simplified procedures for low risk exports – so called 'green line'
- **Timber exporting and processing enterprises**
 - The registration and declaration by enterprises are based on honesty and the commitment to assume full responsibility. If the Forest Protection Department trusts the records of the enterprises, the verification will primarily focus on some

criteria. In case the information provided by the enterprise is scattered or shows inaccurate understanding, the review will cover all the criteria. This thorough process takes time, especially in getting all the necessary information verified according to the ECS.

- Compiling information according to form No. 06 of Circular 21 is currently difficult. The enterprises would need more information on what to fill in and would require harmonized formats, e.g. for input and output monitoring of forest products. Therefore, enterprises have requested detailed instructions from FPD or a complete set of sample documents to avoid being classified as Group II due to misunderstandings on the side of the enterprises on which information to be provided in which format.

▪ ***Timber Industry Association***

Associations are serving as a bridge between the Provincial FPD and local enterprises in providing information, applying the due diligence system, and guiding the implementation to meet the requirements of the enterprise classification.

Reviewing regulations on the classification of timber exporting and processing enterprises with international commitments

According to the assessment of the EU and international and national experts alike, the current system of classifying timber exporting and processing enterprises under Decree 102 and Circular 21 still has gaps and differences as compared to commitments under the VPA FLEGT. Some major differences are indicated below.

- For the subject, enterprise classification is not conducted for All Organizations in the VNTLAS supply chain (Annex V, Section 2.2.1 of VPA FLEGT).
- For the criteria, enterprise classification is not applied for All Record of violations (as described in Annex V, Section 11 of VPA FLEGT).

At the same time, the Agreement between Vietnam and the U.S. on illegal logging and timber trade also outlines the requirement of Vietnam to amend the ECS to ensure all individuals and enterprises involved in the supply chain are classified.

Policy recommendations

Following the short analyses, some following policy recommendations are proposed.

- **Recommendation 1:** FPD should develop a digital system for online self-declaration by enterprises and partially automated classification by provincial FPD.
- **Recommendation 2:** DARD and FPD should provide specific instructions and training in the form of "hands-on" experience for rangers about the process, methods of appraisal and checking the information declared by enterprises.
- **Recommendation 3:** DARD and FPD should adjust form No. 06 of Circular 21 and provide specific instructions in the Provincial Public Administration Center's procedures for classifying timber exporting and processing enterprises.
- **Recommendation 4:** The ECS should be extended to the main players as planned by the Government. Due to limited resources, in the next stage, it may be possible to include three additional categories of enterprises into the ECS, such as timber importers, timber processing enterprises directly supplying to exporters and exporters themselves. Those enterprises could be prioritised due to their important role in the value chain which would enhance tackling any remaining illegally imported timber in the value chain.
- **Recommendation 5:** The Forest Protection Department should provide the list of enterprises classified as Category 1 to the Customs agency for

integration into the risk management database, so these enterprises could benefit from simplified procedures for low risk exports – so called ‘green line’.

- **Recommendation 6:** It is proposed to allow the integration of voluntary certification mechanisms, due diligence, and chain of custody systems recognized by VNTLAS into the Timber Exporting and Processing ECS – and in the future – into the full system.

References

1. Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade (VPA FLEGT).
2. Agreement between the Government of the Socialist Republic of Vietnam and the Government of the United States of America on illegal logging and trade.
3. Law on Forestry 2017
4. Decree No. 102/2020/ND-CP dated September 1, 2020, of the Government regulating Vietnam's timber legality assurance system.
5. Circular No. 21/2021/TT-BNNPTNT dated December 29, 2021, of the Ministry of Agriculture and Rural Development regulating the classification of timber exporting and processing enterprises.
6. Website of the Vietnam Forest Protection Department: <http://www.kiendlam.org.vn/>
7. Procedures for classification of timber exporting and processing enterprises by the Public Administration Center of Binh Duong Province and the Center for Public Administration Service Center of Binh Dinh Province.

Disclaimer: *The views and opinions contained in this article are those of the author and do not necessarily reflect the official policy or position of the German Federal Ministry for Economic Cooperation and Development, the Ministry of Agriculture and Rural Development, the Viet Nam Administration of Forestry, or GIZ. The author acknowledges the reference to the policy brief “Accreditation of voluntary certification programs as one of the criteria of the Organizational Classification System (OCS) of the Vietnam Timber Legality Assurance System (VNTLAS) by Dominic Stanculescu (December 2018).*

Liên Hệ

Danh sách các Doanh nghiệp Nhóm I về Chế biến và xuất khẩu gỗ

http://www.kieklam.org.vn/Desktop.aspx/List/Go_hop_phap/Danh_sach_cac_Doanh_nghiep_che_bien_va_xuat_khau_goc_nhom_I/

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Bản Tóm lược Chính sách này là sản phẩm của Dự án “Hỗ trợ thực hiện VPA FLEGT tại Việt Nam” do GIZ – VNFOREST tài trợ.