



**Comments from The Environmental Investigation Agency (EIA) on
Draft 6 of the “Timber and Timber Product Legality Definition for
the Voluntary Partnership Agreement”, issued in December 2012 by
the Ministry of Agriculture and Rural Development of the Socialist
Republic of Vietnam**

Summary of EIA Comments

Draft 6 of the **Vietnamese Timber and Timber Product Legality Definition (hereafter referred to as the “Legality Definition”)** structurally fails to provide credible assurances that timber imported into Vietnam has been legally harvested and traded in the country of harvest.

The Legality Definition does not build compliance with harvesting regulations in the country of harvest into sections governing imported timber, preferring instead to limit assurances to compliance with Vietnamese customs procedures.

This approach, combined with provisions for exemptions and unilateral “validation” procedures for Vietnamese officials, conspire to make the Legality Definition worse than ineffective in its function of providing the basis for assurances of the legality of timber imported into, processed in, and exported to Europe from Vietnam. Instead, the Legality Definition appears to attempt to permit Vietnam to claim that any timber imported into the country is legal if Vietnamese officials say it is.

The EC must not accept Draft 6 of the Vietnamese Legality Definition as the basis for a TLAS (Timber Legality Assurance System) that might underpin a VPA licensing system in Vietnam. It must stand firm in negotiations until the Legality Definition is fit for purpose. VPAs must not become a loophole for illegal and untraceable timber to bypass the EU Timber Regulation.

Note on the Scope of EIA’s comments:

EIA is aware that the 6th draft of the Timber and Timber Product Legality Definition incorporates some amendments suggested by Vietnamese civil society organizations following consultations on draft 5 in the proceeding months. EIA notes that recommended amendments put forward by Vietnamese civil society organizations appear to have focused entirely on domestic timber production considerations, and do not seem to have related to imported timber.¹

¹ Summary Report on The findings and recommendations of community consultation on the timber legality definition, VNGO-FLEGT Network, January 2013. Accessed at: <http://loggingoff.info/sites/loggingoff.info/files/Summary%20report%20->

Imported timber makes up approximately 80 per cent of raw material supply for Vietnam's timber industry.² Clearly, any credible Legality Definition in Vietnam must provide assurances on the legal harvesting and trade of imported timber, or it will only cover roughly 20 per cent of Vietnam's raw material sources. EIA is aware that the European Commission has made clear to the Vietnamese Ministry of Agriculture and Rural Development (MARD) that any Legality Definition underpinning a VPA licensing system must provide assurances on the legality of imported timber.

Given these considerations, and the organization's experience in tracking international timber flows, EIA has analyzed the 6th draft of Vietnam's Legality Definition almost exclusively in relation to assurances it would appear capable of providing on the legality of harvesting and trade of timber imported into Vietnam from foreign countries.

EIA Note on the two draft "Definitions":

The 6th Draft Vietnamese "Timber and Timber Product Legality Definition" includes two matrixes of Principles, Indicators and Verifiers to demonstrate timber legality. The first matrix is intended for "organizations", while the second is intended for "Households". The comments detailed below relate to the first Matrix, designed for Organization's. However, many of the issues raised also apply to the matrix for "Households" as many of the provisions are identical in both Matrixes.

Detailed Comments on Draft 6 of the Vietnamese Legality Definition

Vietnam's Domestic Timber:

Principle 1 of the Vietnamese Legality Definition enshrines the principle of "compliance with harvesting regulations" for all domestic timber, and requires evidence of compliance with this principle, in line with 10 *Indicators* and numerous *verifiers*, covering a range of different timber production sources in Vietnam.

EIA makes no comment on the contents of Principle 1.

Vietnam's Timber Imports:

Principle II of the Legality Definition deals with imported timber. It does not enshrine the principle of legal harvesting, or many of the other foreign laws involved in timber production and trade.

The Legality Definition removes all reference to "compliance with harvesting regulations" from Principle II, and instead merely refers to "compliance with regulations on imported timber". Few, if any of the verifiers of the three indicators of

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² Baseline Study 3: Vietnam: Overview of Forest Governance & Trade, Forest Trends, April 2011.

compliance with Vietnamese regulations on imported timber relate to compliance with harvesting regulations in the relevant countries of harvest.

Instead, the three Principle II indicators listed in draft 6 of the Vietnamese Legality Definition largely cover requirements to comply with Vietnamese customs and plant quarantine procedures, neither of which can or could testify to the legality of timber harvesting in, or exports from foreign countries.

Principle II, Indicator 1 merely requires that timber imports comply with domestic Vietnamese customs procedures. While they may credibly attest to the legality of *import into Vietnam*, the customs procedures detailed as verifiers in indicator 1 do not and cannot be a credible assurance of the legality of harvesting in supplier countries.

Invoices, sales contracts, packing lists and the like are not enough - such documents are commonly used for significant illegal timber flows in the region. While reference is made to CITES permits, and a special import/export permitting procedure with Cambodia, these relate to relatively low volumes of Vietnam's overall import by volume.

While the "Terminology interpretation" section accompanying the Legality Definition matrix defines "The certificate of origin (original)" as being a required part of "Customs documents", no mention of such certificates is included in Principle II of the Legality Definition matrix itself. Further, no information on which authorities in supplier countries can legitimately issue Certificates of Origin is provided in the "Terminology interpretation", or even if they are issued by foreign governments.

Worryingly, in October 2011, Vietnam announced that Certificates of Origin for logs and sawn timber from Laos were being issued by the Vietnamese Ministry of Industry and Trade (rather than by Laos authorities), and that such measures were specifically designed "to avoid possible accusations of trading Laotian illegal wood".³

Indeed, during undercover investigations into the illicit log trade between Laos and Vietnam, EIA has been provided with copies of Certificate of Origin (CO) documents issued by the Vietnamese Chamber of Commerce & Industry stating Laos as the Country of Origin and China as the country of import. No official Laos Certificate of Origin accompanied the documents, and the company concerned informed EIA that they did not have Certificates of Origin from Laos as they would need to pay for them, and that they had made many shipments in this way.⁴

Evidence that Vietnamese officials are already issuing Certificates of Origin for timber imported from neighboring countries are of considerable concern, raising doubts that such documents are actually required on import by Vietnamese Customs.

Principle II, Indicator 2 merely requires importers to comply with Vietnam's existing plant quarantine regulations – none of which relate to the legality of harvesting in the country of harvest. Further, according to the Legality Definition,

³ Trade: Vietnam to Tighten Timber Imports from Laos to Avoid Possible Accusations, Vietnam News Brief Service, 17 October 2011.

⁴ See section on Nicewood, in Checkpoints: How Powerful Interest Groups Continue to Undermine Forest Governance in Laos, EIA, September 2012.

Vietnam's plant quarantine regulations allow for exemptions, without elaborating on their nature, for an unspecified volume of timber and timber products. Importers of such exempted timber can apply for plant quarantine documents in Vietnam, validated by Vietnamese authorities.

While fumigation of non-fumigated logs in Vietnam is logistically sensible where supplier countries do not have the facilities, indicator 2 offers no assurance whatsoever that imported timber complies with harvesting regulations in the country of harvest.

Principle II Indicator 3 relates to the requirement for relevant Hammer Marks or other log markings required in supplier countries to be evident on logs imported into Vietnam.

Hammer marks and other log markings can be directly or indirectly relevant to certain aspects of legal timber harvesting and trade in various countries. Laos, for example, requires all logs, sawn timber, stumps and galls - whether for export or domestic processing - to be hammer marked accordingly, though in practice this rarely occurs.⁵

However, while the Legality Definition states that hammer and other log markings are a requirement, one of the "verifiers" of this indicator explicitly permits non-hammer marked logs to be imported, and subsequently be unilaterally marked by Vietnamese "residential forest rangers" using Vietnamese hammer marks. It does not state that this cannot happen where hammer and log markings are a requirement in the country of harvest.

Rather than providing any form of assurance on the legality of imported timber (as a Timber Legality Assurance System – TLAS should), this indicator effectively permits logs without legality assurances required in key supplier countries (hammer marks) to be freely imported and "validated" by Vietnamese officials.

Though they are an indicator of ownership or permitting in many countries, log markings or hammer marks are seldom evidence in themselves that all harvesting and trade practices comply with relevant legislation. Further, the relevant Vietnamese Decision⁶ requiring hammer marks on imported logs – issued in 2006 - is completely disregarded in practice.

EIA has been monitoring flows of logs from Laos to Vietnam since 2007, with investigators having personally seen tens of thousands of Laos logs in ports, storage yards, and processing factories across Vietnam over a 5 year period. Not once have EIA investigators seen any hammer marks on any Laos logs in Vietnam. Nor do any of the photographs EIA researchers have taken of Laos logs in Vietnam evidence any form of hammer marks – either Laos or Vietnamese markings. While this is a clear failing of Laos authorities to apply their own laws, it is clear Vietnamese officials are equally failing in their duties.

⁵ Article 3, Paragraph 29 of Forestry Law No.6/NA, 24th December 2007, superseding Forestry Law 13/NA of 9/11/2005.

⁶ Article 7, 8, Decision No. 44/2006/QĐ-BNN, as cited in Draft 6 of the Timber and Timber Product Legality Definition for the Voluntary Partnership Agreement", issued in December 2012 by the Ministry of Agriculture and Rural Development of the Socialist Republic of Vietnam.

Added to these concerns, the “requirements” of Indicator 3 only cover round logs, and do not cover any other type of timber product, resulting in the measure not applying to large volumes of timber imported into Vietnam, including the requirement for hammer marks on rough sawn timber, stumps and galls from Laos.

Combined, these weaknesses conspire to make Indicator 3 of Principle 2 largely incapable of providing credible assurances of the legality of imported timber.

EIA Conclusions on the Principle (II) and its Indicators (1-3) for Timber Imported into Vietnam:

Principle II, which covers imported timber, has removed reference to “compliance with harvesting regulations” that is centrally enshrined in principle I covering domestic Vietnamese timber. This suggests that Vietnam’s Legality Definition is not intending to provide assurances that imported timber was legally harvested in the country of harvest, but rather that it was legally imported into Vietnam according to Vietnamese laws.

Such conclusions are reinforced by the fact that none of the three indicators to be employed in demonstrating compliance with Principle II provide any assurance of the legality, or otherwise, of the harvesting in the country of harvest.

Further, the three indicators of compliance with Principle II provide various options and procedures for Vietnamese customs, forestry, and other officials to unilaterally “validate” imported timber that does not comply with the core substance of the indicators or verifiers, or has been somehow “exempted” from the requirements of the core verifiers listed.

The net result is that this crucially important element of the Legality Definition provides virtually no assurances whatsoever that the timber imported into Vietnam had been legally harvested or traded in the country of harvest, while formally allowing Vietnamese authorities to validate the legality of timber they have little to no assurance has been legally produced and traded.

Given the proportionately large contribution imported timber makes to overall timber flows in Vietnam (estimated at 80% in 2011),⁷ such failings not only undermine assurances the draft Legality Definition can make for the vast majority of timber commercially traded in Vietnam, but also the credibility of the rest of the system as it relates to timber transport, processing and trade.

EIA believes such an approach is structurally flawed. At best it fails to provide the assurances required by any credible VPA licensing system. At worst it would appear to be an effort to enable Vietnam’s timber industry and regulatory authorities to launder illegal or unknown-source timber into the EU, under a VPA Licensing System. This is unacceptable.

⁷ Wood products industry faces challenges, Vietnam News Service, March 28, 2011.

Timber Transport, Trade, Processing & Export:

Draft 6 of the Vietnamese Legality Definition also includes Principles, Indicators and Verifiers on the legal transportation, trade, processing, and export of timber and wood products.

While the Principles, Indicators and Verifiers relating to these downstream processing and trade sectors in Vietnam may be adequate to provide assurances of legality for timber harvested in Vietnam (due to Principle I's detailed provisions on domestically legally harvested timber), for imported timber, they fail.

Due to the weakness of the Indicators and Verifiers making up Principle II on imported timber, the elements of the Legality Definition dealing with how imported timber is subsequently transported, traded, processed, and exported from Vietnam, are incapable of demonstrating that Vietnam's re-exports of imported timber (whether further processed or not) are made with legal wood.

Principle III of the Legality Definition deals with "Compliance with the Regulations on Timber Transportation and Trading", and includes 8 Indicators of compliance.

Principle III, Indicator 3, covers imported timber that is subsequently re-exported to third countries without further processing within Vietnam. Many of the structural failings of Principle II to provide credible assurance of timber legality are directly carried over into this section of the Legality Definition, rendering it largely, if not entirely, irrelevant as an assurance of legality for imported timber.

Similarly, **Principle III, Indicator 5**, which is supposed to provide assurances on the legality of "processed timber, timber products which are harvested in natural forests; import timber; handled confiscated timber", requires merely a Finance Ministry invoice and the exporters' packing list validated by Vietnamese forest rangers. No reference is made to any of the requirements on imported timber as detailed in Principle II, which are themselves largely redundant in demonstrating that harvesting in supplier countries was legal.

Further, **Principle IV** on "Compliance with the regulations on timber processing" also repeats many of the inherent weaknesses of the provisions in Principle II on imported timber.

Principle IV, Indicator 2 covers the "origin of timber which are going to be processed" by processing companies in Vietnam. The only verifier mentioned for imported timber is that hammer marks on logs – as required in the country of harvest – are either evident, or if missing, have been made with Vietnamese Hammer Marks by Vietnamese officials. Again, Vietnamese officials can unilaterally mark logs so they comply with this aspect of the Legality Definition – even where they fail to comply with the log marking requirements of the country of harvest.

It goes on in this vein throughout the entire Legality Definition.

Principle V on "Compliance with Exporting Regulations" includes two Indicators – neither of which would seem to provide assurances concerning the legality of timber

in the products, at least as far as imported timber is concerned. **Indicator 1** on “Compliance with Regulations on Customs Procedures” relates only to Vietnam Customs’ export procedures. While indicator 1 would seem capable of demonstrating that timber has been *legally exported from Vietnam*, this has no bearing on the legality of the timber harvesting, or the legality of the upstream trade. **Indicator 2** on “Compliance with Regulations on Plant Quarantine” similarly has no bearing on the legality of timber in the exported goods.

Further, EIA notes that Principle V on exports makes no reference to any legal requirement that exported timber must be constituted entirely from legally harvested timber. EIA can only conclude that it is not an offense in Vietnam to export timber or wood products made with imported timber that was illegally harvested or traded in supplier countries. If this is not the case, the Legality Definition should make this clear. It does not.

Note on Military Companies:

Chapter II, Article 9 of Vietnam’s Law on Enterprises (2005) explicitly prohibits units of the people’s armed forces of Vietnam from “the right to establish, contribute capital, purchase shares and manage enterprises”.⁸

This measure was reinforced at the Fourth plenary session of the Vietnamese Communist Party Central Committee, in 2007, which adopted a resolution directing army, police and regime-sponsored mass organizations to divest themselves of all commercial enterprises by the end of 2012. Indeed, Prime Minister decision 339/QD-TT of March 2008 explicitly ordered the Vietnamese Ministry of Defense to reorganize around 100 named companies owned by the Vietnamese People’s Army, and enact the divestiture of 84 wholly-owned companies by 2010.⁹

EIA investigations in 2010, 2011, and 2012 have repeatedly shown that the **Company of Economic Cooperation (COECCO)** – a commercial subsidiary of the **Vietnamese People’s Army’s Military Region 4** - is one of the biggest single importers of timber into Vietnam, probably the biggest log importer from Laos into Vietnam, a major re-exporter of Laos logs from Vietnam to other countries, and a significant supplier of Laos logs to numerous furniture and other wood product processing companies across Vietnam – many of which export to the EU. COECCO also operates its own sawmill in Laos, and another in Vinh city, Vietnam, both of which were still active in July 2012.¹⁰

Principles III, IV & V of draft 6 of the Vietnamese Legality Definition, relate to compliance with regulations on timber transport and trade, timber processing, and exports, respectively. COECCO is involved in all of these activities.

⁸ Law on Enterprises, 2005.

<http://www.vietnamlaws.com/freelaws/Lw13na12Jun99Enterprises%5BXIV1033%5D.pdf>

⁹ <http://thuvienphapluat.vn/archive/Quyét-dinh/Quyét-dinh-339-QD-TTg-phe-duyet-phuong-an-sap-xep-doi-moi-doanh-nghiep-100-von-nha-nuoc-truc-thuoc-Bo-Quoc-phong-giai-doan-2008-2010-vb64500t17.aspx>

¹⁰ See EIA reports: Crossroads (2011) and Checkpoints (2012).

While Principle IV on compliance with regulations on timber processing cites the need to “ensure the legitimacy of processing enterprises” through the provision of business registration licenses, it fails to cite any of the legal provisions that limit the right of military units - such as Military Region 4 - to establish, finance, or manage enterprises.

EIA is not aware of whether COECCO has now been divested from Military Region 4, or if it has ceased operating. However, if it has not, it would seem that a major player in the Vietnamese timber industry is effectively operating outside of and in spite of the law, and in ways that would appear to compromise entire swathes of the Vietnamese timber Legality Definition.

EIA urges the European Commission and Vietnam to work together to clarify the legal status of COECCO and similar military companies in the timber trade in Vietnam, and ensure any final Legality Definition excludes them from any legitimate role in the Vietnamese timber trade.

EIA, February 2013