



Rat der
Europäischen Union

Brüssel, den 2. Dezember 2019
(OR. en)

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FORETS 32
DEVGEN 182
ENV 534
RELEX 431
JUR 411

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vom	8. Oktober 2004
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Betr.:	Empfehlung der Kommission an den Rat im Hinblick auf die Ermächtigung der Kommission zur Aufnahme von Verhandlungen über den Abschluss von Partnerschaftsabkommen zur Umsetzung des EU-Aktionsplans "Rechtsdurchsetzung, Politikgestaltung und Handel im Forstsektor" (FLEGT)
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Die Delegationen erhalten in der Anlage die freigegebene Fassung des obengenannten Dokuments.

Der Wortlaut dieses Dokuments ist mit dem der vorherigen Fassung identisch.

RESTREINT UE



RAT DER
EUROPÄISCHEN UNION

Brüssel, den 8. Oktober 2004 (13.10)
(OR. en)

13197/04

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ÜBERMITTLUNGSVERMERK

Absender: Frau Patricia BUGNOT, Direktorin, im Auftrag des Generalsekretärs der Europäischen Kommission

Eingangsdatum: 22. Juli 2004

Empfänger: der Generalsekretär/Hohe Vertreter, Herr Javier SOLANA

Betr.: Empfehlung der Kommission an den Rat im Hinblick auf die Ermächtigung der Kommission zur Aufnahme von Verhandlungen über den Abschluss von Partnerschaftsabkommen zur Umsetzung des EU-Aktionsplans "Rechtsdurchsetzung, Politikgestaltung und Handel im Forstsektor" (FLEGT)

Die Delegationen erhalten in der Anlage das Kommissionsdokument SEK(2004) 973 endg..

Anl.: SEK(2004) 973 endg.



KOMMISSION DER EUROPÄISCHEN GEMEINSCHAFTEN

Brüssel, den 20.7.2004
SEK(2004) 973 endgültig

RESTREINT U.E

**EMPFEHLUNG DER KOMMISSION AN DEN RAT
IM HINBLICK AUF DIE ERMÄCHTIGUNG DER KOMMISSION
ZUR AUFNAHME VON VERHANDLUNGEN ÜBER DEN ABSCHLUSS VON
PARTNERSCHAFTSABKOMMEN ZUR UMSETZUNG DES EU-AKTIONSPLANS
"RECHTSDURCHSETZUNG, POLITIKGESTALTUNG UND HANDEL IM
FORSTSEKTOR" (FLEGT)**

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BEGRÜNDUNG

1. EINLEITUNG

Im Mai 2003 veröffentlichte die Europäische Kommission den EU-Aktionsplan "Rechtsdurchsetzung, Politikgestaltung und Handel im Forstsektor (FLEGT)" ⁽¹⁾. Mitte Oktober nahm der Rat Schlussfolgerung zu dem Aktionsplan ⁽²⁾ an. Im Januar 2004 verabschiedete das Parlament dazu einen Antrag ⁽³⁾.

Mit diesem Aktionsplan stellte die Kommission ein neues und innovatives Konzept zur Bekämpfung des illegalen Holzeinschlags vor, das eine verantwortungsvolle Politikgestaltung (Good Governance) in den Entwicklungsländern mit den Rechtsinstrumenten und Steuerungsmöglichkeiten des EU-Binnenmarkts zu verbinden sucht. Kernbestandteile des Aktionsplans sind Maßnahmen zur Förderung einer verantwortungsvollen Forst- und Holzwirtschaft in den Holz erzeugenden Ländern einerseits und die Einführung eines Genehmigungssystems andererseits, mit dem gewährleistet werden soll, dass nur legal geschlagenes Holz in die EU eingeführt wird.

Das Genehmigungssystem für Holzprodukte soll auf freiwilliger Basis auf der Grundlage von Partnerschaftsabkommen mit den Holz erzeugenden Ländern und Regionen, die in diesem Bereich mit der EU zusammenarbeiten wollen, umgesetzt werden.

Dieses Dokument enthält eine Empfehlung der Kommission an den Rat im Hinblick auf die Ermächtigung der Kommission zur Aufnahme von Verhandlungen über den Abschluss von FLEGT-Partnerschaftsabkommen gemäß Artikel 300 EG-Vertrag.

Die Kommission hat die Absicht, FLEGT-Partnerschaftsabkommen mit den Holz erzeugenden Ländern auszuhandeln, die infolge des illegalen Holzeinschlags vor gravierenden Problemen stehen. Zu diesem Zweck wurden im Rahmen von Konsultationen, an denen sich neben der Kommission auch interessierte EU-Mitgliedstaaten beteiligen, erste Kontakte mit mehreren Holz erzeugenden Ländern geknüpft. Eine Zusammenfassung der bisherigen Konsultationen ist in Anhang 2 beigefügt. Auch bei Gesprächen auf hoher politischer Ebene, die teils von der Kommission, teils von Vertretern der EU-Mitgliedstaaten geführt wurden, haben Holz erzeugende Länder großes Interesse am Abschluss von FLEGT-Partnerschaftsabkommen bekundet. Die Kommission wird gemeinsam mit den Mitgliedstaaten auf diesen Kontakten und Gesprächen aufbauen und den Rat über die Fortschritte laufend unterrichten.

¹ KOM (2003) 251

² ABl. C 268 vom 07.11.2003, S. 0001-0002

³ Parlamentsdokument 7014/04

2. KURZBESCHREIBUNG DES EU-AKTIONSPLANS "RECHTSDURCHSETZUNG, POLITIKGESTALTUNG UND HANDEL IM FORSTSEKTOR (FLEGT)"

Der Aktionsplan "Rechtsdurchsetzung, Politikgestaltung und Handel im Forstsektor (FLEGT)" sieht die Umsetzung eines als Prozess konzipierten Maßnahmenbündels vor. Dabei liegt der Schwerpunkt einerseits auf politischen Reformen und dem Aufbau von Kapazitäten in den Holz erzeugenden Ländern und andererseits auf flankierenden Maßnahmen auf der Nachfrageseite. Letztere sollen dazu dienen, den Konsum von illegal geschlagenem Holz in der EU (und letztendlich auch in den anderen wichtigen Absatzmärkten der Welt) zu verringern.

Zu den politischen Instrumenten, die nach den Vorschlägen der Kommission zum Einsatz kommen sollen, gehören u.a.: technische Hilfe und Zusammenarbeit bei der Förderung einer verantwortungsvollen Forst- und Waldwirtschaft; Maßnahmen zur Bekämpfung des Handels mit illegal geschlagenem Holz; ergänzende Maßnahmen im Bereich der öffentlichen Beschaffung; ergänzende und parallele Initiativen des Privatsektor gemäß den Grundsätzen der sozialen Verantwortung von Wirtschaftsunternehmen ("Corporate Social Responsibility"); Maßnahmen zum Schutz von Investitionen und Finanzierungen. Diese Maßnahmen werden in der Mitteilung über den EU-Aktionsplan "Rechtsdurchsetzung, Politikgestaltung und Handel im Forstsektor (FLEGT)" im Einzelnen erläutert.

Zurzeit wird an einem koordinierten Vorgehen der EU zur Umsetzung des FLEGT-Aktionsplans gearbeitet, das an den besonderen Stärken und Fähigkeiten der Kommission und der einzelnen EU-Mitgliedstaaten ausgerichtet ist.

3. ZIELE UND GELTUNGSBEREICH DER FLEGT-PARTNERSCHAFTSABKOMMEN

Ziel des FLEGT-Aktionsplans ist es, eine verantwortungsvolle Forst- und Holzwirtschaft in den Entwicklungs- und Transformationsländern mit den Rechtsinstrumenten und Steuerungsmöglichkeiten des EU-Binnenmarkts zu verbinden. Kernbestandteile des Aktionsplans sind Maßnahmen zur Förderung einer verantwortungsvollen Waldbewirtschaftung in den Holz erzeugenden Ländern und die Einrichtung eines Genehmigungssystem, mit dem gewährleistet wird, dass nur legal geschlagenes Holz in die EU eingeführt wird.

Die Einführung des Genehmigungssystem für Holzeinfuhren erfolgt auf freiwilliger Basis auf der Grundlage von Partnerschaftsabkommen mit den Holz erzeugenden Ländern, die in eine Zusammenarbeit mit der EU in diesem Bereich einwilligen. Aufgrund seines freiwilligen Charakters ist dieses System mit den WTO-Regeln vereinbar.

Dem Rat wurde neben dieser Empfehlung für ein Verhandlungsmandat auch der Entwurf einer Verordnung vorgelegt, die die Einführung des Genehmigungssystem im Rahmen der Gemeinsamen Handelspolitik nach Artikel 133 des Vertrags zur Gründung der Europäischen Gemeinschaft vorsieht.

Das Genehmigungssystem ist Teil umfassender Partnerschaftsabkommen zwischen der EU und den Holz erzeugenden Ländern. Diese Abkommen enthalten Bestimmungen über die technische Hilfe zur Unterstützung der Umsetzung des Genehmigungssystem und sehen neben zusätzlichen Maßnahmen zur Förderung einer verantwortungsvollen Forst- und

Holzwirtschaft in den Partnerländern auch Verpflichtungen zur Verbesserung des Umweltmanagements vor.

In den Partnerschaftsabkommen wird eine Reihe von Maßnahmen und Reformen dargelegt werden, die zum Aufbau von Systemen führen sollen, mit denen – nachweisbar - gewährleistet wird, dass das Holz gemäß den Rechtsvorschriften des Erzeugerlands geschlagen wurde. Darin werden auch Fristen für die Durchführung dieser Maßnahmen und Reformen und für die Operationalisierung des Genehmigungssystems festgelegt werden.

Die Verhältnisse im Forstsektor wie auch die politischen Rahmenbedingungen sind von Land zum Land sehr unterschiedlich. Daher müssen die Systeme, Strukturen und Kriterien zur Überprüfung und Bestätigung des legalen Holzeinschlags im Ursprungsland in Abstimmung mit den Partnerländern auf die besonderen Bedingungen vor Ort zugeschnitten werden.

Die Systeme zur Gewährleistung des legalen Holzeinschlags werden wo immer möglich auf den bestehenden Verfahren aufbauen. Dazu zählen auch die von der Privatwirtschaft eingerichteten und verwalteten Systeme, die je nach Bedarf geändert oder verbessert werden sollen. Die Systeme werden so gestaltet werden, dass der legale Handel nicht benachteiligt und die nach Ermessen und ohne Rechenschaftspflicht erteilte Befugnisse zur Ressourcennutzung nicht verstärkt werden. Die Transparenz solcher Systeme ist von zentraler Bedeutung.

Das Genehmigungssystem und die damit verbundenen Systeme müssen für Industrie und Handel praktikabel und für die Behörden und die anderen damit befassten Stellen kontrollierbar sein. Die Erteilung der Genehmigungen muss wirksam, kosteneffizient, zuverlässig und öffentlich überprüfbar sein und darf sich nicht zum Nachteil der legalen Geschäftstätigkeit auswirken.

Auch wenn die Partnerschaftsabkommen auf die besonderen Verhältnisse im jeweiligen Partnerland abgestimmt werden sollen, werden sie auch einige gemeinsame Elemente beinhalten. So wird sich jedes Partnerland dazu verpflichten müssen, glaubwürdige rechtliche und administrative Strukturen und technische Systeme zur Überprüfung der Legalität der Herkunft von Holz und Holzzeugnissen nach dem nationalen Recht zu entwickeln. Dies bedeutet

- eine Verpflichtung der EU zur Gewährung technischer Hilfe in den im Folgenden genannten Bereichen und generell bei der Förderung einer verantwortungsvollen Forst- und Waldwirtschaft,
- eine Verpflichtung der EU zur Förderung der Nutzung von und des Handels mit legal geschlagenem Holz,
- eine Verpflichtung der Partnerländer zur Sicherstellung, dass das geltende Forstrecht stringent, verständlich und durchsetzbar ist,
- die Entwicklung technischer und administrativer Systeme, um den Holzeinschlag zu überwachen und um zu ermitteln und zurückzuverfolgen, welchen Weg das Holz genommen hat - vom Ort des Fällens bis zum Absatzmarkt oder Ausfuhrort und dann zum Ort der Einfuhr in die EU,

- den Einbau von Kontroll- und Prüfmöglichkeiten in das Rückverfolgungs- und Genehmigungssystem, einschließlich der Benennung unabhängiger Kontrolleure, sowie
- die Entwicklung von Verfahren zur Erteilung von Ausfuhrgenehmigungen für legal geschlagenes Holz, falls solche Verfahren nicht bereits existieren.

Aufgrund der Schwierigkeiten, die mit der Feststellung der Herkunft hoch verarbeiteter Holzprodukte verbunden sind, wird sich das Genehmigungssystem zunächst auf eine begrenzte Zahl von Holzprodukten (Rundholz, grob gesägtes Holz, Furnierholz und Sperrholz) erstrecken. Nach der geplanten Verordnung kann das System allerdings dort, wo dies praktikabel erscheint, auf weitere Produktkategorien ausgedehnt werden.

4. INTERESSEN DER PARTNERLÄNDER UND DER GEMEINSCHAFT

Sowohl die Gemeinschaft als auch die Partnerländer haben ein klares Interesse daran, bei der Umsetzung des von der EU vorgelegten FLEGT-Aktionsplans zusammenzuarbeiten.

Die Bemühungen der Holz erzeugenden Länder um Eindämmung des illegalen Holzeinschlags werden oft dadurch zunichte gemacht, dass, sobald das illegale Holz das Land verlassen hat, nicht ohne weiteres verhindert werden kann, dass es in die Versorgungskette gelangt und die Beteiligten damit Gewinne erzielen. Das Genehmigungssystem würde hier Abhilfe schaffen.

Das FLEGT-Genehmigungssystem bietet den teilnehmenden Ländern auch weitere Vorteile:

- größeres Vertrauen der Märkte in das Holz aus den teilnehmenden Ländern;
- Zunahme der Zoll- und Steuereinnahmen;
- zusätzliche Vollzugsinstrumente zur Bekämpfung illegaler Aktivitäten auf dem Markt, von dem das Holz stammt;
- Priorität in der EG-Entwicklungshilfe für FLEGT-bezogene Fördermaßnahmen bei der Programmierung der jeweiligen Länderstrategien.

Seitens der Gemeinschaft kommt das FLEGT-Genehmigungssystem den wachsenden Forderungen der Wirtschaft und der Verbraucher nach Herkunftsgarantien bei Holzprodukten entgegen.

Importeure, die Holz in Ländern einkaufen, die mit dem Problem des illegalen Holzeinschlags zu kämpfen haben sollen, können oft nicht sicherstellen, dass dieses Holz legal geschlagen wurde. Ihre Geschäfte leiden unter der negativen öffentlichen Wahrnehmung und die Verbraucher kaufen lieber Ersatzprodukte und –materialien. In einigen Ländern, so vor allem in Russland, hat der Privatsektor freiwillige Systeme eingeführt, um diesen Problemen zu begegnen.

Das FLEGT-Genehmigungssystem ist auch eine Antwort auf die Sorgen der Öffentlichkeit in Bezug auf die mit dem illegalen Holzeinschlag verbundenen Probleme, die vor allem in den zahlreichen von Verbraucherorganisationen lancierten Initiativen zur Beeinflussung der nationalen und EU-Behörden zum Ausdruck kommen. Angesichts dieser weit verbreiteten Sorgen erwarten das Europäische Parlament und die nationalen Parlamente der EU

Mitgliedsstaaten, dass die Kommission und die Regierungen der Mitgliedstaaten angemessene Maßnahmen zur Bekämpfung des illegalen Holzeinschlags und des damit verbundenen Handels ergreifen.

Das FLEGT-Genehmigungssystem wird auch einen Beitrag dazu leisten, die wachsende Nachfrage der öffentlichen Beschaffungsbehörden in der EU nach legal geschlagenem Holz zu befriedigen. Immer mehr EU-Mitgliedstaaten führen eine Politik der öffentlichen Beschaffung ein, mit der gewährleistet werden soll, dass das erworbene Holz legal im Ursprungsland geschlagen wurde. In den vom illegalen Holzeinschlag besonders betroffenen Holz erzeugenden Ländern wird das FLEGT-Genehmigungssystem dazu beitragen, die neuen Anforderungen zu erfüllen.

Das FLEGT-Genehmigungssystem wird auch zur Verwirklichung eines zentralen Ziels der gemeinschaftlichen Entwicklungspolitik beitragen, nämlich der Förderung einer verantwortungsvollen Staatsführung und der Bekämpfung von Korruption.

5. VERBINDUNG ZU ANDEREN INTERNATIONALEN ÜBEREINKÜNFEN UND GEMEINSCHAFTSINITIATIVEN

Multilaterale Umweltübereinkommen

Das UN-Übereinkommen über die biologische Vielfalt und das Übereinkommen über den internationalen Handel mit gefährdeten Arten (CITES) sind die wichtigsten multilateralen Umweltübereinkommen von unmittelbarer Relevanz für die FLEGT-Initiative.

Auf der 6. Konferenz der Vertragsparteien (COP) zu dem Übereinkommen über biologische Vielfalt im Jahr 2002 wurde ein erweitertes Arbeitsprogramm im Bereich der biologischen Vielfalt der Wälder beschlossen, das u.a. Maßnahmen gegen die unerlaubte Nutzung der biologischen Ressourcen der Wälder vorsieht. Die Notwendigkeit zur verbesserten Rechtsdurchsetzung im Forstsektor wurde auf der 7. COP im Jahr 2004 erneut hervorgehoben. Das FLEGT-Initiative trägt maßgeblich zur Erfüllung der Verpflichtungen der EG in diesem Bereich bei.

Zwischen CITES und der FLEGT-Initiative besteht insofern ein klarer Zusammenhang, als ein Großteil des Handels mit illegal geschlagenem Holz seinen Ursprung in den Tropenländern hat. CITES kann die Ziele der FLEGT-Initiative untermauern und könnte in manchen Fällen einen wichtigen Beitrag dazu leisten, bestimmte Aspekte des Handels mit illegal eingeschlagenen Holz, insbesondere den Handel mit hochwertigen gefährdeten Baumarten, anzugehen.

Der auf dem Weltgipfel für nachhaltige Entwicklung 2002 beschlossene Umsetzungsplan sieht auch spezifische Maßnahmen zur Bekämpfung des illegalen Holzeinschlags vor.

Neuverhandlung des Internationalen Tropenholz-Übereinkommens

Das 1994 geschlossene Internationale Tropenholz-Übereinkommen (ITTA) wird zurzeit neu verhandelt. Bei dem ITTA handelt es sich um ein Rohstoffübereinkommen, dessen Ziel darin besteht, durch Förderung des Handels mit aus nachhaltig bewirtschafteten Wäldern gewonnenem Holz zur Entwicklung der Volkswirtschaften der Holz erzeugenden Länder beizutragen.

Die im Rahmen des ITTA geschaffene Internationale Tropenholz-Organisation (ITTO) bildet ein einzigartiges Forum für die Zusammenarbeit zwischen Verbraucher- und Erzeugerländern. Vor allem in Bezug auf die handelspolitischen Aspekte könnte die ITTO daher eine wichtige Rolle bei der Umsetzung der FLEGT-Initiative spielen. Die FLEGT-Initiative hat allerdings keinen direkten Bezug zur Neuverhandlung des ITTA.

Regionale Prozesse im Hinblick auf Rechtsdurchsetzung und Politikgestaltung im Forstsektor

Prozesse zur Verbesserung der Rechtsdurchsetzung und Politikgestaltung im Forstsektor wurden in mehreren wichtigen Holz erzeugenden Regionen der Welt eingeleitet. Damit soll der politische Wille zur Bekämpfung des illegalen Holzeinschlags und der damit verbundenen Korruption und unverantwortlichen Politik gestärkt werden. Der "Asia Ministerial Process for Forest Law Enforcement and Governance (Asia FLEG)" war der erste Prozess dieser Art. Darauf folgte im Jahr 2003 die Einleitung des "Africa Ministerial Process for Forest Law Enforcement and Governance (AFLEG)". Russland hat vor kurzem eine führende Rolle im Hinblick auf die Einleitung eines ähnlichen Prozesses für Europa und Nordasien übernommen.

Regionale Initiativen dieser Art sind im Zusammenhang mit dem FLEGT-Aktionsplan der EU wichtig, denn sie tragen dazu bei, den erforderlichen politischen Willen zu stärken, den illegalen Holzeinschlag und den damit verbundenen Handel auf freiwilliger Basis in Partnerschaft mit der EU zu bekämpfen. Die FLEGT-Partnerschaftsabkommen werden die EG in die Lage versetzen, die im Rahmen dieser regionalen Prozesse eingegangenen Verpflichtungen konkret und unmittelbar zu unterstützen.

Regionale Handels- und Kooperationsabkommen

Das FLEGT-Genehmigungssystem wird auf der Grundlage bilateraler Abkommen mit der EU umgesetzt werden, die auf Länder- und wo immer möglich auch auf regionaler Ebene ausgehandelt werden sollen. Langfristig könnte sich eine Umsetzung auf regionaler Basis als zweckdienlicher erweisen. In diesem Fall könnten die bestehenden und geplanten regionalen Handels- und Kooperationsabkommen eine Möglichkeit bieten, die Initiative auf die regionale Ebene zu heben. Zu den in diesem Zusammenhang relevanten Abkommen und Initiativen gehören u.a. die Wirtschaftspartnerschaftsabkommen mit den AKP-Staaten, die Transregionale EU-ASEAN-Handelsinitiative (TREATI) sowie das Assoziationsabkommen mit den Mercosur-Ländern Lateinamerikas.

Internationale und nationale Regelungen für die Zertifizierung von Holz aus nachhaltig bewirtschafteten Wäldern

In den letzten Jahren wurde eine Reihe von Umweltkennzeichnungs- und Zertifizierungssystemen zur Zertifizierung von Holz aus nachhaltig bewirtschafteten Wäldern entwickelt. Diese marktgestützten Systeme bieten den Verbrauchern eine Gewähr dafür, dass die von ihnen gekauften Holzprodukte aus einem nachhaltig bewirtschafteten Waldbestand stammen. Das FLEGT-Genehmigungssystem und die FLEGT-Partnerschaftsabkommen unterscheiden sich von solchen marktgestützten Regelungen. Das FLEGT-Genehmigungssystem soll die Einfuhr von illegal geschlagenem Holz in die EU verhindern; es ist nicht als eine weitere Form der Kennzeichnung für den Endverbraucher konzipiert, die mit den bereits anerkannten marktgestützten Systemen der Holzzertifizierung in Konkurrenz tritt.

Länderstrategiepapiere und regionale Strategiepapiere

Die Länderstrategiepapiere und regionalen Strategiepapiere bilden die Grundlage der gemeinschaftlichen Entwicklungszusammenarbeit. Sie werden in Abstimmung mit den Partnerländern ausgearbeitet und sind auf den prioritären Bedarf der Partner ausgerichtet. Wichtig ist, dass die FLEGT-Partnerschaftsabkommen mit ausreichenden Ressourcen für die Zusammenarbeit ausgestattet werden. Die Programmierung dieser Hilfe wird allerdings gemäß den für die EG-Außenhilfe üblichen Verfahren erfolgen.

B. Empfehlung

Aus den oben angeführten Gründen empfiehlt die Kommission,

- dass der Rat die Kommission ermächtigt, zur Umsetzung des FLEGT-Genehmigungssystems Partnerschaftsabkommen mit den Holz erzeugenden Ländern auszuhandeln, die sich mit Problemen des illegalen Holzeinschlags konfrontiert sehen,
- dass, da gemäß Artikel 300 EG-Vertrag die Kommission diese Verhandlungen im Namen der Europäischen Gemeinschaft führt, der Rat einen Sonderausschuss einsetzt, der sie bei dieser Aufgabe unterstützt, und
- dass der Rat die im Anhang beigefügten Verhandlungsdirektiven annimmt (Anhang I).

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ANNEX 1: NEGOTIATING DIRECTIVES FOR FLEGT PARTNERSHIP AGREEMENTS

1. GENERAL OBJECTIVES

The Commission shall negotiate on the basis of the following provisions.

The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

1.1 Purpose and scope of the agreements

FLEGT Partnership Agreements will be established to implement the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) ⁽⁴⁾. A FLEGT Partnership Agreement will aim to reinforce the capacity of exporting countries to reduce illegal logging. Partnership agreements will include elements of institutional support, capacity building and technical assistance from the EU to facilitate implementation of licensing scheme described herein, and additional actions to combat illegal logging and improve forest sector governance. Such elements will be designed to meet circumstances and needs in partner countries and regions.

FLEGT partnership agreements will also implement a Community system of rules for the import of certain timber products, for the purposes of implementing the voluntary FLEGT licensing scheme, as set out in the Communication on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) ⁽⁵⁾.

Entering into a partnership agreement will thus imply a specific and binding political commitment on the part of partner countries and regions to implement the FLEGT licensing scheme, within a schedule stipulated in the FLEGT partnership agreement.

1.2 Definitions of basic concepts to be used in FLEGT partnership agreements

The following definitions shall apply in the FLEGT Partnership Agreements:

(a) 'Forest Law Enforcement, Governance and Trade licensing scheme' (hereinafter 'FLEGT licensing scheme') means the licensing scheme for trade in timber negotiated with partner countries and regions;

(b) 'partner country or region' means any state or regional organisation for which the FLEGT Licensing Scheme is effective;

(c) 'partnership agreement' means the agreement through which partner countries or regions become committed to implementing the FLEGT licensing scheme;

(d). 'regional organisation' means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the FLEGT licensing scheme;

(e) 'FLEGT licence' means a document of a standard format which is to be forgery-resistant and tamper proof, verifiable, and which refers to a shipment of timber products as being in

⁴ COM (2003) 251

⁵ COM (2003) 251

compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by a partner country or region's competent authority;

(f) 'third-party monitoring' means a system of independent monitoring or auditing which provides assurance that FLEGT licences are issued only for legally harvested timber products;

(g) 'competent authority(ies)' means the authority(ies) designated by a partner country or region to issue, validate or verify licences;

(h) 'timber products' means the products to which the FLEGT licensing scheme applies, and which are imported to the EU for commercial purposes;

(i) 'illegally harvested timber' means timber products harvested in violation of national laws in partner countries or regions;

(j) 'imports' means the release for free circulation of products within the meaning of Article 79 of Council Regulation (EEC) No. 2913/1992;

(k) 'export' means the physical leaving or taking out of any part of the geographical territory of a partner country or region;

(l) 'country of origin' means the country where the product originates, according to the Community provisions concerning non-preferential origin;

(m) 'shipment' means a consignment of timber products;

1.3 Categories of products covered by the agreement

The partnership agreements and the FLEGT licensing scheme will apply to the following products.

HS Heading 4403 – wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.

HS Heading 4406 – railway or tramway sleepers (cross-ties) of wood.

HS Heading 4407 – wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.

HS Heading 4408 – Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm.

HS Heading 4412 – Plywood, veneered panels and similar laminated wood.

1.4 Entry into force, duration and termination of the agreement

The partnership agreement will enter into force upon being signed by both parties.

The partnership agreement will specify a period during which the FLEGT licensing scheme must be phased in and implemented.

The agreement will last until either party informs the other of their intention to withdraw, through formal diplomatic channels, and with advance notice of one year.

2. SPECIFIC MATTERS TO BE ADDRESSED IN THE PARTNERSHIP AGREEMENTS

The following specific matters must be addressed in the FLEGT partnership agreements.

2.1 Dialogue

The partnership agreements will include an element of dialogue to facilitate implementation and encourage reform.

The objectives of the dialogue are to:

- Ensure the partnership agreements encompass matters relating to good governance, and serve to initiate governance reform in the forest sector.
- Ensure smooth operation of the partnership agreement
- Raise matters of concern arising in relation to the operation of the partnership agreement.

The dialogue shall take the form of:

- Meetings between senior officials of both parties;
- Occasional meetings between ministers to discuss matters of common interest;
- Occasional meetings between governments, civil society and the private sector.

Dialogue should take place within agreed and existing frameworks, where such frameworks exist.

Issues for consideration in dialogue

Multilateral and regional approaches

The FLEGT Action Plan highlights the need to engage other major timber consumers, and explore ways of working together towards a more comprehensive multilateral framework to address illegal logging and the associated trade. This builds on a need for such collaboration highlighted by the G8. Dialogue should be structured to engage partner countries and regions in these efforts.

Dialogue should also be used to encourage partner countries to participate in efforts to raise FLEGT to regional groupings, and to engage with neighbouring countries on FLEGT-related issues.

Institution building and the rule of law

Strengthening institutions, and helping countries develop capacity to uphold the rule of law, is an important aim of the FLEGT initiative. Dialogue should therefore include a focus on the reforms and investments needed to build this capacity in partner countries and regions.

Inequity

In some countries, existing forest laws exclude local people – both indigenous and non-indigenous – from access to forest resources, forcing them to operate illegally to meet their basic livelihood needs. Such concerns must be addressed in dialogue.

Rules of origin

The rules of origin which apply to wood and wood products must be respected in implementation of the FLEGT licensing scheme. Problems which arise in relation to rules of origin and the products covered by the FLEGT licensing scheme will be addressed through dialogue with partner countries and regions, and solutions will be found that are compatible with the rules of the WTO and the FLEGT objectives.

2.2 Co-operation and development assistance

The Parties shall establish close cooperation aimed at effective implementation of the FLEGT initiative:

The Commission and Member States shall ensure that, where needed, partner countries and regions are provided with the technical and financial assistance required to implement the FLEGT initiative. Assistance should in particular be directed towards:

- Ensuring equitable and just solutions to the illegal logging problem so as not to have an adverse impact on poor and forest-dependent people. This should include efforts to provide alternative livelihoods for those who lose their employment as a result of the eradication of illegal logging;
- Helping partner countries to build systems to verify timber has been harvested legally;
- Promoting transparency of information;
- Capacity building for partner country governments and civil society;
- Support for institution building; and
- Promoting policy reform.

The programming of this assistance to support FLEGT partnership agreements will be subject to the normal procedures for programming EC assistance.

2.3 The FLEGT licensing scheme

The EU, as a significant consumer of wood products, shares responsibility with timber-producing countries to tackle illegal logging and its associated trade. However, there are limited practical mechanisms for identifying and excluding illegal timber from the EU market. From within potential partner countries and regions, only in a few countries are there existing mechanisms for identifying and verifying the origin of imported timber. However, these mechanisms are voluntary, and while acknowledged by stakeholders, they do not have official status.

The FLEGT Action Plan therefore proposes the development of voluntary licensing scheme for timber exports to the EU, to be implemented through voluntary partnership agreements between the EU and wood-producing countries and regions.

Under the licensing scheme, legally produced timber exported to the EU would be identified by means of licences issued in partner countries and regions. Timber originating in a partner country or region and arriving in the Community without such a permit would not be allowed to be released for free circulation in the EU.

The FLEGT licence

Under the FLEGT licensing scheme, import into the Community of timber products originating in partner countries and regions will be prohibited unless the consignment of timber products is accompanied by a valid FLEGT licence, as issued by the competent authority of a partner country or region.

The Commission will thus ensure that the partnership agreements contain provisions whereby:

- A FLEGT licence accompanies each shipment of timber products on export;
- Processes for issuing and validating licences meet minimum agreed standards to provide assurance of legality;

The licence will follow a standard design, should be tamper proof and forgery resistant, and should refer to the following information: date of issuance; date of expiry; issuing authority; value of the shipment in accordance with the commercial invoice; the relevant HS code; the species of timber contained in the shipment, and the volume of the shipment.

As an alternative to the licensing of individual shipments, the licensing of market participants could be considered in the case of countries which export exceptionally large volumes of timber products to the EU.

Controls to provide assurance of legality

The Commission will ensure that partnership agreements contain provisions which provide adequate assurance as to the legality of timber products.

General provisions

Controls must reflect circumstances in partner countries and regions. Transparency is important at all stages to ensure that trustworthy systems are developed which provide a credible assurance of legality.

Wherever possible, controls will accommodate and /or build on existing systems to track timber products, including systems set up by the private sector using internationally agreed standards such as ISO and European standards (EMAS), and public-private partnerships, with incremental modifications to provide assurance of legality if required.

Controls shall be based on systems which include chain of custody tracking of timber products from harvest to port of export.

Partner countries and regions shall designate a competent authority(ies), and an independent third-party monitor, to support the chain of custody tracking system.

Partner countries and regions will need to agree to amend or enact appropriate laws or regulations to implement and enforce the licensing FLEGT licensing scheme, as required, and maintain dissuasive and proportional penalties for transgressions.

Controls must be transparent, and designed in such a way as to discourage the use of discretionary and unaccountable executive powers over the issuance of FLEGT licences.

Export regime

The Commission will ensure that a FLEGT licence be issued to accompany the export of timber products to the EU, with checks to verify the legality of the timber products.

Exporters should apply to the competent authority in the partner country or region for a FLEGT licence to accompany shipments of timber products to the EU.

The competent authority may issue the licence, once satisfied that the timber products have been harvested legally.

Import regime

The Commission will specify that upon arrival in the EU, the Community customs authority will confirm the shipment is accompanied by its valid FLEGT licence.

In accordance with existing Community customs legislation, Community customs authorities shall use a risk-based approach to decide on the need to inspect shipments in more detail.

If doubt arises as to the validity of the licence, customs authorities will seek confirmation from the exporting country. Procedures for obtaining this confirmation will be set out in the partnership agreement with the exporting country.

The institutional framework

The Commission will ensure that partnership agreements contain a institutional framework to ensure smooth implementation of the partnership.

Joint committees should be established by the EC and partner countries and regions to monitor and supervise implementation of the partnership and the FLEGT licensing scheme, and mediate and resolve any conflicts and disputes that arise.

Independent third-party monitoring

Third party monitoring is essential to uphold the credibility of the FLEGT licensing scheme, and controls designed to provide assurance of legality. It is also essential to ensure that the FLEGT licensing scheme operates in an effective and transparent manner. The Commission will thus ensure that partnership agreements contain adequate provisions for third-party monitoring.

Third party monitoring will be designed to meet circumstances in partner countries, and may include:

- Inspection of harvesting operations;
- Audit of chain of custody systems;
- Financial audit of tax and royalty payments;
- Audit of shipments for export; and
- Others, as defined.

The private sector

Partnership agreements should contain elements designed to involve the private sector in efforts to combat illegal logging. In particular:

- Forest concessionaires and processing mills should be encouraged to support the objectives of the partnership agreement through development and implementation of codes of good practice, and adherence to management plans.
- Timber buyers, sellers and exporters should be encouraged to support the objectives of the partnership agreement, so as to help provide an assurance of the legality of their goods, through the adoption of codes of practice and purchasing policies which procure only legal timber and that the operation of such codes and policies be subject to the scrutiny of regular independent audit and third party monitoring.

Where private sector mechanisms exist to identify the origin and legality of timber products, consideration should be given to accommodating these mechanisms within the FLEGT licensing scheme if they comply with the requirements set out in the licensing scheme.

Efforts should be made to assist small-scale producers to comply with the requirements of the partnership agreements.

Local communities

Partnership agreements should include strong safeguards to ensure that measures to combat illegal logging do not unduly penalise those living in impoverished conditions. Where implementation of the partnership agreements are likely to have an adverse impact on poor people's livelihoods, measures should be designed and included to compensate for this impact.

Defining the relevant aspects of national legislation in partnership agreements

The Community will ensure that partnership agreements clearly specify the aspects of national law which will apply in order to provide the required assurance of legality. The relevant aspects of national law which apply must contribute to a clear definition of legality, that is objectively verifiable and operationally workable.

The relevant aspects of national law to be followed in each partner country and region will be set out in the partnership agreements, but should contain the following basic elements:

- Forest harvesting concessions should be allocated in a transparent manner, in full compliance with national laws.

- Harvesting should take place within agreed boundaries, and comply with agreed management and harvesting plans, including their time schedules and quotas.
- Concessionaires should make full payment of taxes, royalties and stumpage fees on harvested timber.
- Payment of taxes, royalties and stumpage fees should be subject to regular audit.

The EU will attach particular importance to this set of issues when negotiating partnership agreements with third countries and regions.

3. CONSULTATIONS AND STAKEHOLDER INVOLVEMENT IN THE PARTNERSHIP AGREEMENTS

The Commission will ensure that stakeholders are consulted regularly during elaboration of the partnership agreements.

4. ADMINISTRATIVE MATTERS

The Commission will ensure inclusion in the partnership agreements of the following administrative matters:

Compliance

Review missions may be conducted in an analytical, expert and impartial manner with the consent of the partner country or region concerned, where there are credible indications of significant non-compliance with the certification scheme.

In exceptional circumstances, the agreement may be suspended pending the resolution of serious structural problems.

Review mechanism

The Community intends that the FLEGT licensing scheme and FLEGT partnership agreements should be subject to periodic review, to allow for analysis of effectiveness and impact. The first such review should take place no later than three years after the effective starting date of the FLEGT licensing scheme.

Statistics

The Community should ensure that the partnership agreements require the yearly publication of a report to facilitate implementation and monitoring of the FLEGT licensing scheme which includes the following details:

- Volumes of timber products exported to the Community under the FLEGT licensing scheme, according to the relevant HS Headings;
- The number of FLEGT licences issued by the partner country or region.

Co-operation

Partners countries and regions should encourage, through their relevant authorities, closer cooperation between law enforcement agencies and between customs agencies of partners and the EU.

Partners countries and regions should provide to the Commission information identifying their designated authorities or bodies responsible for implementing the provisions of this FLEGT licensing scheme. This information will be published by the Commission in the Official Journal C series and posted on the internet.

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ANNEX 2: RECORD OF JOINT EU CONSULTATION MEETINGS WITH POTENTIAL PARTNER COUNTRIES

EU FLEGT Delegation to Malaysia

Kuala Lumpur, 12 May 2004

Ministry of Natural Resources and Environment

Present on the European Side

Mr. Thierry Rommel, EC Head of Delegation to Malaysia
Mr. Matthieu Noble, Trainee with the European Commission in Malaysia
Mr. Christian Lundmark Jensen– (DK)
Mr. Bjorn Blau – Danish Embassy to Malaysia
Mr. Flip van Helden – (NL)
Mr. John Hudson – (UK)
Mr. Michael Barrett – (UK)
Mr. Jeremy Pilmore-Bedford - UK High Commission to Malaysia

Present on the Malaysian Side:

Chairman: Dato' Suboh Mohd Yassin – Deputy Secretary General (NRE)
Dato' Freezailah, Chairman MTCC
Mr. Chew Lye Teng, CEO MTCC
Mrs. Sani Bakar, Serawak Timber Industry Development Corporation (STDC)
Mrs. Dayang Nena Abang Bruce, – STDC
Mr. Awang Mentali – STDC
Mr. Frederick Kugan - Sabah Forestry Department
Mr. Norchahaya Hashim, – Head of Enforcement MTIB
Mrs. Aimi Lee Abdullah, – Public & Corporate Affairs Division, MTC
Mrs. Siti Syaliza Mustapha, - Public & Corporate Affairs Division MTC
Mr. Ahmad Loman, – Principal Assistant Secretary MPIC

Summary

Delegation was well received by both the Ministry of Natural Resources and the Environment as well as the Ministry of Plantation Industries and Commodities. The Malaysian side was well prepared, with the discussions focusing on the possible advantages of taking part in the FLEGT scheme and its possible WTO implications. Both ministries would engage in consultations to provide the EU delegation in Kuala Lumpur with an initial response to the EU FLEGT Action Plan. An official response to the EU-FLEGT Action Plan proposal was subsequently received by the EC Delegation in Malaysia, on June 9, 2004.

Detail

Opening remarks from the Chair

Welcome to EU delegation. Note that Minister Lim had previously discussed FLEGT with Commissioner Lamy, and indicated Malaysia's willingness to work with the EU.

Malaysia has been working for some time on certification and is currently engaged in the development of a pan-ASEAN certification scheme.

Opening remarks from Ambassador Rommel

Noted high priority EU gives to tackling illegal logging. Broad overview of FLEGT Action Plan, particularly the concept of partnerships between the EU and timber producing countries.

Partnership Agreements must be underpinned by verification systems. These will provide confidence of legality for consumers, providing a potential market advantage to partner countries, and protecting legally harvested timber from unfair illegal competition.

Explained that the EU delegation was not present to negotiate, but to explain the Action Plan and seek the views of the Malaysian Government, reporting these back to the Council. EU delegations will also be visiting other countries/regions.

The Ministry of Natural Resources and Environment was invited to provide further written comments by the end of May 2004 in order to inform the EU's more detailed plans.

PowerPoint Presentation from EU Delegation

Provided more detail on the EU Action Plan, including the reasons for the plan, the history of its development and timeframe for coming developments. Also the advantages to potential partner countries. Noted that a multilateral solution would be desirable in the longer term, but bilateral action was more realistic in the short term.

Explained the absence of legislation in the EU to tackle illegal timber imports, the proposal for a new import Regulation and the proposal for a licensing scheme to allow implementation of the Regulation.

Noted that legality was to be defined by partner countries, and that the proposed licensing scheme would apply to roundwood and rough sawn wood in the first instance.

Described procurement policies already being pursued by a number of Member States, and the potential role of the private sector.

Chair's response

Malaysia (and this new Ministry and its Minister) remains committed to sustainable development, and is rich in natural resources. Its forestry policies have evolved considerably since the early 1990's, with particularly strong effects in Peninsular Malaysia and Sarawak – representing together 80% of natural forest land. Over 60% of the land is covered by natural forest. Malaysia has taken steps to amend its laws to punish illegal loggers. Should recognise that poor farmers with few alternatives may always want to steal a few trees. An ITTO-compatible and approved certification scheme has been implemented (MTCC).

Whilst forest law enforcement in Malaysia is good, Malaysia is a trading nation and faces problems with imports of illegally produced wood from other countries in the region. Malaysia aims to plug loopholes in legislation that currently prevent enforcement agencies from dealing with the transit of illegally logged (CITES-listed) timber through Free Trade Zone. Noted the responsibility of other countries to tackle their own governance problems.

Timber exports are very important to Malaysia, particularly for Sarawak and Sabah.

Malaysia looks forward to close working with the EU, but notes the need to avoid creating any costly additional burdens that are not justified under FLEGT, as well as to avoid that

timber-exporters without VA's secure an unfair competitive advantage in terms of export-pricing at the expense of timber-exporters with VA's. .

Response of Malaysian Delegates

Pleased that the EU is taking action to tackle illegal logging. The Malaysian Government has not formalised its detailed position on the FLEGT Action Plan, but will hold internal discussions following the EU visit.

Pleased to note that Russia is included in the Action Plan (demonstrating that it does not discriminate against tropical timber).

In principle Malaysia supports the objectives of the Action Plan. There are some questions, but these are about form rather than substance. Specifically:

Will FLEGT partnership agreements constitute green (non-tariff) barriers to trade?

Should ITTO be used as a mechanism for achieving SFM through certification (upcoming ITTA negotiations provide an opportunity for a multilateral solution)?

Noted Malaysian ban on Indonesian logs, and that Malaysia demands documentation from Myanmar and PNG to indicate that timber is of a legal origin. Do not deny that some timber from Indonesia may still be smuggled in. Customs authorities are trying to tackle this.

Malaysian industry is ready to embrace responsible sourcing of timber and the concept of certification. But with the systems Malaysia has already put in place, there are concerns about the burden of imposing further demands for verification. Also noted that there are many countries with greater problems in the forestry sector. Would Malaysia be blocked from trading with the EU if it did not sign up to a partnership agreement?

Representative from Sarawak asked for clarification of the EU's emphasis on legality rather than sustainability.

EU Response

The EU Action Plan proposed dealing with legality as a first step towards achieving sustainability (the stepwise approach as espoused by ITTO). Not all regions are ready for sustainability, and legality is a necessary first step to achieving this. Some Member States are also encouraging legality and sustainability through their procurement policies.

If Malaysia did not sign a partnership agreement, it would not be excluded from trading with the EU –but there are likely benefits of market access to partner countries that can demonstrate legality of origin. However, this is in the hands of the market.

Licensing is proposed as a mechanism to help EU Enforcement Authorities implement the proposed import Regulation. This may very well build upon existing mechanisms (perhaps further developed) rather than creating any new and unnecessary administrative burdens either for timber exporting countries or for the EU.

The timeframe for implementing the Action Plan is largely in the hands of the Council and European Parliament. A rough estimate of the time required to agree the necessary legislation and conclude Voluntary Partnership Agreements would be 12-18 months.

The intent of the Action Plan is not to restrict trade in legally produced timber, but to provide market confidence in timber. This may require independent monitoring and/or verification. Does the Malaysian certification system provide for independent verification? Does it apply to Sarawak and Sabah as well as Peninsular Malaysia?

Malaysia

Land is not a federal issue, but one for individual states in Malaysia. But there is an advisory committee chaired by the Deputy Prime Minister (secretariat provided by the Ministry of Natural Resources and Environment) that oversees general forestry policies and practices. Implementation lies fully with the 13 individual states.. SGS and other certification bodies provide independent monitoring, auditing and reporting in support of the MTCC certification scheme.

The existing MTCC scheme, which is already fully compatible with ITTO criteria and indicators for sustainable forest management, should be built upon to provide the licensing scheme that the EU seeks.

EU

Recognise the variations between potential partner countries and that partnership agreements must be flexible and not impose a 'one size fits all' solution. Agreed that the proposed licensing could build upon existing licensing schemes that are based on legality.

It is unlikely that a multilateral solution on illegal logging and governance in the forestry sector could be achieved within the timeframe of the current ITTA negotiations. Furthermore, we first need the experience that bilateral agreements can provide.

Chair

Key points for the EU delegation to take away:

Malaysia is not starting from point zero in dealing with illegal logging. Malaysia has been firmly addressing illegal logging and loggers involved since the mid-1990's.

Malaysia is prepared to work with the EU and with other countries that have problems with illegal logging, such as Indonesia - but eventually local governance is critical.

Glad to note that EU FLEGT Partnership Agreements will vary according to the circumstances of the partner country

Would like to be kept informed of progress on an EU FLEGT partnership agreement with Indonesia.

Malaysia will follow-up this meeting with interdepartmental discussions on the Action Plan, and consultation with industry.

Malaysia wishes to move forward on co-operation with the EU and hopes that we can overcome any obstacles in doing so.

Actions:

Ministry of Natural Resources and Environment invited to provide further written comments to the Commission by the end of May 2004. EU Delegation to report back to the Council on the discussions.

Ministry of Plantation Industries and Commodities (MPIC)

Present on European Side:

As for earlier meeting

Present on the Malaysian Side:

Chairman: Dato' Abdullah Tahir, Secretary General MPIC

Mrs. Fatimah Zohro, Deputy Secretary General II - MPIC

Mrs. Fatimah Raya Nason, Undersecretary - MPIC

Dato' Freezailah, Chairman - MTCC

Mr. Chew Lye Teng, CEO - MTCC

Haji Nazuri Hashim, Director-General Malaysian Timber Industries Board

Mr. Norchahaya Hashim, Head of Enforcement - MTIB

Mrs. Aimi Lee Abdullah, – Public & Corporate Affairs Division, MTC

Mrs. Siti Syaliza Mustapha, - Public & Corporate Affairs Division MTC

Mr. Ahmad Loman, Principal Assistant-Secretary - MPIC

Mr. Zulkarnain Abdul Kadir, Assistant-Secretary - MTIB

Detail

Opening remarks from the Chair

Noted that if the Voluntary Partnership Agreements were based on trade, then the Ministry of Plantation Industries and Commodities will lead for Malaysia.

Opening remarks from Ambassador Rommel

As for earlier meeting.

PowerPoint Presentation from EU Delegation

As for earlier meeting.

Chair's response

Emphasised that the Malaysian Government has not yet formalised its position.

Malaysia shares concerns about illegal logging. This is broadly under control within Malaysia (other than some 'poaching'). The bigger problem is the trade in timber from other countries. Malaysia is on the trade route from Indonesia. The Ministry of Finance are trying to plug the loophole in legislation relating to Free Trade Zones –including to implement CITES regulations.

Malaysia's current export licensing schemes could be expanded to cover timber in order for the EU to implement its import Regulation.

Will there be a premium for timber verified as legal?

Recognises that it is in Malaysia's interest to tackle illegal logging in order to remove unfair competition. On the other hand, Malaysia fears that the EU's bilateral approach to FLEGT – VA will reduce the export competitiveness of timber exporting countries (such as Malaysia for example) to the benefit of timber exporting countries without VA's.

Will the EU scheme result in unnecessary burden to the industry? It will be counter productive if not managed correctly. Will the scheme present a non-trade barrier? Will bilateral agreements favour one nation over another (by giving different amounts of development assistance)?

Negotiations with all countries should be transparent –and Malaysia would favour a regional or multilateral process.

Malaysia recognises the limits of its natural resources, and is interested in using plantations to meet their future needs, and to tackle illegal logging. Is interested in FDI for plantation development.

What sort of capacity building will be linked to the Action Plan?

Re-emphasised that Malaysia is broadly supportive of the Action Plan

Response of Malaysian Delegates

Malaysia has no disagreement with the general EU proposals –but will need to look at the detail carefully.

Note that certification is being expanded to Sabah and Sarawak. The MTCC scheme could form the basis of EU licensing in Malaysia. (Note: There is already an export permit scheme in place under the MTIB)

Urges EU to play major role in ITTO.

Why are Japan, N. America and China, as major consumers, not included in the Action Plan? If not, there is foreseen a risk that trade will follow the "easiest route" to the markets, i.e. through countries without EU partnership agreement.

EU Response

The EU is a major timber importer. As an importer, we can form partnerships with producers –that is why the Action Plan focuses on producing rather than consuming regions. But the bilateral agreements are a starting point. A multilateral solution is the eventual objective. But individual Member States are talking with Japan and China. The EU process can catalyse international action.

The EU Action plan is a barrier – but only to trade in illegally logged timber. It will benefit legal trade. The premium will be determined by the market, which at present - at least for some timber products - proves willingness to pay premiums of up to 30 % for timber with sufficient documentation for legality Consumers in the EU are increasingly demanding evidence of legally produced timber. The EU process is about facilitating supply. Consumers will pay the price, and suppliers have the opportunity to benefit. Premiums may more or less evaporate in the long run as standards rise. The real premium is market access.

Further explanation of reason and purpose of licensing scheme (as at earlier meeting). Also confirmed for the Chair that the licensing scheme would be uniform across all 25 Member States –Malaysia would not be required to meet different requirements for different Member States.

Development Co-operation will be an element of the voluntary partnership agreements, but will vary according to conditions in different partner countries.

Chair

There will need to be further discussions to ensure that the Action Plan works. The Ministry of Plantation Industries and Commodities will look at the EU proposals positively and brief their new Minister accordingly.

Actions:

Ministry of Plantation Industries and Commodities invited to provide further written comments to the Commission by the end of May 2004 and confirmed they will do so. EU Delegation to report back to the Council on the discussions.

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EU FLEGT Delegation to Indonesia

Jakarta, 14 May 2004

Ministry of Forests

Present on the European Side

Co-Chairman: Mr. Aldo Dell'Ariccia, Desk Officer for Indonesia, European Commission
Mr. Juan Planas, First Counsellor, Delegation of the European Union
Mr. Vernon Copeland – EC Delegation
Mr. Geert Aagaard Andersen – Danish Ambassador to Indonesia
Mr. Christian Lundmark – (DK)
Mr. Flip van Helden – (NL)
Mr. Frans Claassen, Embassy of the Netherlands
Mr Esa Hurtig, Embassy of Finland
Mr. John Hudson – (UK)
Mr. Michael Barrett – (UK)

Present on the Indonesian Side

Chairman: Mr. Koes Saparjardi, Director General of Forest Protection & Nature Conservation
Mr. Tachrir Fathoni, Secretary Directorate General of Forest Protection & Nature Conservation
Mr. Bambang Murdiono, Director of International Cooperation & Investment
Mr. Suhendroyono, Head for Centre of Forest Standardization & Environment
Mr. Djoko Supomo, Deputy Director of Forest Product Processing & Marketing
Mr. Achmad Edi Nugroho, Deputy Director, Bureau of International Cooperation & Investment
Mr. Nyoto Sanjoyo, Agency of Forestry Industries Revitalization
Mr. Jimmy Chandra, Agency of Forestry Industries Revitalization
Ms. Indra Setiadewi, Indonesia Ecolabel Institute

Summary

Level of awareness of the FLEGT Action Plan not high. Meeting suffered from a lack of time due to shifting appointments. This meeting served as a first opportunity to present the Action Plan, encourage internal discussion between Ministry of Forestry and other Ministries within Indonesia, to invite further written comments and pave the way for more detailed future discussions with the EU.

Detail

Opening remarks from the Indonesian Chair

Welcome to EU delegation.

Opening remarks from Commission co-chair

Provided brief overview of the of the FLEGT Action Plan and invited the Indonesian delegates to provide further written comments to the Commission noting the mid-2004 timeframe for the Commission to prepare its more detailed plans.

PowerPoint Presentation from EU Delegation

Provided more detail on the EU Action Plan, including the reasons for the plan, the history of its development and timeframe for coming developments. Also the advantages to potential partner countries. Noted that a multilateral solution would be desirable in the longer term, but bilateral action was more realistic in the short term.

Explained the absence of legislation in the EU to tackle illegal timber imports, the proposal for a new import Regulation and the proposal for a licensing scheme to allow implementation of the Regulation.

Noted that legality was to be defined by partner countries.

Described procurement policies already being pursued by a number of Member States, and the potential role of the private sector.

Noted initial proposed scope of Action Plan is roundwood and rough sawnwood. Which, with a ban on log exports, is only a very small part of trade between Indonesia and the EU. The issue of Indonesian plywood will require further discussion in Brussels.

Made clear distinction between the FLEGT Action Plan (political process) and the Commission's 'FLEGT Support Project' in Indonesia.

Noted recent Greenpeace Action in Brussels highlighting the alleged use of illegally produced Indonesian plywood in Commission buildings.

Further EU Comments

Noted that Indonesia at the CBD COP 7, February 2004 during negotiations of the work programme on protected areas had raised particular concern over the negative impacts of illegal exploitation and trade of resources calling for the need for urgent action against it

Noted the significance of Indonesia in supplying tropical timber to EU Member States.

Emphasised the growing demand of consumers in the EU for legally sourced timber and the need for transparency to provide confidence to the market.

Response of Indonesian Delegates

Development assistance would be a necessary first step before Indonesia could implement the measures (licensing and verification) required under a proposed FLEGT Voluntary Partnership Agreement.

EU Comment

There is already considerably overseas development assistance for the Indonesian forestry sector –but it is unclear that this is producing tangible results.

Why? Because illegal logging remains profitable. The economic landscape needs to be changed. The EU Action Plan aims to contribute to such a change by creating a fair market for legally logged timber.

Development assistance should not be considered in isolation from other aspects of the FLEGT Action Plan

Indonesian Chair

Indonesia has taken action to tackle illegal logging. A new 'decree' is under discussion, and hopefully will be signed off by the President soon. This makes provision for a minimum penalty for illegal logging (3 years imprisonment) and a fast track process (30-45 days). Decree may contain the death penalty for illegal logging related crimes.

It would be helpful for the decree to be considered in the context of the FLEGT Action Plan.

Further comments by Indonesian Delegates

There is a problem of laundering of Indonesian logs through 3rd countries, and it is not clear how the Action Plan will address this.

How can the FLEGT system work if it is voluntary? Why should countries other than Indonesia sign up and how can they be encouraged to do so?

What is the real benefit to forest industry of verifying legality? Will there be a green premium?

If illegal logging is not tackled soon, there will be no timber left in Indonesia to produce legally under the FLEGT scheme. Therefore hope that the FLEGT Action Plan will be coordinated with the necessary support as soon as possible.

EU Response

A multilateral solution is desirable in the longer term, and FLEGT bilateral agreements provide some progress towards achieving this.

There are advantages to countries (in addition to Indonesia) to sign up to FLEGT Partnership Agreements as they will provide market confidence in their timber.

The market will determine if premiums are paid. At present demand for legally verified timber exceeds supply and this favours those who can demonstrate legality. In many construction projects, the additional cost incurred by sourcing legally produced timber is very small in comparison to total construction costs.

Commission co-chair

Reminded those present that the EU was opposed to the use of the death penalty in Indonesia's draft decree on illegal logging.

Presentation by BRIK

BRIK (Forest Industry Revitalisation Body) gave an overview of their scheme for demonstrating legality and suggested that the EU could already have confidence in the legality of Indonesian timber produced in accordance with this scheme.

EU Response

Welcomed the joint work of the private sector with the Indonesian Government. Requested clarification on the issue of transparency; could the BRIK scheme incorporate independent verification, and are BRIK willing to make public the data on which they base their scheme? The key issue is market confidence.

BRIK Response

The BRIK scheme indicates legality. Consumers must trust the system –verification is a sovereign issue

Closing comment of Indonesian Chair

Expressed hope that Indonesia and the EU can work together in order to ensure that the FLEGT Action Plan is of benefit to Indonesia.

Closing Comment from the Commission co-chair

Thanked the Ministry for the opportunity to present the Action Plan and repeated request for further written comments representing the views of different relevant Ministries in Indonesia. This will help formulate a Voluntary Partnership Agreement. This is the beginning of the process.

Actions:

Indonesian Government invited to provide further written comments to the Commission by the end of May 2004. EU Delegation to report back to the Council on the discussions.

EU Ghana informal FLEGT meeting

Geneva, 5th May 2004

Present

Fredua Agyeman, Technical Director, Min. of Lands and Forests, Ghana
Neil Scotland, European Commission
Julia Falconer, Dept for International Development, UK
Flip van Helden, Ministry of Agriculture, Nature and Food Quality, The Netherlands
Evy von Pfeil, GTZ, Germany
Mike Barrett, Dept for Environment, Food and Rural Affairs, UK
Nicola Stewart, Foreign Office, UK
John Hudson, Dept for International Development, UK

Summary

Commission presented an overview of the EU FLEGT Action Plan. Ghana explained necessary next steps towards formal negotiation and expressed interest in the main elements of the action plan. Ghana provided advice to the EU on handling presentation of the Action Plan to Ghana.

Commission handed over the FLEGT briefing notes and gave a presentation of the package of measures in the Action Plan.

Ghana noted the upcoming elections (December) and the need to build confidence in the FLEGT process in Ghana. Important to explain that the Action Plan contributes to poverty alleviation and is not about tackling corruption and punishing illegal activities. The EU needs to explain why the Action Plan has come about, not just what it is. Scene setting and emphasis that it is about supporting legitimate trade are important. Important to explain the Action Plan to industry executives as an opportunity and not a punishment.

Ghana explained that the Ministry of Finance would be responsible for signing any partnership agreement and that FLEGT issues should be picked up in the context of PRSP discussions. Noted the need to ensure that the problem of illegal logging was not shifted elsewhere (i.e. non-partner countries). Legislation exists in Ghana – enforcement is the issue. Capacity building to support enforcement is key.

Mr. Agyeman was clear about what the FLEGT Action Plan is about but not the time frame and noted the need for more detailed explanation of the proposals and specifically the definition of legality.

EU responded by explaining the concept of the Regulation – what it would do and why it is necessary. The EU explained that entering into a voluntary partnership agreement would have long-term benefits in terms of market access and immediate benefits in terms of increased rent capture.

In Ghana the decision on whether to pursue (or not to enter into) a FLEGT partnership agreement will rest with the Min. of Lands and Forestry who would make a recommendation to the Ministry of Finance. The final decision would be made by the Cabinet.

To initiate formal discussions it was recommended that a European Commissioner write to Ghanaian Ministers. The EU should make a presentation on FLEGT to the Ministry of Finance and encourage trade representatives at EU Missions to engage with Ghanaian trade officials. Trade issues are dealt with by the Ministry of Finance in Ghana.

A suggestion was also made for the EU's private sector to engage with their counterparts in Ghana to reinforce the FLEGT messages. Further discussion at political level required to explain the trends in EU markets and market demands

Mr. Agyeman indicated that it should be fairly straightforward for a lawyer to produce a definition of timber legality for Ghana by examining the relevant statutes.

Whilst this discussion has no formal status Mr. Agyeman stated that he believed that there is sufficient interest in Ghana in the elements of the Action Plan (voluntary partnership agreements and licensing scheme) to merit progression to more formal discussions.

The EU agreed to keep Ghana informed of the progress on the FLEGT Action Plan over the coming months.

Ghana did raise strongly the need for linked cooperation assistance, particularly for log tracking systems; EC expressed interest in seeing the proposal (to help inform the development of regulation).

Ghana's comments on the main message of the FLEGT Action needing to be presented in positive/ poverty reduction context and as measures which can easily be integrated in already existing national policies such as national forest programmes, was also reflecting concerns about how other countries perceive the process. Mr. Agyeman was particularly concerned that the message should not be expressed in negative terms, sounding like a trade restriction. Mr. Agyeman also emphasized the importance of a harmonised message from EU member States in dialogue with the government on this issue.

Compte Rendu de la réunion informelle EU - République Démocratique du Congo (DRC) pour la partenariat volontaire FLEGT

Date : le 21 mai 2004

Etaient présents :

Mr Anselme ENERUNGA, Ministre de l'environnement
Mr Léon KANU MBIZI, Directeur du cabinet du Ministre de l'environnement
Mr Léonard MWAMBA KANDA, Secrétaire générale du Ministère de l'environnement
Mr Manuel MüELLER, République Fédérale d'Allemagne,
Mr Patrick De BOUCK, Ambassade de Belgique
Mr Pierre LAYE, Ambassade de France
Mme Joke ZUIDWIJK, Ambassade des Pays Bas
Mr Hans BECK, Département for International Développement (DFID)
Mr TON VAN DER ZON, Pays Bas
Mme MARION VAN SCHAİK, Pays Bas
M Filippo SARACCO, Délégation de la Commission européenne

Résumé

La Commission a présenté un aperçu général du Plan d'Action FLEGT de l'Union européenne ainsi que les premières étapes pour se préparer au processus de négociation, les challenges et les possibilités offertes. La RDC lui a remercié pour cette démarche et a montré l'intérêt de poursuivre plus en profondeur les discussions pour arriver au partenariat.

1. La Commission a présenté les grandes lignes du partenariat sur base de la présentation PowerPoint et remis au Ministre les documents de base (présentation et briefing notes FLEGT).
2. La RDC, par le Directeur du Cabinet du Ministre de l'environnement a demandé à connaître plus précisément le timing de la mise en place du Cadre juridique.
3. La commission a répondu que pour ce qui concerne les accords de partenariat volontaire les étapes seront définies d'un commun accord entre l'UE et les pays partenaires intéressés.
4. Le représentant des Pays Bas a rappelé l'importance de ce sujet pour l'UE et pour les Pays Bas en particulier. Le consommateur reste frileux quand il s'agit des bois tropicaux parce qu'il n'a pas d'assurance que la légalité soit respectée. Il a confirmé l'intérêt de discuter la possibilité d'une coopération renforcée mais associée aux mesures de contrôle pour éviter la perte de forêts tropicales.

Des actions pour réduire voir éliminer le bois d'origine clandestine en coopération avec les pays producteurs peuvent être envisagées.

5. La France a confirmé son soutien à cette démarche au niveau de l'UE et le lien indissociable qu'il y a lieu de maintenir avec le développement durable.

Un projet d'appui institutionnel dans ce secteur au niveau régional (Conférence des Ministres des Forêts d'Afrique central – COMIFAC) est en cours de finalisation et doit aussi contribuer au développement d'une filière bois véritablement opérationnelle aussi en RDC.

6. La RDC (Dir Cab du Ministre) a demandé des éclaircissements quant à cet appui et à la possibilité de prendre en charge le soutien logistique, la réhabilitation et l'équipement au vu de la situation du pays.

7. La France a mentionné l'importance d'un appui dans le domaine de la Statistique et la nécessité de mettre en place des Observatoires.

L'appui logistique ne peut s'inscrire que dans le cadre d'une politique volontariste bien affichée.

8. La Grande Bretagne a rappelé que le premier gagnant dans la mise en place réelle du partenariat est le gouvernement et en définitive le peuple congolais, par une augmentation sensible des recettes qui dériveraient de ce secteur.

9. L'Allemagne a confirmé que ces recettes ont un rôle clé pour la relance économique, qu'un cadre juridique clair permet une confiance accrue des entreprises et donc une augmentation des investissements. Un souci particulier concerne la protection de la nature qui doit pouvoir bénéficier de toutes les mesures mises en place.

10. La RDC par son Ministre de l'Environnement confirme que la RDC a un intérêt majeur pour une exploitation de ses forêts bien planifiée. Il s'est dit prêt à rentrer dans ce processus.

Le Ministre rappelle cependant que les problèmes logistiques restent aigus et que les méthodes d'exploitation ne sont pas toujours appropriées.

C'est le bon moment pour préparer le terrain à ces négociations mais les moyens seront un argument important. Il prend aussi l'occasion pour remercier la contribution française au recyclage des agents du Ministère de l'Environnement qui s'est déroulée à l'Ecole Régionale de Aménagement Forestiers Tropicaux (ERAIFT).

11. Comme prochaine étape la RDC propose de mettre en place un groupe d'experts qui sera à sa disposition et pourra discuter avec les experts de l'UE.

12. La RDC (Dir Cab du Ministre) confirme encore un fois qu'elle est consciente qu'il s'agit d'un processus irréversible et donc « on est obligés d'y aller ». La peur d'un boycott des bois tropicaux qui « bloque le peu que nous produisons » est toujours présente.