



Regulating the Trade in Illegal Timber: Asian Approaches Compared - State of Play June 2017

Marigold Norman and Jade Saunders



With Support from:



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Acronyms

CoC	Chain of Custody
DDS	Due Diligence System
EU	European Union
EUTR	European Union Timber Regulation
FLEGT	Forest Law Enforcement Governance and Trade
ILPA	Illegal Logging Prohibition Act (Australia)
InFIT	The China-UK Collaboration on International Forest Investment and Trade
MoU	Memorandum of Understanding
MTIB	Malaysian Timber Industry Board
RFA	The China Responsible Forest Product Trade and Investment Alliance
SILK	Sistem Informasi Legalitas Kayu
TLAS	Timber Legality Assurance System
TREE	Timber Regulation Enforcement Exchange
VPA	Voluntary Partnership Agreement

Executive Summary

In the last year, Japan, the Republic of Korea, China, Vietnam, Indonesia and Malaysia have all taken steps to develop regulations designed to exclude illegally logged timber from their markets for wood product imports. This momentum reflects a political desire to demonstrate global leadership in mitigating their countries' contribution to global climate change through consumption of imported illegal deforestation, in response to increasing concerns from civil society.

All these measures are designed to alter the existing patterns of international trade in timber products. For those countries that import significant volumes of raw material for processing and re-export, including Vietnam, Malaysia, and Indonesia, new legislation also reflects a desire to maintain access to the markets of Europe, the US and Australia, which already have legislation in place requiring that timber product imports must be legal. These 'demand-side' regulations – the European Union Timber Regulation (EUTR), the US Lacey Act, and the Australian Illegal Logging Prohibition Act (ILPA) – have been operational for several years, with implementation and enforcement modalities now well-established. This 'proof of concept' requirement has encouraged producer and processing countries to develop national control systems that can help their exporters meet the increasing demand for verified legal timber in the EU, US and Australia. For Indonesia, Vietnam and Malaysia, import control measures were developed as a key component of the timber legality assurance systems that underpin FLEGT Voluntary Partnership Agreements (VPAs).

Together, the US, EU28 and Australian markets, alongside the Asian countries now designing their own import controls, account for over 90% of global timber imports in 2016. Therefore, as the Asian demand-side regulations start to come into force, the global market incentive for companies trading in legal timber will be significant.

Each country is at different stages of developing their legislation and implementing regulations, but a number of key legal parameters have already been agreed and offer insight into the way that each nation seeks to tackle the trade in illegal timber. These parameters are summarized as follows (Box 1):

Box 1: Legislative Requirements on Regulated Importers at a Glance

Japan – Registered businesses to carry out Due Diligence with an appropriate confirmation of legality.

Republic of Korea – Importers to document the legality of timber imports. The scope of the legality definition appears to include legal right to harvest and potentially the legal right to export.

China (forthcoming) – Expected to require businesses to carry out Due Diligence to confirm legality of the timber.

Malaysia – Importers to document the legality of timber imports. "Legal" is not defined in the legislation but compliance options vary widely in scope as evidenced in the documents accepted as proof of legality.

Indonesia – Registered importers (traders and processing operators) to carry out Due Diligence and to document the legality of the timber imports. Due Diligence is required at the relationship level between the importer and the exporter.

Vietnam – Importers to carry out Due Diligence and document the legality of the timber in accordance with the relevant legislation of the country of harvest.

To date, published details of the legislative developments in Asia have been sparse, with piecemeal information available largely from informal consultations. Proposals have evolved quickly, often at a faster pace than they have been published or translated. With this in mind, this report seeks to synthesize the latest available information (as of June 2017) about the recent legislative developments in Asia. This information is based on documentary analysis and

interviews with key experts, and aims to provide an overview of the current situation in Japan, the Republic of Korea, Malaysia, Indonesia, Vietnam, and China.

The report also seeks to provide an analytical framework for comparing the requirements of the various pieces of emerging legislation; highlighting key similarities and differences in their approach to excluding illegal timber from their national markets. Finally, the report offers insight into how the emerging Asian timber regulations compare with existing approaches to tackling the trade in illegal wood and offers lessons based on the implementation experience of the EUTR, the US Lacey Act and the Australian ILPA (a high-level comparison is provided in **Table 1**).

Ultimately, while countries are at different stages in the development and implementation of their timber import regulations, technical harmonization and robust, pro-active enforcement will be critical for their long-term success in eliminating the trade in illegal timber and protecting forests.

Key Findings

- **The potential impact on illegal logging of Asian ‘demand-side’ import regulations could be significant.** While countries are at different stages in the development and implementation of their regulations, technical harmonization and robust, pro-active enforcement will be critical for their long-term success in eliminating the trade in illegal timber and protecting forests. Once the new Asian legislation is fully operational, regulated markets are likely to account for around 90% of global demand for timber products in the future, and thus have the potential for transformative market impact.
- **The new Asian regulations are mandatory, apart from the Japanese law.** Experiences to date suggest that non-legally binding mechanisms have limited impact and make it harder for responsible companies to justify the effort and costs associated with compliance.
- **China experts indicate that the country will take a stepwise approach to regulation, with the ultimate aim of establishing a mandatory import control regime with penalties for non-compliance.** Given the significance of China in the regional and global trade in forest products, the effectiveness with which voluntary measures are implemented in the first phase, and the speed with which they are replaced with enforceable mandatory measures, will be critical achieving a transformative impact on the Asian market.
- **Effective enforcement of the new laws will facilitate continued access to EU, US and Australian markets** for Asian companies wishing to export processed products made with wood harvested in other countries.
- **Compared with the US Lacey Act, the new Asian regulations include a number of significant options for *de facto* compliance, which may become loopholes.** Paper-based options for *de facto* compliance can be subject to fraud and forgery, and companies should ultimately be held legally responsible for buying illegal wood if they do so, regardless of the availability of supply chain documents.
- **Compared with the EUTR, it appears that the new Asian regulations may not be enforced with a pro-active risk-based approach to company checks.** Pro-active checks of company Due Diligence Systems have led to significant changes in buying behavior in the most progressive EU Member States, even where there is no “smoking gun” evidence that illegal wood has entered a given supply chain.
- **Compared with enforcement institutional arrangements in both the US and EU, the new Asian regulations do not appear to include open communication channels for sharing information about illegal harvesting or risky supply chains between NGOs and investigators or prosecutors.** Open channels of communication have proved critical facilitators of cases in both the US and EU, nonetheless in Asia, even where civil society can play a role as an independent monitor as set out in the Indonesian TLAS, which includes the right for civil society to visit companies and request documents on the legality of the timber, in practice this is yet to happen.

- **At the producer or source country level, the development of demand-side regulations for the Asian markets have the potential to reach and incentivize legal harvesting in markets that have not traditionally supplied the EU, US and Australia.** Based on trade data, the Asian regulations have the highest potential to incentivize legally verified timber in Thailand, South Africa, Philippines, Solomon Islands, Mozambique, Fiji, India, Cambodia and Lao PDR.

Recommendations

For governments of Asian countries developing and implementing new demand-side regulations:

- Align public procurement policies to create positive incentives (“carrots”) for the most responsible companies, which will likely increase the level of compliance and the speed at which companies invest in the necessary systems for compliance.
- Fully enforce new regulations, adapting compliance systems as needed and ensuring that penalties create negative incentives (“sticks”) that are adequately dissuasive for companies to import illegal timber.
- Encourage future candidates among Asian consumer countries to develop similar legislation to tackle the trade in illegal timber, such as Taiwan and India. In 2016, India imported timber and wood products worth more than US\$6 billion (approximately 2% of the global reported imports) and is also a significant manufacturer of furniture for export, in many cases manufactured using imported timber.

For all countries enforcing demand-side regulations, including the US, EU, and Australia:

- To secure the maximum possible impact of the new regulations on illegal logging, and support for a ‘level playing field’ for responsible Asian companies, there needs to be active regional and global enforcement cooperation along the lines of the Timber Regulation Enforcement Exchange (TREE) Network, which brings together enforcement authorities for the EUTR, US Lacey Act and Australian ILPA. Promoting legislative harmonization would then create the clearest possible ‘market message’ to illegal loggers, and avoid competition issues between States.
- Encourage outreach and information sharing in all countries supplying the newly regulated markets, to facilitate responsible trade and identify opportunities for governance reform associated with increased market demand for legal wood.

Table 1: Comparison of Global Efforts to Regulate the Trade in Illegal Timber

Comparative parameter	Japan	Korea	China (forthcoming)	Malaysia	Vietnam	Indonesia	US	EU	Australia
Application	Voluntary	Mandatory	Mandatory (unconfirmed)	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory
Scope of regulated actors	Whole supply chain	Whole supply chain (unconfirmed)	Whole supply chain (unconfirmed)	First placer + exporters to EU	All companies (organizations and households)	All companies	Whole supply chain	First placers	First placers
Scope of regulated products	Broad scope	Intermediate scope (15 products)	Broad scope (unconfirmed)	Narrow scope	All imports of timber and rubber wood	Broad scope	Broad scope	Broad scope	Broad scope
Requirements on actors	Due Diligence	Document legality	Due Diligence (unconfirmed)	Document legality	Due Diligence	Due Diligence	Prohibition-Due Care	Prohibition-Due Diligence	Due Diligence
Scope of accepted compliance	Unknown-compliance options are likely to be broad. There may be variation in the scope of legality verified by different compliance options.	Unknown-compliance options are likely to be broad. There may be variation in the scope of legality actually verified.	Unknown	Broad set of compliance options with only one type of document required. This means that there variation in the scope of legality actually verified.	Broad compliance options covering full scope of legality (harvest, taxes and fees, harvesting activities, third party rights and trade and transport).	Compliance options are broad. Most are not operational yet. There may be variation in the scope of legality actually verified.	Broad compliance options covering full scope of legality (harvest, taxes and fees, harvesting activities, third party rights and trade and transport).	Broad compliance options covering full scope of legality (harvest, taxes and fees, harvesting activities, third party rights and trade and transport).	Broad compliance options covering full scope of legality (harvest, taxes and fees, harvesting activities, third party rights and trade and transport).
Checks	Pre-import. Not linked to customs clearance	Pre-import and linked to customs clearance	Unknown	Pre-import and linked to customs clearance	Pre-import and linked to customs clearance	Pre-import and linked to customs clearance	Post import based on suspicion and evidence of illegality	Post import based on risk	Post import based on risk
Enforcement penalties	Penalties linked to non-compliance with the regulation	Penalties linked to non-compliance with the regulation	Unknown	No penalties. As checks take place pre-import, timber without sufficient evidence of legality would not be allowed onto the market	Penalties still being developed. Depending on the severity of the violation, administrative sanctions, suspension of activities and/or prosecution will apply and will be adequate, proportional and dissuasive with harsher penalties for repeated non-compliance.	As checks take place pre-import, timber without sufficient evidence of legality would not be allowed onto the market. Some limited penalties linked to non-compliance	Penalties are higher for those who knew they were trading in illegally harvested materials. For those who did not know, penalties vary based on whether everything possible was done to determine that the product was legal.	EU Member States lay down the penalties applicable to infringements of the EUTR	Penalties for serious and deliberate breaches of the illegal logging laws are ultimately at the discretion of a court, however they can now include heavy fines

1. Introduction

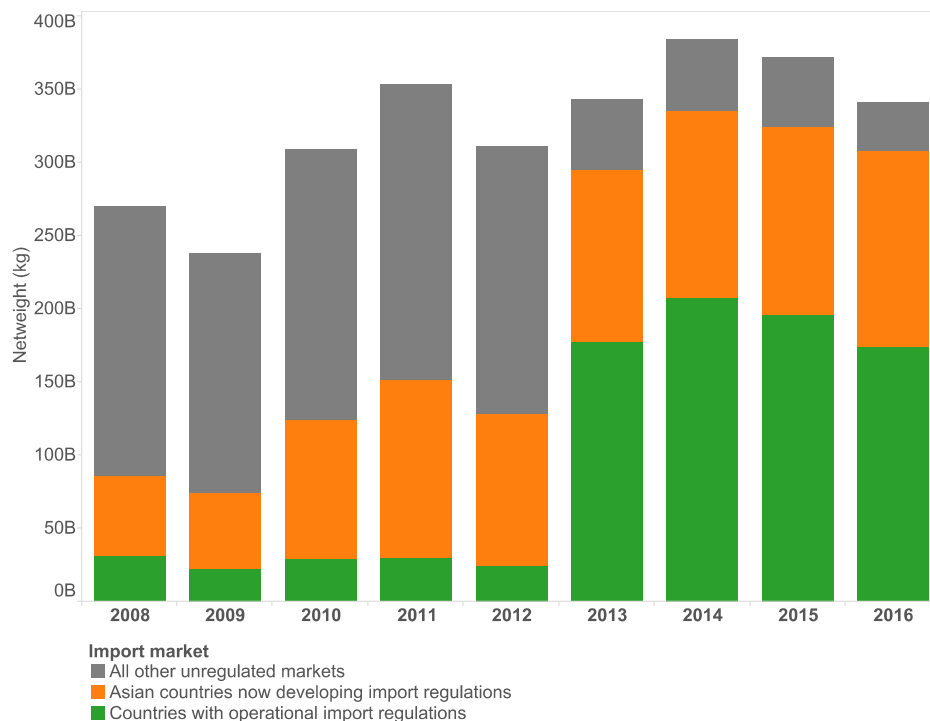
In the last year, Japan, the Republic of Korea, China, Vietnam, Indonesia and Malaysia have all taken steps to develop import regulations designed to exclude illegally logged timber from their markets. These have the potential to reduce the amount of illegal timber being harvested and entering the global market, if they are robust and implemented well. Each country is at different stages of developing their legislation and implementing regulations, but a number of key legal parameters have already been agreed and offer insight into the way that each nation seeks to tackle the trade in illegal timber.

The recent momentum reflects a desire to demonstrate global leadership in mitigating climate change by addressing consumption, as well as a response to increasing concerns from civil society and the international community about the impact of Asian demand in forested countries that harvest and export timber for Asian markets. The Republic of Korea, for example, has seen rising consumer concern about the deforestation caused by Korean imports – a significant proportion of which may be illegal – and the potential for this “embodied” deforestation to undermine other Korean efforts to mitigate climate change. Korea’s Rural Economic Institute reported in 2014 that as much as 36% of Korean timber imports over the past five years were likely to be illegal, sourced from countries with the some of the highest rates of illegal logging in the world. This has led to the development of legislation that aligns Korean corporate purchasing policies with its international and domestic commitments to forest protection and climate change mitigation.

New Import Regulations and Growth in Asian Markets has Significant Potential to Impact Trade of Illegal Timber

China, Japan, the Republic of Korea, Malaysia, Vietnam, and Indonesia are rapidly increasing their imports to feed domestic demand and, in some cases, an export-oriented manufacturing industry. Their share of the global trade in timber has risen from 22% in 2009 to almost 40% in 2016 (Figure 1).

Figure 1: The Rise of Asian Regulated Markets: Global Imports of Timber Products 2009-2016



Source: Data from UN Comtrade, 2017. Compiled by Forest Trends, 2017

Over the same period, the number of national regulations affecting timber imports has also risen -- increasing the global share of timber imports subject to controls (Figure 2). In 2009, the US was the sole operational regulated market, and US imports accounted for just 7% of the global share at that time. As the EUTR and the Australian ILPA became operational from 2013 and 2014, the global share of timber imported into regulated markets reached 68%. Together, the US, EU28 and Australian markets, alongside the Asian countries now designing their own import controls, accounted for over 90% of global timber imports in 2016. Therefore, as the Asian demand-side regulations start to come into force, the global market incentive for companies trading in legal timber will be significant.

Figure 2: Summary Timeline of Global Timber Import Regulations: Year in Force



2. Emerging Legislation Compared

This section compares key legislative parameters, developed in consultation with experts, to draw out the details of each piece of regulation, explore the extent to which the measures are consistent, and identify some of the likely implications for the trade in forest products.

An overview of the current status of each demand-side regulation including a synthesis of the key policies and regulatory measures controlling timber imports in Japan, the Republic of Korea, China, Indonesia, Vietnam and Malaysia is provided in Annex I and detailed tables on all of the legislative parameters for each country are provided in Annex II.

Are the Legislative Requirements Voluntary or Mandatory?

A key legal parameter for each piece of national legislation is the extent to which its requirements are mandatory, and by implication, the ease with which individual timber importers can opt-out of the requirements. Based on the current provisions, Japan is the only legislation with voluntary application and where businesses can choose whether to opt-in or out of the requirements.

In the cases of the Republic of Korea, Malaysia, Indonesia, Vietnam, and China (Figure 3), the import regulations are expected to be mandatory for all regulated actors.

China is developing regulation, tentatively titled *Administrative Measures for Strengthening the Legality of Imported Wood*, which is a normative document. Normative documents are not governmental regulations but crafted and promulgated by administrative authorities or organizations that are authorized by law or regulation to govern public affairs. Such normative documents are issued by administrative leaders and are not required to go through the process of gathering opinions before coming into force, such as panel discussions, evidence review meetings and hearings. This approach gives the China State Forestry Administration (SFA), as the key regulatory authority, flexibility in scope and implementation. As a result, the forthcoming control system is expected to be mandatory and to include penalties for non-compliance, but is likely to be preceded by supporting measures such as a voluntary implementation of industry compliance standards (such as the China Timber Legality Verification System [CTLVS], which has been in development since 1999) establishing a public procurement policy which includes legality requirements for timber products), and creating information platforms about legal sourcing for companies. Ultimately, the use of any specific compliance standards, for example those developed by industry associations for their member companies, will be voluntary.¹

Japan has taken a different approach, designing a voluntary system where the regulation only applies to companies that apply for approval as “registered operators in timber related business”. While the provisions only apply to these registered operators, the enforcement ordinance notes that “the responsible minister can demand a report on the legality of timber from any timber-related business operator, regardless of whether the business operator is registered or not” (edited for clarity). As the Japanese system is not fully operationalized yet, it will be important to see how this provision is used in practice when full implementation commences.

¹ It should be noted that China's *Administrative Measures* are still under development by SFA. Their final application and scope are yet to be determined.

Figure 3: Application Scope of the Import Regulation Requirements

	Mandatory	Voluntary
Indonesia	X	
Malaysia	X	
Vietnam	X	
China	X	
Republic of Korea	X	
Japan		X

Which Actors Are Covered by the Regulations?

In addition to the overall application scope of the regulations, their impact will also be determined by which types of individual and company are subject to the legislative requirements. In general, the Asian countries developing import controls have taken slightly different approaches (Figure 4). Malaysia, Indonesia and Vietnam regulate first placers of timber on their markets as well as those seeking to process and export to the EU. Japan regulates the entire supply chain, and while China and Korea are still developing their provisions, they could follow the Japanese model.

Figure 4: Scope of Regulated Actors

Country	Applies to first placers + companies exporting to the EU	Applies to all companies	Applies to voluntarily registered companies in a supply chain	Unknown
Malaysia	X			
Indonesia		X		
Vietnam		X		
Japan			X	
Republic of Korea				X
China				X

The Malaysian import regulations apply to all importing companies, all forwarding agents, all timber associations, and all companies exporting to the EU. This can be summarised as applying to operators first placing timber on the market as well as those seeking to process and export to the EU.

Vietnam's import provisions apply to all operators (both those classified as households and those classified as companies or organisations). This is essentially similar to the Indonesian import control system, which applies to all traders and processing operators registered on the Sistem Informasi Legalitas Kayu (SILK) Portal.

In the case of Japan, while the regulation is voluntary, operators throughout the national supply chain can apply for registration. Businesses are expected to register as one of two types. Type I (equivalent to first placers on the market), or Type II (all other Operators downstream from the first placer). Companies seeking to market their operations as legal and sell "confirmed" timber will have to demonstrate that all down-stream suppliers are registered businesses so this is expected to incentivise companies to register and comply with the controls.

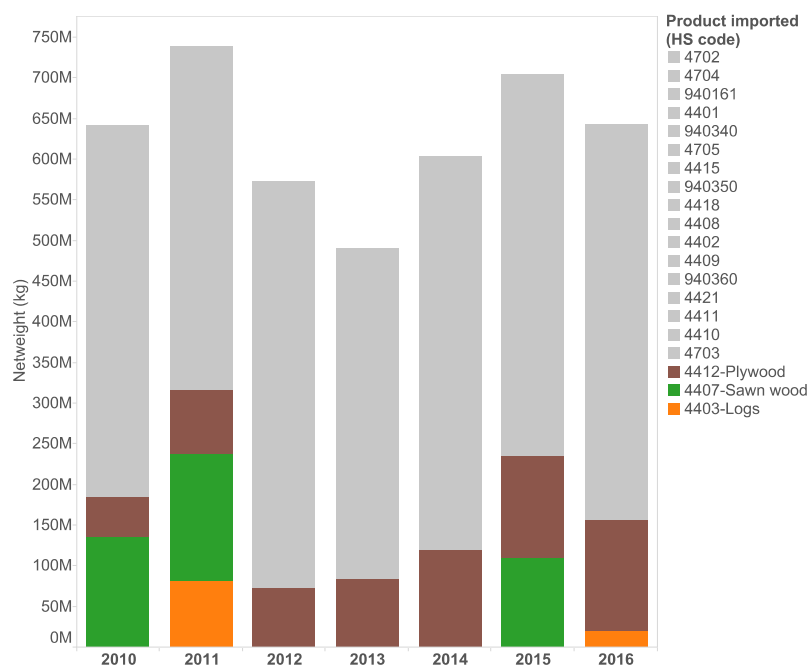
The scope of regulated actors within China's developing import control system remain unconfirmed although, the provisions are expected to apply to importers, processing operators and further down the supply chain. Similarly for Korea, the provisions on the regulated actors are likely to apply to all importing companies. As the legislation does not make a distinction between importers and subsequent traders, some interpretations suggest that Korea will follow the Japanese model and regulate the entire supply chain.

Which Products Are Covered under the Scope of the Regulation?

The breadth of timber product categories or Customs HS codes regulated under each of the developing timber import controls vary widely, with Vietnam's covering the broadest spectrum by regulating all timber and rubber wood products imported into Vietnam. In contrast, Malaysia's import regulation only applies to a very specific set of products and HS codes.

Malaysia's import control system applies to logs, sawn timber, plywood, veneered panels and similar laminated wood under the customs HS codes 4403, 4407 and 4412. Log, sawn wood and plywood imports are only roughly one quarter (26%) of products imported into Malaysia (Figure 5). Since logs, sawn wood and plywood are core components for processed products exported to the EU, as a pre-emptive measure, all importers of other timber products have also been advised to obtain evidence of legality for any other products which will undergo further processing, and be exported to the EU.

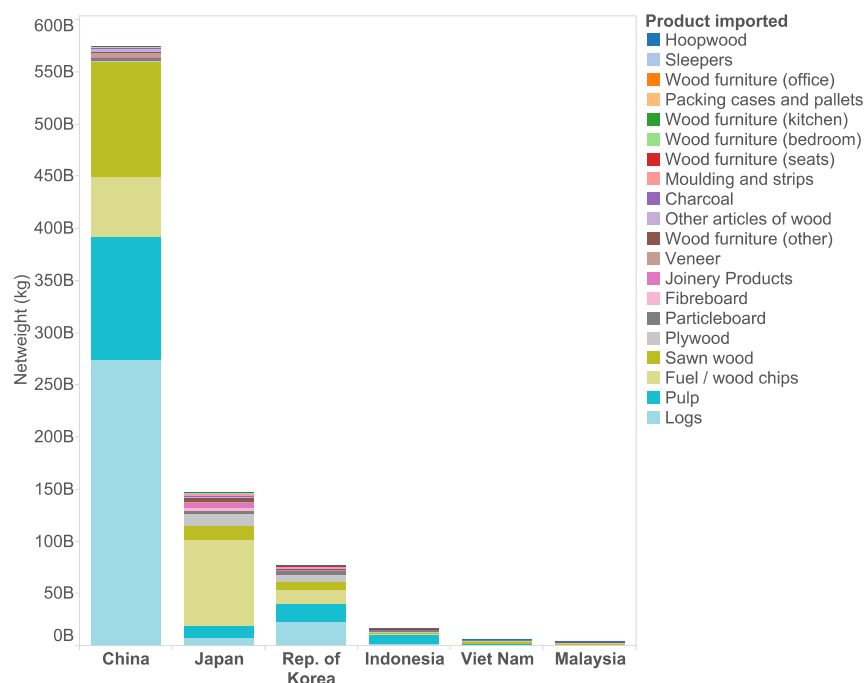
Figure 5: Annual Malaysian Imports of Timber Products Showing Proportion of Plywood and Log Imports



Source: Data from UN Comtrade, 2017. Compiled by Forest Trends, 2017

According to the more recent revised enforcement ordinance, Korea's import regulation applies to fifteen timber products, designated by Presidential Decree. These include sawn wood, preserved wood, dricon, wood plastic composite wood, laminated timber, plywood, particle board, fibreboard, wood flooring, wood pellets, oriented strand board, wood briquette, wood chips, modelled charcoal and charcoal. Figure 6 shows the volume of different timber products imported into the Republic of Korea between 2010 and 2016. The figure highlights that fuel wood, pulp, sawn wood, logs and plywood are the main timber products imported. Less than 10% of Korean timber imports over that period were furniture products. Therefore, most notably absent from the current scope of regulated products is pulp, which alone accounts for roughly 22% of imports between 2010 and 2016. However, the enforcement ordinance is still to be drafted, making it possible that the product scope may change.

Figure 6: Scale of Imported Timber into Each of the Asian Markets 2010-2016



Source: Data from UN Comtrade, 2017. Compiled by Forest Trends, 2017

Japan's import regulation applies widely to wood, furniture, paper and other processed products. Wood consists of logs, boards and square timber, veneer, plywood, glued laminated timber and wood pellets, chips and fragments. Furniture, paper and other products consist of chairs, desks, shelves, storage fixtures, coat hangers, umbrella stands, bulletin boards, blackboards, whiteboards and bed frames, wood pulp, copy paper, form paper, coated and non-coated printing paper, tissue paper and toilet paper, wood flooring, siding boards, and unfinished goods that will become any of the regulated products through subsequent manufacture or processing using wood or wood pulp. The scope therefore covers the main timber product categories imported into Japan (fuel wood, pulp, sawn wood, logs and plywood) as highlighted in Figure 6.

The Japanese regulation excludes recycled wood and also exempts downstream or Type II operators from the Due Diligence requirements for plywood used as moulds on construction sites, designed to create an opt out for construction sub-contractors. However, registered businesses first placing imported plywood on the Japanese market are still required to carry out Due Diligence and are not exempt from the regulation.

China is expected to take a step-wise approach to the products regulated by the developing import provisions, which are thought likely to ultimately include a broad range of timber and paper products. Experts expect the requirements to start with precious and easily identified illegal species or products (e.g. logs), and for coverage to increase over time. The majority of China's timber imports (99%) between 2010 and 2016 are in the form of logs, pulp, fuel wood and sawn wood (Figure 6). All four product categories will need to be covered in order to have the most impact on the global trade in illegal wood.

For Indonesia, the regulation applies to a broad range of timber products which are set out in the list in annex 1 of the import regulation.² This includes pulp which is Indonesia's most significant import product (Figure 6).

² The full list of products included within the scope of the import regulations is set out in annex 1 of the MOT import regulation NUMBER 97/M-DAG/PER/11/2015.

The widest scope of all the import provisions is included in the Vietnamese regulation which regulates all timber and rubber wood products entering Vietnam.

What Is the Legislative Requirement on Companies or Individuals, What Are Importers Expected to Do?

All of the regulations are designed to encourage regulated importers to take active steps and to put in place a system that reduces the risk of illegal timber entering the market. This means that all of the developing provisions regulate the process by which importers seek to exclude illegal timber rather than the outcome itself (illegal timber prohibited from the market). In this they are closer to the legal mechanism in place in the EU and Australia than the Lacey Act.

Table 2: Legislative Requirements on Regulated Importers at a Glance

Japan	Registered businesses to carry out Due Diligence with an appropriate confirmation of legality.
Republic of Korea	Importers to document the legality of timber imports. The scope of the legality definition appears to include legal right to harvest and potentially the legal right to export.
China	Expected to require businesses to carry out Due Diligence to confirm legality of the timber.
Malaysia	Importers to document the legality of timber imports. “Legal” is not defined in the legislation but compliance options vary widely in scope as evidenced in the documents accepted as proof of legality.
Indonesia	Registered importers (traders and processing operators) to carry out Due Diligence and to document the legality of the timber imports. Due Diligence is required at the relationship level between the importer and the exporter.
Vietnam	Importers to carry out Due Diligence and document the legality of the timber in accordance with the relevant legislation of the country of harvest.

Table 2 shows the requirements on regulated importers at a glance. While all importers are expected to put in place a system to document the legality of imports, there are distinctions in the way that each regulation defines the scope of legality.

In Malaysia regulated operators are required to document the legality of timber imports. “Legality” is not defined in the legislation.

Indonesian importers are required to carry out Due Diligence and to document the legality of the timber imports. The Ministry of Environment and Forestry issued guidance on how the Due Diligence process should be carried out. This guidance highlights that Due Diligence is required at the relationship level between the importer and the exporter. In practice, registered importers (traders or processors) must upload details on their plans to import prior to importation and provide details of their Due Diligence including an assessment of whether the import is either “negligible” or “significant” risk. Operators must mitigate any “significant” risk to “negligible” and make available documentary evidence of legality as evidence of risk mitigation.

Vietnamese importers are required to carry out Due Diligence and document the legality of the timber in accordance with the relevant legislation of the country of harvest, including rights to harvest, forestry activities, taxation and fees, trade and customs requirements and compliance with any other relevant legal requirements in the country of harvest such as export bans, or export licensing requirements.

In Korea, importers are expected to be able to document the legality of their timber. The scope of the legality definition appears to include legal right to harvest and, potentially, legal export.

In the case of Japan, registered businesses are required to carry out Due Diligence to confirm the legality of their wood. However downstream, or Type II, operators will only need to check whether a supplier is registered under the system, although they are also encouraged to undertake chain of custody checks. This is similar to the previous system for

traders set up under the Green Purchasing Law for government procurement, known as Goho Wood.³ For Type I companies (importers first placing timber on the market), the detailed Due Diligence criteria have yet to be made available. To date, the legislation outlines a basic risk assessment and risk mitigation framework. It suggests that companies must use such a risk assessment and mitigation framework to determine the origin of the timber and, if a company cannot verify the legality of a timber product, they must not buy or sell it. At the same time, the legislation does not currently clearly define the “risk” of illegal timber and registered companies can still trade in “unconfirmed” wood as long as they designate it as such.⁴

The Chinese requirements on importers are still in development, but experts predict that the forthcoming Administrative Measures will be in line with the broader trend requiring companies to conduct Due Diligence to confirm the legality of their timber imports. A Due Diligence toolkit has already been developed by the China Responsible Forest Product Trade and Investment Alliance (China-RFA), with support from InFIT⁵ and Due Diligence training for companies has been on-going. Due Diligence obligations are also an important component of the existing timber associations developed standard and expected to be reflected in the forthcoming standard due to be published by the China National Forest Products Industry Association (CNFPIA).

What Is Acceptable Documentary Evidence of Legality?

The definition of “legal” timber and the process by which companies can demonstrate compliance is further highlighted by the type of documentary evidence accepted. It is important to note that the extent to which governments define acceptable evidence of compliance has significant implications for the extent to which individual companies remain legally responsible for buying only legal wood. The more options governments provide for demonstrating that wood is legal, the less companies need to interrogate their suppliers or the sourcing documents obtained, which can be subject to fraud and forgery.

Malaysia, Indonesia, and Vietnam have all published examples of the type of evidence that will be accepted as proof of compliance under each of their import controls which are shown in tables 3-5. Under the Malaysian regulation, compliance options vary and companies only need to demonstrate legality through one type of document. All importers must submit a CITES Permit / Certificate if relevant to the species of timber and a copy of the certificate showing the origin of the timber. Table 3 shows the list of possible documents that must be submitted alongside the certificate of origin. It suggests that operators could demonstrate compliance through either an internationally recognized certification scheme (which are often used to demonstrate legality and sustainability), or through a legality verification scheme (such as FLEGT license), or a customs declaration form (which might only demonstrate the legal right to export rather than the full scope of the relevant legislation of the country of harvest which generally include rights to harvest, forestry activities, taxation and fees as well as trade and customs). A self-declaration document option was added in the most recent June 2017 update to the provisions which allows for an exporting company to meet the requirements of the import control if the self declaration is endorsed by a third party for countries which do not have a timber legality system in place.

The Malaysian government will conduct an assessment of documents produced by exporting countries that provide evidence of legality and intends to develop appropriate guidelines for importers in accordance with the current legislation of the major supplying countries.

³ Japan's voluntary goho-system was set up in 2006 to promote the sourcing of legally verified wood-based products under the Japanese Forestry Agency's 'Guideline for Verification of the Legality and Sustainability of Wood and Wood Products', developed in order to promote compliance with the country's Green Purchasing Law. An English version of the guidelines is available <http://goho-wood.jp/world/guideline/en.html>

⁴ The definition of “unconfirmed” wood remains unclear, although interpretations from experts in Japan suggests that this is likely to mean any timber product where the origin cannot be confirmed.

⁵ The China-UK Collaboration on International Forest Investment and Trade (InFIT) is a joint initiative between China's State Forestry Administration (SFA), China's Ministry of Commerce (MofCom), and the UK's Department for International Development (DFID).

The Vietnamese government will develop specific implementation guidelines including a list of high-risk species and a list of low-risk countries and territories that will be reviewed, supplemented and adjusted by the parties during implementation.

Operators can demonstrate compliance with the Vietnamese import control system through either a FLEGT license or a CITES permit. Where neither are available, operators must submit a self declaration⁶ which will include documents demonstrating right to harvest, forestry activities, taxation and fees, trade and customs including information on any legal requirements for timber export such as log export bans or export licensing requirements (Table 4). In addition, importers must also identify any risk of illegal timber in the shipment and the steps they have taken to mitigate these risks. Specific examples of documents to demonstrate compliance are not set out in the Vietnamese VPA text.

For Indonesia, the import control provisions list five different types of documentary evidence of compliance covering a broad scope of legality and/or sustainability in the case of the certification option. In addition, Indonesia has also laid out the option of demonstrating compliance through a Mutual Recognition Agreement Country license, Country Specific Guidelines or a reference letter from the authority of the country of harvest on the legality or sustainability of forest products. In practice, documentary evidence for imports under categories a) and b) in Table 5 does not currently exist. To date, only Country Specific Guideline for Canada have been approved. This has meant that a majority (80%) of the documentary evidence submitted as evidence of timber legality to date has been under category d) certification, although the government has not yet provided a list of approved or appropriate certification standards. The expectation is that any internationally recognised certification standard will be accepted. Reference letters (category e)) have also been submitted as evidence of legality, but less is known about the basis on which the authority of the country would guarantee legality. The Indonesian government plans to take a leading role in developing some of the acceptable documentary evidence of legality such as Mutual Recognition Agreements (when issued) and Country Specific Guidelines.

Table 3: Documentary Evidence of Legality to be Accepted under Malaysia's Timber Import Regulation

Malaysia	<p>Documents considered evidence of legality must include one of the following:</p> <ul style="list-style-type: none"> a) FLEGT License; or b) Timber Certification (FSC, PEFC, MTCS, and other credible certification scheme); or c) Certificate of Voluntary Legality Scheme; or d) Legality Document issued by any agency / corporation / recognized association; or e) Self-declaration documents by the exporter with endorsement by the authorities of the exporting country; or f) A copy of the Customs Declaration of the exporting country.
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⁶ The Vietnam VPA requires a self-declaration for all imported timber shipments without CITES permit, or FLEGT licence or equivalent export licence covering the entire shipment from an exporting country which has concluded a VPA with the EU and has an operational FLEGT licensing system in place. The Self-declaration is to be submitted together with applicable Customs documentation. More information on the Self Declaration is available in the Annex V /Appendix 3 STANDARD FORM FOR SELF-DECLARATION OF IMPORTED TIMBER SOURCES.

Table 4: Documentary Evidence of Legality to be Accepted under Vietnam's Timber Import Regulation

Vietnam	<p>One of the following 3 alternative ways to demonstrate legality for imported timber is required:</p> <ol style="list-style-type: none"> 1. Valid FLEGT license or equivalent export license covering the entire shipment from an exporting country which has concluded a VPA with the EU and has an operational FLEGT licensing system in place; or 2. Valid CITES permit covering the entire shipment; or 3. A Self-declaration demonstrating due diligence, additional documentation according to the risk categories status of the imported timber as specified in Table 4 of Annex V of the VPA to demonstrate legal harvest. In addition, importers must also include information on legal requirements for timber export in the country of harvest. Specific examples of documents to demonstrate compliance are not set out in the VPA.
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Table 5: Documentary Evidence of Legality to be Accepted under Indonesia's Timber Import Control System

Indonesia	<p>Documentary evidence of timber legality must include:</p> <ol style="list-style-type: none"> a) FLEGT license; and/or b) MRA (Mutual Recognition Agreement) Country License from the country that has work agreement of recognition of legality assurance of the timber and trade with Indonesia; and/or c) Country Specific Guidelines (CSG) or the like on the legality of forest products, regulated by exporting countries; and/or d) Certificate from a certification agency that applies certification scheme on legality or sustainability of forest products along with the traceability. e) Reference letter from the authority of the country of harvest or country of origin of forest products on the legality or sustainability of forest products.
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Table 6: Documentary Evidence of Legality to be Accepted under Republic of Korea's Timber Import Regulation

Republic of Korea	<p>Documents to demonstrate legality must fall under the following:</p> <ol style="list-style-type: none"> 1) Deforestation permit issued under the laws and regulations of the country of origin; 2) An internationally accepted certification standard as prescribed by the Director of KFS; 3) Documents to be mutually recognized in accordance with the bilateral consultation between Korea and the source country; 4) Documents issued by the director of KFS that verify legal harvest. <p>Specific examples of documents that will meet these requirements have not yet been released.</p>
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Korea's import provisions do not clarify the full scope of compliance options or provide examples of the documents that might be accepted. However, the legislation states that evidence will be evaluated to determine whether it falls under any of the types listed in Table 6. The government of Korea is expected to lead the development of a list of acceptable documentary evidence of legality at some point in the near future, particularly in the case of the bilateral agreements with source countries.

Japan has not formally announced a list of acceptable evidence of legality. To date, general policy guidance suggests that operators may make use of "certification methods utilizing forest management certification schemes and Chain of Custody (CoC) certification schemes," "verification methods implemented by business operators on the basis of certification by forest, forestry or timber industry-related organizations," "verification methods based on the individual

efforts of individual companies and the like,” and “forest or timber certification schemes of prefectural governments and the like”. However, in a recent Forestry Agency Q&A document the government clarified that certification is a tool for Due Diligence but does not by itself constitute Due Diligence, which is in line with European Commission guidance on compliance with the EUTR.

The expectation in the case of Japan is that the government will release information on the relevant laws and regulations of key producer countries to support businesses to conduct Due Diligence. This is likely to be made publicly available through a new web portal called the “Clean Wood Navi” which will contain examples of applicable legislation in timber-producing countries and other relevant information to help companies assess risk. The Forestry Agency has indicated its desire to collaborate with stakeholders including NGOs to ensure the contents of the site are comprehensive, but currently the contents are in the early stages of development and remain relatively limited.

China has not released information on the expected scope of compliance options, but the government is expected to play an important role in establishing a legality framework that will include the industry associations and will likely also play a role in supporting compliance. To date, the government has already released voluntary guidelines for companies investing overseas in timber operations, set up MoUs with a number of key trade partners and developed Country Specific Guidelines for sourcing in Mozambique, Gabon, Guyana and Myanmar. China is also seeking mutual recognition with other countries timber legality verification systems, notably the SVLK in Indonesia, and is reportedly keen to pursue a timber mutual legality recognition regime for the Asia Pacific region.

The critical issue with government-sanctioned compliance options is the extent to which they are considered resources which can be used in risk assessment and mitigation, versus *de facto* evidence of compliance or legal sourcing. Any *de facto* compliant scenarios set out by the Government reduce the possibility of enforcement against companies, in the event that the paperwork that they are relying on is not genuine. There is enough evidence of fraud and forgery in certification schemes and the implementation of the CITES licensing system in some key producer countries to suggest that granting these a “green lane” status would significantly weaken the potential impact of the regulations on illegal logging. However, regulations or related guidance noting that, where relevant, CITES paperwork should be made available by importers, or that buying reliable certified products from a reputable dealer can be a sensible option for mitigating the risk of illegally-harvested wood entering a supply chain, are unlikely to compromise the possibility of sanctions for companies buying illegal wood.

When Are the Checks Expected to Take Place and Will These Happen prior to Import?

There is some variation in the point at which company checks will take place and the extent to which checks on importer Due Diligence are specifically linked to customs clearance. Broadly, initial checks tend to happen prior to import and are either directly required to gain import approval (for a set timeframe, for a set supply chain/product or for each shipment of regulated timber) or take place prior to import but are not directly linked to customs clearance as set out in Figure 7.

Figure 7: Enforcement Checks on Company Due Diligence/Timber Legality

Country	Prior to import but not linked to customs clearance	Prior to import and linked to customs clearance	Unknown
Japan	X		
Republic of Korea		X	
Indonesia		X	
Malaysia		X	
Vietnam		X	
China			X

Under the Japanese regulation, registering bodies will conduct checks on a company’s Due Diligence System (DDS) when a company applies to become a “registered operator in a timber related business”. Registering bodies are expected to determine whether or not business operators applying for registration are capable of carrying out the confirmation of legality appropriately. Once a company submits an application to register, they must include a list of products that they import, as well as evidence that they can undertake Due Diligence. Companies must then submit a new plan every time

they expect to source a new product through a new supply chain. The application to register a company takes place pre-import but is not specifically linked to a customs clearance procedure.

An Inspection Agency to be established under the Republic of Korea's legislation is expected to inspect documentary evidence prior to import and issue a customs clearance if the requirements are met. Importers cannot sell or distribute any product before the inspection result is confirmed or before supplementation of a violation. In addition, Agencies can inspect facilities, equipment, and documents of timber producers.

Under the Malaysian regulation, import approval is dependent on pre-import checks of a company's DDS. The full process detailing the pre-import checks is outlined in "the flow process".⁷ It is currently unknown whether import approval will be based on a product/supply chain or whether checks and approval will be required for each shipment of logs, sawn wood, plywood, veneered panels and similar laminated wood under the customs HS codes 4403, 4407 and 4412.

Import approval under Indonesia's timber control system is dependent on pre-import checks on company DDS. Import approvals are provided for six or twelve month periods and are based on the importer's relationship with the supplier/exporter for the specified products and HS codes in the application rather than individual shipments. The Ministry of Environment and Forestry assesses the information uploaded by registered Operators on the SILK Portal including the information on the products to be imported (such as the country of harvest, species, product, HS code) as well as Due Diligence on the relationship between the importer and exporter and documentary evidence of legality. The Ministry of Environment and Forestry will either reject the petition or issue an import recommendation to the Ministry of Trade. Based on this recommendation, the Ministry of Trade will issue an approval to import. Post import checks also take place on operators as part of an audit.

Vietnam's import regulation requires DDS and documentary checks at the border for all shipments. The Customs Agency (in collaboration with Forest Protection Department if needed) will check the legality, validity and conformity of the company's self-declaration. A risk-based approach will apply to border checks with shipments allocated red, yellow and green risk categories. Shipments considered high and medium (red and yellow) risk are expected to be subject to physical checks. How the customs risk-based control and management categories will take account of the new species and geographic risk factors is yet to be established. Systematic documentary checks will also apply based on species and geographic origin risk associated with the product.

It is currently unclear when checks are likely to take place under the developing Chinese import regulation.

What Are the Stated Penalties?

In general, stated penalties across the regulations are relatively soft. The boldest approach to penalties for non-compliance is set out in Vietnam's timber import regulation. Depending on the severity of the violation, administrative sanctions, suspension of activities and/or prosecution will apply and are expected to be adequate, proportional and dissuasive with harsher penalties for repeated non-compliance. While the provisions set up some flexibility in the severity of applied penalties, legislation still needs to be developed to determine exactly how penalties will be administered.

Indonesia is taking a softer approach on criminal sanctions. The Indonesian provisions are designed to promote good behaviour, with failure to comply preventing access to the supply chain. In practice, the ability to sanction companies rests on an operator misinforming or providing un-truths on the application for import approval. The Ministry of Trade can revoke an import approval for twelve months if an operator has traded overseas ahead of receiving an approval, imported different HS codes, species or products or declared that they are a processor or trader but have not processed or traded the product. In such cases any timber must be re-exported or destroyed.

⁷ The full flow process is outlined in English here [http://www.mtlib.gov.my/repository/pelesenan/2016/flow process of import legality_bi_11.3.16.pdf](http://www.mtlib.gov.my/repository/pelesenan/2016/flow%20process%20of%20import%20legality_bi_11.3.16.pdf)

The Ministry of Environment and Forestry can also revoke an import recommendation, which essentially acts as a ban on a company importing for 12 months. Revoking an import recommendation would be based on evidence that an operator lied about Due Diligence, mis-declared at point of import or if the Operator lost their SVLK licence or processors and traders were not operating within the scope of their definition.

When the director of the Korea Forest Service identifies illegal wood on the market, the sale will be suspended and the timber will either be returned or discarded. Failure to comply with the order to suspend, return or discontinue the sale could lead to up to three years imprisonment or a fine of no more than 30 million Won (approx. US\$27,000). It is currently unclear how the Director will investigate or identify illegal wood on the market.

In the case of Japan, the legislation states that in instances where companies cannot document the legality of the timber, they must label it as “unconfirmed”. Where “unconfirmed” timber is miss-labelled, registering bodies can remove companies or suspend operations.

There are no penalties listed in the Malaysian import control requirements. Technically, as checks on company legality and Due Diligence are prior to import, any failure to document legality should mean that an import license was denied.

China has not yet provided information on likely penalties for non-compliance with a mandatory regime.

What Independent Oversight Functions Exist to Monitor the System?

While still evolving, a number of the Asian import regulations include provisions for an independent monitor to check the enforcement and ensure that the overall system is functioning effectively. However to date, these provisions have tended to be less developed, requiring additional clarification and/or legalisation to enact the role of an independent monitor.

Currently, the most developed provisions for an independent monitor are set out in Indonesia’s import control system which has been operational since the beginning of 2016. There are ultimately two main independent audit or oversight functions. First, there is an overall TLAS independent audit with the independent audit results expected by the end of 2017. In addition, civil society can play a role as an independent monitor as set out in the TLAS. This includes the right for civil society to visit companies and request documents on the legality of the timber. While this can take place in principal, in practice this is yet to happen.

Provisions under the other country import regulations are less clear. The government of Japan is expected to be responsible for overseeing the system, as the registering bodies will implement the system itself. How this will work in practice, as well as the involvement of civil society as an (informal) independent monitor is still to be seen.

In the case of the Malaysian provisions, the regulation is currently monitored administratively by MTIB. The Malaysian government is looking to assign an independent party to monitor the system but this will be subject to further legislation. The Vietnamese government will assign an independent evaluator to monitor the entire TLAS during this implementation phase. There will also be entry points for stakeholders to provide feedback but a formal independent monitoring role is not specified.

The role of an independent monitor in the case of the Chinese and Korean import regulations is currently unknown.

3. Discussion: Consistency between New and Existing Legislation to Regulate the Trade in Illegal Timber, and Implications for Global Market Incentives

The six Asian countries developing import control measures join at least 30 other states (the 28 Member States of EU, the United States, and Australia) in requiring companies to trade only in legally-harvested timber. The US Lacey Act, the Australian ILPA, and the EUTR have been operational for several years (see Box 2), with implementation and enforcement modalities established. Consistency across global efforts to regulate the trade in illegal timber can create a significant global market incentive for companies to trade in legal timber. However, without consistent approaches to legislative parameters, implementation and enforcement, there is also risk that the global trade in illegal timber will merely shift towards less discerning markets without robust regulations in place.

Box 2: Other Timber Regulations

The US Lacey Act (amended in 2008 to incorporate timber)

The legislation creates a strict liability Prohibition which makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the United States, a U.S. State or a foreign country. In the US, the prohibition is backed by a declaration requirement that includes scientific name, country of harvest, value and volume. Penalties for violations of either the prohibition or declaration requirement vary based on the violator's ability to demonstrate that "due care" was taken; that being whether the company did everything reasonable to determine that a product was legal before purchase. Both the EUTR and the Australian ILPA took inspirations from the US Lacey Act.

European Union Timber Regulation, 2013

EU Timber Regulation prohibits the placement of illegally-sourced timber products on the EU market. It entered into force fully in March 2013 across the 28 Member States of the EU and is henceforth referred to as the EUTR. Underpinning the prohibition, the legislation creates a requirement on companies or individuals first placing⁸ on the EU market timber products that are included in the regulation, to exercise 'due diligence', and thereby minimize the chance of handling illegal products. Due Diligence is described in the legislation as a three-step process; the documentation of supply chains, assessment of the risk of illegal wood entering the supply chain and mitigation of that risk.

Australian Illegal Logging Prohibition Act, 2012

Australia's Illegal Logging Prohibition Act* was passed by its parliament in November 2012. Similar in principle to the EU regulation, it prohibits the import of all illegal timber and wood products. It also bans any processing of illegally harvested domestic logs. It places a Due Diligence requirement on importers of 'regulated timber products' and processors of domestic logs to mitigate any risk that the products may include illegally logged timber. As such, importers are then required to submit a statement of compliance with the due diligence requirements alongside the customs import declaration to confirm that the imported timber is legal.

* Brack, D. 2009. „Combating Illegal Logging: Interaction with WTO Rules“. Energy, Environment and Resource Governance Illegal Logging Briefing Paper 2009/01. London: Chatham House.

⁸ First placing on the EU market for timber harvested outside the EU, is defined as the point when the timber is cleared by EU customs authorities for free circulation within the EU. In the majority of cases, the 'Operator' responsible for first placement is the importer, as identified as the named or numbered "Consignee" in Box 8 of the customs declaration document (the Single Administrative Document). For further guidance see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508342/EUTR_Commission_guidance.pdf

Table 7 provides a high level comparison across a number of the parameters discussed in the previous section to highlight where there are similarities and differences in the way that each seeks to tackle the trade in illegal timber.

Consistency and Lessons Learned

Consistency across global efforts to regulate timber imports is strongest in terms of the application and scope of the provisions. There is less consistency in the way that each regulation sets out the process of complying as well as the provisions to enforce non-compliance.

Scope of Application

Voluntary demand-side measures have tended to be a precursor to regulatory measures. The EUTR, for example, emerged after public procurement policies developed by several Member States requiring government buyers to source only legal and sustainable timber. Responsible companies could voluntarily implement systems that allowed them to access government contracts if they wished, but were not compelled to do so. This ultimately prepared many businesses for the requirements of legally binding, mandatory regulations that were to follow. Japan is the only country to design a regulation with voluntary requirements and the choice for businesses to opt-in even though Japan has been helping to raise awareness of the issue of illegal logging, and preparing business to meet voluntary legality standards through the goho-wood system for more than a decade. This should suggest sufficient capacity within the industry to meet a mandatory regulation. Experiences to date suggest that a non-legally binding mechanism actually makes it harder for companies to justify the effort and costs associated with obtaining the necessary documents to verify legality. It also has significant implications for the potential success of the regulation in eradicating the trade in illegal timber.

At the same time, Japan has sought to regulate the entire supply chain which is expected to encourage greater application as companies seeking to market their operations as legal and sell “confirmed” timber will have to demonstrate that all down-stream suppliers are registered businesses, a provision expected to incentivise businesses to opt-into the requirements of the regulation. This approach to regulating the entire supply chain is consistent with the US Lacey Act and the expected approach that China and the Republic of Korea might take. Similarly, the control provisions in the Indonesian and Vietnamese VPAs apply to all operators importing timber into the country. In contrast, the EUTR and the Australian ILPA along with the Malaysian import control system, have only regulated the businesses first placing timber on the market. The focus on merely the ‘first placer’ is a significant limitation, relying on effective checks on these actors and consistent enforcement in all geographical areas where products are placed on the market. The EUTR uses a traceability requirement on all subsequent traders of timber products, which should allow for product to be seized after first placement, but anecdotal evidence of enforcement of EUTR provisions suggest that this is not happening consistently across the EU due to differing interpretations of the EUTR and variable enforcement resourcing.

The majority of the timber regulations cover a broad set of timber products. It is notable that the Vietnamese import control system regulates all timber and rubber wood imported into the country. This is largely consistent with the US Lacey Act, the EUTR and the Australian ILPA which cover a broad range of products, with some exceptions. It seems likely that the European Commission will seek to expand the breadth of the product scope in imminent review to address a number of the remaining product exemptions which includes tables and chairs, wooden instrument parts and printed paper. In contrast, the Republic of Korea and Malaysia have chosen a narrow product scope with notable limitations. The MTIB already updated the product scope in 2017 to also include sawn wood but even with this expanded coverage, almost three quarters of Malaysia’s imports are outside the scope of the provisions.

Due Diligence Systems vs. Prohibitions

All of the Asian regulations are designed to encourage regulated companies to take active steps and to put in place a system that reduces the risk of illegal timber entering the market rather than to explicitly prohibit the import of illegally harvested wood. Only the US Lacey Act has a strict liability prohibition, banning illegally sourced wood products. In establishing company responsibilities to undertake Due Diligence, the emerging Asian regulations have followed the approach of the EUTR and the Australian ILPA in requiring companies to carry of Due Diligence or document the legality

of their timber. This approach reduces the need for cases which require evidence of illegal activity in countries outside the jurisdiction of the court considering the offence, reducing the technical and political barriers to prosecution. Anecdotal evidence suggests that Due Diligence can effectively change company-sourcing behaviour, particularly when mandatory for the entire supply chain, in shifting practices. A Forest Trends survey of EU, US and Australian enforcement activities for 2016⁹ showed changes in company purchasing behavior away from individual suppliers who were unable to provide full document sets and/or independently-verify CoC, towards others who could. China was the source country most frequently cited as being affected by changes in buyer behavior among operators and/or traders related to perceived DDS risk.

As part of the Due Diligence requirements of the new regulations, most expect business operators to collect information to determine any risk of illegal logged product entering the supply chain. Both the Indonesian and Vietnamese VPAs, like the EUTR, Australian ILPA and the US Lacey Act include a definition of “legality”. The definitions tend to cover the broad pillars of legality including rights to harvest, taxes and fees, timber harvesting activities, third party rights and compliance with trade, transport and customs regulations. The legality definition is then supported by requiring companies to verify these central pillars of legality with documentary evidence. In general, the EUTR and Australian ILPA offer a broad set of compliance options and some basic guidance on the different types of documents that can be used as evidence of legality but, crucially, the legal responsibility for excluding illegal wood from the supply chain rests on business operators, who can be sanctioned if they do not take appropriate steps to assess and mitigate risk. The government of Indonesia, and to a lesser extent Vietnam, have taken a slightly different approach and have decided to provide much more clarity on the types of evidence that will meet the requirements under each of the import regulations. In doing so, both governments appear to have provided ‘green lanes’ for timber based on the type of evidence. Both allow certificates from national certification schemes and FLEGT licenses as acceptable evidence of legality, but also include other types of evidence that do not necessarily verify the full scope of legality, or are subject to significant fraud or forgery risks. This includes the option to provide a CITES certificate in the case of Vietnam, and the potential to use a reference letter from the authority of the country of harvest or country of origin in the case of Indonesia.

In contrast, less is known about the definition of legality under the Japanese, Malaysian, Chinese and Korean regulations. In the case of Malaysia, the options to only provide a self-declaration document endorsed by the authorities of the exporting country, or a copy of the Customs Declaration could be interpreted to only verify legal right to export. For Japan, Korea and China, where provisions are still in development, there is concern that ‘legality’ could be narrowly interpreted under the new regulation to only include legal right to harvest, excluding for example the payment of appropriate fees and taxes, or social obligations. In China however, the industry association standard currently being developed states that “timber legality” refers to “that the harvesting, transportation, processing and trading (which) are compliant with the laws and regulations in the nation where these activities take place, as well with international agreements that the nation is a party.”

The emerging legislation will have the most profound impact on illegal logging globally if the Japanese, Chinese and Korean regulations include broad definitions of legality in any forthcoming guidance, and legislate for a legal responsibility to rest on business operators to ensure that, regardless supply chain documentation, they are not buying illegal wood.

Checks, Prosecutions, and Sanctions

There is significant global pressure to speed up customs clearance in order to facilitate global trade, and the ASEAN single window project¹⁰ among others has been established to meet this pressure. Establishing new legal regimes which involve meaningful pre-import checks would therefore run counter to this wider trend or require extensive new enforcement resources at point of import. Pre-import checks that are not extensively resourced would risk being meaningless ‘tick box’ exercises. Emerging information about early EUTR cases demonstrates that companies are being

⁹ Timber Regulation Enforcement Exchange Newsletter Fall 2016. Available at http://www.forest-trends.org/documents/files/doc_5494.pdf

¹⁰ For further reading see: <http://asw.asean.org/>.

given time to justify or improve their Due Diligence, often accompanied by an injunction on further sales of specific products until improvements have been met. Although the extended timeframes for enforcement are not always appreciated by NGOs in the EU, they allow prosecutors to justify sanctions when companies fail, and build the capacity of Operators to comply in the future. It should be noted however that injunctions in this case are critical additional tools for keeping potentially illegal wood out of regulated markets; without them, phased enforcement of this sort would constitute a significant loophole, which may allow illegal wood to enter a country for processing. This would be particularly problematic if the processed product was then issued a FLEGT license for export – in the case of Indonesia or Vietnam.

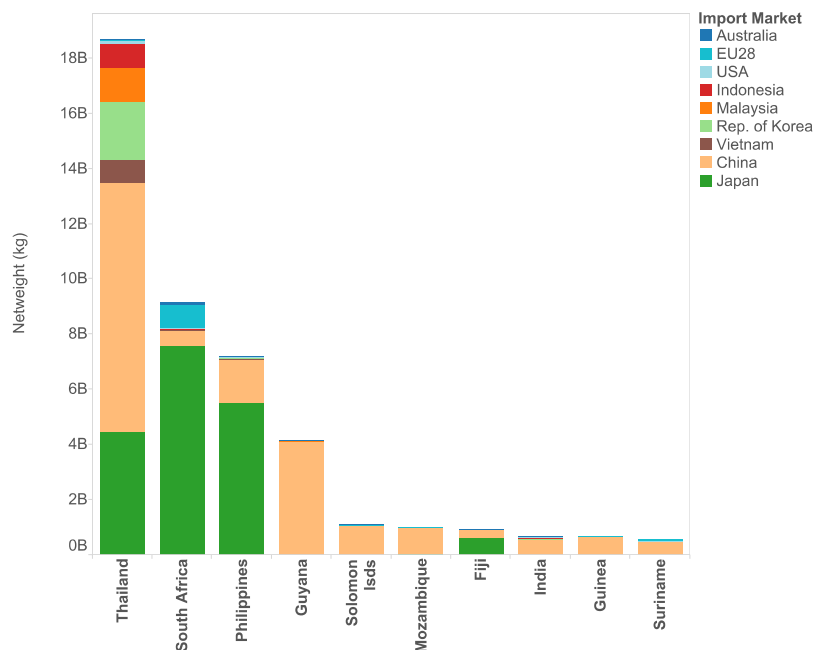
Opportunities for the Future

Robust and effectively enforced timber regulations have significant potential to shift consumption practices in the more than 37 states that have sought to regulate illegal timber over the past decade. Together, global demand for legal timber can also encourage additional countries to develop their own import controls in order to meet the demands of international buyers.

In addition, global efforts to ensure that timber is legal, and complies with forest sector policies and regulations in producer countries, can also support forest management and reduce illegal logging at the source. Demand-side regulations for the Asian markets have the potential to reach new markets that have not traditionally supplied the EU, US and Australia. As the Asian regulations come into effect, they have the potential to incentivize the demand for legally verified timber sourced from Thailand, South Africa, Philippines, Solomon Islands, Mozambique, Fiji, India, Cambodia and Lao (Figure 8).

While the group of countries is by no means homogenous, and the specifics of each forest sector will determine the nature and extent of reactions to a new incentive for demonstrably legal wood, it is reasonable to expect that there will be an increase in private sector and government focus on legal compliance/enforcement and supply chain transparency. It is also reasonable to hope that a reduction in demand for illegally harvested timber will reduce instances of illegal logging, as well as reducing the likelihood of the profits of illegal logging corrupting the institutions responsible for governing these national forest sectors.

Figure 8: Top 10 New Markets Likely to Be Impacted by the Developing Demand-Side Timber Regulation
(Exports in netweight kg 2012-2016)



Source: Data from UN Comtrade, 2017. Compiled by Forest Trends, 2017

Future candidates for similar legislation to tackle the trade in illegal timber are Taiwan and India. In 2016, India imported timber and wood products worth more than US\$6 billion (approximately 2% of global reported imports) and is also a significant manufacturer of furniture for export, in many cases manufactured using imported timber.

Recommendations

For governments of Asian countries developing and implementing new demand-side regulations:

- Align public procurement policies to create positive incentives (“carrots”) for the most responsible companies, which will likely increase the level of compliance and the speed at which companies invest in the necessary systems for compliance.
- Fully enforce new regulations, adapting compliance systems as needed and ensuring that negative incentives (“sticks”) are adequately dissuasive for companies to import illegal timber.
- Encourage future candidates among Asian consumer countries to develop similar legislation to tackle the trade in illegal timber, such as Taiwan and India. In 2016, India imported timber and wood products worth more than US\$6 billion (approximately 2% of the global reported imports) and is also a significant manufacturer of furniture for export, in many cases manufactured using imported timber.

For all countries enforcing demand-side regulations, including the US, EU, and Australia:

- To secure the maximum possible impact of the new regulations on illegal logging, and support for a ‘level playing field’ for responsible Asian companies, there needs to be active regional and global enforcement cooperation along the lines of the Timber Regulation Enforcement Exchange (TREE) Network, which brings together enforcement authorities for the EUTR, US Lacey Act and Australian ILPA. Promoting legislative harmonization would then create the clearest possible ‘market message’ to illegal loggers, and avoid competition issues between States.
- Encourage outreach and information sharing in all countries supplying the newly regulated markets, to facilitate responsible trade and identify opportunities for governance reform associated with increased market demand for legal wood.

Annex 1: What Is the Current Status of Timber Import Regulations in Asia?

This Annex provides an overview of the current status of demand-side regulations and synthesises the key policies and regulatory measures controlling timber imports in each of: Japan, the Republic of Korea, China, Indonesia, Vietnam, and Malaysia.

Japan

The government of Japan passed an *Act on Promotion of the Distribution and Use of Legally Logged Wood (Clean Wood Act)* in May 2016. This required the government to develop a policy and two ordinances detailing Due Diligence requirements for companies and an institutional framework and mandate for enforcement. The Ministry of Economy, Trade and Industry; The Forestry Agency and the Ministry of Land, Infrastructure, Transport and Tourism released the draft policy and ordinances for public consultation in March 2017. The government promulgated the three implementing regulations on May 1st, 2017 with no changes.

The legislation came into force on May 20th, 2017 although the government is still expected to come forward with guidelines for implementation, and to open applications for the role of Registering Bodies¹¹, which will be responsible for implementing the system. In practice therefore, companies are unlikely to be able to register and start implementing the requirements of the legislation until September 2017 at the earliest.

Republic of Korea

The government of Korea committed to excluding illegal wood from the Korean market in the 2012 *Forest Act*. The Korea Forest Service (KFS) recently announced a revised *Act on the Sustainable Use of Wood*¹² in March 2017, which includes provisions regulating the import of illegally logged timber products.

While the law will come into effect on September 22, 2017, the import provisions which will now largely come into effect on 22 March 2018, following recent revisions. The government of Korea is expected to come forward with an enforcement ordinance and further information on the scope of the legislation including how importers can demonstrate compliance with the provisions in the near future.

Malaysia

The Malaysian Timber Industry Board (MTIB) issued Director General (DG) Circular: LPKM 1/155/1/1 Vol.4 (45) in December 2015¹³ which announced a new *Import Legality Regulation Under the Timber Legality Assurance System (TLAS) FLEGT-VPA*. This was followed by two amendments in May¹⁴ and July¹⁵ of 2016 extending the grace periods for

¹¹ The registering bodies are yet to be approved by the government and are most likely to be auditing companies.

¹² The legislation is available in Korean here

<http://www.korealaw.go.kr/LSW/lsSc.do?menuId=0&p1=&subMenu=1&nwYn=1§ion=&tabNo=&query=%EB%AA%A9%EC%9E%AC%EC%9D%98%EC%A7%80%EC%86%8D%EA%B0%80%EB%8A%A5%ED%95%9C%EC%9D%B4%EC%9A%A9%EC%97%90%EA%B4%80%ED%95%9C%EB%B2%95%EB%A5%A0#undefined>

¹³ The DG Circular is available in English here

http://www.mtib.gov.my/repository/pelesenan/import_legaliti/lama_pekeliling%20peraturan%20import%20legaliti_bi_11.3.16.pdf

¹⁴ The May 2016 DG circular amending the date of entry into force is available in English here

http://www.mtib.gov.my/repository/pelesenan/import_legaliti/baru_pekeliling%20kp%20import%20legaliti%20bil%201_2016%20bi.pdf

¹⁵ Confirmation of the second amendment to date of entry into force is available in English here

http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2299%3Aimport-legality-regulation-under-timber-legality-assurance-system-tlas-&catid=1%3Ahighlights&lang=en

the implementation of the regulation following concerns raised by WTO member countries. In line with the scope of the developing VPA with the EU, the import regulation only applies to Peninsular Malaysia.

Entry into force was originally intended to be January 3rd 2017, but implementation was delayed and the import provisions came into effect on July 1st 2017 and are published on the MTIB web portal.¹⁶

Indonesia

To meet the import control requirements of FLEGT licensing under the Voluntary Partnership Agreement with the EU, Indonesia's Ministry of Trade issued regulation No.97¹⁷ in 2014, which sets out the overarching legal framework for excluding illegal wood from the country's imports, and creates a requirement on importers to seek additional import approval for wood products, which now require Due Diligence. This was followed in 2015 by implementing regulations issued by the Ministry of Environment and Forestry, setting out how Due Diligence¹⁸ should be carried out.

The import control system has been in effect since January 1, 2016.

Vietnam

Vietnam included provisions to regulate the import of timber products as part of the Voluntary Partnership Agreement (VPA) with the EU¹⁹, which was initialled in May 2017. Further implementing regulations are forthcoming including legislation requiring importers to conduct due diligence.

The legislation is expected to be operational by 2021, in time for FLEGT licensing.

China

China is developing *Administrative Measures for Strengthening the Legality of Imported Wood*, which is a normative document. Normative documents are not governmental regulations but crafted and promulgated by administrative authorities or organizations that are authorized by law or regulation to govern public affairs. Such normative documents are issued by administrative leaders and are not required to go through the process of gathering opinions before coming into force, such as panel discussions, evidence review meetings and hearings. This approach gives the SFA, as the key regulatory authority, flexibility in scope and implementation.

At the same time, China has been building the capacity of its commercial sector to undertake Due Diligence in wood sourcing and drafting guidance on industry standards for sourcing wood and timber products from several producer countries. China's various forest product industry associations are also in the process of developing timber legality verification standards which are expected to be aligned with the government legislative framework, once published.

16 http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2418%3Aimport-legality-regulation-under-timber-legality-assurance-system-tlas-&catid=1%3Ahighlights&lang=en

17 The Regulation is available in English here https://www.mfp.or.id/attachments/article/88/3_Permendag_P97_2014.pdf

18 The implementing regulations on Due Diligence are available in English here https://www.mfp.or.id/attachments/article/88/10_SE11_PHPL_PPHH_2015_English.pdf

19 The VPA is available in English here http://ec.europa.eu/environment/forests/pdf/11_05_2017_EU_Vietnam_VPA.pdf

Annex 2: Asian Timber Import Provisions at a Glance

Comparative parameter	JAPAN
Date in force	May 20, 2017
	The government of Japan passed an <i>Act on Promotion of the Distribution and Use of Legally Logged Wood</i> (Clean Wood Act) in May 2016. The government consulted on drafts of a basic policy and ordinances on Due Diligence and enforcement in March 2017 and promulgated the three implementing regulations May 1 st 2017 with no changes.
Voluntary vs. Mandatory	Voluntary, the regulation only applies to registered companies. Although, “the responsible minister can demand a report on the situation of the securing of the use of legally harvested timber, etc. from any timber-related business operator, regardless of whether the business operator is registered or not”.
Import dependent on document/ DDS checks	No. Registering bodies will conduct checks on DDS when companies apply to become “registered operators in timber related business”. The application to register a company takes place pre-import but is not specifically linked to a customs clearance procedure.
Scope of regulated actors	The entire supply chain.
Scope of regulated products	“Wood (excluding that which was collected or discarded after having been used once or without use as well as that which uses these as materials)” and furniture, paper, and other processed products. Plywood specifically used as molds on construction sites are exempt from the regulation, which only applies to the first placer rather than any sub-contractors.
Positive obligation vs prohibition	Positive obligation
If positive obligation, to do what? document supply chain, assess risk, mitigate risk, avoid risk all together	For registered businesses to carry out Due Diligence with an appropriate confirmation of legality.
Acceptable documentary evidence of legality	Evidence to demonstrate legality have not been formally announced. To date, general policy guidance suggests that wood related business operators may make use of “certification methods utilizing forest management certification schemes and CoC certification schemes,” “verification methods implemented by business operators on the basis of certification by forest, forestry or timber industry-related organizations,” “verification methods based on the individual efforts of individual companies and the like,” and “forest or timber certification schemes of prefectural governments and the like.
Paper-based or fact-based determination of legality	Unknown although expected to be a paper-based determination of legality.
Consumer government support for Due Diligence vs Business responsible for Due Diligence	The expectation is that the government will release information on relevant laws and regulations in Japan and producer countries to support businesses in their Due Diligence.
Independent Oversight function	The government of Japan is responsible for overseeing the system, which will be implemented by the registering bodies.
Penalties	Non-registered companies declaring that they are “registered operators in timber related business” will be subject to penalties. In instances where companies cannot document the legality of the timber, they must label it as “unconfirmed”. Where “unconfirmed” timber is miss-labeled, registering bodies can remove companies or suspend operations.

Comparative parameter	THE REPUBLIC OF KOREA
Legislation	The government of Korea committed to exclude illegal wood from the Korean market in the 2012 Forest Act. The Korea Forest Service (KFS) announced a revised act on the use of sustainable timber in March 2017, including a regulation on the import of illegally logged timber products.
Date in force	The law will come into effect on September 22, 2017 although the import provisions will largely come into effect on March 22, 2018.
Voluntary vs. Mandatory	Mandatory
Import dependent on document/ DDS checks	Yes. Documents will be checked by an Inspection Agency prior to customs clearance. Importers cannot sell or distribute the product before the inspection result is confirmed or before supplementation of a violation.
Scope of regulated actors	Unknown although likely to apply to all importing companies.
Scope of regulated products	<p>Currently, the regulation applies to sawn wood, preserved wood, dricon, wood plastic composite wood, laminated timber, plywood, particle board, fiberboard, oriented strand board, wood flooring, wood pellet, wood chip, wood briquet, modeled charcoal, charcoal.</p> <p>The enforcement ordinance is still to be drafted, and as such the product scope could be subject to change.</p>
Positive obligation vs prohibition	Positive obligation
If positive obligation, to do what? document supply chain, assess risk, mitigate risk, avoid risk all together	To document the legality of timber imports. The scope of the legality definition appears to include legal right to harvest and potentially the legal right to export.
Acceptable documentary evidence of legality	<p>Documents to demonstrate legality must fall under the following:</p> <ol style="list-style-type: none"> 1) Deforestation permit issued under the laws and regulations of the country of origin; 2) An internationally accepted certification standard as prescribed by the Director of KFS; 3) Documents to be mutually recognized in accordance with the bilateral consultation between Korea and the source country; 4) Documents issued by the director of KFS that verify legal harvest. <p>Specific examples of documents that will meet these requirements have not yet been released.</p>
Paper-based or fact-based determination of legality	Paper-based determination of legality.
Consumer government support for Due Diligence vs Business responsible for Due Diligence	Unknown
Independent oversight function	Unknown
Penalties	The regulation states that when the director of the KFS identifies illegal wood on the market, the sale will be suspended and the timber will either be returned or discarded. Failure to comply with the order to suspend, return or discontinue the sale could lead to up to three years imprisonment or a fine of no more than 30 million Won (approx. US\$27,000).

Comparative parameter	MALAYSIA
Legislation	The Malaysian Timber Industry Board (MTIB) issued a Director General (DG) Circular (LPKM 1/155/1/1Vol.4(45)) dated 21 December 2015 announcing a New Import Regulation Under the Timber Legality Assurance System (TLAS). This was followed by an amendment DG Circular dated 30 May 2016 extending the grace period for the implementation of timber import legality regulations. The legislation only applies to Peninsular Malaysia.
Date in force	June 15, 2017
Voluntary vs. Mandatory	Mandatory
Import dependent on document/ DDS checks	Yes, import approval dependent on pre-import checks on a company's DDS. The full process detailing the pre-import checks is outlined in "the flow process". It is currently unknown whether import approval will be based on a product/supply chain or each shipment.
Scope of regulated actors	First placers plus all companies exporting to the EU.
Scope of regulated products	The regulation applies to the import of logs and plywood (referring to the custom HS codes 4403 and 4412) only. Although, "as a pre-emptive measure, all importers of other timber products are also advised to obtain legality evidence from respective producing countries, particularly for products which will undergo further processing, and to be re-exported to the European Union countries."
Positive obligation vs prohibition	Positive obligation
If positive obligation, to do what? document supply chain, assess risk, mitigate risk, avoid risk all together	To document the legality of timber imports. "Legal" is not defined in the legislation but compliance options vary widely in scope as evidenced in the documents accepted as proof of legality.
Acceptable documentary evidence of legality	Documents considered evidence of legality must include one of the following: a) FLEGT License; or b) CITES Permit; or c) Timber Certification (FSC, PEFC, MTCS and other credible certification scheme); or d) Certificate of Voluntary Legality Scheme; or e) Legality Document issued by any agency / corporation / recognized association; or f) A copy of the Customs Declaration of the exporting country.
Paper-based or fact-based determination of legality	Paper-based determination of legality.
Consumer government support for Due Diligence vs Business responsible for Due Diligence	The Malaysian government conducts an assessment of documents produced by exporting countries that provide evidence of legality. The government also intends to develop appropriate guidelines for importers in accordance with the current legislation of the major supplying countries.
Independent Oversight function	The regulation is currently monitored administratively by MTIB. The Malaysian government is looking to assign an independent party to monitor the system but this will be subject to further legislation.
Penalties	None listed. As the checks are pre-import, failure to document legality would be expected to result in no import license issued by the MTIB Licensing Unit.

Comparative parameter	INDONESIA
Legislation	To meet the import control requirements of the Voluntary Partnership Agreement with the EU, Indonesia's Ministry of Trade issued regulation No.97 in 2014 which sets out the overarching legal framework and sets up the requirement on importers to seek import approval. The Ministry of Environment and Forestry then issued implementing regulations which set out how Due Diligence should be carried out in 2015.
Date in force	The import control system has been in effect since January 1, 2016.
Voluntary vs. Mandatory	Mandatory
Import dependent on document/ DDS checks	Yes, import approval is dependent on pre-import checks on company DDS. Import approvals are provided for six or twelve months and are based on the importer's relationship with the supplier/exporter for the specified products and HS codes in the application rather than individual shipments.
Scope of regulated actors	All parties plus national control system
Scope of regulated products	The full list of products included within the scope of the import regulations is set out in annex 1 of the MOT import regulation NUMBER 97/M-DAG/PER/11/2015.
Positive obligation vs prohibition	Positive obligation
If positive obligation, to do what? Document supply chain, assess risk, mitigate risk, avoid risk all together	For registered importers (traders and processing operators) to carry out Due Diligence and to document the legality of the timber imports. Due Diligence is required at the relationship level between the importer and the exporter.
Acceptable documentary evidence of legality	Documentary evidence of timber legality must include: a) FLEGT license; and/or b) MRA (Mutual Recognition Agreement) Country License from the country that has work agreement of recognition of legality assurance of the timber and trade with Indonesia; and/or c) Country Specific Guidelines (CSG) or the like on the legality of forest products, regulated by exporting countries; and or d) Certificate from a certification agency that applies certification scheme on legality or sustainability of forest products along with the traceability. e) Reference letter from the authority of the country of harvest or country of origin of forest products on the legality or sustainability of forest products.
Paper-based or fact-based determination of legality	Paper-based determination of legality.
Consumer government support for Due Diligence vs Business responsible for Due Diligence	The Indonesian government is providing support to companies through drafting guidance and releasing additional material. The overarching approach is structured around removing any uncertainty for businesses. The government is also taking a leading role in facilitating some of the documentary evidence of legality such as Mutual Recognition Agreements (when issued) and Country Specific Guidelines.
Independent Oversight function	There are two main independent audit or oversight functions: 1) Independent audit function of the TLAS. The first independent audit results will be publicly available by the end of 2017. 2) The role that civil society can play as an independent monitor as set out in the TLAS. This includes the right for civil society to visit companies and request documents on the legality of the timber. While this can take place in principal, in practice this has not yet taken place.
Penalties	No criminal sanctions. Indonesia is taking a relatively soft approach that promotes good behavior, with failure to comply preventing access to the supply chain. In the event of any inconsistencies, forestry officials may withhold or revoke approval of the control documents resulting in a 12 month suspension of operations

Comparative parameter	VIETNAM
Legislation	Vietnam has included provisions to regulate imports of timber as part of the Voluntary Partnership Agreement (VPA) with the EU which was initialed 11th May 2017. Further implementing regulations are forthcoming including legislation requiring importers to conduct due diligence.
Date in force	The full system is expected to be operational by 2021, in time for FLEGT licensing.
Voluntary vs. Mandatory	Mandatory
Import dependent on document/ DDS checks	Yes. Import is dependent on documentary checks at the border for all shipments. The Customs Agency (in collaboration with Forest Protection Department if needed) will check the legality, validity and conformity of self-declaration based on documentary and/or physical checks. A risk-based approach will apply to border checks with shipments allocated red, yellow and green risk categories. Shipments considered high and medium (red and yellow) risk would be subject to physical checks. How the customs risk-based control and management categories will take account of the new species and geographic risk factors is yet to be established. Systematic documentary checks will also apply based on species and geographic origin risk associated with the product.
Scope of regulated actors	All operators (both those classified as households and those classified as organizations).
Scope of regulated products	The import regulation applies to all timber and rubber wood products entering Vietnam.
Positive obligation vs prohibition	Positive obligation
If positive obligation, to do what? Document supply chain, assess risk, mitigate risk, avoid risk all together	For importers to carry out Due Diligence and document the legality of the timber in accordance with the relevant legislation of the country of harvest covering Rights to harvest; Forestry activities; Taxation and fees; Trade and customs including any legal requirements for timber export in the country of harvest such as export bans, export licensing requirements, etc.
Acceptable documentary evidence of legality	One of the following 3 alternative ways to demonstrate legality for imported timber is required: 1. Valid FLEGT license or equivalent export license covering the entire shipment from an exporting country which has concluded a VPA with the EU and has an operational FLEGT licensing system in place; or 2. Valid CITES permit covering the entire shipment; or 3. A Self-declaration demonstrating due diligence, additional documentation according to the risk categories status of the imported timber as specified in Table 4 of Annex V of the VPA to demonstrate legal harvest. In addition, importers must also include information on legal requirements for timber export in the country of harvest. Specific examples of documents to demonstrate compliance are not set out in the VPA. Importers must also identify any risk of illegal timber in the shipment and the steps they have taken to mitigate these risks.
Paper-based or fact-based determination of legality	Paper-based determination of legality.
Consumer government support for Due Diligence vs Business responsible for Due Diligence	The Vietnamese government will develop specific implementation guidelines including a list of high-risk species and a list of low-risk countries and territories that will be reviewed, supplemented and adjusted by the parties during implementation.
Independent oversight function	The Vietnamese government will assign an independent evaluator to monitor the entire TLAS during this implementation phase. There will also be entry points for stakeholders to provide feedback but a formal independent monitoring role is not specified.
Penalties	Depending on the severity of the violation, administrative sanctions, suspension of activities and/or prosecution will apply and are expected to be adequate, proportional and dissuasive with harsher penalties for repeated non-compliance. Legislation still needs to be developed on penalties.

Comparative parameter	CHINA
Legislation	Still in development.
Date in force	Still to be decided.
Voluntary vs. Mandatory	Mandatory
Import dependent on document/ DDS checks	It is currently unclear when checks are likely to take place under the developing Chinese import regulation.
Scope of regulated actors	Likely to follow the Japanese approach and regulate the whole supply chain
Scope of regulated products	China is expected to take a flexible approach to the products regulated by their developing import provisions, which are thought likely to include a broad range of timber and paper products.
Positive obligation vs prohibition	Likely to be a positive obligation
If positive obligation, to do what? document supply chain, assess risk, mitigate risk, avoid risk all together	The Chinese legislative requirements on importers are still in development but are expected to be in line with the broader trend requiring companies to conduct Due Diligence to confirm the legality of their timber imports. A Due Diligence toolkit has already been developed by the China Responsible Forest Product Trade and Investment Alliance (China-RFA), with support from InFIT20 and Due Diligence training for companies has been on-going. Due Diligence obligations are also an important component of the timber associations developed standard.
Acceptable documentary evidence of legality	Unknown. China has not released information on the expected scope of compliance options.
Paper-based or fact-based determination of legality	Expected to be a paper-based determination of legality.
Consumer government support for Due Diligence vs Business responsible for Due Diligence	For China, the government is expected to play an important role in establishing a legality framework that will include the industry associations and will likely play an important role in supporting Due Diligence. To date, the government has already released several voluntary guidelines for companies investing overseas in timber operations, set up MoUs with a number of key trade partners and developed Country Specific Guidelines for sourcing in Mozambique, Gabon, Guyana, and Myanmar.
Independent oversight function	The role of an independent monitor in the case of the Chinese regulation is currently unknown.
Penalties	Unknown. China has not yet provided information on likely penalties for non-compliance.

²⁰ The China-UK Collaboration on International Forest Investment and Trade (InFIT) is a joint initiative between China's State Forestry Administration (SFA), China's Ministry of Commerce (MofCom), and the UK's Department for International Development (DFID).



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