



Enhancing Key Elements of the Value Chain for Plantation Grown Wood in Lao PDR

Policy Brief on Legal barriers and legality issues for smallholder plantation owners and their wood

Hilary Smith and Kaisone Phengsopha

July 2014

Background

Lao PDR has an emerging forest plantation industry based on both smallholder and corporate growers. Plantations and planted trees have the capacity to provide significant financial benefits to Lao PDR and the Government is actively encouraging participation in this sector, including through the Forest Strategy 2020 which sets a target for 500,000ha of new plantation. However, there are many challenges and constraints which need to be addressed in order to maximise returns to smallholders and support the development of competitive domestic value-added wood industries.

The ACIAR project "Enhancing Key Elements of the Value Chain for Plantation-Grown Wood in Lao PDR" aims to improve livelihoods for farmers and processing workers, and to enhance the international competitiveness of Lao PDR's wood industries through improved efficiency of key elements of the planted wood value chain. Specific objectives of the project are to:

1. address constraints and inefficiencies in the value chain, from harvest to processor stages, that limit returns to smallholder growers;
2. increase returns to processors and smallholders through improved efficiencies of the primary wood processing sector;
3. improve the value and quality of wood products for domestic and export markets; and
4. enhance the competitiveness and capacity of wood processing industries.

This policy brief summarises the findings of an analysis of the legal requirements of the value chain for smallholder plantations and their wood and makes some recommendations about ways to address constraints and enhance productivity. While this report is written specifically for smallholder plantations many of the issues identified in this study are also common to commercial plantations and timber.

General Observations

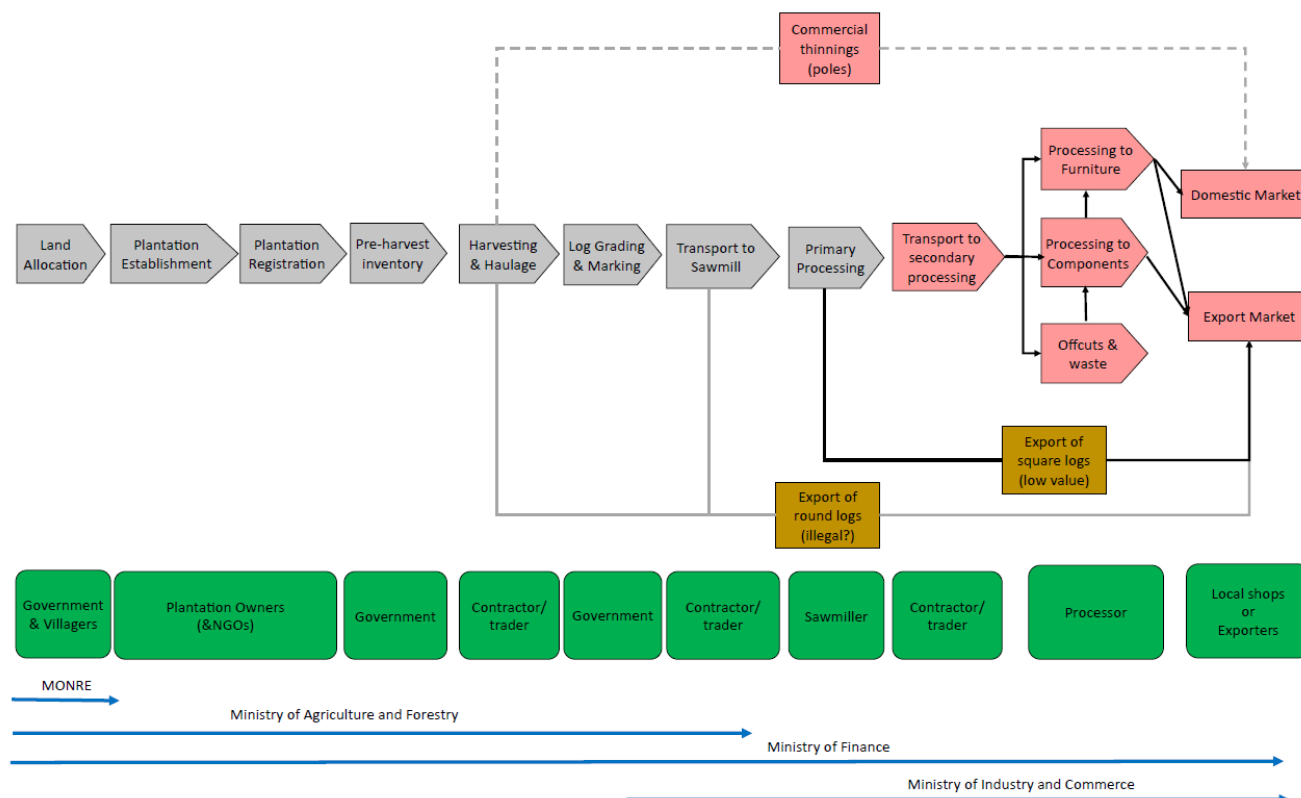
A primary objective of the study was to research, map and reviewed the policies, laws and regulatory instruments governing the smallholder plantation value chain. Overall the regulatory environment was found to be extensive but also highly complex with overlapping, sometimes out of date and often inconsistent laws. Recent legal reform across all sectors and agencies has resulted in a large number of new regulations, decrees and other legal instruments that are sometimes contradictory. Superseded instruments remain in force despite reforms and this causes confusion and duplicated regulatory effort and cost. This adds to the overall cost of production and potentially reduces the return to smallholders and industry. Ineffective implementation may delegitimise the law, resulting in non-compliance and this may impact the legality of wood products and their access to international markets.

The rapid development of new regulations, in response to national and international policy drivers has implications for the implementation of laws by government agencies and the ability of farmers and industry to comply. This may be due to the speed at which reforms are being made or lack of awareness about the regulatory changes. In some cases poor implementation of and compliance with laws persists because laws are viewed as inconsistent with local requirements, conditions or priorities.

Many of the rules that apply to the smallholder plantation value chain have been transferred from laws designed to reduce unsustainable or illegal harvesting of natural forests and the conversion of natural forests for infrastructure development and industrial plantations. New laws and guidance are being developed for large-scale agriculture and forestry plantation projects and similar reforms are required for smallholder plantations. However new laws should be made relative to the scale and risk of the impacts occurring in association with smallholder plantations, which are relatively low because they are small, dispersed, and often use land previously developed for agriculture or other purposes.

The Smallholder Plantation Value Chain

The value chain for smallholder plantations and timber involves many steps and many actors. A large body of regulatory requirements implemented by several agencies governs the process. These are summarised in the diagram below. A set of value chain diagrams that describes the regulatory environment for each of the main stages in the value chain has also been developed and are available in English and Lao, and these are provided as an attachment to this paper.



Forestry Businesses

Under the *Forestry Law 06/NA 2007* and the *Law on Enterprise 11/NA 2005* business registration is required for all participants in the plantation value chain. However, it is not clear whether individual plantation smallholders are required to hold such registration, or whether the requirement would apply to grower groups and cooperatives if formed.

Business registration is also required for the importation of forestry and wood-transport equipment, including harvesting machinery and chainsaws, although it appears that this is inconsistently applied. These regulations potentially create barriers to the development of small-scale timber harvesting and processing operations.

Recommendation

MAF and MOIC review and provide agreed joint guidance on the need for business/enterprise registration including by smallholder plantation owners and grower groups/cooperatives.

Land Allocation and Land Use Rights

The availability of land is a significant issue for the plantation industry. The *Land Law 04/NA 2003* is the principal law governing access to land and land use rights, however the allocation of land for plantations is also determined by the *Forestry Law*. There are inconsistencies between the *Land Law* and *Forestry Law* with respect to the categories and amounts of land that can be allocated for small timber plantations; both agricultural and degraded/barren forest land can be allocated to plantations. Some evidence suggests that this allows agricultural land to be used for plantations, which may result in the conversion of more natural forest, through swidden, to agricultural land for farming. This contradicts government policies to reduce slash-and-burn and increase forest cover. It may also have negative social consequences including land conflict.

The land allocation process is complex and the number of documents used to demonstrate land use rights is diverse. There are inconsistencies and contradictions within the legislation regarding these, and informal and customary procedures are still used in remote areas.

Temporary Land Use Certificates (TLUCs) have been issued for plantations and are valid for 3 years. Both DAFO and DLMA issue TLUCs despite recent reforms.

The proposed revised process for allocating land use rights makes TLUCs redundant, and land development certificates are used to demonstrate a permanent land use, including for plantations. The process for applying for a permanent land use certificate is not straightforward but there appears to be some duplication between this process and the plantation registration processes. There may be an opportunity for streamlining this process.

Recommendations

MAF provide clarification on the categories and amounts of land that can be allocated to smallholder plantations.

MONRE and MAF review and clarify the process for applying for TLUCs, land development certificates, the documents that can be used to demonstrate land use rights and apply for permanent land use certificates.

Plantation establishment, registration and land tax

Registration of plantations is a legal requirement for all plantation owners however few smallholder plantations have been formally registered. The process of registering a plantation is lengthy and costly and the benefits are not fully understood by plantation owners or government officers. This has been recognised by the Government and efforts are being made to address it.

The policy basis for smallholder plantation registration has become lost in a broad set of issues, and the process of registration has become complex, slow and costly which makes it difficult for farmers to comply. Lack of compliance creates a risk that the timber harvested and the processed products will not meet the legality requirements of some markets.

The existence of markets for whole or semi-processed logs, often with less stringent standards with respect to legality, provides potentially cost effective and financially attractive alternatives to farmers. When this timber is exported this will impact timber availability for domestic processing.

Exemptions from land tax have been used to encourage plantation registration. However there are inconsistencies in the rules that determine the size and nature of plantations that can be registered and whether these are eligible for tax exemptions.

- *MAF Directive 1849/AF.99* - plantations eligible for registration must have an area of 1600m² or more and allows for a number of planting systems some of which have less than 1,100 trees/ha
- *Regulation 196/AF, 2000* - plantations > 1600 m² are exempt from land tax if they plant more than 800

trees/ha in low land area and 600 trees/ha in upland areas.

- *Decree No 01/PO on Land Tax, 2007* - any plantations which are registered under the Directive 1849/AF.99, and in which 1 ha consists of 1,100 trees, are exempt from land tax.
- Scattered plantings can be certified under a different process but are not eligible for land tax exemption.

Where land tax exemptions are provided, there are limitations. TLUCs are only valid for three years and land tax exemptions are not available within this period because registration as a tree plantation cannot occur until three years after planting. There is also conflicting information about which government agencies can grant the land tax exemptions.

The payment of land tax, and issued land tax receipts, are used to substantiate land claims, for local land transactions and as evidence in the plantation registration process, although by law these documents cannot be used to claim land ownership.

While the regulations for registering tree plantation parcels are relatively clear, the requirements, or opportunity, for registering scattered trees are not, and the implications of this for the subsequent harvesting, sale and processing of timber sourced from scattered plantings requires further research. At present the law only allows for certification of scattered planting by the village head and these plantation owners are not eligible for land tax or other tax exemptions. It is also unclear whether or how timber from scattered plantation is included in quotas or whether certificates of origin, which are required for processing and export, can be issued for the wood they produce.

In some circumstances plantation registration requires a Plantation Management Plan (PMP), however the technical requirements for PMPs are unclear and do not appear to be enforced. In the absence of PMPs, evidence suggests that plantations are inadequately managed - silvicultural practices such as thinning, pruning and weeding do not occur as required. Barriers to commercial thinning exist which may inhibit this silvicultural practice further. As a result plantations may be poorly managed and wood quality is lower than could otherwise be achieved.

Farmers may only register their plantation when they decide to harvest timber (starting at around age 15) rather than at 3 years of age, when registration first becomes an option. Various factors may contribute to this such as the cost of registration and the fact that there are no intermediate commercial timber crops, such as thinning for poles that can be harvested and sold to offset this cost. Land tax exemptions may not be an adequate incentive on its own, to encourage registration.

There is some evidence that some farmers ‘borrow plantation certificates’ when they sell their timber, to meet this legal requirement.

It is unclear in the regulations whether plantation registration continues after a plantation has been harvested and subsequently replanted (more than one plantation rotation) or whether it must be renewed.

Plantations may be established on land allocated under individual/family land use rights and registered by individuals or groups of individuals. However there appears to be no opportunity for plantation to be established on communal land.

Recommendations

MAF should review the policy basis for, and objectives of, smallholder plantation registration to ensure the expected outcomes are appropriate to scale and that the costs and the complexity of the process are not excessive both for plantation owners and government agencies.

It would be beneficial to establish appropriate definitions of *plantation* and clarify the nature and extent (size and stocking) of plantations that are eligible for registration and tax incentives.

Additionally, establishing definition of a *smallholder* that can be consistently applied through regulations would be useful in order to differentiate smallholder plantation from commercial scale plantations.

The requirements for PMPs and codes of practice for smallholder plantations need to be clarified. Where plans are required, consideration should be given to the use of these to reduce the need for costly pre-harvest surveys and inspections (discussed below). Any codes or standards that are developed must include specific provisions for smallholder plantations and be appropriate to scale and capacity.

MAF and MOF together should review the effectiveness and applicability of land tax incentives for plantation registration and give consideration to the provision of land tax exemptions in the first three years after plantation establishment.

A clear mechanism that enables scattered tree plantings to become registered, gain tax (or other) incentives and for the wood origin to be certified should be considered.

A risk-based assessment of the overall need for plantation registration should be undertaken and consideration given to the treatment of smallholder plantations as an agricultural crop.

The development and promotion of markets for intermediate products such as thinning and poles, and the introduction of tax exemptions associated with these products could be investigated as an option for

encouraging farmers to register their plantations well before harvest.

Harvesting and Sales

Many of the regulations for harvesting and sales that are applied to plantations have been developed for natural forests and large scale plantations on land to be converted from natural forest.¹ The intent is to improve sustainability, reduce the risk of illegal harvesting and the potential for such timber entering the supply chain. While there are risks of negative impacts occurring in association with smallholder plantations, these are comparatively low. The harvesting regulations that are based on requirements for natural forests are overly complex, costly, and inappropriate to the scale of plantings when applied to smallholder plantation owners.

The quota system is designed to regulate the harvesting of timber, maximise returns and allocate supply to processors who meet specific standards. While there seems to be a clear protocol that logs from smallholder should be included in annual logging quota it is unclear how (or whether) smallholder plantation volumes are actually included and whether the legality of this timber can subsequently be demonstrated.

Despite regulatory guidance clearly demarcating responsibilities, the roles of DAFO, PAFO, DOFI and DOIC in harvesting and haulage remain unclear and there is some duplication in effort and costs to farmers, traders and processors.

Plantation owners are required to undertake (or have undertaken) pre-harvest measurements including for harvesting, thinning and pruning, which adds to management costs. There is an expectation that these assessments must be made by DAFO and paid for by the farmer (or buyer of the wood). However it is not always the case that DAFO undertakes these assessments (farmers often undertake the assessments themselves), but anecdotally, the payment must still be made in order to obtain the necessary approvals/permits. Other avenues for undertaking these assessments, that are already within the regulations should be re-examined, such as the role of Village Forestry Units/Committees, and other mechanisms such as grower groups or cooperatives as service providers.

Inadequate product definitions may limit market access. For example, thinnings are not recognised as product, although poles are recognised as a forest product from harvesting in conversion forest but can be harvested only with permission from the Government.

¹ Guidance on regulatory requirements and approvals for large scale commercial plantations were being drafted at the time this study was being undertaken.

Other barriers to commercial thinning exist and this reduces plantation health and wood quality. Consideration should be given to the introduction of tax exemptions for thinnings to promote better quality/volume of wood through plantation management. This could be limited to, for example, 12 years or <10cm dbh, after which the responsiveness to thinning reduces. Any risk that this would create an incentive for 'short rotation' teak plantations should be examined such that long term wood supply is not adversely impacted. Other measures such as retained stocking rates may be needed.

Tax incentives exist for plantation owners that undertake their own harvesting. Opportunities for promoting grower harvesting of thinnings through tax incentives should be investigated further.

The use of log lists compiled by PAFO at Log Landing 2, which are transferred to DOIC and are meant to enable the tracking of timber to the point of consumption or export do not appear to be effective.

Harvesting taxes and fees are inconsistently applied. Provincial variations create an incentive for wood to be transported to Provinces with more favourable tax treatment. This has adverse consequences for local downstream processing. Flat rate taxes and Provincial variations to the National Law based on a 'unit price of sale of timber' should be reviewed taking into account any price variations on the basis of product type.

Recommendations

MAF should consider the development of specific regulations for the smallholder plantation resource that reflect the level of risk associated with timber harvesting and sales.

Clarification of the approvals procedures and service fees required by DAFO and DOIC is needed to reduce duplication in cost and effort, particularly at Log Landing 2.

A review of product classes and standards should be undertaken to reflect market demand and potential supply including for primary products such as round logs, squared logs and thinnings.

Including harvesting provisions within PMPs should be investigated; approved PMPs which include silvicultural and harvesting schedules could assist in reducing pre-harvest costs, improve silviculture and promote markets for products such as thinnings. A risk based approach through post-harvest auditing, could also be applied.

The identification and removal of barriers to commercial thinnings should occur but this needs to ensure minimal impacts on long-term wood supply across all product classes.

A review the potential roles for Village Forestry Units or grower groups to undertake pre-harvest, harvest and post-harvest assessments should be undertaken.

Haulage and Transport

Recent reforms have attempted to eliminate the requirement for timber transport permits and controlling licenses however the new regulations are being applied inconsistently and in some cases permits are still being requested at Log Landing 2 by both DOIC and PAFO. There are costs to farmers and traders associated with these permits. In the absence of transport permits it is unclear how source of origin can be tracked.

Issues may arise where fees and charges collected in association with transport approvals accrue to the Provincial budget, creating a disincentive for termination of the procedure.

The complexities associated with haulage and transport act as a disincentive for processors to buy timber at the farm gate.

Reforms have been made to reduce the number of internal checkpoints, although it is unclear whether this has been implemented.

Recommendations

MOIC and MAF jointly provide guidance to staff, farmers and industry to clarify the requirements for transport controlling licences and the authority responsible for issuing these, where necessary. This guidance should also articulate the costs of licences to ensure that these are fairly passed through the value chain. Streamlining the haulage and transport approval processes would ensure that wood can be transported efficiently.

Additional notifications on the number and purpose of checkpoints, and the responsibilities of government agencies to undertake inspections and monitoring at these checkpoints should be provided.

A review of the allocation of revenue to the Provincial budget should be undertaken.

Wood Processing

Wood processing is regulated under the *Law on Industrial Processing, No 1/NA 1999* and the *Forestry Law* with responsibilities shared between MOIC and MAF. Despite recent efforts for clarification, the relationship between MAF and MOIC remains complex and provides an opportunity for regulatory failure and non-compliance. This is particularly apparent in the disconnection between the determination of wood quota by MAF and the allocation of supply to mills by MOIC, on the basis of processing capacity.

While reforms have been made to clarify and formalise the supply and use of raw material from plantations, new regulations omit the detail provided in previous instruments and as a result there is lack of clarity in some areas. For example the replacement of Notices *No. 1887/MOIC.DIMEX*, *No. 0484/MOIC.DIMEX* and *No. 1862/MOIC.DIMEX* which were aimed at promoting the use of raw material from plantations and formalising the management of the plantation timber trade were replaced by *Notice No 1791/MOIC.DIMEX 2011* which is effectively a procedural notice regulating the import and export of plantation grown timber.

There are many approvals required for investment in, and establishment of, wood processing factories, from numerous departments. It remains unclear whether all of these approvals are effective, how well they are complied with and whether compliance is consistently enforced.

Local processing facilities can obtain logs from different sources, including those listed at Log Landing 2 or from non-registered sources. The procedures for log tracking from Log Landing 2 though the processing chain are poor and inadequately enforced. As concepts adopted from the harvesting of natural forests they may be less relevant and more challenging to consistently apply for smallholder plantations. Timber products from unregistered wood sources can be legally transported, then be exported or distributed to the domestic markets.

In 2006 50-60% of logs harvested in Luang Prabang left Lao PDR as squares. It is unclear whether such primary products (squares) meet the legal definition of 'processed' and, therefore whether they meet export requirements or market-based 'legality' standards. This practice appears to be continuing, with local traders favouring this process.

Recommendations

MAF and MOIC undertake an assessment of the procedures by which wood processing facilities obtain wood from registered and unregistered plantations, and the documents required to support this.

A review of the procedures for improved log tracking and the roles of MOIC and MAF in enforcement should be undertaken. Documenting the roles and responsibilities of MOIC and MAF in a guideline could improve efficiency.

Clarification of regulations and the removal of out-of-date requirements for the establishment of and operation of wood processing factories could improve compliance.

General guidance on processed and un-processed wood products is provided in the regulations, however it remains unclear as to whether some products such as square logs (squares) constitute a processed wood product. The standards set in the regulations may not be consistent with market demand, and should be reviewed.

Export and Duties

The complexity of export procedures has been recognised and reforms are already underway to improve efficiencies and remove barriers in the process.

A Plantation Timber Export Preliminary Impact Assessment undertaken by MOIC in 2013 highlighted many of the issues and may address upstream processing and downstream supply procedures. In particular the requirement to provide certificates of origin would benefit from a review as well as a consolidation of log tracking procedures at, and after, Log Landing 2.

There are definitional irregularities in the complex legislation that exists, which potentially have implications for legality verification. For example, it is not clear whether the provisions that apply under *Notification No 1791/MOIC.DIMEX, 2011* and *Notification No 0076/MOIC.DIMEX* apply to plantation timber for company/factories if the volume supplied is not included in an annual harvesting plan or quota.

There are inconsistencies in the treatment of plantation grown teak as a 'special timber' species by different Provinces. These rules are in place because teak occurs naturally in the forests of Lao PDR and there is some risk of illegal harvesting and the export of naturally grown teak in consignments of plantation timber.

It is important to recognise that even if all internal Lao procedures are followed and legal requirements are met, importing consumer countries may impose additional requirements to ensure due diligence and proof of 'legality'. Cross border requirements are especially critical because Laos is land locked and international trade is dependent on third country requirements. Disparities are revealed in comparisons of export and import data collected by Lao PDR and trade partners.

Recommendations

A review of export procedures for plantation timber by MOIC and consolidation into guidance for industry would be beneficial in streamlining procedures.

Together MAF, MOIC and the timber industry should review and develop product categories that reflect plantation timber processing and market demand including for unprocessed and semi-processed products.

A review of the treatment of plantation teak as a 'special timber' species taking into account the onerous requirements for plantation registration, log marking and log tracking that are in place should occur. Improved enforcement of these procedures could eliminate the needs for additional special treatment of plantation grown teak.

Tax

The *Tax Law NA/05 2005* was revised in 2011, however Directives on the payment of taxes by forestry business have not been updated to reflect these changes.

The authority for Provincial governments to introduce local tax rules needs to be clarified and reviewed to ensure that tax payments are not duplicated and reflect contemporary requirements. Additionally, the impacts of local tax variations on the incentives for the timber industry to invest in local processing should be investigated.

There is opportunity to encourage improved plantation management and produce higher quality resources through the introduction of tax incentives for products such as thinnings. Where products are specified in tax laws and directives these should be consistent with other regulations.

The use of a fixed price tax for timber sales can provide certainty and transparency however, where taxes are calculated on the basis of a percentage of the unit sale price of timber products, these should be reviewed regularly and must include all relevant product types to ensure that growers and traders are not adversely impacted.

Recommendations

MOF update and communicate Directives on the payment of forestry business related taxes to reflect recent changes to the Tax law.

An examination should be made by MOF of the tax treatment variations between Provinces to gauge the magnitude of the impact of these variations on investment potential within Luang Prabang Province (i.e. how much wood is leaving Luang Prabang Province due to adverse tax laws). Clarification should then be made of the rules that authorise Provincial government variations to tax laws.

The procedures for calculating taxes where these are based on a percentage of the unit sale price of timber products, to ensure these accurately reflect market price should also be reviewed regularly.

Together MAF, MOIC and Industry should review wood product categories to ensure consistency between regulations.

Tax incentives to promote good plantation management and encourage the growing of higher quality resources should be considered.

Fees and Service Charges

Regulatory fees and service charges are potentially substantial and in many cases are not articulated in regulatory guidance. Consequently there are inconsistencies in the collection of fees and service charges causing uncertainty and potentially adding costs at all

stages in the value chain. This also creates the opportunity for unofficial fees to be charged.

The Government has made efforts to clarify and document official fees and charges in other areas. Increased transparency of fees would create certainty for smallholders and other value chain actors.

Recommendations

Fees and service charges should be justified, documented and made publically available.

Cooperatives and Associations

The promotion of small to medium enterprises and the formation of cooperatives have a strong policy basis in the current strategies for socio-economic development, forestry and agriculture. The smallholder plantation sector is well placed to benefit from this, however the concepts of cooperatives are not well understood by government agencies or plantation owners. To be effective their benefits must outweigh those of the existing 'trade-based' system. Anecdotally there appears to be some social aversion to the term 'cooperative' and broader acceptance may be achieved through the use of alternative language.

In order to facilitate the development of plantation cooperatives specific laws and guidelines will be needed. These must take into account lessons from farmer grower groups across a range of product sectors and other countries. Procedures for establishing, registering and managing cooperatives will need to be efficient, straightforward and inexpensive to ensure that participation is not onerous.

If cooperatives are enabled to provide services previously undertaken by government officials (for example pre-harvest inventory) the regulatory cost impact will need to be assessed and clear guidance issued to ensure efficient implementation.

Recommendations

As the implementing ministry MAF will need to develop communication and extension material to ensure the concept of plantation cooperatives and their benefits is well understood by farmers and supporting agencies.

Complementary regulations will need to be developed to ensure that cooperatives are able to function effectively and meet the expectations articulated in national strategies and policies.

A review and clarification of the supporting governance structures, such as the roles of MAF and MOIC, will ensure that cooperatives can realise their potential without competing with government agencies. Where cooperatives do take up the provision of services previously performed by government agencies this must be supported by

regulations. However, the impact of these regulatory reforms on agency budgets must be reviewed and understood.

Monitoring, Compliance, Enforcement and Professional Conduct

Monitoring, enforcement and compliance responsibilities are dispersed throughout a complex array of regulatory instruments and between government agencies. In particular, there is overlap and duplication in responsibilities of MAF and MOIC.

The substantial body of documentation for approvals that are required at various stages along the value chain exacerbates the requirements for monitoring and enforcement and potentially discourages compliance.

Where applied, the nature of financial penalties should be transparent and publicised both to encourage compliance and as a disincentive to the application of 'unofficial fines'.

Recommendations

Joint guidance by all agencies should be provided on the regulatory functions of each of the relevant agencies along the value chain.

A review the complexity and extent of administrative procedures and approvals should be made to reduce opportunities and incentives for non-compliance.

Administrative Fees and Financial penalties should be clearly articulated and enforced.

Measures for making petitions or complaints about unjust treatment or unofficial fees or fines should be documented and made publically available.

Legality Policy Drivers

The secondary objective of the ACIAR project is to understand the nature and evolution of international and trans-national timber legality policies and drivers, their impacts on both the legal framework in Lao PDR and the possible implications for smallholder plantation owners and the timber value chain. This study has reviewed international treaties and obligations, such as membership of the World Trade Organisation, international law reform programs including through FLEGT, other consumer country measures such as the USA's Lacey Act and Australia's Illegal Logging Prohibition Act, and certification programs and approaches to legality verification.

A number of issues and some risks were identified including problems associated with defining what is 'legal' and what is 'illegal' as well as challenges around managing for legality in situations where customary law still practiced. The limits of law reform programs and the tendency for international

standards to apply pre-conditions that may not be reflected in local norms were examined.

The study highlights the challenges faced by Governments of timber producing countries who strive to put in place a legal framework that meets its own national policies and strategies for economic development, for poverty alleviation and forest management, in such a way that is also acceptable under international standards, treaties and norms. For these Governments maintaining both local and international legitimacy through laws that are acceptable, accessible, practical and enforceable is difficult.

The study also examines the challenges experienced in the development of standards for legality verification which should, but often do not, take into account the obstacles faced by Governments and timber producers as they attempt to access markets which apply these legality standards. Verifiers of timber legality should be careful not to incorporate requirements which create further barriers to effective participation for legal wood products. Importantly the study reveals that if markets for legal wood are inaccessible to growers and others in the timber value chain, alternative markets will continue to be sought which may or may not have equivalent standards. If the implementation or enforcement of legality mechanisms are not in place or they are ineffective, then new regulations, decrees and laws will not achieve their anticipated outcomes.

Conclusions

The study finds that the legal framework for smallholder plantations and timber production in Lao PDR is extensive and complex. It has emerged in response to drivers of economic reform including for national development and poverty reduction, and international policies for development, environmental concern and law reform. The regulatory environment is difficult to navigate and to keep up-to-date, particularly when faced with a rapidly changing external policy environment.

National strategies clearly dictate support for plantation expansion, in response to deforestation and illegal logging in the natural forest estate; and the opportunity that plantations could provide smallholders in moving from subsistence to market-based production are well articulated. However, the current regulatory framework does not effectively enable this transition and new international drivers for legality assurance, which may freeze unworkable regulatory frameworks, may serve to further alienate smallholders from some markets and encourage their participation in others.

Blockages or bottlenecks in the value chain occur where complex, unclear or out-of date rules inhibit the process. Excessive regulatory complexity, with associated costs in time and money discourage participation, resulting in non-

compliance; and while lack of compliance is generally associated with illegal activities, corruption, inequality and unsustainable resource use, other factors may also be at play. Norms rather than coercive measures may impact the ability and willingness of individuals to comply with the law, and these need to be understood if a workable regulatory environment is to be created. This is true in as much for the individuals to whom the laws apply as to the agents of their enforcement.

For smallholder plantation growers, legal barriers to registering plantations have been identified as a factor which limits their participation in, and the benefits they could derive from, the plantation timber value chain. In its current form the process for plantation registration certainly acts as a disincentive for smallholders. Inconsistency in law and lack of understanding of the benefits also discourages participation in the registration process. Grower empowerment begins with transparency and understanding who pays what along the value chain. Blockages occur where agencies are unaware of regulatory changes or do not implement them. Duplication in approvals increases costs to growers.

However, the study suggests that addressing this one aspect of the legal value chain is unlikely to yield positive outcomes for growers, given the inefficiencies and barriers that extend throughout the value chain. To find practical solutions a review of the risks associated with smallholder plantations should be undertaken and the policies and regulations revised. New processes will need to be tested against a set of criteria:

- Are the laws legitimate?
- Are the laws understandable?
- Are the laws fair?
- What are the adverse impacts?
- Can the laws be implemented?
- Are the laws defensible?
- Are they enforceable?
- Are the benefits of compliance clear?
- How much does compliance cost?
- Is full compliance practical and possible?

These questions will be addressed as the project works to identify an acceptable improved regulatory process and trial implementation with government agencies, plantation owners and other actors in the smallholder teak plantation value chain in Lao PDR.

Summary of Recommendations

This project makes the following recommendations to address issues with respect to regulatory barriers through the smallholder plantation value chain:

1. Convene a joint meeting of MAF, MOIC, MONRE and MOF to discuss and clarify a range of issues including:
 - a. Streamlining the process for granting temporary and permanent land use rights, and clarifying agency responsibilities.
 - b. Reviewing the purpose of, and requirements for, plantation registration, including in the context of the movement of timber along the supply chain (demonstrating 'origin').
 - c. Identifying scale- and risk-appropriate measures to regulate smallholder plantations (including establishment, silviculture and harvesting).
 - d. Review, clarify and provide guidance on roles and responsibilities of agencies at plantation registration, harvesting, transport and processing.
2. Examine basic principles to differentiate smallholder plantations from industrial plantations and native forests. In particular review the concept of treating smallholder plantations as an agricultural crop.
3. Undertake further research into the use and traceability of plantation registration, timber harvesting/log tracking documents that may be used to demonstrate wood origin and legality.
4. Develop simple guidance on the main 'regulatory' steps for farmers.
5. Encourage the use of the Lao Gazette by Government agencies at all levels to keep legal instruments accessible and up-to-date.
6. Encourage legality verification programs to differentiate plantation smallholders and their wood from natural and industrial plantation sources.

This study is part of a project funded by the Australian Centre for International Agricultural Research (ACIAR) on "Enhancing Key Elements of the Value Chains for Plantation-Grown Wood in Lao PDR" (Project FST/2012/012, VALTIP2). More information about ACIAR can be found at <http://aciarc.gov.au/>

For further information about this study or for a copy of the full project report please contact Dr Hilary Smith hilary@latitudeforestservices.com.au