

AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON ILLEGAL LOGGING AND TIMBER TRADE

The Government of the United States of America and the Government of the Socialist Republic of Viet Nam (collectively “the Parties”), have agreed as follows:

Article 1: Understandings

1. The Parties agree on the importance of the conservation and sustainable management of forests for providing environmental, economic, and social benefits for present and future generations, and the critical role of forests in providing numerous ecosystem services and habitat for wild fauna and flora.
2. The Parties recognize the importance of combating illegal logging and associated trade, and that cooperation and further dialogue on initiatives can enhance the effectiveness of timber regulatory and enforcement measures.
3. The Parties affirm that this agreement will further enhance, and is without prejudice to, the Agreement between the Parties on Trade Relations, signed on July 13, 2000 and the Trade and Investment Framework Agreement between the Parties, signed June 21, 2007 (“TIFA”).

Article 2: Definitions

For the purposes of this Agreement:

CITES means the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington, March 3, 1973, as amended, and the appendices thereto;

confiscated timber means timber that Vietnamese authorities confiscate for any violation of applicable domestic or international law;

high-risk source countries means countries that are not designated as a positive geographical area exporting timber to Viet Nam under *Decree 102/2020/ND-CP* dated September 1, 2020 by the Government of Viet Nam *on timber legality assurance system (“Decree No. 102”)*, or countries that are so designated but that are associated with a high risk of illegal logging, illegal timber trade, or other activities related to illegal timber;

illegal logging means the harvest, transportation, purchase, or sale of timber in violation of applicable domestic or international law;

illegal timber trade means the purchase, possession, or exchange of timber, including the import, export, or transshipment of timber, that has been harvested, transported, purchased, or sold in violation of applicable domestic or international law;

person means a natural person or an enterprise.

Article 3: Confiscated Timber

1. Viet Nam shall ensure that confiscated timber does not enter the supply chain for export or for domestic consumption for commercial use. To that end, consistent with its existing authorities, Viet Nam shall:
 - (a) destroy confiscated timber, return it to the country of harvest if that country is identified and agrees to take back the timber or the timber is covered by paragraph (b) below, or, where appropriate, provide it for use as samples in wood identification databases;
 - (b) in exceptional circumstances, auction the confiscated timber for non-commercial use, such as scientific research or construction of a public good;¹
 - (c) for all confiscated timber, identify the volume, type, end-use, and destination in the regular report detailed in Article 14.9; and
 - (d) when confiscated timber is returned to the country of harvest, if the importer can be identified, ensure that the Vietnamese importer will bear all of the costs associated with its return.
2. Within three months of entry into force of this Agreement, the competent Vietnamese authority shall issue written notice to timber processing, importing, transporting, exporting, and reselling enterprises, and associations that these entities and their members commit to not participate in auctions of confiscated timber. This written notice shall also be posted on the competent Vietnamese authority's website.
3. Within 18 months of entry into force of this Agreement, Viet Nam shall endeavor to revise its laws, including *Decree Number 29/2018/ND-CP* dated 5 March 2018, by the Government of Viet Nam, *Prescribing processes and procedures for establishing all-people ownership of property and disposal of property under established all-people ownership* ("Decree No. 29"), to prohibit any person engaged in, or who has engaged in, the processing, importing, transporting, exporting, or reselling of timber or timber products from participating in any auctions of confiscated timber.

¹ Public goods include items that are made available to all Vietnamese individuals and are not intended for profit, such as public schools or school desks, public buildings, or public park and recreation facilities.

4. In the report described in Article 14.9, Viet Nam shall provide updates on amending *Decree No. 29*. Among other updates, Viet Nam shall report to the Timber Working Group when it submits the proposal to amend *Decree No. 29*, consistent with this Article, to the competent authority.

Article 4: Financial Incentives Related to Imported Timber

1. Within nine months of entry into force of this Agreement, Viet Nam shall ensure that it eliminates any financial incentives to import, process, or export timber that is not plantation-grown in Viet Nam or that is a product of illegal logging or illegal timber trade. Such financial incentives may include grants, loans or loan guarantees on non-commercial terms, or tax revenue foregone.

2. As part of the report described in Article 14.9, Viet Nam shall include information regarding any financial incentives identified under paragraph 1, and its elimination of those incentives pursuant to paragraph 1, from the Government of Viet Nam to timber and wood product importers, processors, and exporters.

Article 5: Customs Inspections and Clearance

1. Pursuant to its existing authorities, Viet Nam shall enhance its inspections of timber imports. To this end, Viet Nam shall:

- (a) conduct inspections commensurate with the risk level of the imports in question; and
- (b) in evaluating the risk level of imports, appropriately take into account relevant factors such as whether the country of harvest is associated with a high risk of:
 - (i) illegal logging;
 - (ii) illegal timber trade; or
 - (iii) fraudulent documentation certifying timber legality.

2. Viet Nam shall apply its existing authorities to require post-clearance inspection, commensurate with the risk level of the imports in question, to ensure that the documents certifying the legality of imported timber shipments are accurate and authentic. Post-clearance inspection shall also include the verification of CITES permits and re-export certificates, and Vietnamese interagency cooperation to confirm the legality of import documentation. If there is evidence that the timber may be illegal, the competent authority shall verify the documents and physically inspect the timber shipment consistent with Viet

Nam's regulations. If, following the post-clearance inspection, goods are determined to violate applicable domestic or international law, Viet Nam shall impose a penalty sufficient to deter such violations.

3. For imports, exports, and re-exports of CITES-listed species, Viet Nam shall apply its existing authorities to require pre-clearance inspection of the accompanying CITES documents, consistent with the requirements of CITES. In this regard, Viet Nam shall:

- (a) coordinate with the relevant competent authorities in Viet Nam, the country of harvest, and, if necessary, the country of transit, to confirm the validity of the CITES documents if available evidence raises doubts as to their validity;
- (b) apply its regulations to impose a penalty sufficient to deter such violations if Viet Nam determines in its pre-clearance inspection that goods violate applicable domestic or international law; and
- (c) adopt guidelines to verify any document for which available evidence raises doubts as to the validity of the CITES documents, including that the documents may be fraudulent, for example, that it contains false information or unauthorized changes.

Article 6: Entities Covered under the VNTLAS Risk Assessment

1. Viet Nam shall revise the Enterprise Classification System ("ECS") under the Timber Legality Assurance System ("VNTLAS"), and take any other relevant measures, to ensure that all relevant persons in the supply chain are covered.

2. To satisfy the commitments under this Article, Viet Nam shall:

- (a) endeavor to amend *Decree No. 102* and any other relevant measures, to ensure that the ECS and the VNTLAS, and any other relevant measures, cover the appropriate entities, including importers;
- (b) within nine months of entry into force of this Agreement, issue a resolution providing that it is seeking to amend *Decree No. 102*, and any other necessary measures, to take into account the considerations in paragraphs 1 and 2(a); and
- (c) in the report described in Article 14.9, report on its progress in implementing the changes under this Article.

Article 7: Geographic Indicators Criteria

1. Viet Nam shall ensure that the geographic indicators criteria used to classify a third country as a “positive geographical area exporting timber to Viet Nam” adequately account for available evidence concerning the third country’s risk of illegal logging, illegal timber trade, and fraudulent documentation certifying timber legality.
2. To ensure that any determination to designate a country as a “positive geographical area exporting timber to Viet Nam” adequately accounts for the considerations in paragraph 1, Viet Nam shall endeavor to amend *Decree No. 102*, and any other measures that are necessary for this purpose. In the report described in Article 14.9, Viet Nam shall report on its progress in implementing these changes.
3. Within nine months of entry into force of this Agreement, the Government of Viet Nam shall issue a resolution providing that it is seeking to amend *Decree No. 102*, and any other necessary measures, to take into account the considerations in paragraph 1.
4. The Parties shall, at the first meeting of the Timber Working Group, exchange information concerning data and best practices that are relevant to developing and maintaining the list of low-risk countries and the criteria used to define that list.

Article 8: Domestic Verifications

1. Viet Nam shall ensure that all exports of domestically harvested timber, and wood products made from that timber, are subject to verification regardless of export destination.
2. Viet Nam shall endeavor to amend *Decree No.102* and any other measures that are necessary to implement the commitment in paragraph 1. In the report described in Article 14.9, Viet Nam shall report on its progress in implementing these changes.
3. Within nine months, Viet Nam shall issue a resolution providing that the Government of Viet Nam is seeking to amend the relevant provisions of *Decree No. 102*, and any other necessary measures, to implement the commitment in paragraph 1.

Article 9: Ongoing Implementation of Licensing Schemes

1. At meetings of the Timber Working Group, Viet Nam shall, as appropriate, report on its progress toward operationalizing the Forest Law Enforcement, Governance and Trade (“FLEGT”) licensing scheme. Viet Nam shall also notify the Timber Working Group of any changes to the VNTLAS, and related measures, implementing the licensing scheme.

2. Viet Nam shall endeavor to ensure that exports to the United States, and to other markets, of timber and wood products are subject to controls that are no less strict than those required to obtain a FLEGT license.

Article 10: Cooperation between Viet Nam and Source Countries

1. The Parties recognize the importance of collaborating with third-country sources of timber to ensure that timber imports from those countries were legally harvested and traded. Such collaboration is particularly important with respect to timber imports from countries associated with a high risk of illegal logging, illegal timber trade, or fraudulent documentation certifying legality. For such timber imports, the competent Vietnamese authorities shall:

- (a) require documentation from the source country, and possess an understanding of that documentation, that is sufficient to ensure that the timber imports comply with applicable domestic or international law; and
- (b) conduct country-specific, contextual evaluations, which go beyond a single document purporting to certify legality, as appropriate, to ensure the authenticity and accuracy of the document.

2. Viet Nam shall endeavor to work with high-risk source countries from which it imports timber, to formalize the exchange of timber trade data, jointly investigate and prosecute those involved in the illegal trade or harvesting of timber, and conduct periodic audits of producers and exporters in those countries. In addition, Viet Nam shall endeavor to:

- (a) exchange exemplars of the official documents used to certify the legality of timber shipments from the high-risk source countries;
- (b) work with high-risk source countries to improve forest governance, enforcement, and the capacity of the competent Vietnamese authorities to make effective, country-specific, and risk-based evaluations of the documentation certifying timber legality; and
- (c) sign new memorandums of understanding (“MOUs”) with trading partners, or revise existing MOUs, to reflect the commitments in this Article with respect to high-risk source countries.

3. Within nine months of entry into force of this Agreement, Viet Nam shall develop and provide to the Timber Working Group an action plan describing, in concrete terms, the steps it will take to accomplish the commitments under this Article. In addition, Viet Nam

shall endeavor to assist the United States in tracking progress on the commitments under this Article. In the report described in Article 14.9, Viet Nam shall report on these efforts.

4. The United States shall endeavor, where appropriate, to support Viet Nam in its efforts under this Article to engage with high-risk source countries and to formalize cooperation with those countries, including through technical assistance as described in Article 16.

Article 11: Illegal Timber Activities in Third Countries or Involving Third-Country Nationals

1. Viet Nam shall use existing authorities, and enhance resources as appropriate, to identify, investigate, and pursue civil or criminal enforcement against Vietnamese persons, and any affiliated persons, involved in illegal timber-related activities in third countries. Such activities include facilitating the procurement of fraudulent documentation from foreign officials, or otherwise facilitating illegal logging or illegal timber trade. Viet Nam shall do the same with respect to foreign persons operating in its territory.

2. Consistent with its law, Viet Nam shall ensure that persons found to have been involved in activities related to illegal timber harvesting or trade, whether in Viet Nam or in another country, are subject to the penalties provided for under Vietnamese law, including, where appropriate, imposition of a fine or suspension of operations. To this end, Viet Nam shall:

- (a) provide a mechanism for international and domestic organizations and individuals, foreign governments, and other interested parties to identify persons who may be involved in the illegal harvest or trade of timber; and
- (b) at each meeting of the Timber Working Group, provide a report on any persons found to have been involved in the activities under paragraph 2.

3. At each meeting of the Timber Working Group, Viet Nam shall report on its progress toward fulfilling the commitments in this Article. In addition, the Parties shall share best practices and explore potential projects involving technical assistance.

Article 12: Verification and Enforcement Measures

1. On written request by the United States, Viet Nam shall provide information related to the inspection, due diligence, and audit performed on a particular shipment of timber or wood products that was imported into Viet Nam. Such information shall include:

- (a) a copy of the logging license of the logging unit, or the forest owner's certificate of permission to harvest the forest lot;

- (b) for sawn timber, a copy of the certificate of registration as a woodworking establishment;
- (c) a copy of the export visa, or export license, from the country of harvest, and any third country through which the timber transited;
- (d) a complete set of declarations or other records submitted to, obtained, or possessed by Vietnamese customs officials for the export of the shipment; and
- (e) to the extent consistent with applicable domestic and international law, any other relevant information requested by the United States.

2. Viet Nam shall endeavor to work with the authorities of high-risk source countries to enforce the applicable laws related to forest sector governance and the harvest of, and trade in, timber products. This may include working with the authorities of those third countries to conduct periodic audits of producers and exporters in that country.

3. In performing audits, inspections, and verifications, Viet Nam shall use the relevant timber species names. Viet Nam shall do so for domestically harvested and imported products.

Article 13: Law Enforcement

1. The Parties shall endeavor to enhance the cooperation between the Parties' respective law enforcement agencies to combat the harvest and trade of illegal timber. Such cooperation shall include, but is not limited to, technical assistance programs identified in Article 16 of this Agreement.

2. The Parties shall report on these cooperation activities to the Timber Working Group.

Article 14: Working Group for Regular Consultation

1. The Parties recognize the importance of maintaining and strengthening government capacity and institutional frameworks to promote sustainable forest management and trade in legally harvested forest products.

2. The Parties hereby establish a timber working group under the U.S.-Viet Nam TIFA Council² (the “Timber Working Group”), jointly chaired by USTR and the Ministry of Agriculture and Rural Development of Viet Nam. The Timber Working Group shall oversee the implementation of this Agreement.

3. The Timber Working Group shall be composed of senior government representatives, or their designees, from the relevant government authorities of each Party responsible for the implementation of this Agreement.

4. Within 45 days of entry into force of this Agreement, each Party shall designate and notify a contact point from its relevant authorities to facilitate communication between the Parties in the implementation of this Agreement. Each Party shall promptly notify the other Party, in writing, if that contact point changes.

5. The Timber Working Group shall meet within six months of the date of entry into force of this Agreement. Thereafter, it shall meet twice every year unless agreed otherwise. The host and venue of Timber Working Group meetings will alternate between the Parties, unless the Parties decide otherwise.

6. The Timber Working Group may establish sub-working groups, as needed.

7. The Parties shall regularly consult through the Timber Working Group to exchange relevant information, in accordance with applicable domestic and international law, including:

- (a) trade and harvest data;³
- (b) information on efforts to combat illegal logging and associated trade, including interdiction, confiscations, arrests, prosecutions, and convictions;
- (c) Viet Nam’s implementation of the FLEGT license scheme and the VNTLAS;
- (d) the identification of high-risk source countries; and
- (e) Viet Nam’s progress in implementing the commitments of this Agreement.

8. For the first meeting of the Timber Working Group, Viet Nam shall provide an explanation of alleged discrepancies between the value of timber products reported as exported from certain source countries (namely, Cambodia, Cameroon, and Lao PDR) and the declared value of imports from those countries reported by Viet Nam. If additional

² See Article Three, paragraph 4 of the U.S. Viet Nam TIFA (“the Council shall, establish *ad hoc* working groups on specific issues, where appropriate and agreed upon by the Parties, to facilitate its work”).

³ Such information may include, but is not limited to, relevant data elements related to imports and exports of timber and wood products.

discrepancies between these or other source countries are alleged through the Timber Working Group or the public comment procedure (outlined below in Article 15) Viet Nam will respond to those allegations no later than at the next meeting of the Timber Working Group.

9. No later than two weeks before each meeting of the Timber Working Group, Viet Nam shall provide to the Timber Working Group a report outlining its progress toward satisfying the terms of this Agreement.

Article 15: Public Information and Participation

1. Viet Nam shall, in accordance with applicable Vietnamese law, provide for the receipt of, and consideration of, written questions or comments from interested persons, including but not limited to Vietnamese citizens and international and domestic organizations and individuals, regarding the implementation of this Agreement. Viet Nam shall promptly respond, in writing, to these questions or comments, in accordance with domestic procedures, and make the questions or comments and the responses available to the public, for example by posting on an appropriate public website.

2. Viet Nam shall make use of existing, or establish new, consultative mechanisms, for example national advisory committees, to seek views on matters related to the implementation of this Agreement. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, law enforcement, wood working enterprises, or other environmental matters.

3. Upon proposal of any legal measure related to the harvesting or trade of illegal timber, Viet Nam shall promptly provide to the United States' point of contact, as designated through the Timber Working Group, a summary of the legal measure and any public comments received.

Article 16: Technical Assistance

1. The Parties recognize the importance of cooperation as a mechanism to implement this Agreement, to enhance its benefits, to strengthen the Parties' joint and individual capacities to protect the environment, and to promote healthy forests, as they strengthen their trade and investment relations.

2. Through this Agreement, the Parties will cooperate to build capacity for forest law enforcement and trade of forest products; improve the operational efficiency of the forest management system in meeting economic, social and ecological objectives; and encourage public participation and improve transparency in forest management and international trade in forest products.

3. The Parties shall cooperate on initiatives to promote sustainable forest management and to combat illegal logging and associated trade. The Parties shall facilitate the regular exchange of data, information, scientific research, and reference materials, such as wood samples, related to improving the assessment, monitoring, and verification of the legality of traded timber and timber products.

4. The Parties shall facilitate regular meetings and workshops for relevant Vietnamese officials including law enforcement personnel to build their capacity to combat timber trafficking and promote the legal timber trade.

5. The Parties shall discuss the design, planning, and consideration of a United States Forest Service Timber Legality Technical Expert. This Technical Expert shall serve as a senior-level technical advisor to facilitate bilateral cooperation on technical assistance, information exchange, policy recommendations, and other activities related to combatting illegal logging in Viet Nam and third countries, promoting forest products trade legality, and the development and implementation of the VNTLAS. The Technical Expert shall be hosted by a forestry-related Government of Viet Nam agency and collaborate with additional Government of Viet Nam agencies, as appropriate.

6. The terms of this Agreement are without prejudice to the Letter of Intent Regarding Cooperation in the Field of Forestry, between the Viet Nam Administration of Forestry, Ministry of Agriculture and Rural Development, and the Forest Service of the U.S. Department of Agriculture, of April 23, 2019. As appropriate, consistent with paragraph 7 of that letter, the Parties may seek to modify it to cover certain commitments in this Agreement.

7. The Parties will endeavor to regularly exchange information to assist Viet Nam in negotiating and signing new or revised MOUs to enhance the development of cross-border cooperation between enforcement agencies.

Article 17: Amendments

1. The Parties may agree, in writing, to amend this Agreement.

2. An amendment shall enter into force 60 days after the date on which the Parties exchange written notifications confirming that an agreement has been reached in accordance with paragraph 1 of this Article of the approval of the amendment, or such other date as the Parties may decide.

Article 18: Notice and Comment on Implementing Measures

Each Party shall provide no fewer than 45 days for public comment on all proposed measures implementing this Agreement. Each Party shall consider concerns raised by the other Party in any final measure or amendment intended to implement this Agreement.

Article 19: Consultations

The Parties shall consult on, and endeavor to resolve through negotiation, any disagreement arising between the two Parties related to the interpretation and implementation of this Agreement.

Article 20: Entry into Force and Termination

1. This Agreement shall enter into force 30 days after the date of signature by both Parties.
2. Either Party may terminate this Agreement by providing written notice of termination to the other Party. The termination shall take effect 60 days after the date on which a Party has provided written notice to the other Party, or on such other date as the Parties may decide.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Hanoi and Washington, DC, in duplicate, this 1st day of October, 2021.

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA**

**FOR THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF
VIET NAM**
