



COUNTRY REPORT: THAILAND Recent Developments of Forest-Related Law

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Introduction

Logging of natural forests is banned in Thailand. In order to satisfy the country's need for timber, the Thai government had enacted the *Forest Plantation Act (1992)* to encourage increased investment in plantation forests. However, this Act contained a number of constraints that made it ineffective in achieving its objectives.¹

On 2 August 2002 the Thai Government ratified the *Kyoto Protocol*.² Under Article 12 of the *Protocol*, Thailand, through the Clean Development Mechanism (CDM), can implement emission-limitation projects to earn saleable certified emission reductions credits, which can be counted towards the country's obligations to meet the Kyoto targets. To enable CDM to operate, the *Forest Plantation Act (1992)* has been amended (25 October 2011).³ The objectives of the amendment are to comply with the international agreement and to help further develop the national economy through timber production.

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¹ Regional Office for Asia and the Pacific of Food and Agriculture Organisation, *Thailand Forestry Outlook Study (2009) Asia-Pacific Forestry Sector Outlook Study II*, Working Paper Seires No. APFSOS II/WP/2009/22, 88.

² Office of Natural Resources and Environmental Policy and Planning of Thailand, *UNFCCC and Kyoto Protocol Implementation in Thailand (2011)* (available at <http://www.onep.go.th/CDM/en/unfwork.html>).

³ Secretariat of Cabinet (Thailand), *Cabinet Resolution No. 23495/54 on 25 October 2011 (2011)* (available at <http://www.cabinet.soc.go.th>).

This report discusses the amendments to the *Forest Plantation Act*. The report begins with a brief outline of the four main amendments to the Act. This is followed by a more detailed discussion of the benefits of the amendments and the issues that may arise as a result of the amendments. The conclusion to this report identifies research agendas for consideration by the IUCN Academy on Environmental Law.

Amendments to the *Forest Plantation Act*

As already noted, the 1992 Act did not succeed in encouraging increased investment in plantation forests in Thailand. A significant reason for the lack of success was the fact that only teak plantations were allowed. This restriction severely curtailed economic opportunities that might arise from investments in plantations. The 2011 amendments remove the restrictions on the type of tree that can be planted.⁴

Another amendment to the Act is a provision to allow licences to be obtained for timber production on land cleared under section 54 of the *Forest Act* that has been registered for plantation forests.⁵ The Forest Chief Executive may grant a licence for the establishment of a lumber factory on such lands, subject to conditions set by the relevant Minister.⁶

Section 14 of the amended Act exempts plantation timbers from royalties and fees (this is intended to increase the incentives for investing in plantation forests). Section 14(1) also exempts non-timber forests products such as firewood and bamboo from royalties and fees. A fourth amendment enables the imposition of administrative penalties to suspend or revoke the registration of a plantation forest if there is a breach of conditions stated in a permit or under the Act.⁷

Discussion of Amendments

Incentives, especially for the private sector, for investment in plantation forests have been increased by the amendments to the *Forest Plantation Act*. The amendments increase the availability of land for plantation forests and provide opportunities for a greater range of investors to participate - including owners of cleared land who might

⁴ Section 3.

⁵ Section 4.

⁶ Section 10 and section 11(2).

⁷ Section 26(1).

otherwise be unable to invest in forest plantations. They further enable lumber yards to be conveniently established where timber is being harvested and exempt those who sell plantation timber from royalties and fees.

By increasing the land area under forest and better controlling harvesting activities (through enabling the imposition of penalties for breaches of the Act), Thailand appears to be making significant steps towards ensuring a sustainable forest industry that contributes to the economic wellbeing of the country as well as meeting its obligations under the *Kyoto Protocol*.⁸ There are, however, a number of key issues that the amended Act does not address.

Excessive Discretionary Power

Excessive, legislated discretionary power can cause complexity⁹ and enable corruption.¹⁰ Section 11(1) of the Act grants the Forestry Chief Executive and the Forestry Minister significant discretion to create the conditions of approval for establishing a forest plantation and lumber factory on approved cleared land. These powers could be used to impose complex or unnecessary conditions that will allow eligibility to only a minority of 'preferred' parties.¹¹

This potential (ab)use of discretionary power is evident when noting the operation of another Thai law, which aims to grant land to landless people and thereby provide them with the means to stop encroaching on and damaging natural forests. Thus far, the law has met with little success because government agents (often from several government authorities) have imposed complex conditions for the granting of land, which effectively precludes the landless from obtaining land.

⁸ Thailand Greenhouse Gas Management Organization (Public Organization), *Clean Development Mechanism (CDM): CDM Development in Thailand* (2011) (available at <http://www.tgo.or.th/english/>).

⁹ A. Contreras-Hermosilla and G. Witness, *Emerging Best Practices for Combating Illegal Activities in the Forest Sector* (2003) *DFID-World Bank-CIDA*, 8.

¹⁰ Food and Agriculture Organization, *Reforming Forest Tenure: Issues, Principles and Process* (2011) *FAO Forestry Paper* 165, 13; and Food and Agriculture Organization and The International Tropical Timber Organization, *Forest Law Compliance and Governance in Tropical Countries: A Region-by-Region Assessment of the Status of Forest Law Compliance and Governance in the Tropics, and Recommendations for Improvement* (2010), 11.

¹¹ Food and Agriculture Organization and International Tropical Timber Organization, *Best Practices for Improving Law Compliance in the Forest Sector* (2005) *Forestry Paper No.* 145, 12.

The regulation of the forest industry in Indonesia provides a good illustration of how such discretionary power can be abused. Research suggests that some forestry officials exercise their discretionary power over licensing and permits for logging concessions in ways that benefit those operators who are prepared to provide the officials with financial returns.¹²

Conflicting Regulations

The amendments to the *Forest Plantation Act* do not consider and at times contradict the objectives of other Acts. Such conflict in objectives can cause administrative complexity,¹³ high transactions costs and ineffective implementation of effected laws.¹⁴

For example, there are contradictions in the objectives of *Forest Plantation Act* and those of the *Forest Act* (1941). The *Forest Act* has a conservation focus. People may be granted land under the *Forest Act* but only for the conduct of agricultural activities.¹⁵ The *Forest Plantation Act*, on the other hand, has a commercial focus and allows for the planting of any kind of tree (as a consequence of the 2011 amendments) on appropriately registered cleared land. Native forests could, therefore, be cleared to make way for plantation forests and for sites for lumber factories - both activities being counter the objectives of the *Forest Act*.

In addition, by allowing *any* type of tree to be planted, there is an increased danger that native forests will become invaded by weedy tree species. It is also possible that tree species are planted that significantly reduce available natural resources for other activities. For example, there is evidence that some kinds of Eucalyptus trees planted

¹² C. Palmer, *The Extent and Causes of Illegal Logging: An Analysis of a Major Cause of Tropical Deforestation in Indonesia* (2000) CSERGE Working Paper, Economics Department University College London and Centre for Social and Economic Research on the Global Environment University College London and University of East Anglia, 20.

¹³ N. Gunningham, P. Grabosky and D. Sinclair, *Smart regulation: designing environmental policy* (1998) Clarendon Press, 46.

¹⁴ P. Martin and J. Shortle, 'Transactions costs, Risks and Policy Failure (2009)' in C. Soares et al (eds), *Critical Issues in Environmental Taxation: International and Comparative Perspectives* (2010) 8 Oxford University Press, 717.

¹⁵ Section 54.

for timber in Thailand consume vast quantities of water, reducing water availability for crops planted on adjacent lands.¹⁶

Other conflicts between administrative authorities under legislation may also arise. Usually, the power to grant a license for establishing a lumber factory is provided by the Department of Industrial Works (the *Forest Plantation Act* vests this power in the Chief Executive Officer and the Minister of the Department).¹⁷ The Department of Pollution Control is charged with monitoring any pollutants that may arise from establishing the factory,¹⁸ and the local government usually has the power to oversee the operation of factories established in their administrative territory.¹⁹ Together these different authorities can create confusion and potential conflict between agency requirements.

Insufficient Monitoring of Implementation

Although the amendments to the *Forestry Plantation Act* allow for penalties to be imposed for breaches of the Act, there is no requirement to monitor whether permit conditions are, in fact, being implemented. This should be a basic requirement to ensure effective operation of the Act.²⁰ In addition, there should be a requirement to gather data and information that could guide the improvement and development of policies and laws regarding forestry practices.

There is, for example, no requirement to monitor the activities of third parties contracted to plant trees or harvest timber. The contractors might carry out their activities without regard to permit requirements for what and how land should be cleared. There are no impediments to contractors who can do long-term damage to the industry because they are concerned only with the amount of timber they can harvest in their allocated period for harvesting without regard to the maturity of the trees being harvested.²¹

¹⁶ P. Kuaycharoen, 'Plantations are not Forests Commercial Tree Plantations in the Mekong Region: Commercial Tree Plantations in Thailand: Flawed Science, Dubious Politics and Vested Interests' (2004) 9(3) *Towards Ecological Recovery and Regional Alliance*.

¹⁷ Factory Act B.E. 2535 (1992) (Thailand), section 7.

¹⁸ Pollution Control Department (Thailand), *Mission Statement of Pollution Control Department (Thailand)* (2004) (available at http://www.pcd.go.th/about/en_ab_mission.html).

¹⁹ *Thailand Constitution* (2007), section 290.

²⁰ FAO et al (supra note 11), 73.

²¹ Forest Watch Indonisea and Global Forest Watch, *The State of the Forest: Indonesia* (2002) Forest Watch Indonisea and Global Forest Watch, 29.

Lack of Costing of Implementation

There is a lack of evidence that the cost of implementing the Act was appropriately considered before the amendments to the Act were passed. For example, it is unlikely that resources would be available to deal with the administration of a proliferation of lumber factories that may arise as a result of the provisions in the amended Act.²²

Other costs also appear to be overlooked. There is no requirement within the Act to ensure that trees planted in fact return the highest benefit. Any tree may be planted, under the Act but one of the objectives of the Act is to increase the economic welfare of the country. The Act should make clear the definition of how such welfare can best be achieved.

Stakeholder Needs

Stakeholders affected by the *Forest Plantation Act* are not effectively considered by the amendments to the Act. As already noted, decisions regarding the granting of permits are vested entirely in the Chief Executive Officer and the Minister. There is no provision to involve the community or other stakeholders who may be impacted by, for example, the establishment of factories.

In addition, there is no scope to enable groups of people to participate in forestry operations. The amendment provisions of the *Forest Plantation Act* theoretically allow for land granted to landless people under the *Forest Act* to be planted out with plantation forests. However, small-scale landholders are unlikely, individually, to be able to afford the expense and time for creating such forests. It may be possible for the landholders to engage in plantation forestry activities as a group, but this possibility is not addressed in the amendments to the Act.²³

²² P. Martin et al, *Developing a Good Regulatory Practice Model for Environmental Regulations Impacting on Farmers* (2007) Research Report, Australian Farm Institute and Land & Water Australia, x.

²³ A. Nawir and L. Santoso, 'Mutually beneficial company-community partnerships in plantation development: emerging lessons from Indonesia' (2005) 7(2) *International Forestry Review* 177.

Research Agenda for IUCNAEL

The above discussion raises a number of possible research agendas for consideration by the IUCN Academy of Environment Law (IUCNAEL).

How can land-use laws and institutions be reformed to achieve effective forest plantations that result in sustainable forest management in Thailand?

Land use systems and deforestation are interrelated: ineffective land-use governance can lead to significant deforestation. Current regulations attempt to protect native forests by providing landless people with land for cultivation to halt their encroachment on the forests, but regulations simultaneously provide for the means to destroy native forests to create timber plantations. There are no clear property rights and obligations for the use of land, and there is little coordination among authorities who approve land allocation.²⁴ The research agenda would be to develop proposals for better land-use governance systems that achieve effective forest plantations and sustainable forest management for Thailand.

Whether co-regulation is an effective method for reducing excessive discretionary power provided in Thailand's Forest Plantation Act²⁵

Forms of co-regulation between industry and government could include mutual contracts or agreements related to plantation and timber management.²⁶ Co-regulation arrangements may also help to ensure that licensees produce timbers of a high standard.

Development of an assessment method to ensure that regulatory objectives are being met

²⁴ S. Lakanavichai, 'Trends in forest ownership, forest resources tenure and institutional arrangements: are they contributing to better forest management and poverty reduction?; Case study from Thailand' in Food and Agricultural Organisation, *Understanding Forest Tenure in South and Southeast Asia* (2007) Vol 14, 341.

²⁵ P. Martin and E. Le Gal, 'Concepts for Industry Co-Regulation of Bio-Fuel Weeds' (2010) (1) *IUCNAEL eJournal*, 7-9.

²⁶ L. Senden, 'Soft Law, Self-Regulation and Co-Regulation in European Law: Where Do They Meet?' (2005) 9(1) *Electronic Journal of Comparative Law*, 11-14; J. Gray, *Forest Concession Policies and Revenue Systems: Country Experience and Policy Changes for Sustainable Tropical Forestry* (2002) World Bank Publications, 11.

One approach to assessment that may be worth researching further is the Monitor, Evaluate, Report and Improve (MERI) Framework used by many government departments around Australia to assess the effectiveness of natural resource management policies and to promote their accountability.²⁷

What assurance can be built into the logging industry to ensure that timber is legally planted and harvested?

Illegal logging continues to be a significant problem in Thailand. The viability of implementing the European Union's proposed Forest initiative (or other international counterparts such as the *US Lacey Act*, 2008) could be further investigated. This Initiative is a due diligence system that monitors the sourcing of timbers and encourages plantation licensees to go beyond mere compliance by continuously verifying the methods and practices by which timbers are produced.²⁸

Methods to better involve the community

Better methods to involve the community in the forest plantation industry may provide opportunities for those living in poverty to economically gain from the forestry industry. Community-company partnerships may be a mechanism for achieving better involvement.²⁹ Greater community involvement may also encourage a sharper focus on the sustainable production and supply of timber, and on environmental conservation.

A significant component of such research must be how to manage flows of information to the community to enable good decision-making. Without access to accurate and timely information, stakeholders will not be able to effectively engage in achieving outcomes from the timber industry that will go towards meeting the objectives of the *Forest Plantation Act*. A viable model for increasing the flow of

²⁷ Australian Government, *NRM MERI Framework: Australian Government Natural Resource Management Monitoring, Evaluation, Reporting, and Improvement Framework* (2009) Commonwealth of Australia, 3.

²⁸ International Union for Conservation of Nature, *News and Events:Asia-Pacific Forest Week* (2011) (available at http://www.iucn.org/about/work/programmes/forest/fp_news_events/asia_pacific_forest_week_november_2011/?8575/Addressing-illegal-logging).

²⁹ World Bank, *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia* (2006) Report No. 39245, 86.

information regarding forest practices to stakeholders may be the development of extension services.³⁰

Conclusion

This report has discussed the recent amendments to Thailand's *Forest Plantation Act* (1992). The amendments address a number of failings of the *1992 Act*, but fail to address others. Significantly, the amendments do not adequately provide for increased participation of the community in the forestry industry, and amendments introduce measures that may cause: increases in complexity and corruption in the system; and decreases in environmental sustainability. Timely research and proposals into methods to overcome failings of the Act would provide useful input to Thailand's efforts to truly meet the Act's environmental, social and economic objectives, and to meet the country's international obligations.

³⁰ K. Singh, B. Sinha and S. Mukherji, *Exploring Option for Joint Forest Management in India* (2005) Forestry Policy and Institutions Working Paper: A World Bank/WWF Alliance Project, Food and Agriculture Organization, 4.