



# FLEGT Briefing Notes

## Forest Law Enforcement, Governance and Trade

### What is legal timber?

#### 1 Background

The EU FLEGT Action Plan identifies a number of measures to address the growing problem of illegal logging and the related trade in illegal timber. Fundamental to implementation of many of these measures is the ability to differentiate between legal and illegal timber.

A definition of legality will be an important component of the Legality Assurance Systems that will form part of Voluntary Partnership Agreements (VPAs) to be negotiated between the EU and timber-producing countries (see Briefing Note 6).

This note discusses the nature of a workable definition of legality and an acceptable and credible process for achieving one.

#### 2 What should be included in a legality definition?

A practical definition of legally-produced timber will require more than just listing all laws applicable to a country's forest sector. Deciding which laws should comprise a legality definition is the right of each timber producing country. However, practicality of assessment, its impact on achieving the definition's goals, the consistency between laws, and equity in relation to all forest stakeholders' rights, all need to be taken into consideration.

Most countries have a large number of laws related to forests and timber and assessment of compliance with all of them could be an extremely onerous task. Moreover, not all laws are equally relevant to addressing the most serious impacts of illegal logging. For example, compliance with a law relating to harvest rights is clearly an essential component of a definition, while compliance with road traffic laws is probably not.

In some countries there may be inconsistencies between laws, particularly where legislation is enacted at both national and regional level. For example, a review of Indonesian forest governance found inconsistencies and contradictions between laws and government department decrees<sup>1</sup>. This can make it impossible to

The titles of the eight briefing notes in this series are:

1. What is FLEGT?
2. *What is legal timber?*
3. A timber legality assurance system
4. Control of the supply chain: Wood tracing systems and chain of custody
5. Legality assurance systems: requirements for verification
6. Voluntary Partnership Agreements
7. Guidelines for independent monitoring
8. Market participant-based legality assurance and FLEGT licensing

be fully compliant with all laws and, in these cases, it is necessary to establish which law takes precedence at least on an interim basis until such contradictions are resolved.

Finally, existing forest laws in some countries may exclude local people from access to forest resources, forcing them to operate illegally to meet their basic livelihood needs or compliance may be beyond the practical means of small forest operators. Such issues may require examination of the current law with a view to legislative reform.

The long-term aim of the FLEGT Action Plan is sustainable forest management. Definitions of legally-produced timber should therefore incorporate laws that address the three pillars of sustainability – i.e., those aimed at economic, environmental and social objectives. These are likely to include:

- Granting of and compliance with rights to harvest timber within legally-gazetted boundaries;
- Compliance with requirements regarding forest management, including compliance with relevant environmental, labour and community welfare legislation;
- Compliance with requirements concerning taxes, import and export duties, royalties and fees directly related to timber harvesting and timber trade;



- Respect for tenure or use rights to land and resources that may be affected by timber harvest rights, where such rights exist;
- Compliance with requirements for trade and export procedures.

### 3 Developing a legality definition

The process for deciding which laws are included in a definition of legality is the responsibility of the country in which the laws apply and, if a definition is to be a component of a legality assurance system to underpin a trade agreement, it must be endorsed by the country's government. However the nature of the process has a major influence on the definition's acceptability to different stakeholders.

The potential harm caused by failure to comply with laws can affect different stakeholders in the timber-producing country – government, private sector, the general public, and local and indigenous communities – in different ways. Therefore the process to decide which laws should be included in a definition should generally involve wide consultation with all interested parties.

In some countries with clearly-defined laws, developing a legality definition may be a relatively simple exercise. In others, inadequate, conflicting or inequitable laws might make a clear definition of legality more difficult to achieve. In these cases several rounds of stakeholder consultation may be needed as well as field-testing application of the definition.

There may be instances where the consultation process identifies laws which do not support sustainable forest management, or where an important right is not protected by existing law. In such cases, it may be necessary to adopt interim working definitions that give the best possible outcomes while a programme of regulatory reform is pursued.

### 4 Implementing a definition of legality

Checking compliance with and enforcing a definition of legally-produced timber requires that the definition is clear, operationally workable and objectively verifiable.

It must be easily understood by staff of both forest operators and enforcement agencies. This means that:

- It must be clear which laws and regulations are included in the definition and which are not;
- There must be clear tests of evidence (i.e. criteria and indicators) to determine compliance with each law or regulation;
- There should be practical ways to carry out such tests in the field.

To apply a definition in practice may require significant training of operational and enforcement staff in the forest sector.

It is anticipated that, over time, experience with applying legality definitions will indicate ways in which they can be improved. Additionally laws are also likely to be amended over time. Provision should therefore be made for a process to review and modify a legality definition. For example, a definition may need to be changed if:

- A law or regulation that forms part of the definition is amended or repealed;
- A new law or regulation that may be relevant to timber production is issued;
- Experience shows that testing compliance with a particular law is impractical.

1. Nana Suparna, September 2001. 'Forest Governance and Forest Law Enforcement in Indonesia.' Paper for Forest Law Enforcement and Governance, East Asia Ministerial Conference.



FLEGT Briefing Notes are prepared by an expert group convened by the European Commission and are intended to inform discussion of the EU FLEGT Action Plan. They do not reflect official positions. They are intended to provide useful information for potential FLEGT Partner countries and others with an interest in the initiative. (March 2007)