

# 3. Have the products been legally produced?

## Sourcing and legality aspects

### Origin

Where do the products come from?

### Information accuracy

Is information about the products credible?

### Legality

Have the products been legally produced?

## Environmental aspects

### Sustainability

Have forests been sustainably managed?

### Special places

Have special places, including sensitive ecosystems, been protected?

### Climate change

Have climate issues been addressed?

### Environmental protection

Have appropriate environmental controls been applied?

### Recycled fiber

Has recycled fiber been used appropriately?

### Other resources

Have other resources been used appropriately?

## Social aspects

### Local communities and indigenous peoples

Have the needs of local communities or indigenous peoples been addressed?



### 3. Have the products been legally produced?

There is no universally accepted definition of illegal logging and trade. Strictly speaking, illegality is anything that occurs in violation of the legal framework of a country. It is generally acknowledged that legality is not a synonym for Sustainable Forest Management, and that what is sustainable may not always be legal (World Bank, 2006; Contreras-Hermosilla et al., 2007). Some examples of what have been considered illegal forestry activities are given in Box 4.

Illegal logging is a fundamental problem in certain nations suffering from corruption or weak governance. International trade is one of the few sources of influence sufficient to create the political will to make improvements. Several international processes<sup>4</sup> have taken up this issue, and national efforts have started to appear as a result. During the last five to 10 years, illegal logging and illegal trade have risen to the top of the international forestry agenda.

Illegal logging of wood and paper-based products entails a complex set of legal, political, social, and economic issues. Poverty, lack of education, financial issues, population growth, and weak governance are all enabling factors for illegal activity. Illegal activity has many drivers that make it challenging to address this issue. These drivers are often associated with a range of items from short-term economic gain to local and national actors including communities and governments:

- Local (and often national) governments may receive higher revenues as a result of illegal land conversion and increased timber production.
- Because illegally logged wood can be sold at lower prices, it depresses the profitability of legally harvested wood while improving the competitiveness of industries that use illegal wood.
- Many people may derive an income from illegal forest activities.

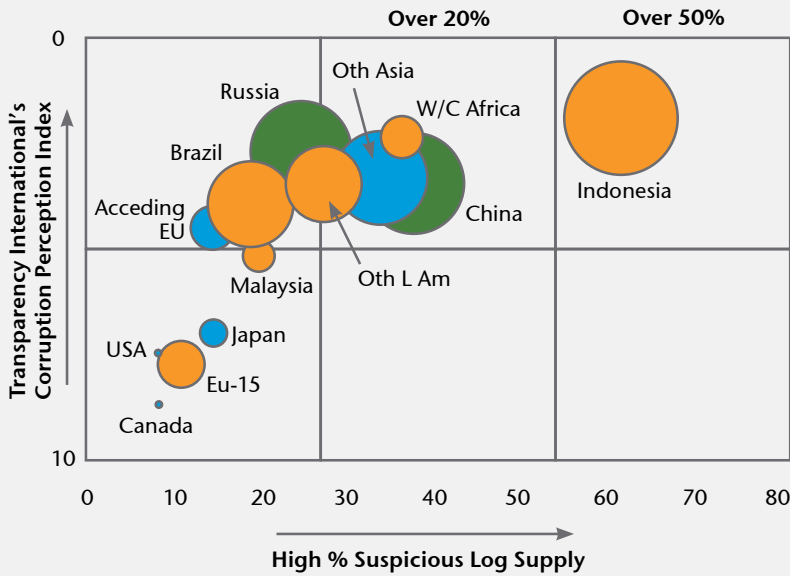
Illegal logging and illegal trade can create serious problems:

- **Government revenue losses** – the World Bank estimates that governments lose revenue equivalent to about US\$ 5 billion per year (World Bank, 2002A).
- **Unfair competition** – market distortion and reduction of profitability for legal goods; the World Bank puts this cost at more than US\$ 10 billion per year (World Bank, 2002A).
- **Increased poverty** – occurs indirectly when governments lose revenues.
- **Support and funding of national and regional conflicts.**
- **Unplanned, uncontrolled and unsustainable forest management.**
- **Destruction** – areas important for biological conservation, ecosystem services, and local livelihoods.

Between 8-10% of global wood production is estimated to be illegally produced, although the great uncertainty of these estimates is also acknowledged; most of this illegally produced wood is used domestically, although a significant portion enters the international trade either as finished products or raw materials (Seneca Creek and World Resources International, 2004). Estimates of illegal logging in specific countries and regions vary depending on the nature of the activity and the variability of laws and regulations (Figure 4).

<sup>4</sup> Prominent international initiatives include the G8 Forestry Action Programme, agreed by G8 foreign ministers in 1998, and the Gleneagles Declaration in 2005. The European Union in 2003 adopted an Action Plan on Forest Law Enforcement, Governance and Trade (EU FLEGT). The US launched the President's Initiative against Illegal Logging, also in 2003. Regional intergovernmental processes on Forest Law Enforcement and Governance (FLEG) have been established in Southeast Asia, Central Africa, and Europe and Northern Asia, each on the basis of a Ministerial Declaration.

**Figure 4. Corruption and illegal logging activity (2004)**



In a widely accepted, in-depth multi-country study, Seneca Creek Associates and Wood Resources International compared corruption and illegal logging activity. In the above graph, the y-axis displays Transparency International's Corruption Perception Index (CPI), where corruption tends to be higher (i.e., having lower CPI) in countries with lower per capita incomes. The x-axis displays the proportion of the total supply of suspicious logs, while the size of a bubble shows the absolute volume of suspicious logs that reach the market in a country or region, including imported logs.

EU-15 refers to the 15 countries in the European Union before May 2004: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Republic of Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. EU countries include EU-15 countries plus Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia.

Source: Seneca Creek Associates and Wood Resources International (2004).

### Factors to consider regarding legality

- Legality is not an issue in every country. A pragmatic approach may be to begin by identifying regions/countries at higher risk, and then focusing efforts on aspects of concern within those areas (e.g., corruption, lack of law enforcement, social conflict, etc). A number of resources are available to assist in this process (below).
- Legality is not always better than illegality in terms of SFM. Lack of compliance with minor administrative regulations may not have a significant impact on sustainability. It is desirable, but difficult, to focus on significant infractions.
- There are also cases when the law is not seen by everyone as equitable or fair (e.g., people with traditional claims to the land), or where laws protecting customary rights are not enforced or ignored.
- Verification of compliance with all national laws can be challenging. A pragmatic way to address this is to establish whether violations are merely oversights or form a pattern of major violations with serious impacts on sustainability.
- It is difficult to prove legality beyond good title because legal systems document non-compliance (i.e., citations, fines), not compliance. Transfer of title, however, is commonly documented through bills of lading and other negotiable instruments. Even for title, however, the risk of forged documents can be significant in some places. At a minimum, documents should carry all appropriate stamps and seals from the relevant governmental agencies.
- Consider actively supporting government action to address illegal logging and international trade in illegally-produced wood-based products.

## SELECTED RESOURCES: LEGALITY

### Procurement requirements

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<p>CEPI Legal Logging Code of Conduct</p>	<p>Members commit to full compliance with all applicable laws related to logging and purchasing wood. Members commit to implement procurement procedures that comply with laws corresponding to the underlying principles of the EMS. The legality of purchased wood is to be appropriately documented; support and cooperation with governments in their action to halt illegal logging is expected.</p>
<p>Danish Government Procurement Policy for Tropical Forests (under review)</p>	<p>Legality requirements in draft criteria are similar to UK central government criteria for legal timber. Requires that the forest owner/manager hold legal use rights, compliance with all relevant laws related to forest management, environment, labor and welfare, health and safety and other parties' tenure and use rights. Draft criteria also require payment for all relevant royalties and taxes, as well as compliance with CITES requirements. Accepts CSA, FSC, MTCC, PEFC and SFI as schemes that provide adequate documentation of legality.</p>
<p>European Community Green Purchasing Policy</p>	<p>For paper, core criteria propose that all fiber must come from legally harvested sources; in addition, award criteria should allow to give preference to fiber coming from sustainably harvested sources. The comprehensive standards propose additional award criteria related to compliance with the full set of the EU Ecolabel requirements.</p>
<p>French Policy on Public Procurement of Timber and Wood Products</p>	<p>Does not include definition of legality; procurement managers are required to refer to existing tools such as forest certification systems, ecolabels, or the supplying countries that could define which legislation is relevant. Requires compliance with CITES.</p>
<p>FSC Controlled-Wood Standard</p>	<p>Requires wood harvesting to comply with all applicable harvesting laws in the jurisdiction.</p>
<p>German Government Procurement Policy</p>	<p>Requires that wood come from verifiable legal forest management, initially as verified by FSC and PEFC.</p>
<p>Japanese Government Procurement Policy</p>	<p>Requires that timber be harvested in a legal manner consistent with procedures in the forest laws of timber-producing countries. Legality is a priority for the Japanese government.</p>
<p>New Zealand Timber and Wood Products Procurement Policy</p>	<p>Seeks to ensure procurement of only legally sourced timber and wood products. Provides guidance for implementation through supplier engagement and contract clauses and documentation for the verification of legality; recognizes third-party forest certification as a way to verify legality as well as legality validation schemes and ecolabels.</p>
<p>PEFC Guide for the avoidance of controversial timber</p>	<p>Introduces safeguard mechanisms against procuring illegally logged wood.</p>

### 10 things you should know | 3. Have the products been legally produced?

Public procurement policies for forest products and their impacts	Reviews how public procurement policies define or address legality (e.g., through certification, providing specific guidance on selected aspects, deferring to third-party definitions, etc). It provides selected definitions of legality and compares different definitions and approaches. The report also analyzes the impact of public procurement policies on legality.
SFI Procurement Objective	Requires program participants to comply with the law in their own operations, to assess and address the risk of procuring from illegal logging and support efforts to halt illegal logging.
Timber Trade Federation Responsible Purchasing Policy	Provides guidance and assistance to members to evaluate levels of law compliance in various countries of the world

#### Resources to assess requirements

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CEPI Certification Matrix	Compares certification systems' law compliance requirements.
CPET	Provides advice and guidance for compliance with UK central government procurement requirements for the legality of wood products. Accepts CSA, FSC, MTCC, PEFC, and SFI certification as evidence of legality.
Environmental Paper Network	Rates compliance of paper-making facilities with international labor, human and health conventions.
EPAT®	Rates compliance of paper-making facilities with international labor, human and health conventions.
FCAG	Includes criteria and requirements for assessing compliance with relevant national and international laws, treaties and agreements.
FPAC: A buyers' guide to Canada's sustainable forest products (the report)	Assures readers about the lack of systemic issues around illegal logging in Canada.
GFTN	Provides advice for keeping illegally harvested wood out of the supply chain. Advice includes providing definitions of legal wood, addressing bad or unfair laws, examples of procurement policies, list of CITES listed species, and lists of legal documentation for various countries. (See Miller et al., 2006).
Good Wood. Good Business guide	Provides overview definitions of illegal and legal wood, as well as guidance to exclude illegal wood from the supply chain.
GPN	Promotes the use of raw materials that have been produced in compliance with the laws and the rules of the regions where they were harvested.
Greenpeace's Responsible Procurement Guide	Promotes sourcing legally known and verified timber. Recognizes and promotes FSC legality requirements.

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#### New Zealand Government Paper Buyers guidance

Verification methodology provides five options to verify compliance with legality requirements. Options include combinations of forest certification systems, ecolabels, chain-of-custody certificates and self declarations.

#### Timber Trade Action Plan

Compiles legality checklists against which it assesses gaps in the legality of identified supply chains in producer countries in Africa, Latin America and Asia; it offers technical guidance to companies to fill such gaps and achieve third-party verification of legality. Country legality checklists are developed based on international legality requirements (e.g., Smartwood, etc.) and in-country draft or generic legality standards when available.

#### Tropical Forest Trust

Evaluates operations' compliance with basic legality requirements through field checks. Establishes and monitors supply management systems in forest operations and processing facilities and provides guidance towards specific legal standards.

#### WWF Guide to buying paper

Promotes the avoidance of illegal and other unacceptable sources. Promotes forest certification as means to avoid sourcing raw materials harvested through illegal practices.

#### WWF Paper Scorecard

Rates percentage of fibers that are certified to avoid the potential inclusion of fiber from unwanted sources.

#### WWF Tissue Scoring

Scoring criteria include clear policies aimed at eliminating all raw materials from illegal and controversial sources.

## Box 4. Examples of illegal forestry activities

Illegal activities can generally fall into two broad categories: illegal origin (ownership, title or origin), and lack of compliance in harvesting, processing, and trade. The following are examples of activities that have been identified and/or included in some definitions of illegal logging (Contreras-Hermosilla, 2002; Miller et al., 2006; GFTN, 2005).

Illegal origin (ownership, title, or origin)

- Harvesting of wood in protected areas without proper permission (e.g., in national parks and preserves). This may include instances where authorities allocate harvesting rights without properly compensating local people.
- Logging protected species.
- Logging in prohibited areas such as steep slopes, riverbanks and water catchments.
- Harvesting wood volumes below or above the limits of the concession permit as well as before or after the logging period stated in the harvesting license.
- Harvesting wood of a size or species not covered by the concession permit.
- Trespass or theft, i.e., logging in forests without the legal right to do so.
- Violations, bribes and deception in the bidding process to acquire rights to a forest concession.
- Illegal documentation (including trade documents).

Lack of compliance throughout the supply chain (harvesting, manufacturing, and trade)

- Violations of workers' rights (e.g., illegal labor, underpaying workers, etc.), labor laws and international standards, and violation of traditional rights of local populations and indigenous groups.
- Violation of international human rights treaties.
- Wood transported or processed in defiance of local and national laws.
- Violations of international trade agreements (e.g., CITES species – Box 5).
- Failure to pay legally prescribed taxes, fees and royalties.
- Illegal transfer pricing (e.g., when it is to avoid duties and taxes), timber theft, smuggling.
- Money laundering.
- Failure to fully report volumes harvested or reporting different species for tax evasion purposes.

Different definitions of illegal logging can lead to different estimates, which makes addressing the problem more difficult (Contreras-Hermosilla et al., 2007; Rosembaum, 2004). Defining illegal logging is not only a technical issue, but one with potentially far-reaching political implications (Contreras-Hermosilla et al., 2007).

## Box 5. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was established to limit and regulate the trade of endangered species.

CITES is an international, legally binding agreement to ensure that international trade of certain animals and plants (including wood from certain tree species) does not threaten their survival.

CITES establishes controls for the international trade of selected species. All import, export, and introduction of species covered by the convention must be authorized through a licensing system established by member countries. Each country designates one or more Management Authorities that administers the licensing system advised by one or more Scientific Authorities.

Based on the degree of protection needed, species covered by CITES are listed in three appendices:

- Appendix I – species threatened with extinction; trade is permitted but under very restricted circumstances

- Appendix II – trade of these species is controlled and regulated to ensure their survival
- Appendix III – species subject to special management within a country.

Sources: Cites website ([www.cites.org](http://www.cites.org)), and UNEP/WCMC's Tree Conservation Information Service website ([www.unep-wcmc.org/trees/trade/cites.htm](http://www.unep-wcmc.org/trees/trade/cites.htm)).

*The Bali Mynah is one of the world's most critically endangered birds. Native to the island of Bali in Indonesia, there are less than twenty remaining in the wild.*

