

RESEARCH INTO WOOD LEGALITY VERIFICATION SCHEMES



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By:



Ogle Consulting Ltd

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Acronyms and Abbreviations

AFP	Asia Forest Partnership
AFCS	Australian Forest Certification Scheme
AMDAL	Indonesian environmental impact assessment
ASEAN	Association of Southeast Asian Nations
ATFS	American Tree Farm System
BRIK	Indonesia's Forest Industry Revitalisation Agency
CIFOR	Centre of International Forestry research
CITES	Convention on International Trade in Endangered Species of Wild fauna and Flora
CoC	Chain of custody
CPET	Central Point for Expertise on Timber
CSA	Canadian Standards Association
ENGO	Environmental Non Government Organisation
ETPIK	Indonesian license to export
EU	European Union
FAO	Food & Agriculture Organisation
FLEG	Forest Law Enforcement and Governance
FLEGT	Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
G8	Group of Eight
GFTN	Global Forest & Trade Network
GST	Goods and services tax
ILO	International Labour organisation
ITTG	Imported Tropical Timber Group
ITTO	International tropical Timber organisation
MAF	Ministry of Agriculture and Forestry
MOU	Memorandum of Understanding
MTCC	Malaysian Timber Certification Council
NGO	Non Government Organisation
NZ	New Zealand
PEFC	Programme for the Endorsement of Forest Certification
SFI	Sustainable Forestry Initiative
SFM	Sustainable forest management
SGS	Societe Generale Suisse
TFT	Tropical Forest Trust
TLTV	Timber legality & Traceability Verification
US	United States of America
VPA	Voluntary Partnership Agreement
WTO	World Trade Organisation
WWF	World Wildlife Fund



Executive Summary

1. During 2007 and early 2008, MAF commissioned Ogle Consulting Ltd to undertake research into the labelling of legal timber products and policy options to improve the legality of timber in New Zealand. An outcome of that work is that it has increased the need for further information on what legality schemes exist, how they measure legality and whether or not certification schemes can be used as a proxy for legality at present. This research report has the following objectives and deliverables:

1. To examine what legality schemes for wood products exist;
2. How they measure legality;
3. Their differences and whether or not certification schemes can also be used to measure legality; and

2. The illegal logging issue has been on the international agenda for the past decade. However, progress has been slow and it is really only in the past three years that advances have been made, with numerous initiatives to combat illegal logging, either already being implemented or in various stages of formulation. These initiatives fall into six main categories:

- International multilateral and bilateral initiatives and agreements
- Importing country legislated (or planned) approaches
- Legality verification and sustainability certification schemes
- Government procurement policies requiring the purchase of legal timber
- Major company buying policies placing pressure on suppliers to verify the legality of their timber
- Voluntary and cooperative policies to encourage industry and consumers to deal only with legal timber

Although there are commendable features in most initiatives, the overall global approach to combating illegal logging still lacks harmonisation and coordination.

3. The European Union has been the major funding source and initiator of planning processes relating to the problem of illegal logging and associated trade. Through its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan it has identified a range of measures it considers necessary to reduce the trade and use of illegally harvested timber. In this report, the FLEGT documentation has been adopted as a baseline or main reference point for discussing legality verification systems. The reasons for this are:

- It represents the most comprehensive attempt to use the power of timber-consuming countries to reduce the extent of illegal logging. The FLEGT licensing system includes all EU member countries and most major timber exporting countries in Asia and Africa, as well as Russia.
- The FLEGT objective and definition of legality is very similar to NZ's definition. The FLEGT objective and definition are based on a 2001 agreement to "explore ways in which the export and import of illegally harvested timber could be eliminated" (Brack, 2006).

Introduction and Objectives

Outline of Measures to Combat Illegal Logging

Choice of the FLEGT Documentation as a Reference Point for Discussing Legality Verification Systems



- It is independent of initiatives by environmental non-government organisations (ENGOs), commercial verification/ certification agencies and producer orientated vested interests;
- The FLEGT Action Plan is well documented and advanced in its implementation. In addition, much of the FLEGT documentation is generic in nature, and contains principles and criteria that appear useful in the NZ context.

4. FLEGT lists three separate elements of a legality assurance scheme as:

1. A definition of legally produced timber,
2. A mechanism for the control of the supply chain,
3. A means for verifying that the requirements of the legality definition and the supply chain have been met.

5. MAF has requested that this research on wood verification systems use the definition of legality accepted by the NZ Government in its policy on illegal logging, namely:

“Illegal logging takes place when timber is harvested, transported, brought or sold in violation of national laws.”

There is, however, no internationally agreed single definition on legality. The NZ Government definition is relatively brief, with a narrow interpretation of legality, and includes international laws and conventions to the extent where international laws are given effect to through national laws.

Environmental non-government organisations (ENGOs) generally prefer a wider definition of legality. Their definitions usually cover the possibility that wood harvested from a legally verified source may have elements in the forest harvesting operation, that are environmentally, socially or economically unsustainable. Also as part of any legality verification system they require, if possible, an automatic process toward attaining full forest sustainability certification.

6. Mechanisms are the criteria that have been designed to describe the minimum **outcomes** that must be achieved for wood to be recognised as legally produced – effectively a checklist for auditing the logging and timber trade process. The FLEGT initiative has five principles and criteria, covering:

- User rights
- Production and processing
- Quantities
- Mixing of legally verified timber with other approved timber –
- Imported wood products

7. A legality definition is insufficient in itself to control illegal activities in the timber trade. The FLEGT approach assumes a need to establish a minimum governance assessment requirement within the legality standard. Verification is therefore the control process to ensure the legality of timber. Verification must be sufficiently robust and effective to ensure that any non-compliance with requirements, either in the forest or within the supply chain, are

3 Elements of a legality assurance scheme

Definition of Legality

Mechanisms

Verification



identified and action is taken in a timely manner to resolve the problem.

8. The FLEGT principles and criteria have been used as a reference point and compared with 14 other schemes. This comparison is summarised in the following table. The assessment is based on NZ's current definition of legality, but assumes the need for independence in the legality verification process to ensure that compliance with the laws of the producer country exists. The result is that 13 of the 15 schemes are considered to include legality verification measures that, under that under NZ's current definition of legality, should be acceptable in NZ.

Examination of Individual Schemes

<i>Name</i>	<i>Forest Sustainability Schemes That Includes Legality Verification That Should Be Acceptable in NZ</i>	<i>Standalone Legality Verification Schemes That Should Be Acceptable in NZ</i>	<i>Advocate/ Promoters of Legality Verification & Other Schemes That Should be Acceptable in NZ</i>	<i>Legality Verification Schemes That Should Not Currently Be Acceptable to NZ</i>
Sustainability and Legality Certification Schemes				
FLEGT		✓		
FSC	✓			
PEFC	✓			
MTCC	?	✓		
CSA	✓			
SFI	✓			
ATFS	✓			
SGS		✓		
Certisource		✓		
Smartwood Rainforest Alliance		✓		
TFF		✓	✓	
LEI	✓			
AFCS	✓			
BRIK				✓
ITTG Form 592				✓
Promoters or Advocates of Other Systems				
TFT			✓	
WWF GTFN			✓	
UK Government Procurement			✓	
ITTO			✓	



1. INTRODUCTION

1.1. Background

Illegal logging is a concern for New Zealand for social, environmental and economic reasons. MAF is developing domestic and international policies to address the issue.

Various domestic measures are being considered to control the sale of suspected illegal timber in New Zealand. In addition, the New Zealand Government already has a mandatory timber and wood products procurement policy with a requirement for timber and wood products to be legally sourced.

1.2. Research Rationale and Objectives

During 2007 and early 2008, MAF commissioned Ogle Consulting Ltd to undertake research into the labelling of legal timber products and policy options to improve the legality of timber in New Zealand¹.

An outcome of this work is that it has increased the need for further information on what legality schemes exist, how they measure legality and whether or not certification schemes can be used as a proxy for legality at present.

Objectives and deliverables for the research are:

1. To examine what legality schemes for wood products exist;
2. How they measure legality;
3. Their differences and whether or not certification schemes can also be used to measure legality; and
4. Consideration of what guidance could be provided to consumers on what to ask for when seeking legality verification should also be included in the report. This will be reported separately to MAF and is not included in this report.

1.3. Outline of Research Approach and Methodology

The focus of the research is on legality and not sustainability, although it is recognised that sustainability should be the ultimate goal.

The research work undertaken by Alan Ogle during April 2008 involved:

- A literature and internet based search of both domestic and international developments in the area of illegal logging and verification schemes/ systems associated with improving timber and timber product legality;
- An analysis of the NZ imported timber and wood products market to refine the research to those areas of greatest interest to NZ; and
- Assessment of the most pertinent legality (and sustainability) verification schemes and their relevance in the NZ context.

1.4. Disclaimer and Limitations

The report contains opinions of the Consultant, Ogle Consulting Ltd, as to possible verification schemes/ systems to improve the verification of legality of timber products available in NZ. In this report Ogle Consulting Ltd has drawn on a range of resources. The main source has been from

¹ Ogle Consulting Ltd; March 2008: "Research Into Improving the Legality of Timber Products in NZ"



documents that are publicly available. This has been supplemented from the Consultant's own databases and field experiences related to monitoring forest harvesting and trade. A short research consultancy has meant that publicly available documents cannot in all cases be independently verified.

The Consultant has prepared this report with care and diligence, and the statements in the report are given in good faith and in the belief, on reasonable grounds, that such statements are not false or misleading. However, the Consultant does not guarantee or otherwise warrant the accuracy of statements or assume responsibility for errors or omissions. The report does not purport to give legal advice. Nothing in the report is, or should be relied upon as, a promise by Consultant as to the future. Actual results may be different from the opinion contained in this report, as anticipated events may not occur as expected and the variation may be significant. The Consultant has no responsibility to update this report for events and circumstances occurring after the date of this report.



2. LEGALITY VERIFICATION SYSTEMS – GENERAL CONSIDERATIONS

2.1. Outline of Measures to Combat Illegal Logging

The illegal logging issue has been on the international agenda for the past decade. However, progress has been slow and it is really only in the past three years that major advances have been made, with numerous initiatives to combat illegal logging, either already being implemented or in various stages of formulation. These initiatives fall into six main categories:

- International multilateral and bilateral initiatives and agreements (such as the Asia Forest Partnership, Global Forest and Trade Network, EU FLEGT, G8 Forestry Action Programme, etc);
- Importing country legislated (or planned) approaches, including potential EU FLEGT import licensing and possible extensions to the US Lacey Act to prohibit the import and marketing of illegal timber and wood products etc;
- Legality verification and sustainability certification schemes (including FSC, PEFC, MTCC, CSI, SFI, TFT, AFSA, SGS TLTV etc);
- Government procurement policies requiring the purchase of legal timber – implemented in the UK, Japan, NZ etc;
- Major company buying policies placing pressure on suppliers to verify the legality of their timber; and
- Voluntary and cooperative policies to encourage industry and consumers to deal only with legal timber – such as Australia’s policy released in October 2007.

However, although there are commendable features in most initiatives, the overall global approach to combating illegal logging still lacks harmonisation and coordination. Concrete action is not always forthcoming and progress is slow.

2.2. Choice of the FLEGT Documentation as a Reference Point for Discussing Legality Verification Systems

The European Union has been the major funding source and initiator of planning processes relating to the problem of illegal logging and associated trade. Through its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan it has identified a range of measures it considers necessary to reduce the trade and use of illegally harvested timber. In this report, the FLEGT documentation has been adopted as a baseline or main reference point for discussing legality verification systems. The reasons for this are:

- It represents the most comprehensive attempt to use the power of timber-consuming countries to reduce the extent of illegal logging. The FLEGT licensing system includes all EU member countries and most major timber exporting countries in Asia and Africa, as well as Russia.
- The FLEGT objective and definition of legality is very similar to NZ’s definition. The FLEGT objective and definition are based on a 2001 agreement to “explore ways in which the export and import of illegally harvested timber could be eliminated” (Brack, 2006).
- It is independent of initiatives by environmental non-government organisations (ENGOS), commercial verification/ certification agencies and producer orientated vested interests;
- The FLEGT Action Plan is well documented and more advanced than other initiatives in its implementation. In addition, much of the FLEGT documentation is generic in nature, and contains principles and criteria that appear useful in the NZ context.



The FLEGT Action Plan rests primarily on the negotiation of FLEGT voluntary partnership agreements (VPAs) with producer countries. These agreements will establish a licensing system in each country, designed to identify legal products and license them for import to the EU. Unlicensed products will be denied entry at the EU border. The agreements include the provision of capacity-building assistance to partner countries to set up the licensing scheme, improve enforcement and, if necessary, reform their laws. Where appropriate, there are provisions for independent scrutiny of the validity of the issue of the licenses, and for verifying the legal behaviour at every stage of the chain of custody of the timber.

2.3. Elements of Systems for Legality Assurance

FLEGT (Briefing Note 5) provides an outline of what it regards as “elements of a legality assurance system”. These are:

1. A definition of legally produced timber,
2. A mechanism for the control of the supply train,
3. A means for verifying that the requirements of the legality definition and the supply chain have been met.

The FLEGT approach is geared toward setting up licensing systems based partnership agreements in wood exporting countries. The principles and elements of their approach are however relatively generic and useful to understanding what constitutes a system or framework for legality assurance, and the roles of various stakeholders. The three elements are discussed further in ensuing paragraphs.

2.4. Definition of Legality

2.4.1. New Zealand Government Definition

MAF has requested that this research on wood verification systems use the definition of legality accepted by the NZ Government in its policy on illegal logging, namely:

“Illegal logging takes place when timber is harvested, transported, brought or sold in violation of national laws.”

There is, however, no internationally agreed single definition of legality. The NZ Government definition is a relatively brief, with a narrow interpretation of legality, and accepts that it will only include international laws and conventions to the extent that international laws are given effect to through national laws. The NZ Government legality definition is virtually identical to that adopted in the FLEGT Action Plan.

The NZ Government definition involves all phases of the forest industry, including harvesting, transport, processing and trade. In other words, illegal logging is any illegal act that may occur anywhere from the harvesting of a tree to the final timber products. Hence, tracking the wood from tree stump to the final buyer would be necessary to ensure the products are not contaminated by uncertified material from other sources.

2.4.2. Other Definitions of Legality

ENGOs generally prefer a wider definition of legality. Their definitions usually cover the possibility that wood harvested from a legally verified source may have elements in the forest harvesting operation, that are environmentally, socially or economically unsustainable. For example, WWF defines legality as:



“Illegal logging occurs when forest products are bought or sold in violation or circumvention of national or sub-national laws relating to harvesting, transportation, processing. These include large and small-scale timber theft, transfer pricing, breaching of tax rules, illegal aspects of timber sourcing, circumvention of agreements through bribery or deception.”

The WWF definition encompasses elements, such as bribery, deception, and breaching of tax rules. These additional elements would be more difficult to audit since they are based on “best” business practices and are much more subjective. For example audits on “transfer pricing” require extensive offshore crosschecking and commercial judgement, to try and separate what is an acceptable profit from sale of logs through a chain of intermediaries, and what is tax evasion.

The lack of consistency in definitions on legality is unlikely to be solved quickly. It reflects the complexity of the underlying issues and agendas of the many stakeholders.

ENGOs, are also generally reluctant to accept that legal verification can be partially separated from environmentally and socially responsible sustainable forest management. For example, a Greenpeace (2008) assessment of wood products legality verification systems, includes as part of its criteria for assessment, that legality verification systems include “a time bound commitment to achieve Forest Stewardship Council (FSC) certification”. Greenpeace gives greater weighting to this criterion than any other aspect, and state that: “legality can, and should, only be seen as a starting point in meeting the end goal of ensuring wood products come from environmentally and socially responsible forest management. Greenpeace currently recognises FSC as the most credible certification scheme in this respect.”

2.5. Mechanisms for Controlling the Supply Chain

2.5.1. What Is Meant By Mechanisms

Mechanisms are the criteria that have been designed to describe the minimum *outcomes* that must be achieved for wood to be recognised as legally produced. Mechanisms do not generally decide the *means* for achieving the outcomes. The means are left to the national laws of individual producing countries.

Mechanisms therefore are effectively just a checklist of criteria and outcome indicators, against which a verification agency audits the logging and timber trade process.

As a result of the growing international concern about illegal logging and trade, numerous checklists of criteria have been developed in recent years to help check, license or certify timber as legally sourced. These criteria have evolved from a combination of:

- International, multilateral and bilateral initiatives and agreements;
- Importing country legislated (or planned) approaches;
- Legality verification/ sustainability certification schemes and promoters/ service providers; and
- Government procurement policies requiring the purchase of legal timber.

However, there is a great deal of variation in the criteria developed by each of these stakeholders, and no clearly established international standards have yet arisen.

2.5.2. Principles and Criteria Commonly Existing in Most Mechanisms

The NZ definition of legality would at its simplest level require criteria covering compliance with national laws covering:



- Harvesting
- Transportation
- Trade

The FLEGT initiative, which shares a definition of legality that is very similar to NZ, lists five principles and criteria (FLEGT Briefing Note 4):

1. User rights – that there is clear delineation of areas where forest resource rights have been allocated and identification of the holders of those rights;
2. Production and processing – That there are effective mechanisms for tracing timber throughout the supply chain from harvesting to the point of export;
3. Quantities – That there are robust and effective mechanisms for measuring and recording the quantities of timber or timber products at each stage of the supply chain, including reliable pre-harvest estimates at appropriate accuracy of the volume of standing timber in each harvesting site. All data is recorded in a way that makes it possible to reconcile them with the prior and subsequent links in the chain in a timely manner. Reliable reconciliation is carried out for the entire supply chain;
4. Mixing of legally verified timber with other approved timber - If mixing of logs or timber from verified legal sources with logs or timber from other sources is allowed, there are sufficient controls in place to exclude material which is from unknown sources or which was harvested without legal harvesting rights; and
5. Imported wood products - There are adequate controls to ensure that all wood products have been legally imported.

Section 3 of this report goes into further detail in comparing the principles and criteria of legality schemes.

2.6. Means of Verification

Although a legality definition is a positive step, it is insufficient in itself to control illegal activities in the timber trade. In many producer countries, a culture of non-compliance is so embedded that most forest managers would be found illegal if the legal and regulatory frameworks governing the sector were to be fully enforced. Governance is typically weak, corruption endemic and some elements of the industry simply adjust their activities and procedures to circumvent any rules that are enforced.

The FLEGT approach assumes a need to establish a minimum governance assessment requirement within the legality standard. It also attempts, as far as possible, to ensure that systems are in place for independent auditing of compliance with these standards. Without governance assessment and auditing processes, the current NZ definition of legality is of limited value.

Verification (FLEGT Briefing Note 5) is the process of obtaining clear and credible evidence that demonstrates there have been regular audits of activities in forest management units and processing facilities to verify that there has been:

- Compliance with the requirements of the definition of legality in the forest and, where the definition requires it, at processing facilities;
- Implementation of supply chain controls at each point where a product is shipped, received or transformed – such as sawmills and plywood mills – to check that no material that is unaccounted for has entered the process;
- Export consignments have been produced in a manner that complies with all laws included in the legality definition;



- There are sufficient controls to assure that licensed products include only timber from legal operations.

Verification is, therefore, the control process to ensure the legality of timber. Verification must be sufficiently robust and effective to ensure that any non-compliance with requirements, either in the forest or within the supply chain, are identified and action is taken in a timely manner to resolve the problem. The intensity of verification should be proportional to the specific circumstances from the country of origin.

The FLEGT definition of verification includes four principles and criteria:

1. Organisation - verification is carried out by a government, market participant or third-party organisation, or some combination of these, which has adequate resources, management systems and skilled and trained personnel, as well as robust and effective mechanisms to control conflicts of interest.
2. Verification of legality in the forest - there is a clear scope setting out what has to be verified. The verification methodology is documented and ensures that the process is systematic, transparent, evidence based, carried out at regular intervals and covers everything included within the scope.
3. Verification of systems to control the supply chain - there is a clear scope setting out what has to be verified which covers the entire supply chain from harvesting to export. The verification methodology is documented and ensures that the process is systematic, transparent, evidence-based, carried out at regular intervals, covers everything included within the scope, and includes regular and timely reconciliation of data between each stage in the chain.
4. Non-compliances - there is an effective and functioning mechanism for requiring and enforcing appropriate corrective action where non-compliances are identified.

The FLEGT definition does not insist on independent *third party* verification. It does however require that “There is a robust system in place to ensure that all potential conflicts of interest at both the individual and the organisational level have been identified and documented and are being effectively managed and controlled.” Also “Where verification activities are carried out by field-based monitoring personnel who are routinely involved with forest operations (e.g. forest guards), there must also be a component of the verification process carried out by other personnel who are not routinely involved with either the forest operations or line management of the field-based monitoring personnel.”



3. LEGALITY VERIFICATION SYSTEMS: EXAMINATION OF INDIVIDUAL SYSTEMS

3.1. Criteria

In order to evaluate and compare the various legality verification systems, the FLEGT principles and criteria have been condensed to 13 criteria upon which comparisons can be made. These criteria and their descriptions for comparative purposes are shown in Table 3/1.

Table 3/1: FLEGT Legality Verification Criteria

<i>Criteria</i>	<i>Description of Criteria for Comparative Purposes</i>
1. Definition of legality	Whether broader or narrower than the NZ/FLEGT definition
2. Mechanisms to Cover:	
2.1 User rights to forest resources	Clear delineation of areas where forest resource rights have been allocated and the identification of those rights.
2.2 Production and processing tracing	Tracing of timber through the full supply chain from harvesting to point of export.
2.3 Quantity measurement at each stage in the supply chain	Robust and effective mechanisms for measuring and recording the quantities of timber or timber products at each stage of the supply chain, including reliable pre-harvest estimates at appropriate accuracy of the volume of standing timber in each harvesting site. Data is recorded in a way that makes it possible to reconcile prior and subsequent links in the chain in a timely manner. Reliable reconciliation is carried out for the entire supply chain.
2.4 Mixing timber provisions	If mixing of logs or timber from verified legal sources with logs or timber from other sources is allowed, there are sufficient controls in place to exclude material which is from unknown sources or which was harvested without legal harvesting rights.
2.5 Imported timber	Adequate controls to ensure that all imported wood products from a third party source country have been legally imported.
3. Verification of legality:	
3.1 Compliance in forest harvesting and processing	Compliance with the requirements of the definition of legality in the forest and, where the definition requires it, at processing facilities.
3.2 Supply chain controls	Controls at each point where a product is shipped, received or transformed to check that no material that is unaccounted for has entered the process.
3.3 Exports comply with all laws	Export consignments have been produced in a manner that complies with all laws included in the legality definition.
3.4 Verification sufficiently independent to prevent conflicts of interest	Verification is carried out by a government, market participant or third-party organisation, or some combination of these, which has adequate resources, management systems and skilled and trained personnel, as well as robust and effective mechanisms to control conflicts of interest.
3.5 Verification of forest legality	Clear scope setting out what has to be verified. The verification methodology is documented and ensures that the process is systematic, transparent, evidence based, carried out at regular intervals and covers everything included within the scope.
3.6 Verification of supply chain systems	Clear scope setting out what has to be verified which covers the entire supply chain from harvesting to export. The verification methodology is documented and ensures that the process is systematic, transparent, evidence-based, carried out at regular intervals, covers everything included within the scope, and includes regular and timely reconciliation of data between each stage in the chain.
3.7 Non-compliances	There is an effective and functioning mechanism for requiring and enforcing appropriate corrective action where non-compliances are identified.



3.2. Schemes for Assessing Legality

The comparison covers the following 19 legality verification schemes, initiatives, frameworks, promoters and service providers for assessing legality. 15 of these schemes provide standalone sustainability or legality verification systems. The remaining four are promoters of legality and/or advocates of other systems:

The 15 schemes that provide standalone sustainability or legality verification systems are:

- Forest Law Enforcement, Governance and Trade (FLEGT)
- Forest Stewardship Council (FSC)
- Programme for the Endorsement of Forest Certification (PEFC)
- Malaysian Timber Certification Council (MTCC)
- Canada Standards Association National Standard for Sustainable Forest Management (CSA)
- Sustainable Forest Initiative (SFI)
- American Tree Farm System (ATFS)
- SGS MLTV/ TLTV/ VLTV
- Certisource
- Smartwood Rainforest Alliance
- Tropical Forest Foundation (TFF)
- WWF Global Forest and Trade Network (WWF GTFN)
- Indonesian Eco-labelling Institute (LEI)
- The Australian Forest Certification Scheme (AFCS)
- Indonesia BRIK scheme
- NZ Imported Tropical Timber Group (ITTG)

The four promoters or advocates of other systems:

- Tropical Timber Trust (TFT)
- WWF Global Forest and Trade Network (WWF GTFN)
- UK Government procurement
- International Tropical Timber Organization (ITTO)

A summary comparison against the FLEGT criteria is shown in Table 3/2

3.3. Sustainability and Legality Certification Schemes

Seven of the 15 schemes or frameworks above go further than legality verification, and require automatic provision for full sustainability certification.

All seven forest certification schemes require an independent organization to develop standards for responsible forest management. Independent auditors are accredited to the scheme to issue certificates confirming that forest operations conform with sustainable forest management standards and that product chains of custody exist to track the wood from forest to end user.

As far as could be established from documentation obtained, all seven of the sustainability certification schemes researched include specific reference or criteria for the need to verify legal compliance with both applicable laws of the wood producing country and international treaties/ agreements to which the country is a signatory.

Our belief is, therefore, that all seven sustainability certification schemes examined are suitable to also be used as a measure for verification of legality.



Table 3/2: Comparison of Schemes, Frameworks, Initiatives, Promoters and Service Providers for Assessing Legality

<i>Legality Scheme or Framework</i>	<i>Legality definition Compared to NZ</i>	<i>2.1 User rights to resource</i>	<i>2.2 Production & processing tracing</i>	<i>2.3 Quantity measurement in supply chain</i>	<i>2.4 Mixing timber provisions</i>	<i>2.5 Imported timber</i>	<i>3.1 Compliance in forest harvesting & processing</i>	<i>3.2 Supply Chain controls</i>	<i>3.3 Exports comply with law</i>	<i>3.4 Independence of verification & processing</i>	<i>3.5 Verification of forest legality</i>	<i>3.6 Verification of supply chain systems</i>	<i>3.7 Non compliance procedures</i>
Sustainability and Legality Certification Schemes													
FLEGT	Same as NZ	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes but not always an independent 3 rd party	Yes	Yes	Yes
FSC	Stronger -also includes sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
PEFC	Stronger -also includes sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MTCC	Stronger -also includes sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes – but can include government appointed certifiers	Yes	Yes	Yes
CSA	Stronger -also includes sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SFI	Stronger -also includes sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ATFS	Stronger -also includes sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SGS MLTV/ TLTV/ VLTV	Generally stronger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Certisource	Generally stronger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rainforest Alliance Smartwood	Generally stronger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
TFF	Generally stronger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Indonesian LEI	Generally stronger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes



Table 3/2 (Continued)													
<i>Legality Scheme or Framework</i>	<i>Legality definition Compared to NZ</i>	<i>2.1 User rights to resource</i>	<i>2.2 Production & processing tracing</i>	<i>2.3 Quantity measurement in supply chain</i>	<i>2.4 Mixing timber provisions</i>	<i>2.5 Imported timber</i>	<i>3.1 Compliance in forest harvesting & processing</i>	<i>3.2 Supply Chain controls</i>	<i>3.3 Exports comply with law</i>	<i>3.4 Independence of verification</i>	<i>3.5 Verification of forest legality</i>	<i>3.6 Verification of supply chain systems</i>	<i>3.7 Non compliance procedures</i>
The Australian Forest Certification Scheme (AFCS)	Generally stronger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Indonesian BRIK	Weaker	Yes	Doubtful	Doubtful	Doubtful	Doubtful	Yes	Doubtful	Doubtful	No	Doubtful	Doubtful	Doubtful
NZ Imported Tropical Timber Group	Weaker – largely based on Indonesian BRIK	Yes	Doubtful	Doubtful	Doubtful	Doubtful	Yes	Doubtful	Doubtful	No	Doubtful	Doubtful	Doubtful
Promoters or Advocates of Other Systems													
TFT	Stronger –also includes sustainability – not strictly a legality scheme, but a program supporting FSC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WWF Global Forest & Trade Network (GFTN)	Stronger –also includes sustainability –a supporting network for legality and sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
UK Government Procurement	Slightly stronger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ITTO	A supporting organisation for legality and sustainability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes



3.4. Comments on How Individual Legality Verification Schemes Measure Legality

3.4.1. Forest Law Enforcement, Governance and Trade (FLEGT)

The FLEGT legality criteria are explained in more detail in Section 3.1 above. To be fully effective, the FLEGT licensing system relies on the negotiation of FLEGT voluntary partnership agreements (VPAs) with all producer countries that export wood to the EU market. There is still considerable uncertainty that this will happen. The FLEGT VPAs include a licensing system designed to identify legal products and license them for import to the EU (unlicensed products will be denied entry), combined with capacity-building assistance to help the partner country set up the licensing scheme, improve enforcement and, where necessary, reform its laws.

The way in which the licensing scheme is being built up through agreements with individual countries, however, renders it vulnerable to evasion as illegal products can simply be transhipped via non-partner countries to the EU. Timber supply chains are becoming more complex, as timber is increasingly logged in one country and then exported to another for processing (into plywood, for example, or furniture) before export to its final destination. Other disadvantages with the VPA approach is that it could be highly bureaucratic, time consuming and costly to develop and implement.

As mentioned earlier, the main relevance of the FLEGT initiative, is that it has a definition of legality that is virtually identical to the NZ definition, and that it has built up a credible system of criteria to measure legality.

3.4.2. Forest Stewardship Council (FSC)

FSC is an international ENGO supporting a scheme for forest products, which provides a credible guarantee that the product comes from a well-managed forest. FSC certification applies to over 84 million hectares in around 80 countries, including over 40 percent of New Zealand's planted forest estate, and a small area of our indigenous forest.

The FSC standard covers legal compliance in its wider listing of compliance principles. The first of ten principles requires that the laws of the country plus international agreements to which the country is a signatory be complied with.

3.4.3. Programme for the Endorsement of Forest Certification (PEFC)

PEFC has now become the largest scheme internationally. Its membership covers 35 independent national forest certification systems of which 25 have so far completed the assessment process involving public consultation. These 25 systems account for more than 200 million hectares of forest.

PEFC (PEFC Website) states that “In the case of wood from PEFC certified forests, the independent certifiers not only guarantee its legality but additionally give the assurance that the wood comes from forest management, which is ecological, socially and economically sustainable”. In their standard, Annex 3 Section 3.2 states that “3.2 Laws & regulations - National laws, regulations, programs and policies shall be respected in forest management and certification. Certification schemes may not contradict legislation and any apparent violations the legislation shall be taken into consideration in internal and external audits. In addition PEFC certification covers compliance with International Labour Organisation (ILO) and other international conventions “relevant to forest management and ratified by the country will be respected through the legislative framework. Such conventions include, amongst others, “Convention on Biological Diversity (5) and the United Nations Framework Convention on Climate Change ”.



3.4.4. Malaysian Timber Certification Council (MTCC)

The MTCC was established in October 1998 to develop and operate a voluntary national timber certification scheme in Malaysia. Certification under the scheme has principally been in Peninsula Malaysia plus one company in Sarawak. Its forest management standards are based on FSC standards.

Criterion 1 (MTCC Website) of the MTCC Criteria and indicators list all the national regulations that must be complied with including the participation of local communities and health and safety of forest workers.

The main criticism raised against the MTCC is that it is under the authority of the Ministry of Plantation Industries and Commodities, and therefore questions have been raised regarding its full independence and transparency as a sustainability scheme. The MTCC is accepted by the UK Government as an assurance of legally harvested timber, but not as a full forest sustainability scheme. The scheme is being reviewed again in 2008 by the Central Point for Expertise on Timber (CPET) to assess whether its recently upgraded standards meet The UK Government's requirements. (CPET Website).

3.4.5. Canada Standards Association National Standard (CSA)

The Canadian National Sustainable Forest Management Standard covers six criteria (key environmental, economic and social values) and indicators associated with sustainable forest management. The CSA only operates in Canada. It incorporates a management process, which is consistent with the ISO 14004 Environmental Management System standard, plus independent auditing by accredited auditors. The CSA is closely aligned to the PEFC scheme.

The standard (CSA Website) clearly lists a requirement to demonstrate that relevant legislation and regulatory requirements, including indigenous rights, legal/ constitutional rights, workers rights, tenure rights and all other legal responsibilities have been complied with.

3.4.6. Sustainable Forest Initiative (SFI)

This certification system is based in the United States, and covers sustainable forestry programs for forests in North America developed by the American Forest & Paper Association (AF&PA). With regards to legality, SFI (December 2007) states that "In addition to promoting sustainable forest management on SFI certified lands, SFI participants must also ensure that the wood they purchase comes from legal and well-managed sources." In addition the website states that "the SFI Standard acknowledges that there is a significant amount of wood fibre that is not from certified forests and requires SFI companies that source wood directly, take measures to ensure all of the wood fiber they use, certified or not, is procured from known and legal sources. Risk assessments are taken to prevent undesirable or illegal wood fibre from offshore entering the product mix and in North America it means promoting logger training, best management practices and landowner outreach to promote the increased use of sustainable forestry practices in forests that are not certified."

3.4.7. American Tree Farm System (ATFS)

The American Tree Farm System (ATFS) is the oldest voluntary, third-party forest management verification process in the USA. (American Tree Farm System Website). ATFS takes a three-step approach to promoting sustainable forest management—outreach, education and certification. It focuses on certifying the forestry practices of non-industrial private landowners in the U.S.A. The ATFS system oversees nine standards, 15 performance measures, and 21 indicators. The standards address commitments to America Forest Foundation's (AFF's) Standards of Sustainability, legal compliance, long- term management planning, environmental, aesthetic, and special sites issues.



The ATFS does not have a product tracking or labelling system. It does, however, have mutual recognition with the Sustainable Forestry Initiative® (SFI) programme covered above. As a result, under the SFI® system, ATFS certified raw material is considered equivalent to SFI® certified material.

3.4.8. SGS TLTV/ VLTV/ MLTV

The SGS Group (Société Générale de Surveillance (SGS)) has headquarters in Switzerland and operates as a global independent commercial inspection, verification, testing and certification service company. It has more than 50,000 employees worldwide. SGS has three schemes specifically geared toward verifying legality. (SGS Website)

Its Timber Legality & Traceability Verification (TLTV) scheme is a “voluntary, company level” approach, incorporating regular auditing, or continuous monitoring, and verification of a company’s wood production and tracking information, outside any other international or national scheme. The scheme is based largely on the UK-Indonesia MOU model. This scheme is currently being trialled in a PNG project, involving Rimbunan Hijau and it’s NZ subsidiary, Lumberbank.

The Voluntary Legal Timber Validation (VLTV) scheme is a “voluntary, country level” approach. It is proposed as suitable for a national scheme with a programme of continuous monitoring and verification of wood production and tracking information.

The Mandatory Legal Timber Validations (MLTV) is a “compulsory, country level” approach suitable for a national scheme enforcing a programme of continuous monitoring and verification of wood production and tracking information.

SGS also offers forest management and chain of custody certification by SGS QUALIFOR that allows clients to operate under the FSC standard.

3.4.9. Certisource

Certisource operates from global corporate headquarters in Singapore (Certisource Website). It has developed an independent commercial DNA legality assurance system that provides DNA based chain of custody tracking, with legality verification criteria based largely on the WWF GFTN model (see below).

Merbau timber from two concessions in Papua is validated under the Certisource system, and is being imported into New Zealand.

3.4.10. Smartwood Rainforest Alliance

SmartWood is a programme of the Rainforest Alliance, an international ENGO based in New York. The programme initially focussed just on tropical forests but has since expanded to cover all forest types worldwide. The Rainforest Alliance SmartWood Program (Smartwood 2007) has developed what it calls “a generic standard for verification of legal origin (VLO) that shall be applied upon request by companies or organisations requesting verification services for third party independent auditing. Verification to this standard will establish that timber or non-timber forest producers have a documented legal right to harvest under the laws and regulations of the jurisdiction and that all points along the defined supply chain utilizing the forest product maintain systems to document and control the chain of custody.”

The VLO standard does not evaluate complete legal compliance. Smartwood offers a further scheme or standard for verification of legal compliance (VLC).



SmartWood also certifies forest products that come from 'sustainable' or 'well-managed' forests to standards of other schemes such as FSC.

3.4.11. Tropical Forest Foundation (TFF)

The Tropical Forest Foundation (TFF) is a US based NGO established to foster dialogue and alliances between industry groups, improve tropical forest management, and enhance the economic value of tropical forests (TFF Website). TFF is composed of representatives from industry, the scientific, academic and conservation communities and the world's major supplying and consuming regions. It is now operating as an international organization dedicated to promoting tropical forest conservation and management through education and training.

Much of TFF's work has been focused on South America. However it has had an active programme in Indonesia, supported by grants from the US State Department, USAID, the USDA Forest Service, and ITTO. Under this programme it has developed a legality verification standard for exported wood with 8 principles, 14 criteria and 24 indicators.

3.4.12. Indonesian Ecolabeling Institute (LEI)

The LEI was established as a working group for developing a sustainable forest management certification system, which was implemented in 1998. LEI's certification system was developed with reference to the sustainable forest management principles and criteria of the ITTO and FSC, as well as the environmental management system developed by ISO. A joint certification process with FSC was initially fostered, but this is understood to no longer operate. The current status of activities and operating status LEI is unclear. From a web search, its most recent news item is January 2007 when it was involved in litigation regarding Pt. Riau Andalan Pulp And Paper' (RAPP) forest certification.

LEI is an independent and originally FSC based institute, offered a standard for both legality and full forest sustainability certification. Credibility in the marketplace is however relatively low, as the above mentioned involvement in certifying the RAPP forests harmed their reputation. with limited interest by companies currently seeking to use the scheme.

3.4.13. The Australian Forest Certification Scheme (AFCS)

An Australian standard for forest certification was established in August 2007. It is intended for voluntary application to any forests in Australia being managed for wood production, whether native or planted forests. It has independent, third-party certification of forest management. Its criteria and standards, have been aligned and endorsed to the PEFC standard, and provide defined environmental, economic, social and cultural performance outcomes via an independent third party verification process.

Although the objective of the AFCS is full forest sustainability certification, legality is assured by way of its endorsement by PEFC. (AFCS Website)

3.4.14. The Indonesia BRIK scheme

The Indonesian BRIK (Badan Revitalisasi Industri Kehutanan) Scheme is an initiative of the Indonesian Forest Industry Revitalisation Agency. BRIK was established as a non-profit non-government organization in 2002. All timber exporters are required to join BRIK, and since October 2003 have had to apply for a license to export (ETPIK), which requires the provision of specified information relating to the source, volumes harvested and transportation documentation for each load of logs received, details of the supplier and the volume of processed product produced.



In theory, this system enables BRIK to check that no company is producing more processed timber than its legal intake of raw material allows. It can also check that the raw material received by each member factory is covered by legal timber transport documents. In addition, it can determine the total consumption of timber of all its members and compare this figure with the annual allowable harvest. Finally, BRIK can check what is actually going on at wood processing factories by making spot checks. In this way, BRIK claims to be auditing the quantities of timber used by all Indonesian forestry companies that sell products overseas and ETPIK listing can be removed for non-compliance with BRIK requirements. However, although in many respects BRIK is a positive step, there have been many criticisms, not the least of which is the lack of any form of third party verification and checking through the chain of custody. Other criticisms include (Down to Earth, 2004):

- BRIK does not release information on the source of timber used, even though it collects it;
- Only 3,893 companies are licensed by BRIK (198 ply mills, 1640 saw mills and 2205 furniture producers), yet there are probably many thousands of other wood processing units in Indonesia;
- BRIK has enough field staff to check only a proportion of the biggest ply mills once a year. Moreover, pulp and paper factories - long suspected of being major contributors to 'illegal logging' - are not yet required to have ETPIK permits to export;
- Even ETPIK holders could be secretly consuming up to one third more timber than is officially reported due to the high figure for wastage, which BRIK uses in its production calculations;
- Corruption associated with log transport permits is another major problem. The BRIK system relies heavily on SKSHH documents as proof of the legality of timber. These are the weakest link in the chain of verification. SKSHH are the responsibility of the department of forestry, not BRIK. There are not sufficient checks in the system to control the problem;
- BRIK is a 'cartel of timber producers dominated by former businessmen who belonged to the plywood industry association';
- Most of the eight large plywood mills caught red-handed with illegal timber by department of forestry investigators between late 2002 and mid-2003 were members of BRIK and exported with EPTIK licenses.

BRIK at this point lacks international recognition as a credible independent verification system for legality verification.

3.4.15. NZ Imported Tropical Timber Group (ITTG)

The ITTG members are bound by a charter, which includes provisions that members move towards only importing tropical timber from certified sustainably managed forests. At this stage however there are no specific legal obligations upon members and no clear agreement on the requirements for legality, sustainability and certification. In addition, whilst the ITTG has made some positive progress in terms of addressing illegal logging issues, its effectiveness is constrained, as not all relevant industry participants are members.

The ITTG accepts the use of a "Form 592 Chain of Custody Certificate". This form is based upon the BRIK system and is flawed by the above inherent weaknesses of the BRIK system.

Some individual ITTG members however are committed to only importing timber that has independent legality verification and/or forest sustainability certification. ITTG membership, and commitment to its charter, does not at this stage however constitute a legality verification for timber sold by its members.



3.5. Comments on Promoters or Advocates of Other Systems

3.5.1. Tropical Timber Trust (TFT)

The TFT is non-strictly a legality verification system or standard in its own right. It was established by companies trading in tropical forest products to help transform the international trade in tropical timber and timber products into a force for forest conservation. TFT provides information about the origin of all tropical wood in member countries. TFT also helps the forest managers improve their management and achieve FSC certification. It has developed and implemented systems to improve legality verification and sustainability certification.

TFT members are based in Europe, North America, South East Asia, and New Zealand. (Tropical Forest Trust Website). They include more than 40 multi-national retail giants and smaller retailers committed to purchasing only legally harvested timber. TFT is supported by membership fees and grants/ donations. It has forged partnerships with governments, timber companies, and international organizations to expand the world's holdings of FSC-certified forests.

3.5.2. WWF Global Forest and Trade Network (GFTN)

The GFTN is a WWF initiative to eliminate illegal logging and improve the management of forests. It operates by facilitating trade links between companies committed to achieving and supporting responsible forestry, trying to create market conditions that help conserve the world's forests whilst at the same time providing economic and social benefits for the businesses and people that depend on forests.

Its in-country programmes (WWF GFTN Website) are commonly supported by WWF donors including bilateral and multi-lateral donors. It promotes legality and full forest certification schemes and standards, although its objective is full forest sustainability certification. Typically these standards are those of the country in question, FSC, ITTO, or a WWF developed standard adapted from others for the local situation. Their website² however states that “currently WWF considers the Forest Stewardship Council (FSC) certification system to be the only credible system to ensure environmentally responsible, socially beneficial and economically viable management of forests. WWF therefore recommends the FSC system to consumers, forest managers, policy makers, businesses and the public.”

3.5.3. UK Government Procurement

The UK Government's procurement policy on timber and timber products was announced in July 2000. This policy requires all Government departments and their agencies to actively seek to buy timber products from legal and sustainable sources. In the UK Government November 2006 directive (CPET 2006) it provides its own definition of 'legal' being:

“For UK Government procurement, legal timber and wood derived products are those which originate from a forest where the following requirements are met:

- 1.1 The forest owner/manager holds legal use rights to the forest.
- 1.2 There is compliance by both the forest management organisation and any contractors with local and national legal requirements including those relevant to: a) Forest management; b) Environment; c) Labour and welfare; d) Health & safety; and e) Other parties' tenure and use rights
- 1.3 All relevant royalties and taxes are paid.
- 1.4 There is compliance with the requirements of CITES.”

² http://gftn.panda.org/practical_info/basics/sound_forest/certification/credible_certification/index.cfm



3.5.4. International Tropical Timber Organization (ITTO)

ITTO is an intergovernmental organization promoting the conservation and sustainable management, use and trade of tropical forest resources. Its 60 members represent about 80% of the world's tropical forests and 90% of the global tropical timber trade.

ITTO undertakes a wide range of policy work related to certification. It commissions/ funds studies, convenes conferences and workshops, and sustains a debate among its members. It also assists member countries in establishing their own certification programs through projects and training. For example, the Indonesian LEI scheme benefited from two ITTO projects aimed at assisting the development of the LEI forest certification scheme. ITTO has also developed a training package to assist in the training of forest auditors. (ITTO website).

3.6. Summary Assessment of Schemes and Their Suitability to Be Used to Measure Legality

An assessment of the 19 schemes/ promoters is shown in Table 3/3.

The assessment is based on NZ's current definition of legality, but assumes the need for independence in the legality verification process to ensure that compliance with the laws of the producer country exists.

Table 3/3: Classification of Schemes, Initiatives, Frameworks, Promoters and Service Providers

<i>Name</i>	<i>Forest Sustainability Schemes That Includes Legality Verification That Should Be Acceptable in NZ</i>	<i>Standalone Legality Verification Schemes That Should Be Acceptable in NZ</i>	<i>Advocate/ Promoters of Legality Verification & Other Schemes That Should be Acceptable in NZ</i>	<i>Legality Verification Schemes That Should Not Currently Be Acceptable to NZ</i>
Sustainability and Legality Certification Schemes				
FLEGT		✓		
FSC	✓			
PEFC	✓			
MTCC	?	✓		
CSA	✓			
SFI	✓			
ATFS	✓			
SGS		✓		
Certisource		✓		
Smartwood Rainforest Alliance		✓		
TFF		✓	✓	
LEI	✓			
AFCS	✓			
BRIK				✓
ITTG Form 592				✓



Promoters or Advocates of Other Systems				
TFT			✓	
WWF GTFN			✓	
UK Government Procurement			✓	
ITTO			✓	

The result of the assessment is that 13 of the 15 schemes that provide standalone sustainability or legality verification systems, are considered to include legality verification measures that, under NZ's current definition of legality, should be acceptable in NZ as means to provide a level of assurance that timber and wood products have been legally sourced. Two of the schemes are unlikely to be acceptable in NZ.



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