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Keurhout

Introduction to the legal timber issue
and the
Keurhout Protocol for the Validation of Claims of
Legal Timber

Introductie op de legaal hout-problematiek
- een document geschreven ten geleide aan het
“Keurhout protocol voor validatie van claims op legaal hout” –

Ondanks alle inspanningen van overheden om illegale oogst en handel in hout te stoppen, vindt in sommige delen van de wereld grootschalige illegale houtkap plaats en komt dit hout op de internationale markt. Consumenten en handelaren wensen dit niet te accepteren en zijn bereid beleid te ontwikkelen om hieraan op effectieve wijze een einde te maken.

Aanvullend hierop heeft Keurhout een onafhankelijk systeem ontwikkeld om claims in de markt ten aanzien van legale herkomst van hout te kunnen bevestigen: het Keurhout protocol voor validatie van claims op legaal hout.

Dit informele document is een inleiding op de problematiek rondom legaal hout en dient als achtergronddocument bij het genoemde Keurhout protocol, om zo dit Keurhoutstelsel beter te kunnen waarderen.

Alvorens het betreffende Keurhout protocol te beschrijven wordt in hoofdstuk 2 ingegaan op de problematiek, met daarbij een overzicht van de lopende activiteiten van overheden en niet-gouvernementele organisaties op nationaal en internationaal niveau. In hoofdstuk 3 volgt een analyse en een interpretatie van (il)legaal hout. Een verkenning van de dilemma's waarmee men wordt geconfronteerd bij de keuze van een adequaat systeem voor zekerstelling van de handelsketen, is beschreven in hoofdstuk 4. Tenslotte wordt ingegaan op de doelstellingen van het Keurhout protocol.

Dit inleidende document en het betreffende Keurhout protocol zijn opgesteld door de heer Erik Lammerts van Bueren van ISAFOR te Scherpenzeel, en mede tot stand gekomen door de deskundige inbreng van een groot aantal onafhankelijke (inter)nationale deskundigen. De bevindingen in dit rapport echter, komen volledig voor rekening van de auteur.

Teneinde dit document internationaal te kunnen inzetten is dit rapport opgesteld in de Engelse taal: ***“Keurhout Introduction to the legal timber issue and the Keurhout Protocol for the Validation of Claims of Legal Timber”***

Introduction to the legal timber issue

and the

Keurhout Protocol for the Validation of Claims of Legal Timber

ISAFOR

Institution Support and Analysis, Forest and Landuse

September 2004

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Keurhout Protocol for the Validation of Claims of Legal Timber

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Observations made in this report are the sole responsibility of the author.

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The Netherlands

Introduction to the legal timber issue and the Keurhout Protocol for the Validation of Claims of Legal Timber

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Acronyms

AFLEG	African Forest Law Enforcement and Governance Ministerial Conference
CoC	Chain of Custody
CEPI	Confederation of European Paper Industries
CIFOR	Centre for International Forestry Research
DNV	Det Norske Veritas
EC	European Commission
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FERN	Forests and European Union Resource Network
FFCS	Finish Forest Certification Council
FLEGT	Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
GFW	Global Forest Watch
IFIA	Interafrican Forest Industries Association
ILO	International Labor Organization
IVLT	Independently Validation of Legal Timber programme
ISO	International Organization for Standardization
ITTC	International Tropical Timber Council
LEI	Lembaga Ekolabel Indonesia
MIV	Modular Implementation and Verification
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
PEFC	Program for the Endorsement of Certification
PGI	Producer's Group Initiative
RIIA	Royal Institute for International Affairs
RIL	Reduced Impact Logging
SFM	Sustainable Forest Management
SGS	Société General de Surveillance
TFF	Tropical Forest Foundation
TFT	Tropical Forest Trust
TTF	UK Timber Trade Federation
UNFF	United Nations Forum on Forest
VLC	Verification of Legal Compliance
VLO	Verification of Legal Origin
VVNH	The Netherlands Timber Trade Association
WB	World Bank
WOC	Wood Origin Control
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization
WWF	World Wide Fund for Nature

Introduction to the legal timber issue and the Keurhout Protocol for the Validation of Claims of Legal Timber

1) Introduction

In spite of all efforts of governments to control illegal logging and trade, timber is illegally harvested at a large scale in some areas of the world. Moreover it enters the international market. Consumers and distributors do not wish to be part of the chain which enables illegal harvesting to continue. They are prepared to develop and implement policies which effectively help to abolish illegal logging.

Complementary to the ongoing efforts of governments to curb illegal logging, Keurhout has developed an independent scheme in the market place to validate claims of legal timber in particular with a view to its legal origin, "Keurhout Protocol for the Validation of Claims of Legal Timber". This introductory document serves as a background paper in order to better appreciate the Keurhout Protocol. The Protocol is a separate document. The main elements of the Protocol are being described briefly, together with some background information on Keurhout, in chapter 5 of this introductory document.

Before describing the Keurhout Protocol, the reader is introduced into the problem with an overview of ongoing activities by governments and NGOs at international and national level, chapter 2, followed by the analysis, and the interpretation of (il)legal timber, chapter 3. Chapter 4 dwells on the dilemmas of choosing the right system for securing the Chain of Custody.

2) State of Affairs

2.1) Concern

Although the majority of industrial logging around the world is legal, growing concern about the magnitude and consequences of illegal logging and trade has stirred the international community, governments, civil society, industry and trade. The OECD (Environmental Outlook 2001) states that some estimates suggest that illegal timber trade may be worth more than a tenth of the entire global timber trade of \$150 billion a year. According to the estimates in the report "Controlling Imports of Illegal Timber; Options for Europe" (The Royal Institute of International Affairs, RIIA, and FERN, 21 October 2002) at least 50% of the logging activities is illegal in such areas as Amazon Basin, South East Asia, Central Africa and Siberia (the Russian Federation). While illegal logging in these areas is most substantial, illegal logging is also reported from other areas, such as Estonia and Canada. Also in Europe and North America logging operations may not always been conducted according to prevailing laws and prescriptions.

Illegal logging and trade cause indiscriminate depletion of forests including fully protected areas, deprive governments and local communities from urgently needed income and benefits, disturb timber markets, and discourage good forest management practices. In some cases revenues from illegal logging fund national and regional conflicts, such as in Cambodia, Liberia and the Democratic Republic of Congo.

2.2) Call for action and policy development

2.2.1) International initiatives

The world wide concern for illegal logging has become manifest through an array of declarations and policy intentions. The **G8** identified, at its summit in 1998, illegal logging as one of the five focal areas of its Forest Action Program. A working group was set up and

presented a report at the next summit proposing measures for the identification and verification of legal production, timber tracking, labeling and certification. The **World Bank** (WB) has coordinated regional initiatives for Forest Law Enforcement and Governance (FLEG) in Asia and Africa. The **East Asia Forest Law Enforcement and Governance Ministerial Conference** in Bali in September 2001 adopted a declaration to take immediate action to address violations of forest law in particular illegal logging and illegal trade. As a result an Asian FLEG Task Force has been set up. The **African Forest Law Enforcement and Governance Ministerial Conference** in Yaoundé, October 2003, stressed in its declaration that problems with conflict timber must be addressed and problems of illegal exploitation of forest resources and associated trade are the shared responsibility of producer and consumer states. The declaration emphasizes the need for institutional reform relating to FLEG.

The **UN Forum on Forests** (UNFF) sent a ministerial message to the World Summit on Sustainable Development (WSSD), 2002, calling for immediate action on domestic forest law enforcement. The UNFF urged governments to address law enforcement and illegal logging as a priority area for combating deforestation and forest degradation. The **International Tropical Timber Council** (ITTC) adopted a decision on forest law enforcement in the context of sustainable timber production and trade. This was followed by a decision on forest law enforcement to undertake data collection on forests in specific Central African countries. The **UN Food and Agriculture Organization** (FAO) has developed a proposal to compile relevant legislation in timber producing countries.

2.2.2) European Commission (EC)

The EC has presented its Communication on Forest Law Enforcement, Governance and Trade (**FLEGT**), Proposal for an EU Action Plan, to the Council and the European Parliament. The Action plan is one of EC's priorities to follow-up on WSSD 2002. The action plan distinguishes six areas of actions:

- *Development co-operation Partnership Agreements:* Memoranda of Understanding (MoU) are envisaged between the EC and individual exporting countries. The MoU's comprise the support with forest law reform, where needed, the development and implementation of a system of verification of legality in the producing countries, a voluntary license scheme (certificate) for exporters and importers of legal timber and wood products. The EC will invest in monitoring and capacity building in the MoU countries.
- *Trade in timber.* The EC will review options including the feasibility of legislation to control the imports of illegal produced timber into the EU.
- *Public procurement.* Practical information will be provided to guide contracting authorities on how to deal with legality when specifying timber in procurement procedures.
- *Private sector initiatives:* Measures are proposed to encourage private sector initiatives for good practice in the forest sector, including the use of voluntary codes of conduct to source only legal timber.
- *Financing and investment safeguards:* Banks and financial institutions which invest in the forest sector should be encouraged to develop due diligence procedures which take account of the environmental and social impact of forest sector lending; including conformity with relevant legislation. Export Credit Agencies should be encouraged to develop guidance on improved project screening procedures and codes of practice for forest sector projects.
- *Implementation:* To support implementation of the above activities, a co-ordinated EU response is proposed, drawing on the different strengths and capacities of the Commission and EU Member states. A joint work programme will be prepared with Member States to facilitate this.

One of the challenges for the implementation of the FLEGT action program is mutual agreement on a workable definition of legality. The EC envisages to agreeing on a definition of legality with each partner country on an individual basis. Stakeholders from producing countries should be consulted on which national laws are relevant for a working definition of legality. The definition to be used by each partner country would be set out in that country's Partnership Agreement. Another point is that the licenses proposed in the action plan would initially cover a limited range of solid wood products (roundwood and rough sawnwood). This

is because of the complexities and difficulties of checking the origin (and thus the legality) of processed timber products.

The FLEGT Action Plan proposes a timber export licensing scheme. (The name is somewhat misleading as the scheme resembles rather a certification scheme than a scheme by which legal entities are licensed - author). The scheme considers three main aspects: 1) Verification that forest harvesting and associated transport and trade are carried out in compliance with a defined set of laws. 2) The tracing of timber from the forests to its import into the EU. 3) The issuing of "licenses" demonstrating that the legality of timber has been verified.

2.2.3) EU member states

Various **EU member states** are developing policies and programmes to curb illegal logging and to distinguish illegal timber from legal timber.

Denmark has produced non-mandatory guidelines for public procurement of tropical timber with the aim of only allowing legal and sustainable timber to be purchased by (semi-)public institutions. The guidelines recommend that purchasers distinguish and specify three levels: "legal"; "legal and progressing to sustainability" and "legal and sustainable". The guidelines have formulated four requirements for the legality of timber. They pertain to: logging permits, national legislation regarding forest management, taxes and duties, and statutory declarations and permits. The guidelines comment on a number of certification schemes.

France has recently adopted a new policy regarding tropical forests including public procurement issues (*Plan d'action du gouvernement en faveur des forêts tropicales, 7 avril 2004*). In this document public procurement will gradually out-phase illegal and non-sustainable tropical timber with a clear timetable (50% in 2007, 100% in 2010). France is also providing support to the Africa Forest Law Enforcement and Governance (AFLEG) process, in partnership with the US, UK, Switzerland and the Commission. Issues concerning illegal logging and trade will also be addressed in co-operation projects at the regional and national level through activities focused on capacity building, data collection and support for the control of forest activities.

Germany in 2002 approved a new strategy for development co-operation in the forest sector. Combating illegal logging is amongst a number of priorities identified for German development co-operation in the sector. The strategy proposes to fight illegal logging and timber trafficking, as well as trade in other illegally harvested forest products (e.g. game and bush-meat), by addressing the various areas for action. Germany is also developing a Federal public procurement policy for forest products and a policy to prevent money laundering activities.

The government of **The Netherlands** has adopted a procurement policy to secure the exclusive use of legal timber in all governmental construction and renovation activities. Some other relevant actions are being taken within the Netherlands and overseas through development co-operation programmes. The subject is attracting increasing attention from civil society and the timber sector.

The **United Kingdom** is supporting both the Asia and Africa Ministerial Process for Forest Law Enforcement and Governance. The issue is addressed through both policy actions and country programmes in Indonesia, Cameroon and parts of Central America (among others). In April 2002 the United Kingdom signed a Memorandum of Understanding with the Government of Indonesia to combat illegal logging and the associated international trade in illegally logged timber and wood products. The MoU includes agreement to work together on legal and administrative reforms, legality verification systems, and financial and technical assistance. The UK is also at an advanced stage of reforming public procurement policy to ensure that only legal and sustainable timber is purchased by public institutions. To that end the Government has produced a model contract. The model contract contains the requirement that all timber supplied to the contractor shall derive from trees that have been harvested in strict accordance with the applicable laws in the country of origin. It is the contractor's responsibility to produce documentary evidence that will enable the Authority to verify the authenticity and credibility of the claims being made. The contractor shall, if requested by the Authority, obtain independent verification of the claims being made and shall meet the full costs.

The Flemish Government (Belgium) has for years a public procurement policy for the Governmentt authorities only to use FSC timber. Most of the provincial and municipal authorities also apply this policy.

2.2.4) Logging companies, timber industry and trade.

In response to the policy developments aiming at curbing illegal logging private companies, business associations and civil society organizations have taken various initiatives.

The **Interafrican Forest Industries Association** (IFIA), founded in 1996 and presently with some 300 member enterprises, has developed a voluntary Code of Conduct. The Code of Conduct contains a set of directives that should be adhered to in order to manage Western and Central African forest ecosystems sustainably. In a joint effort, World Resource Institute/Global Forest Watch, IFIA, IUCN and WWF have set up a scheme of "Voluntary and Independent Monitoring of Forest Concessions in Central Africa". The scheme is sponsored by BMZ, WB, USAID/CARPE. A workshop, held in Douala, Cameroon, March 2004, has identified indicators to assess adherence to the Code of Conduct. Various indicators refer to compliance with legislation.

The **UK Timber Trade Federation's** (TTF) Responsible Purchasing Policy (RPP) is designed to act as a 'fast track' for TTF members wanting access to central government contracts, and other buyers with similar policies (local authorities, DIY trade, etc.) and to conform with EU FLEGT initiatives which are likely to be supported by legislation. The RPP will also assist traders to manage timber sourcing risk and deliver on their environmental policy commitments.

The **Netherlands Timber Trade Association** (VVNH) has formulated a policy plan 2003-2005 and adopted a binding Code of Conduct for the members of the association. Article 1 of the Code of Conduct states that members of the VVNH will provide the Dutch market exclusively with wood that complies with the legislation (both national and international).

From the 1990s onwards, **Finnish forest industry companies** have, on their own initiative, developed methods for ensuring the legal origin of timber. Schemes for verifying the origin of timber are already now covering, for example, timber trade between Finland and Russia. These schemes are third-party verified.

2.2.5) Organizations running certification schemes.

Legal compliance is a basic **Forest Stewardship Council** (FSC) requirement for all certified forests (Principle 1). Legality is also addressed under Principle 2 (Tenure and user right responsibilities); Principle 3 (Indigenous Peoples Rights) and Principle 4 (Community relations and workers rights). FSC is now reviewing its experiences of the implementation of Principle 1, evaluating the lessons learned and using it to build a robust set of protocols and guidelines for identifying and tracing legal forest products. More over FSC distinguishes between controversial and non-controversial sources. Controversial sources are: illegally harvested timber; genetically modified trees; high conservation forests and forests which are object of (major) social conflicts. When FSC adopts the proportionality concept for FSC certified wood, % in is % out, it will only accept wood from non-controversial sources to be combined with certified wood.

In its document "Basis for Certification Schemes and their Implementation" the Program for the Endorsement of Certification (**PEFC**) refers to legality as follows:
"National laws, regulations, programs and policies shall be respected in forest management and certification. Certification schemes may not contradict legislation and any apparent violations of the legislation shall be taken into consideration in internal and external audits".
Technical Document, Annex 4 (CoC), chapter 8 states "The Chain of Custody system ensures that no raw material from illegal logging such as forest areas strictly protected by law, enter into the transportation, manufacturing and storing phases of the process. The terms and definition document of PEFC does not include a definition of (il)legal timber.

PEFC national schemes reflect the legality requirement e.g. the new standard of Finish Forest certification Council (FFCS): "The requirements enacted by legislation are complied with.

Forest management activities comply with the existing forest, environmental and labor legislation in force”.

The ISO has requirements, that should be met when using ISO in wood procurement:
ISO 14001: 4.3.2. Legal and other requirements:

"The organisation shall establish and maintain a procedure to identify and have access to legal and other requirements to which the organization subscribes, that are applicable to the environmental aspects of its activities, products and services."

2.3) Further Observations and Conclusion

2.3.1) Three step model towards sustainable forest management

Concern about illegal logging and the consequences have raised a great activity of policy formulation and rhetoric. The global community is aware of the necessity of immediate and joint action to curb illegal logging. The SFM certification process may contribute to the solution. However, the recognition that expanding the area awarded with SFM certificates is a very slow process, notably in the tropics, has increased the support for a step wise or phased approach towards sustainable forest management. The most commonly referred to concept is a three step model which divides timber in three verified classes pertaining to its production circumstances:

- o legal;
- o legal and implementing a program to achieve sustainability (transition wood)
- o legal and sustainable (SFM certificate).

Verified timber in each of these classes may have its own place in the market. This concept is among others adopted by the Danish Government and the UK for procurement policies. It is referred to in various publications and promoted by professional institutes such as SGS, Tropical Forest Trust (TFT) and Proforest. The latter has developed a modular implementing and verification scheme (MIV). FSC is planning to expand its work to engage in the “transitional” market.

A modular three steps model towards SFM (legal, transition and sustainable) is also the basis of the ‘Producers Groups Initiative’ (PGI) of WWF in Indonesia, Brazil and Central Africa. The idea of the PGI is to give progressive concessionaires access to the market if they adhere to the PGI requirements and submit an action plan how to get progressively towards FSC certification of their concessions. This action plan and the control of it guarantee that there is a progress towards SFM in difficult areas such as the Congo Basin.

Further the Tropical Forest Foundation (TFF) is working on the development of a standard for Reduced Impact Logging (RIL). Application of RIL is a major step towards sustainable forest management. Compliance with the RIL standard, “RIL Verified” timber, could become a prerequisite for certificates of well managed forests.

2.3.2) Contradictory and overlapping legislation.

Various observations¹⁾ are made that in some countries jurisdiction is overlapping, legislation is inconsistent and contradictory. In, for instance some Asian countries, legislation at the provincial and local level is not always consistent with the legislation at the national level. Furthermore inconsistencies appear between laws and ministerial decrees. Inconsistencies are also mentioned between forest laws and environmental laws in some east European countries. These circumstances do not make law enforcement a straight forward task. Identification of what is legal will lead to confusion. Reform of Governance and legislation is needed. Awaiting results of that process experience will be gained, through the verification of legality and the application of this validation protocol, how to cope with these problems.

2.3.3) Inequitable legislation

Other observations from both NGO’s and public institutions point at the fact that national legislation may not have recognized rights of ownership, and use and access by local communities. The establishment of forest laws is in most cases a process at the national

¹⁾ EC FLEGT Briefing note 1, RIIA presentation illegal logging stakeholder update meeting December 2003, FERN “Controlling imports of illegal logging” October 2002, and others.

level, often influenced by economic powerful actors in the forest sector. The allocation of concessions on lands with customary rights of communities living in the forest may be legal, but may be considered, by these communities, as injustice at the same time. The right for having issued these concessions is disputed. The point made here is that legislation has not been founded on a process which enabled the various social groups in a country to have a voice and to feel a sense of ownership towards the law and regulations. Under these circumstances, strict law enforcement may adversely affect poor communities and lead to further social isolation.

To overcome the above mentioned problems Governance reform programmes are necessary. The question is to what extent does this affect the urgency to take action to curb illegal logging? Timber extracted from protected areas, harvest of protected species, harvest of trees of prohibited dimensions, and over cutting must be stopped. Benefits of enforcing related laws are prevention from indiscriminate depletion of forests including fully protected areas, provision of governments and local communities with urgently needed income and other benefits, prevention of distortion of timber markets, and encouragement of good forest management practices. Enforcing the related laws and verifying the adherence to these laws do not appear to bring about substantial negative unintended effects which exceed the benefits of enforcement.

- Law enforcement on commercial timber from **protected areas** causes in general no unintentional negative side effects. There are many protected areas which have excluded people and are not being challenged. However, in other cases, customary rights may still be exercised in protected areas and being tolerated, accepted, or recognized. In such cases agreements could be made on volumes to be cut under customary rights and to declare that timber legally harvested.
- Law enforcement on timber from fairly **indisputable concessions** causes in general no unintentional negative side effects. In these cases possible disputes have been settled in a relatively accepted way.
- Law enforcement on timber from **disputed concessions** may have various side effects. Law enforcement curbs indiscriminate harvesting but may unintentionally strengthen the perceived position of the concessionaire, which is being disputed by the local communities. Only Governance reform programmes may bring these disputes to a solution.

In those circumstances where customary cutting rights are exercised, which are not legally recognized, provisional solutions must be sought at the local level. Agreements could be made on volumes to be cut under customary rights and to declare that timber legally harvested. Depending on the country and area the cut volumes are limited and the timber is used for subsistence, domestic markets and in some cases for the export market.

- Law enforcement on timber from **community forest and undisputed indigenous lands** seem to cause in general no unintentional negative side effects. Again, in cases where cutting rights are exercised, which are not legally recognized, provisional solutions must be sought at the local level.

2.3.4) Conclusion

Three processes must be pursued simultaneously and with great urgency:

- Governance and legislation reform
- Improved forest management performance, to internationally recognized quality levels (well/responsibly managed forest certificate)
- Verification of the legality of timber

By experience, the first two processes are slow and long term processes. Systems to verify the legality of timber may become operational in a relative short time. Therefore the international community should not wait for the full accomplishment of the other two processes but integrate the results from these processes into the schemes of legality verification and reverse, integrate the lessons learned from the legality verification process into the other two processes.

3) Defining legality

3.1) The struggle

The burning question is: How to define legality in the context of curbing illegal timber?
In all processes regarding implementation of FLEG policies and the development of verification tools this question pops up. The world is struggling with this issue. Originating from the concern that massive volumes of trees were cut indiscriminately and without permits in production forests and even in protected areas, the concept of legality has evolved to encompass all legislation pertaining to forest and forest operations. As a result a frequently referred to, notably by NGO's, definition of legal timber is: *timber that has been logged, transported, processed, purchased or sold in compliance with national, regional and local laws and regulations*. FSC has defined illegally harvested wood as: *wood that has been harvested and does not comply with national regulations including the acquisition of the harvesting rights from the rightful owner, the harvesting methods used and payment of all relevant fees and royalties*. The UK and Indonesia have come up with the following draft definition in the context of their MoU to combat illegal logging: *timber is legal when the validity of its origin, logging permit, logging system and procedures, administration and transport documentation, processing and trade or transfer are verified as meeting all applicable legal requirements*. These definitions are comprehensive and the laws of the country of origin are considered to be the bench mark for the legality proof on activities, which are taking place before the timber is exported. As has been elucidated in chapters 2.3.2. and 2.3.3. legislation may sometimes be contradictory and inequitable. To overcome these deficiencies mutual agreements between importing and exporting countries are being established to define the legality more unambiguously. These definitions come close to the requirements for full compliance with the third quality level of forest management (see the three step model, in chapter 2.3.1). The wide scope makes these definitions less appropriate to distinguish between timber from trees harvested according to legal permits and timber that does not originate from a legal source.

SGS says "Although forest activities should clearly comply with all the relevant laws and regulations of the country, verifying ongoing compliance with all of these for the purpose of guaranteeing the legality of timber would be a cumbersome and counter-productive exercise". The Director of Proforest holds the opinion that "excluding stolen timber from supply chains is much more straightforward than excluding all forms of illegality" and "simply excluding the stolen timber from the market would already make a huge difference".

3.2) Identifying the scope of concern

A very instructive analysis is presented in the World Bank publication "Technologies for wood tracking", Dijkstra et al., December 2002. Designers of any system to verify legal compliance must identify the scope of concern of likely users and judge which aspects of legality warrant inclusion. Systems to verify legality must therefore balance scope in covering the range of issues of concern with the practicalities of designing a system that makes the **right distinction** and that is **affordable**, and **workable**.

Approaches to finding this balance include:

- Limiting the scope of requirements to one or more specific aspects
- Concentrating routine enquires on what can be readily verified
- Stepwise approaches, starting off with simple checklists and progressively adding complexity, (for instance an initial focus on whether forest management and processing have been properly licensed and later extend this to all relevant laws pertaining forest management).

In practice approaches are being developed along these lines.

The **Tropical Forest Trust (TFT)** is striving to expand the area of natural tropical forest certified by FSC. TFT has developed a guide "Good Wood, Good Business" which supports companies in building a system to give maximum assurance that no illegal wood can penetrate in their chain of custody. The Wood Control System has seven key elements. One element is the Chain of Custody (COC) and another one is **Wood Origin Control (WOC)**. The latter refers to four indicators which:

- establish legality that is confined to the legal license permit,

- checks on whether the right trees have been harvested.

Proforest has developed a **Modular Implementation and Verification (MIV)** system to achieve sustainable management. The first three modules concern legal compliance:

- resource rights,
- operating legality,
- control of unauthorised activities.

According to Proforest, most people differentiate **different types or levels of legality**. The levels are roughly:

- 1) Stolen timber which means:
 - a) timber taken from a forest where the logger had no right to cut.
 - b) timber cut by a concessionaire/owner from protected zones in their forests.
 - c) timber cut by a concessionaire/owner which should not have been cut because it is below the diameter limit, a protected species etc.
- 2) Timber with serious failures to meet laws pertaining to operations, environmental protection, health and safety etc. in the forest. Timber for which fees, royalties taxes etc. have not been paid.
- 3) Timber originating from operations with minor infringements of laws (e.g. overloading and occasional non-compliances in the forest).

Eurocertifor an FSC accredited certifier, has developed two standards to establish the legality of timber under an "OLB" - Origin and Legality of Timber - system.

The first document - OLB standard for the certification of forest harvesting enterprise - is aimed at forest management and harvesting enterprises. It tends to limit the evaluation process to make clear evidence of the timber traceability until a first transformation and of the harvesting activities legality:

- legal permit to harvest,
- the adherence to international treaties and conventions,
- respecting the legal rights of indigenous people.

This approach is based on a classical audit and certification scheme with field and forest assessments every 18 months and rapid controls every 6 months.

The second document - OLB standard for the control of wood used during trade and processing - is at the different companies, from the producer to the consumer, which use OLB timber. This approach tends to "follow up" the wood products by controlling incoming and outgoing volumes in the enterprise but without specific audits of the company."

SGS has recently taken the approach of verifying legal compliance with the forest sector and has developed a practical and effective way of helping producer countries to impose effective controls on their timber industries: the **Independently Validation of Legal Timber (IVLT)** programme. This involves, in essence, the creation of a long-term operational partnership between the government and an internationally credible independent verifier: through this partnership, third-party verification and monitoring is integrated into the timber production monitoring system at key points. The involvement of the verifier ensures that procedures are being correctly followed. The result is timber whose source and production have been independently verified as legal.

Under the scheme, verification of legality is separated into two categories, each consisting of several modules:

- **Verification of Legal Origin (VLO):** verification of, for example, production rights, legality of ownership, tax payments and adherence to production quotas. VLO demonstrates that the logs and timber products in question have been legally sourced and are legally owned.
- **Verification of Legal Compliance (VLC):** verification that the timber producer is complying with all relevant national legislation, including laws relating to forest management planning, land management and forest exploitation. VLC demonstrates that logs and timber products have, in a wider sense, been legally produced.

With both VLO and VLC, timber can fully qualify as legally validated. As an essential element of the programme however, an **export permit system defines which VLO and VLC modules** must be adhered to, at any stage of the implementation of IVLT in a given producer country, to authorize timber exports. The rules can be progressively tightened to promote continuous improvement over time. By this modular approach systems can be introduced gradually, and eventually applied to the domestic market as well as exports.

3.3) The Keurhout Hallmark for legal compliance

Overseeing the full picture, the author sees as the most effective way forward to opt for a two level concept of legal compliance fitting in a three step approach towards SFM (see table 1). Keurhout Hallmark has adopted this concept. The concept is based on the reality that the societal pressure to distinguish legal timber from illegal timber stems from the concern about the indiscriminate harvest of trees, which according to legislation were not supposed to be harvested. Further more, securing legal origin is an indispensable prerequisite for responsible forest management. Therefore the **first level** of legal compliance assures that trees and timber have not been stolen i.e. timber comes from a Legal Origin. Timber from a legal origin meets the requirement that it has been harvested in compliance with rules and legislation related to legality of permits, respecting protected zones and species, tree dimensions and volumes per ha. These requirements are being presented in table 1 in this document. They are elaborated in detail in the standard of C and I, which is contained in Chapter 3 of the Keurhout Protocol.

Legislation refers to **laws, rules** and government prescriptions in the **country of origin** including laws and rules pertaining to international Treaties and Agreements which have been ratified by the country. This means that International, national and sub-national legislation is applicable as far as it is relevant to the criteria for Legal Origin as presented in chapter 3 of the Keurhout Protocol.

However more aspects of legislation should be covered if the scope is not merely Legal Origin but widened to wise or responsible management. Therefore, the **second level** of legal compliance (full legal compliance) comprises, in addition to the first level, all other relevant legislation, rules and prescriptions pertaining to sound forest management including environmental and labour conditions and customary rights. These requirements are presented in the **Annex** (Legal requirements to be met for SFM certification after completion of the "transition stage") which is attached to this introductory document.

Table 1: Keurhout approach towards the issue of legal timber

Status of timber 1)	Level of forest management performance 2)	Scope of legal concern 3)	Applicable legal requirements 4)
Legal origin timber	a) Responsible forest manager, i.e. license holder or community complies at least with the basic principle of harvesting only those trees that he is legally allowed to.	a) Timber is not stolen: Legal permit and timber extraction. <i>(and control of unauthorized extraction of timber)</i>	a) * legal registration and permits; payment timber fees and area taxes. * legislation and prescriptions as to protected areas, zones and species. * legislation and gov. prescriptions as to tree dimensions, allowed volumes.
Transition timber	b) a) plus, license holder participates in (third party verified) programme to progressively achieve SFM and move to certification.	b) a) plus, additional legal environmental and labour condition requirements and customary rights.	b) a) plus an agreed program setting time targets to comply with * environmental operating rules and legislation * (inter)national labour condition legislation * customary rights * other relevant laws
Certified timber (well managed forest, SFM)	c) Well managed forests, certified by independent third party, i.e. environmentally sound, economically feasible and socially justified forest management.	c) all relevant legislation and forest management rules. (see a and b)	c) * all legislation and rules pertaining to forest management and forest operations and license holders and operators. (a and b)

The table shows the legal requirements, column 4, which should be fulfilled in relation to the three levels of forest management as named in column 1 and described in column 2.

Achievement of this second level of legal compliance is best guaranteed by a step by step approach, which is being characterised by transition timber. (Part of the wide spread animal poaching practises, notably of primates, is often linked to timber harvesting activities. Therefore control of poaching and hunting must be one of the first legal requirements to be met by this step by step approach).

Progress in legal compliance and achievement of full legal compliance in forest management will probably not be isolated features for sales promotion in the market place. The stage of transition timber must be built on the stage of compliance with the requirements for legal origin, as set out above. Therefore the qualification "legal origin timber" applies not only to timber that complies with the requirements for "legal origin timber" but also to "transition timber".

When full legal compliance is achieved and other conditions pertaining to environmentally sound, economically feasible and socially justified forest management are met certification may follow. Certified well managed forests represent the third and top level of forest management performance including the second level of legal compliance.

4) Dilemma of securing the Chain of Custody

Establishing the legality of harvesting a particular tree is the first step of validation on the way that the log will follow to its final use.

The second step is tracing the wood from the forest on its way of transporting and processing. Various end users and NGO's would like to be assured that the wood they buy is indeed originating from the legal source it claims to come from. To that end all parties in the chain of custody must have a system in place which identifies, documents and separates physically and administratively the flow of third party verified legal logs or derived products from not verified logs and products at the input as well as at the output side. Bar coded tags may help to mark the origin of timber products but their application still requires physical segregation of the wood with processing operations.

The **physical separation** is a controversial issue. It is being considered as highly impractical for timber processing plants. For instance orders of sawn wood may contain lumber from different stems from different origins. The number of available quality stems from one particular origin may simply not be enough to complete the order. Such mixed packages will not be accepted by a system where the end-user requires 100% assurance that all the wood pieces are from a legal origin or a certified well managed forest. This means that the wood in such a package which does come from a legal origin or certified forest is not recognized by the market.

Loss of recognition through the chain of custody entails a disincentive to the managers of the forests to put further efforts into sound legal operations and sustainable management, because through the chain of custody they are no longer awarded for their efforts.

Timber processors and some traders propose a **percentage based input-output system**. Such a system is not unusual with other products, e.g. green power, and is also being accepted by some schemes of certification of well managed forests. Proportionality can commonly be controlled better than physical separation, and therefore is less susceptible to fraud. The only assurance that has to be given is that the proportional input of verified legal timber is equal to the proportional output, taking into account recovery rates.

The disadvantage of a proportional system is that the end user has no assurance that the timber product comes really from a verified legal origin. The only assurance that a proportional verified system can offer is that no more wood is being sold as verified legal timber than has been bought. This means that the supply to the market is limited by the volumes of logs which come from verified legal origins.

The advantage of a proportional system is that it may reduce the processing costs. Further advantage of a proportional system is that the entire log volume originating from a legal source or a well-managed certified source is honoured in the market right until the end-use. The proportional system would thus, in theory, offer more incentives to forest managers for obtaining legal origin and well managed forests certificates than the system which requires physical segregation. However the proportional system provides less incentives than the physical separation system does for the processing industry to strive for increased inputs of legal origin timber. Increased inputs of legal timber would reduce the costs inherent to the physical separation system but not likely the costs of a percentage based system.

The extent to which these counter effects on promoting legal origin and well managed forests would favour the choice for either one of the systems requires more in depth analysis.

The final word is with the end-users. If they persist on physical segregation, in order to be assured that the wood they buy is identical to the wood from the legal origin or the certified forests, then there would be no market for wood traded in a percentage based chain of custody system. But in the case of a physical segregation system the chain of custody would not be able to deliver the full potential of legal origin and certified forests. Finally it should be noted that with an increasing percentage of legal timber and/or certified timber the degree to which the deficiencies of each of both systems will be manifest, will decrease.

In practice the CoC could comprise many tracks. The first track is the part of the CoC within the country of origin from the forest to its first destination e.g. timber processing plant or

timber yard. The first track may include loading at the timber yard for transport over the border by road, rail, water or air. The last track is the transport and processing in the country where the log or its derived products will finally be used. In between may appear many tracks depending on the locations of processing and distribution.

The responsibilities, systems and verification procedures for each stage in the chain of custody are quite likely to be different. This means that verifying the CoC in most cases requires at least two processes of verification. One in the country of origin and one in the end use country. If the timber is not directly shipped from the country of origin to the end use country but transits through/via other countries an additional verification is necessary in each and every part of the chain.

5) Objectives of the Keurhout Protocol

The state-of-the-art review (Chapter 2) has shown that complementary to the ongoing efforts of governments to curb illegal logging there is, at least at present, a clear need for an independent scheme to be developed in the market place to validate claims of legal timber in particular with a view to its legal origin.

The Keurhout Protocol for the validation of the legality of logs and timber products, as presented here, has been developed as a tool to assess the content and the reliability of written claims of legal timber issued by an independent third party.

Validation of legality entails two activities:

- Verification of the Legality of the Origin of the timber
- Verification of the system to trace the timber back to its origin, i.e. the chain of custody.

The validation Protocol is directed at the appraisal of:

- the quality and reliability of the *independent third* party, which issues the claim of legality and or the certificate for meeting the requirements of the chain of custody
- the quality of the legality verification scheme operated by the independent third party.
- the standard (set of C & I) against which the legality of the timber has been verified and the standard against which the chain of custody has been audited.

The Protocol comprises an assessment scheme and a normative part against which conformity is assessed. The normative part is divided into two components. One component sets the criteria and indicators for the legality of timber and the other component contains the requirements for the chain of custody.

The **Assessment scheme** comprises:

- Procedure for the treatment of a request for validation.
- Actual assessment process
- Decision making process and period of validity
- Monitoring and withdrawal procedure.
- Complaints and appeal
- Procedures for establishing and changing the protocol

The **Normative part** contains the aspects and criteria and indicators which serve as benchmark against which conformity of the legal timber claim is being assessed. The elements being assessed are:

- The third party, which endorsed the claim of legality and the chain of custody
- The verification scheme implemented by the third party (not applicable if the third party is accredited by a member of the International Forum for Accreditation).
- The normative documents (C & I) used by the third party to establish the legality of the timber and the sound chain of custody.

The independent Board of Experts of Keurhout will conduct the validation procedure. In this procedure certification bodies may be involved.

After experience has been gained and depending on pros and cons the actual validation process may be transferred to certification bodies which have been accredited for this purpose, by a member of the International Accreditation Forum.

Keurhout is an independent process of assessing the quality and reliability of certificates. Third party issued certificates or third party verified claims of legal timber are being assessed on the basis of protocols. The protocols have been established by the Netherlands Timber Trade Association and are publicly available. The assessment is carried out by the independent Board of Experts. In cases of positive assessment the Keurhout Hallmark is being granted for timber originating from a defined area with a defined management authority for a defined period of time.

Keurhout will, at least for the time being, work with three protocols, each of which is presented in a separate document. All three protocols deal with the forest management issue as well as the chain of custody. The three protocols address respectively:

- Validation of the claimed legality of timber, see the "Protocol for validation of Claims of legal timber". Keurhout will assess whether the legality claim meets the requirements as have been formulated for **Legal Origin** timber in this protocol.
- The reliability and quality of **SFM certificates**.
- The quality and reliability of **certification systems**.

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Annex

Legal requirements to be met for SFM certification (after completion of the transition stage)

Societal pressure to distinguish legal timber from illegal timber stems from the concern about the indiscriminate harvest of trees, which according to legislation were not supposed to be harvested. Further more, securing legal origin is an indispensable prerequisite for responsible forest management. Therefore the **first level** of legal compliance assures that trees and timber have not been stolen i.e. timber comes from a Legal Origin. Timber from a legal origin meets the requirement that it has been harvested in compliance with rules and legislation related to legality of permits, respecting protected zones and species, tree dimensions and volumes per ha. Compliance with the requirements for Legal Origin will be assessed, according to the Keurhout Protocol, against a standard (normative document) which contains five aspects. Aspect 1) Legal registration of logging company; 2) Lawful permit for logging; 3) Customary cutting rights; 4) Selection process of trees to be cut. 5) Monitoring and corrective actions. Criteria and Indicators for these aspects are shown in Chapter 3.3 of the Keurhout Protocol for Legal timber. There is only one Principle: *Timber should come from a legal origin.*

The **second level** of legal compliance is reached when forest management meets all the requirements of relevant international, national and local legislation and rules pertaining to sound forest management including environmental and labour conditions and customary rights. Most outstanding aspects, in addition to the five aspects contained in the Legal Origin standard, mentioned above, are:

Aspect 6: Customary rights as to NTFP (on concession areas).

Criterion 6.1 Customary hunting and collecting rights are tolerated, accepted or recognized and respected

Indicator 6.1.1 The concessionaire has identified the local communities whose livelihoods are likely to be effected by its activities.

Indicator 6.1.2 The concessionaire has established agreements with the communities providing details on access and use of the area by the communities and compensation for adverse effect of the company's activities.

Indicator 6.1.3 Management plans, operational plans and harvesting operations show evidence of minimizing and where appropriate compensating adverse impacts on the ability to exercise customary rights by the communities.

Aspect 7: Fauna management protected animals, bushmeat

Criterion 7.1 The laws pertaining to fauna management and protected animals are respected and protected animals are not captured or hunted.

Indicator 7.1.1 Forest management staff includes a wildlife coordinator. (optional but preferred)

Indicator 7.1.2 Personnel working for the forest manager or his contractors has oral and written instructions complying with relevant fauna and animal protection laws.

Indicator 7.1.3 Permanent control post are established and day and night serving at the entrances to the concession area.

Indicator 7.1.4 Adequate provisions are taken, to prevent poaching, hunting or trading protected animals in the licence area, by any party including Government Agencies.

Indicator 7.1.5 Competent Government Authorities have taken adequate measures to be able to seize and arrest persons who violate the relevant laws.

Aspect 8: Other environmental legislation (water regulation, soil retention, disposal etc)

Criterion 8.1 Laws and regulations pertaining to environmental pollution and biological control are adhered to.

Indicator 8.1.1 Instructions covering all rules and legislation are available to supervisors.

Indicator 8.1.2 Forest workers have been made understood rules as to biological control and chemical use.

Indicator 8.1.3 A system to monitor compliance with these instructions is operational.

Indicator 8.1.4 Provisions are taken to prevent oil and fuel spill in the forests.

Criterion 8.2 Regulations concerning soil and water conservation, including gazettes water retention areas are adhered to.

Indicator 8.2.1 Operating instructions include erosion prevention and mitigation, at least to the extent to what is legally required.

Indicator 8.2.3 regulations concerning stream flows are respected (e.g. no storage of pesticides near river banks, adapted road building near rivers, adapted harvesting rules near rivers, etc.).

Indicator 8.2.4. Management plan and maps distinguish water retention areas.

Indicator 8.2.5. Operations on water retention areas follow specific instructions in order to comply with the formal rules and the purpose of the area.

Aspect 9: Labour rights and social impact

Criterion 9.1 Labour must be employed according to the relevant social and labour legislation and regulations

Indicator 9.1.1 Personnel is officially registered with the competent government authority

Criterion 9.2 In countries which are party to the ILO the concessionaire and its contractors will respect the conventions such as the right for forest workers to organise and voluntarily negotiate their employment conditions.

Indicator 9.2.1 Workers are free to join unions and are not discriminated when they are union members.

Indicator 9.2.2 The license holder and its contractors or their union/federation negotiate with labour unions about employment conditions.

Criterion 9.3 Employer and personnel comply with health and safety rules and legislation.

Indicator 9.3.1. The license holder and its contractors have established safety and health protocols which cover at least all legal requirements, including proper registration of (near) accidents, if so required.

Indicator 9.3.2 The employer provides the required safety gear.

Indicator 9.3.3 Employees are aware of the health and safety rules and wear and use the necessary safety equipment appropriately.

Issue 10: Forest management and operations

Criterion 10.1 Government rules and legislation pertaining to forest management planning and operations are adhered to.

Indicator 10.1.1 Forest management plan is available, up to date, and according to Government requirements and/or a model forest management system.

Indicator 10.1.2 Formally established Codes of Practice for forest operations are being followed. (Reduced impact logging)

Issue 11: Land tenure and land use

Criterion 11.1 Legislation allowing for other land use in the area is respected.

Indicator 11.1.1 Maps indicating formal land use rights (e.g.. mining) and actual other land uses (e.g.. agriculture) are available with the forest manager.

Indicator 11.1.2 Formal land use rights are not disputed.

Issue 12: International treaties, conventions and agreements

Criterion 12.1 In signatory countries, the provisions of all binding international treaties, conventions and agreements, which have been ratified and implemented by the government are respected.

Indicator 12.1.1 The competent manager of the concession or community forest has a file containing relevant parts of ratified international treaties and conventions.

Indicator 12.1.2 Implications, stemming from these treaties and conventions, have been identified and translated into management actions.

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