

Wood Products Legality Verification Systems

An Assessment

TECHNICAL
REPORT

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image Many logging companies operating in Central Africa fail to obtain prior and informed consent to their activities from forest-dependent communities, who often receive little or no lasting compensation for the plunder of their traditional territory.



Legality Verification

Illegal logging is rampant - it is estimated that up to 80% of logging in Indonesia and the Brazilian Amazon and 50% in Cameroon is illegal. It has a devastating impact on the world's forests, fuelling deforestation, climate change, the loss of biodiversity and the way of life of local communities. Furthermore, it undermines the trade in legal and well-managed timber by responsible companies, by undercutting its price and making it uncompetitive.

Unscrupulous logging companies and timber traders continue to exploit the world's forests. In timber producing countries, this is made possible by weak governance and corruption. In consumer countries, governments have failed to adopt legislation that will stop the import of illegal and destructively logged timber.

Campaigns by Greenpeace and others have spurred governments, including those of the EU, US and Australia, to consider new laws to combat illegal logging and trade. Some have already adopted public procurement policies that require legality as a condition of a wood product purchase for government use.

Many private sector companies have also acted to require, as a minimum, that the timber they produce, purchase and sell is from a legal source. Over 70 progressive companies, including B&Q, the IKEA Group and members of the Co-operative Group, have signed an industry statement in support for the EU Commission to adopt legislation under its FLEGT (Forest Law Enforcement Governance and Trade) initiative to eliminate illegal timber from their sector and create rules for fair competition and sustainable markets.

The EU has started negotiating partnership agreements with timber producing countries (Malaysia, Indonesia, Ghana and Cameroon) with the aim of reducing the trade in illegal timber. An important component of these agreements will be the establishment of a Legality Assurance System (LAS) intended to control illegal timber trade within the EU. It is anticipated that market based systems will form part of the LAS and will be likely to be integrated into legal verification systems established by other governments.

In response to this momentum, the market for legality verification has grown. Numerous systems and services have been developed to check, license or certify timber as legal. As governments and the private sector are likely to use one or more commercial legality verification systems to assure imported timber is legal, the need to assess and monitor the credibility of these schemes is critical.

Greenpeace has taken on this task: this assessment, based on desktop analysis and direct correspondence with the world's primary verifiers, attempts to do this. However, an independent body needs to be established to accredit schemes against a credible legality standard and monitor its performance to ensure the schemes are competent and independent.

This assessment grades seven legal verification systems – Tropical Forest Foundation (TFF), Tropical Forest Trust (TFT), Certisource, Global Forestry Services, SGS Russia, SGS TLTV (Central Africa) and Smartwood - against a set of six criteria determined by Greenpeace to provide the essential minimum requirements to ensure credibility. The assessment uses each system's current requirements and only considers proposed revised criteria if publicly available in final draft form.

Assessment of legality verification systems

REPORT CARD

Smartwood	B +	Top of the class, but could do better in addressing broader illegalities.
TFT	B -	Doing well, but needs to be more publicly transparent.
SGS TLTV	C -	Mediocre - needs improvement against several criteria.
Certisource	C -	Mediocre - needs improvement against several criteria.
TFF	D	Inadequate, needs improvement against most criteria.
SGS Russia	D -	Inadequate, needs improvement against most criteria.
Global Forestry Services	F	Unacceptable, needs improvement against almost all criteria.

To be effective, a legality verification system must include:

Full transparency, indicated by:

- availability on the internet of legality standards and chain-of-custody (CoC) procedures
- sharing of summary audit reports and Corrective Action Requests (CARs)
- publication of up-to-date lists of companies and concessions assessed
- open and clear procedures for publication of information

Balanced multi-stakeholder involvement in:

- oversight of system governance
- legality and CoC standards and procedures development.

Legality standards, incorporating:

- understood, respected and resolved customary rights
- compliance with environmental and social regulations
- legal concession allocation and consideration of broader illegality issues (e.g. corruption, transfer-pricing and other criminal activity)

Robust auditing procedures, measured by:

- regular and random audits
- requirement of third-party auditing
- accredited systems and auditors

CoC protocol, with:

- clear CoC procedures
- definitive marketing rules which should not allow on-product labelling

Commitment to achieving environmentally and socially responsible forest management, in particular:

- a time-bound commitment to achieve Forest Stewardship Council (FSC) certification

This final criterion is weighted greater than the others. 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.

The results are ranked in the table above. Smartwood and TFT come out on top, being the only schemes requiring full commitment to FSC certification as part of their legality verification system. Others encourage this route but do not make it obligatory. From our assessment, we would only accept Smartwood's VLC and TFT as providing credible legality verification at present.

image A truck leaving the Niirala border station; illegally logged Russian timber is being freely imported into Finland.



Summary of legality verification systems' strengths and weaknesses¹

Smartwood achieves the top grade as it is the only scheme to meet almost all criteria for a credible legality verification system. It is the only scheme truly developed in a balanced multi-stakeholder manner and the only scheme to require 'prior informed consent' of indigenous people in its standards. Although Smartwood, like Global Forestry Services, SGS TLTV and SGS Russia, allows forest operations to be verified to a lower 'legal origin' (VLO) standard in lieu of achieving full 'legal compliance' (VLC)², it distinguishes itself from the others by linking this verification standard to a required FSC certification commitment. Smartwood could excel even further if it includes more specific requirements related to broader illegalities and transfer pricing and adopts a three to five year time frame for companies to achieve FSC certification.

TFT is doing well. Its greatest strengths include a legal assessment that is inclusive of all noted indicators and tightly controlled CoC procedures. Improvements could be made by not allowing for on-product labelling for its 'transition' timber products and by becoming more transparent. While TFT is very open about its policies and procedures and welcomes anyone to observe its audits, its standards and audit reports are not made publicly available on its website. This needs to change.

SGS TLTV's legality standard scores favourably, requiring social and environmental compliance and consideration of indigenous rights. It loses ground because its standards and audit reports are not published openly nor developed with multi-stakeholder input³. At present, SGS TLTV is given recognition for not allowing on-product labelling, and is graded accordingly, but it is considering offering a legality label. On-product labelling should not be allowed as this labelling gives market recognition to what should be inherent in any product and undermines and creates confusion around fully-certified labelled wood products – products deserving market recognition. In Papua New Guinea, where SGS TLTV is just starting, customs log export monitoring continues to be misinterpreted as verification of legality.

Certisource scores well for its DNA and batch-based CoC tracing system but this is weakened by its overall CoC criteria being unclear. In Indonesia it uses the draft national standard, developed in a multi-stakeholder manner that includes limited environmental and social criteria and incorporates some requirements related to indigenous communities. However, it is uncertain if equivalent criteria would be maintained if it was to work in another country. It also fails to meet most transparency indicators and is not independently accredited.

TFF achieved marks for being the only scheme requiring third-party auditing and for having its standard published on its website. The latter achievement is diminished, though, by the fact the standards are not very clear and do not have requirements related to indigenous communities, environmental or social criteria. Moreover, the system is largely owned and operated by North American timber firms. Although TFF is phasing out its legal services for corporate clients, linking them to its broader Reduced Impact Logging (RIL) programme, it will continue to provide legal compliance for local and national governments and at present its verification service is inadequate.

SGS Russia is credited as the only system to have specific criteria in place to identify and prevent transfer pricing, as well as including addressing wider criminality, environmental, social and indigenous rights criteria. It misses the critical criterion addressing legal concession allocation. Although the system is overseen by a multi-stakeholder committee and the standard was developed in a multi-stakeholder fashion there are uncertainties over the balance representation of NGOs and indigenous stakeholders. In addition, SGS Russia's transparency needs to improve dramatically, allowing summary audit reports and CARs to be made publicly available.

Other than not allowing on-product labelling and openly publishing its standards on its website, Global Forestry Services needs dramatic improvement against all other criteria to qualify as a credible legality verification system.

¹ Detail analysis against each criterion is contained in a background briefing paper, available on request from Judy Rodrigues at Greenpeace International: judy.rodrigues@int.greenpeace.org

² Many LVS market schemes are splitting their legality verification process into two parts: Verification of Legal Origin (VLO) and Verified Legal Compliance (VLC). Generally, the former identifies limited requirements to verify a company's legal right to harvest linked to a reliable CoC system and the latter is more inclusive of additional required regulations such as social and environmental regulations.

³ A limited consultation process was recently initiated by SGS in Papua New Guinea, with the aim of developing a standard for the legality audit of a logging company. The outcome of this process is not yet known.

Other organisations involved in legality verification

There are several bodies that review legality as part of a legal or certification programme but are not legality verification systems as such. Nonetheless, it is still important to review the credibility of these organisations' legal assessment criteria.

Keurhout

The Dutch certification and legal assessment body Keurhout was not included in the league table. It does not carry out its own legality audits but instead assesses the legality verifications and systems implemented by others (such as the schemes graded above) against a set of generic standards. However, it is important to grade Keurhout's assessment criteria against the criteria we have used above since many governments and companies are considering or currently using Keurhout's assessment to guide their timber procurement.

Keurhout receives a grade 'D'. It needs to significantly improve most of its assessment criteria. Its main deficiencies are that it is wholly owned by the Netherlands Timber Trade Association (VVNH) and is therefore not an independent assessment body, its audit assessment reports are not published, it allows on-product legality labelling, its social and customary rights criteria are weak and it does not require progress to full certification. Furthermore, even though its standard includes a requirement for legal concession, it does not include criteria tackling broader illegalities or transfer pricing. In its favour it does require third-party auditing and its CoC procedures follow ISO standards but these strengths are weakened when what is being assessed and tracked is not credible in the first place.

Timber Trade Action Plan

Another legal verification programme not included is the European Timber Trade Federations' Timber Trade Action Plan (TTAP), established to stop imports of illegally logged timber into Europe. Its definition of legal timber is too closely based on voluntary partnership agreements (VPAs), established between several European consumer countries and African, Asian and Latin America producer countries, which are a key component of the EU's Forest Law Enforcement, Governance and Trade (FLEGT) licensing system. To date, no VPA legal definition has been finalised. In its absence, TTF, the managing agent for TTAP, endeavours to produce a comprehensive legality checklist from all various legality definitions, criteria and indicators available in the producer country⁴. However, as these checklists are not publicly available and not mandatory to fulfil, there is no way to determine the credibility of the legal verification programme. Given this gross lack of transparency, Greenpeace condemns the European Commission for supporting the programme with tax payers' money.

FSC Controlled Wood

FSC Controlled Wood was not included in this assessment as its standard has been developed to avoid the worst kinds of forest practices beyond legality, and is only applicable as part of the overall FSC CoC system. It is also not available on the market as a stand-alone product. This does not mean that the development of legality verification systems should not reference FSC on how to build a credible system. On the contrary, FSC is an excellent reference guide, providing the benchmark for building a credible certification system. It includes standards developed by a due multi-stakeholder consultation process, robust CoC and third-party auditing procedures, independent monitoring by an accreditation body and transparent controls and management of controlled wood products mixed with certified products with market incentives to advance continuous movement toward full FSC certification.

Legality verification systems assessment - Phase 2

This assessment is a useful guide to identify where a system is lacking credible criteria or where it needs substantial improvement. However, a second assessment phase is necessary to evaluate the robustness of a system's criteria and procedures against its on-the-ground performance, as what may appear credible on paper may prove very different in its implementation.

A good candidate for additional field research would be SGS. Out of all the schemes, it covers the largest area claimed to be verified legal. It has not published any public audit reports for either Russia or Africa, giving reason to suspect that some of the more positive elements of its programmes may have little depth in practice.

TFF would be another good candidate as its standards are vague and do not include compliance with customary rights. Although it does not plan to continue legal verifications for private entities, it will continue to do so for local and national governments.

⁴ These checklists are often produced from referencing legal verification systems available in the relevant country, including those analysed in this study, in addition to its laws and regulations. Personal communication, Emily Fripp, TTF TTAP manager, 10/12/07.

image In Indonesia it is estimated that up to 90% of logging is illegal.

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Principles, criteria and indicators for legality verification systems

This assessment also provides a useful framework to formulate generic international principles and criteria for credible legality verification systems. These principles and criteria provide companies, governments, independent accreditation bodies and NGOs the guidance needed for informed decision-making in developing or assessing the credibility of a legality verification system.

The following table outlines how such criteria and indicators might look. There are, of course, a number of other very basic criteria related to legality standards that should be included, such as requirements for management plans and evidence of payment of taxes. Generally, these items are already included as a matter of course.

It should be possible to expand these criteria and indicators into a full set of generic requirements for legality assurance systems. This would require the addition of the types of basic criteria mentioned above, which could be drawn from the existing draft Smartwood VLC generic legality standards.

One additional aspect not included in the analysis above, but included in the framework below, is a requirement for any system to be structured in such a way that it does not favour large-scale industrial commercial logging unfairly over small-scale operations and community forestry – i.e. that it is theoretically and practically possible for timber from small-scale community forestry operations to be verified. This has been a problem in the past. As a 2006 Verifor study noted, the efforts made under the UK–Indonesia Memorandum of Understanding (MoU) to derive a legality standard from existing laws and regulations, which focus on compliance by large-scale concessions, were criticised as *“legitimising the status quo or even reinforcing exclusion of customary land owners and small-scale producers, and concentrating the legal trade in the hands of existing industry cartels.”*⁵ At least some legality verification suppliers are already aware of this need, as evidenced by SGS’s system in the Russian Far East, which publicised its verification of a small (8000m³/yr) operation in 2006 as proof that *“verification of timber legality is an accessible process for any responsible business, regardless of its scale”*.⁶

⁵ Adrian Wells/Verifor, The legal basis for verification systems – standard setting for legal compliance. Draft of 7 June 2006

⁶ SGS Russia press release, 13 September 2006

Principles, criteria and indicators for legality verification systems

Principle	Criteria	Indicator
1. The system should be fully open and transparent, and involve all stakeholders	1.1 System is fully transparent	<p>1.1.1 Full details of the legality/CoC standards used are publicly available</p> <p>1.1.2 Summary audit reports and corrective action requests are publicly available</p> <p>1.1.3 Lists of companies/concessions verified under the standard are publicly available</p> <p>1.1.4 Rules regarding transparency of information are properly defined</p>
	1.2 System incorporates the views of major stakeholder groups including social and environmental NGOs and indigenous organisations	<p>1.2.1 The system's oversight body incorporates multiple stakeholders</p> <p>1.2.2 Legality/CoC standards are developed with balanced and equitable multi-stakeholder input, and no decisions are passed while the majority of any single major group is opposed</p> <p>1.2.3 The system includes a clearly defined and transparent procedure for handling complaints</p>
2. Legality standards used are clearly defined and robust, incorporating key elements such as rights of local communities, legality of concession allocation and labour and environmental regulations	2.1 Legality standards respect rights of local communities	<p>2.1.1 Standard requires that the forest management enterprise (FME) has implemented a consultation process to ensure it is fully aware of any disputes over indigenous tenure or usage rights</p> <p>2.1.2 Standard requires that there is no outstanding or pending litigation over use or tenure rights with indigenous people</p> <p>2.1.3 Standard requires that the FME has obtained the prior, informed consent of indigenous people to its activities</p> <p>2.1.4 Standard requires that the FME fulfils its obligations under the law to indigenous people and local communities</p>
	2.2 Standards include compliance with human rights, social and environmental laws, rules and regulations	<p>2.2.1 Standards include specific requirements for compliance with human and labour rights laws and workplace health and safety regulations</p> <p>2.2.2 Standards include requirements for compliance with environmental laws, rules and regulations, including in the fields of forestry and conservation</p>
	2.3 Standards include consideration of incidental illegality related to the company or its directors	<p>2.3.1 Standard prohibits corruption, money laundering and other criminal activity</p> <p>2.3.2 Standard requires that company and its directors are not subject to any form of criminal investigation</p> <p>2.3.3 Standard includes consideration of legality of original concession allocation</p> <p>2.3.4 Standard includes specific criteria to identify and prevent transfer pricing</p>
3. System serves to further overall goal of environmentally and socially responsible forest management, and does not unfairly favour large-scale industrial logging	3.1 System is designed and offered as part of a step-wise approach to environmentally and socially responsible forest management	3.1.1 System requires participants to move towards full sustainable forest management (SMF) after a given time
	3.2 System does not serve to compete with existing environmentally and socially responsible forest management certification schemes	3.2.1 System does not permit on-product labelling
	3.3 System does not preclude the verification of timber from small scale and/or community forestry operations.	3.3.1 It is both theoretically and practically possible for small-scale community forestry operations to be verified under the system.
4. Auditing procedures are robust	4.1 Audits against standards are fully independent	4.1.1 Auditing body is independent of the body involved in setting standards and overseeing the system
	4.2 Auditors are properly accredited and qualified	<p>4.2.1 Auditors have independent accreditation from e.g. ISO</p> <p>4.2.2 Audit staff are sufficiently qualified and experienced</p>
	4.3 Audit procedures are robust and performance as well as systems based	4.3.1 Audits occur at least once a year, and include short-notice field inspections of compliance in randomly selected cutting areas
5. Credible chain of custody is assured	5.1 Strong chain of custody procedures are in place	5.1.1 Chain of custody procedures are equivalent to FSC CoC where relevant, and include procedures governing claims

Independent accreditation body required

In order for a legality verification system to be deemed credible, it is necessary for an independent accreditation body (or bodies) to be established or identified to verify and monitor the competency of the legality verification and the chain-of-custody system.

The key tasks of the accreditation body would be to:

- vet and endorse legality standards, including consideration of their development process to ensure the consistency and integrity of standards in different countries and regions around the world;
- develop international accreditation standards, norms and requirements for legality verification systems;
- accredit performance against these standards, norms and systems requirements, including establishing rules for transparent reporting and administering remedial and expulsion actions;
- provide an endorsement link between standards, certificate holders, certified products and potential trademark use for legality verification systems; and
- institute a dispute-resolution mechanism to settle conflicts and manage complaints.

Without such an oversight and governance structure the current and new legality verification systems will not be seen as independent and credible nor will there will be any international or regional consistency. In addition, with such proper oversight and governance, users of legality verification services will be able to assess which schemes in fact exceed the minimum requirements of a credible system.

Acknowledgement

Base information on the different legality verification systems was collated for this report by Earthsight. Summaries in the detailed briefing background document, available upon request from Judy Rodrigues at Greenpeace International (judy.rodrigues@int.greenpeace.org), have been fact-checked against each legality verification system.



STOP

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TIMBER

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Greenpeace is an independent global campaigning organisation that acts to change attitudes and behaviour, to protect and conserve the environment and to promote peace.

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