

IS THE WOOD IN YOUR
PRODUCT LINE OF LEGAL ORIGIN?
*WHAT IS YOUR RESPONSIBILITY TO MAKE SURE
THAT IT IS?*

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Introduction

If you have in your product line wood that comes from anywhere in the tropics, the Russian Federation, or China, chances are good that a significant portion of that wood is of illegal origin. The fact you may be buying illegal wood matters. Illegality is directly linked to a number of problems, including corruption, financing of regional conflicts, forest loss and degradation, and the loss of billions in revenue to developing nations and to the domestic forest products industry. In short, buying illegal wood is the antithesis of supporting sustainable forestry.

Given that serious problems are known to exist that are rooted in the international trade of illegally harvested timber, and that the portion of wood in international trade that is of illegal or suspicious origin is non-trivial, every forest sector company should seriously consider the origin of the wood coming into its manufacturing facilities or distribution centers. Is the origin known? Is the wood verifiably legal? If the answers to these questions are not known, or if the answers indicate or suggest problems, it is time to act, if for no other reason than that it is the responsible thing to do.

Illegal Logging in the Spotlight

Government Attention Focuses on the Issue

The UK was one of the first governments to recognize the role of consumer countries in driving illegal logging, and the first to attempt to curb international trade in illegally logged timber. In 1997 the central government issued voluntary guidelines for government ministries regarding the purchase of timber and timber products from sustainable and legal sources; implementation of these guidelines became mandatory in 2000, with guidelines refined in 2005¹. In 1998, at the urging of Great Britain, the G-8² heads of state, as part of the G-8 Action Program on Forests, agreed to an assessment of public procurement policies that might be used to combat illegal logging and international trade of illegally logged timber.

British and G-8 actions were followed by Denmark in 2001, with a parliamentary directive to agencies of the central government that public procurement policies should be adjusted to ensure that purchases of tropical timber would be based only on legal and sustainable sources. In that same year, the parliament of the Netherlands enacted legislation to begin development of a Dutch certification program to ensure legal, sustainable procurement of all timber and wood products; the new standard (Kerhout) was rolled out in 2005. Also in 2001, participants in the East Asia Forest Law

¹ <http://www.sustainable-development.gov.uk/government/estates/documents/Timber%20Procurement%20Advice%20Note%20November%202005.pdf>

² The Group of Eight (G-8) includes the United States, Canada, the UK, Japan, Germany, France, Italy, and the Russian Federation. Collectively these governments account for about two-thirds of the world economy.

Enforcement and Governance Ministerial conference in Bali agreed to “explore ways in which the export and import of illegally harvested timber can be eliminated.”

The year 2003 was pivotal in western government recognition of the illegal logging problem, and in international commitment to address the issue. For example, in May the European Commission announced an action plan on Forest Law Enforcement, Governance and Trade (FLEGT) under which EU governments would develop and implement measures to address illegal logging and related trade. Shortly thereafter, the UK established CPET (Central Point of Expertise on Timber) for the purpose of providing specifics to government purchasers regarding how to meet the criteria for legality and sustainability.

Then, in July of 2003, U.S. Secretary of State Colin Powell announced the *U.S. Presidential Initiative Against Illegal Logging*. That initiative was developed at the direction of President Bush³ with the stated objective of assisting developing countries in their efforts to combat illegal logging, including the sale and export of illegally harvested timber, and in fighting corruption in the forest sector. In announcing the new initiative, Secretary Powell cited an October 2002 World Bank estimate that governments lose \$10 billion to \$15 billion in revenue each year because of illegal logging, and noted that these resources could contribute to such things as education, healthcare and environmental protection instead are going into the pockets of a "corrupt elite." He also pointed out that illegal logging profits were also being used to finance regional conflicts. The new presidential initiative grew out of U.S. participation in the Congo Basin Forest Partnership, agreed to by 13 nations and the European Commission at the 2002 World Summit on Sustainable Development (see sidebar).

The Congo Basin Forest Partnership

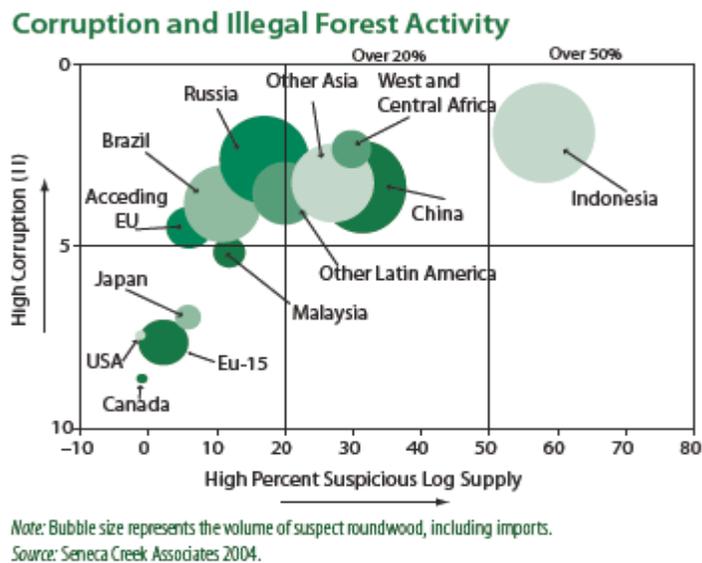
The Congo Basin Forest Partnership (CBFP) goal is to promote economic development, alleviate poverty, combat illegal logging, enforce anti-poaching laws, improve local governance, and conserve natural resources through support for a network of national parks and protected areas, well-managed forestry concessions, and creation of economic opportunities for communities who depend upon the conservation of the forest and wildlife resources of the Congo Basin. U.S. partnership actions focus on eleven key Congo Basin forest landscapes in Cameroon, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gabon, and Republic of the Congo, which are ecologically sensitive, biologically diverse areas and wildlife corridors considered the most vulnerable to deforestation and other threats. The U.S. Government will invest up to \$53 million in the Congo Basin Forest Partnership through 2005.

White House (2003)

In 2004 the American Forest & Paper Association commissioned a study of illegal logging globally. Among the findings were the following:

³ President Bush first raised the issue in a speech on February 14, 2002, indicating that he had ordered the Secretary of State to develop a new initiative to stop illegal logging. .

- Most illegally produced timber is used domestically and does not enter international trade. The suspicious volume of roundwood that enters international trade is only about 1% of global production of both softwood and hardwood combined, *but ranges from 12% to 17% of the volume of roundwood that enters international trade.*
- Between 2% and 4% of softwood lumber and plywood traded globally, and as much as 23% of hardwood lumber and plywood traded globally, may arise from illegal logging. In aggregate, on the order of 5% - 10% of the value of global wood products trade can be traced to suspiciously produced roundwood.
- The nations in which illegal timber makes up the greatest proportion of harvest are Indonesia, China and other Asian nations, West and Central Africa, Russia, Malaysia, Brazil, and Eastern Europe. Illegal logging is rare in the U.S. and Canada, though it does occur.



- The presence of illegally procured wood fiber affects the competitiveness of American and other producers who operate legitimately within national and international environmental and trade rules, costing U.S. exporters as much as \$460 million annually.

Investigations by others (Curtin 2007) have led to the conclusion that the extent of illegal wood in international trade is far higher than estimated by AF&PA.

Action on the part of national governments to curb illegal logging and associated trade has continued since 2004, with one of the most notable developments the Europe and North Asia Forest Law Enforcement and Governance (FLEG) conference at St Petersburg in November 2005. Conferees adopted language recognizing that “ . . . **all countries that export and import forest products, including timber and timber products, have a shared responsibility to undertake actions to eliminate the illegal**

harvesting of forest resources and associated trade . . .” Some 44 nations signed the final declaration.⁴

More recently, in 2006, Japan began requiring that all timber and timber products be harvested in a legal manner consistent with the forest laws of timber-producing countries and harvested from forests under sustainable management. Other governments, including New Zealand, Norway, Canada, Australia, and the United States have also begun to explore options for removing illegal timber from their markets. In November 2006, the U.S. and Indonesia jointly announced an agreement focused on halting the flow of illegal wood from Indonesia; included in the agreement was a U.S. pledge of \$1 million to fund remote sensing of illegal logging activities and to enhance partnerships with both nongovernmental organizations and the private sector. Then in February 2007 a bill was introduced in the U.S. House of Representatives (Legal Timber Protection Act, H.R. 1497⁵) to ban trade in illegally harvested timber and wood products. It is the first time that timber legality has received legislative attention in the U.S. The measure has over a dozen cosponsors and has been endorsed by a number of environmental organizations and the National Hardwood Lumber Association, among others; the American Forest & Paper Association is thus far withholding its support.

Also, in 2006, member companies of the Forest Products Association of Canada (FPAC) adopted a statement on illegal logging, committing to purchase and use wood from legal sources only and, by the end of 2008, to trace all fiber back to the forest area of origin (FPAC 2007).

Private Sector Actions Regarding Illegal Logging

Currently few forest sector businesses have certainty as to the legality of timber supplies, particularly if they are sourcing timber from Russia, China, or anywhere in the tropics.

In the absence of the force of law, forest sector behavior today regarding the illegality issue is driven by a sense of responsibility and/or by customer requirements. Currently few forest sector businesses have certainty as to the legality of timber supplies, particularly if they are sourcing timber from the Russian Federation, China, or anywhere in the tropics. Those that are sure of their sources are companies dealing in wood that has been third-party certified under one of several widely recognized forest certification programs, wood sourced under the FSC “Controlled Wood” standard⁶, wood sourced through the WWF GFTN program, the Tropical Forest Trust, or wood procured under standards of such initiatives

⁴ Signatories were Albania, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Bosnia and Herzegovina, Canada, China, Croatia, Denmark, Estonia, Finland, Georgia, Germany, Greece, Hungary, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Moldova, Mongolia, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, United Kingdom, United States, and Uzbekistan.

⁵ <http://www.theorator.com/bills110/text/hr1497.html>

⁶ See Dovetail Report: “The FSC Controlled Wood Standard: What it is and what it’s for”, May 23, 2007. Available at: <http://www.dovetailinc.org>

as the Tropical Forest Foundation's verified Legal or RIL verified programs. Some industry associations are also beginning to address the timber illegality problem through their own initiatives.

An example of an industry association-led initiative to address illegal logging is the Timber Trade Action Plan (TTAP), a five-year program developed in 2000 by the UK and Dutch timber trade federations in Indonesia for the purpose of developing national guidelines for legality, and standards for chain of custody and auditing. While originally involving only two European countries and five tropical timber producing nations, the effort has now expanded to an EU Timber Trade Action Plan involving representatives from timber trade federations established within each of the EU-15 nations, with commitments from each to source only verified legal timber and to seek to harmonize purchasing policies with other European trade organizations. A recent review of codes of conduct and purchasing policies of the individual timber trade federations that comprise TTAP (Hentschel 2006) showed that while only a few can yet demonstrate active implementation of purchasing commitments, progress is being made toward that end. An interesting observation is that most timber trade federations have moved beyond environmental purchasing goals, even as they continue to work on them, and have begun providing advice and services to their members regarding environmental issues in general. The report also notes that although cooperation between industry and environmental non-governmental organizations (ENGOS) has been weak, development of timber procurement policies under the member timber trade federations of the TTAP has resulted in regular meetings with environmental and other organizations and has in general enhanced relationships, both with ENGOS and with civil society in general. In many ways TTAP is breaking new ground and it provides an excellent example of responsible proactive action on the part of the forest sector.

The EU Timber Trade Action Plan, involving representatives from timber trade federations established within each of the EU-15 nations, is an excellent example of responsible proactive action on the part of industry.

Another example of an industry-led effort aimed at illegal logging is the 25+ Group of European (mostly UK) companies (Brack and Saunders 2006). The Group, that includes traders, processors and end-users such as the construction industry, tends to collectively view responsible procurement as a market opportunity. An important goal of this group is to achieve improvements in supply-chain standards across the forest sector and to implement policies and market mechanisms that reward those who invest in legality verification and certification.

Within North America, forest sector attention to the question of illegality has been quite modest to this point. However, the American Forest & Paper Association issued, as part of its 2004 report on illegal logging, a strong endorsement of constructive efforts to stop it. The AF&PA statement said in part:

*“Does the problem of illegal logging justify all the attention it receives?
We believe that the importance of this issue to AF&PA extends well*

beyond the economic value of the trade opportunities lost to U.S. wood exporters. To the extent that the general public associates logging, in any country, with “illegal activity,” there is a danger of a negative impact on the “wood is good” image. Further, since most members of AF&PA have been actively involved in efforts to improve forest management through the SFI program, efforts to combat illegal logging in other countries seems a natural extension. Finally, this issue is not going to fade away, as NGOs have successfully connected the problems associated with illegal logging with other social and economic issues in the target countries. AF&PA should continue to take an active role in developing ways to solve the problem, if for no other reason to strengthen export promotion efforts in a market increasingly influenced by NGOs and buyer groups.”

AF&PA’s statement rests on an important caveat: the observation that to be effective, solutions to the illegal logging must reduce the spread between the cost of operating illegally and the costs of operating legitimately. As noted by AF&PA, the larger the spread between legal and illegal costs, the greater the returns from illegal activity, meaning that raising costs for legal trade could have a perverse and unintended impact. Thus, the AF&PA appears to be saying that it will not support efforts to halt illegal logging that significantly increase costs of legitimate operation. This possibly explains why AF&PA has not yet signaled its support of the recently introduced Legal Timber Protection Act.

Despite the statement that AF&PA should take an active role in developing ways to solve the illegal logging problem, there is currently no evidence of activity in this regard on the part of AF&PA or any of its member companies or associations. As in Europe, a few individual companies have turned to third-party certified wood as a way of verifying legality.

Given the fact that a number of mechanisms are now in place to avoid illegally sourced wood, as noted earlier, it is a bit curious as to why forest products industries on both sides of the Atlantic and globally have not yet taken decisive action to eliminate such wood from their supply chains. At this point there would appear to be little justification for failing to act.

What Does Legal Mean?

Although seemingly a simple concept, the matter of legality becomes quite complicated when attempting to craft a precise definition. Ottitisch et al. (2005) summarized the definitions of a number of groups and individuals, noting that there are common elements in all of these definitions (i.e. there are some things that virtually everyone agrees constitutes illegality), but there is wide divergence as well.

AF&PA (2004) listed those practices that are clearly illegal and worthy of international attention: “. . . *harvesting without authority in designated national parks or forest reserves and harvesting without or in excess of concession permit limits; failing to report harvesting activity to avoid royalty payments or taxes; and violating international*

trading agreements such as the Convention on International Trade of Endangered Species (CITES). The report also points to logging from concessions in which the loggers have no right to operate, or from land owned by local communities which have not consented to the logging.

The United Nations Economic Commission (UNECE) and the Food and Agricultural Organization (FAO) have adopted a concise definition that identifies illegal logging as simply “. . . harvesting activities that fail to respect national and sub-national laws and norms that regulate such harvesting operations” and this is essentially the definition that has been adopted within the EU FLEGT Action Plan. These definitions also mesh with that of the International Tropical Timber Organization (ITTO), that defines illegal logging as removal of logs in a manner that does not abide by the provisions of relevant rules, regulations, procedures and laws of the country in which logging occurs.

From an operational standpoint there are two distinct aspects to legality: 1) possession of permits and documents from all appropriate authorities providing permission to harvest, and 2) demonstration of compliance with all national, regional, and local laws pertaining to forest management and harvest. Terms that are used to describe these two aspects are:

Legal Origin – indicating a documented legal right to harvest, including permits, planning approvals, and payment of taxes and royalties, and the use of a third-party audited chain of custody system.

Legal Compliance – indicating that all elements of *Legal Origin* are in place, and that in addition compliance can be demonstrated with all laws, rules, and regulations of the government of jurisdiction pertaining to forest operations, forest management, and trade. This term closely matches the definitions of legality used by the UNECE, FAO, EU-FLEGT, and ITTO.

Other definitions are sometimes used that include social and other elements that are beyond the scope of laws, rules, and regulations in the country of origin. In any event, when seeking verification of legality from any organization it is important to clarify up front how “legality” is defined.

What is the Responsibility of Those in the Wood Products Industry?

For those involved in the international trade of timber – and that includes the majority of firms today – a question worth asking is “What is my responsibility regarding illegal logging and trade?” Is it, for example, OK to adopt a “don’t ask, don’t tell” model while continuing with business as usual? Or, is it acceptable to simply sit on the sidelines and let government struggle with the issue, making your voice heard only to find fault with solutions proposed by others?

Alternatively, might there be things that your company could do to help bring about positive change for your company, your industry, and society, while at the same avoiding the virtually inevitable hammer of regulation? Undoubtedly there is. Even very small firms can begin by asking questions of suppliers, sending a market signal that there is interest in resolving this issue. Whether large or small, firms can seek third-party

certified wood or wood that is at least third-party verified as legal. More forthrightly, there are the TTAP and 25+ Group models that could be emulated in other regions of the world. Perhaps the easiest approach is to simply ensure that the issue of source legality is addressed on each and every purchase order given out. Purchase orders, once accepted, are binding contracts. By including simple phrases like “by accepting this purchase order the vendor is assuring “x” company that products and their component materials have been sourced according to all national and international laws” a company can direct the vendor to address concerns about legal sourcing. This approach has the added benefit of mitigating any potential future liability linked to the purchase of illegally sourced materials. In short, there is a great deal that could be done, and without tremendous cost.

Discussion of the illegal logging topic would be incomplete without the observation that legality (and especially verification of *Legal Origin* only) does not necessarily imply responsible forest management. As pointed out by Millieudefensie (2006) and others, logging that proceeds with a local or regional permit in hand may still result in forest operations that fall far short of meeting widely accepted norms of sustainable forest management. Thus, while ensuring legality is important, it is also important to those in producer and consumer countries alike to work toward a greater goal – long-term sustainability of forest operations.

The Bottom Line

Today, the origin of wood and wood products is on the legislative radar screens of all EU nations, with most requiring verification of legality for all wood used in government-funded projects; mechanisms for ensuring legality of all imported wood are under development. More broadly, the problem has gained the attention of policy makers worldwide, and has begun to be reflected in trade law. It is, therefore, an issue that is not likely to go away anytime soon.

If you are involved in the international trade of timber, you do have responsibility for helping to solve the illegality problem. Proactive action to investigate potential problems in your supply chain is the responsible thing to do, could help to restore value to international timber trade, and could help to improve the image of the forest sector in the public’s eye. The time to act is now.

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