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**FSC certification and strengthening legal compliance in the forest products trade**

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## **ABSTRACT**

Since its founding in 1993, the Forest Stewardship Council has set up an international system for forest and certification standards development, for the tracking of forest products, and also for the continuous independent monitoring of performance by forest managers, forest product manufacturers and certification bodies. The FSC system is based on hard-won consensus between business, environmental and social groups as to what constitutes responsible forestry. It encompasses independent auditing to ensure that the standard is met.

Today, in the international arena, there is a high level of interest in the issue of legal compliance in the forestry sector including trade in forest products, by G8, ASEAN and APEC governments, businesses and NGOs. It is now widely recognized that identification and independent verification of “legal” forest products, is one practical method that can be employed to help tackle the illegal forest products trade. This implies a direct link between certification and the verification of legal compliance.

The link can be represented at two levels: the level of forest management, and the tracking of forest products to markets.

At the level of forest management, FSC requires, through its forest management certification, legal compliance by certificate holders. The specifications for this are included under FSC Principle 1. However, there are also other elements of the FSC Principles of Criteria, that address the issue of “legality.” These include Principle 2 (Tenure and Use Rights and Responsibilities), Principle 3 (Indigenous Peoples Rights) and Principle 4 (Community Relations and Worker Rights). The FSC Principles and Criteria offer the broad framework for the definition of national or regional forest stewardship standards through participatory processes at national or regional level.

Certified suppliers have to demonstrate that their products originate from certified forests. FSC’s chain of custody system is used to track and trace such materials through the supply chain. Certified suppliers’ production systems are designed and implemented in a way that allows tracing and tracking of forest products back to the certified forest. They include mechanisms such as physical or temporal separation of wood or wood products, or the use of tracer paints and bar coding. Through chain of custody certification, independent certification bodies verify the adequacy of these production systems and their implementation against a chain of custody standard. For business-to-business commercial relations, invoices for certified products and bills of lading carry a chain of custody registration code. This confirms the status of the products as “certified.” Additionally, certified products are labelled with the FSC trademarks.

Developing systems for the verification of legal compliance requires the development of a clear and practical definition and protocol for evaluating “legal compliance” that meets the requirements of governments, businesses and NGOs, and takes account of international agreements such as CITES, the ILO Conventions or the Universal Declaration of Human Rights, as well as the elaboration of specific guidance for certification bodies for evaluating compliance with the protocol at the forest management and processing unit level.

Based on existing systems and know-how resulting from almost a decade of forest management and chain of custody certification worldwide, FSC is working to forge the links between forest certification and verification of legal compliance. In this way FSC will contribute its expertise to the development of tools and systems for identifying and tracing independently certified legal forest products. The development and uptake of credible and appropriate systems for assuring legal compliance in the forest sector could lead to significant improvement in the way forests are managed as well as in the “legality” of timber trade.

Key words: Certification, forest stewardship standards, legal compliance, tracking and tracing of forest products, chain of custody, FSC Principles & Criteria.

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## **INTRODUCTION**

There is considerable concern at international level about legality in the international forest products trade. This has implications for the economies of producer countries, the profitability of the trade and is causing social and environmental concerns in the international community and among governments and civil society organizations. These concerns implicate both buyers (often in high-income countries) and producers (often in low-income countries), and have a negative impact on the sector as a whole.

There are two direct links between FSC certification and the need to strengthen legal compliance in the forest products sector:

1. FSC certified products are compliant with relevant national and international laws
2. There is a demand for systems and tools for identifying, verifying and tracing legal forest products through the supply chain to markets

## **2. LINK 1 : FSC CERTIFIED PRODUCTS ARE LEGAL**

Through FSC certification, legality is ensured at the forest management level as well as through chain of custody. At the forest management level, FSC requires, through its forest management certification, legal compliance by certificate holders. The specifications for this are included under Principle 1 (compliance with laws and FSC principles). However there are also other FSC Principles and Criteria that address legality, such as Principle 2 (Tenure and Use Rights and Responsibilities); Principle 3 (Indigenous Peoples Rights); Principle 4 (Community Relations and Workers Rights).

FSC’s chain of custody system is used to track and trace certified materials through the supply chain. This means that certified suppliers can demonstrate that their products originate from certified forests.

## 2.1 Forest Management certification and legal compliance

### **Box 1**

#### **Principle 1: Compliance with laws and FSC principles**

Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory, and comply with all FSC Principles and Criteria.

- 1.1 Forest management shall respect all national and local laws and administrative requirements.
- 1.2 All applicable and legally prescribed fees, royalties, taxes and other charges shall be paid.
- 1.3 In signatory countries, the provisions of all binding international agreements such as CITES, ILO Conventions, ITTA, and Convention on Biological Diversity, shall be respected.
- 1.4 Conflicts between laws, regulations and the FSC Principles and Criteria shall be evaluated for the purposes of certification, on a case- by- case basis, by the certifiers and the involved or affected parties.
- 1.5 Forest management areas should be protected from illegal harvesting, settlement and other unauthorized activities.
- 1.6 Forest managers shall demonstrate a long-term commitment to adhere to the FSC Principles and Criteria.

FSC's principles and criteria provide a framework for standards developed by local stakeholders. FSC national or regional standards are developed for a country or for a region and include indicators and verifiers that interpret and elaborate the FSC Principles and Criteria. During a certification assessment, auditors look for objective evidence that the requirements of the standard are being met.

Where national and regional standards exist, certification bodies assess compliance with that standard. Where no national or regional standards exist certification bodies adapt their own generic standards that are also based on the FSC Principles and Criteria, for the purpose of certification. To date FSC has accredited 15 national or regional standards. FSC Contact Persons in 19 countries and FSC Working Groups in 12 countries are working to define how FSC's Principles and Criteria for forest management, including those dealing with legality, should be applied at a national/regional level.

The result of this work is that stakeholders (in particular producers and suppliers but also NGOs and others) are engaged in identifying relevant laws and other key elements of sound forest management at the national level and developing protocols for verifying this as part of the forest management standard setting process.

**Box 2**

**Extract from German national standard**

**Principle 1: Compliance with laws and FSC principles**

1.1. *The forest owner respects the federal and state laws, decrees and communal regulations*

1.1.1. Applicable state and federal laws, state and federal orders, and communal regulations are available

1.1.2. The highest responsible agencies (agency sub divisions in forestry, environmental protection, hunting or water) attest that there are no previous or outstanding violations

1.1.3. Insofar as charges involving alleged legal violations are pending, these charges can be invalidated

1.2. *The forest owner pays all applicable and legally prescribed fees, royalties and taxes.*

1.2.1 The enterprise demonstrates that it is in good standing with the responsible fiscal authorities or proves exemption from taxes

1.2.2 Invoices from timber sales correctly state value added taxes and contributions to the Timber Sales Promotion Fund

1.2.3 Pay slips correctly state social welfare for all employees

[...etc...]

## 2.2 Chain of custody and legal compliance

Certified suppliers have to demonstrate that their products originated at certified forests. Their production systems are designed and implemented in a way that allows tracing and tracking of forest products back to the certified forest. These may employ mechanisms such as physical or temporal separation of wood or wood products or the use of tracer paints or bar codes.

Through chain of custody certification, independent certification bodies verify the adequacy of these production systems and their implementation against a chain of custody standard.

For business-to-business commercial relations, invoices for certified products and bills of lading carry a chain of custody registration code. This confirms the status of the products as “certified.” Additionally, certified products are labelled with the FSC trademarks.

**Box 3**

**Extract from the FSC Chain of Custody standard**

*1. Documented control system*

The company must have a clearly documented control system which addresses all the principles of

chain of custody control

*2. Confirmation of inputs*

The company must operate a system for assuring that inputs are themselves certified

*3. Separation and/or demarcation of certified and non-certified inputs*

The company must operate a system for ensuring that when certified inputs are received they be

clearly marked or otherwise identified as certified

*4. Secure product labelling*

The company must operate a secure system for the production and application of product labels

*5. Identification of certified outputs*

Certified products must be labelled or otherwise be identifiable in a manner that labels do not become

detached during storage, handling or transport

*6. Record keeping*

The company maintains appropriate records of all inputs, processing and outputs of certified products

**2.3 Working with small and community enterprises as well as large suppliers with multiple operations**

The FSC system has been adapted to cater to the needs of small and community enterprises as well as large suppliers with multiple operations. FSC's systems ensure that small operations operate legally, have access to certification and are protected in case new international trade regimes in the future require the implementation of mechanisms for verification of legal compliance.

FSC's Group chain of custody certification assists smaller enterprises wishing to achieve FSC chain of custody certification. These may include artisans woodworkers / craftspeople, portable sawmill operators, small sawmills, carpenters, joiners and small hauling companies. Specifications are aimed at benefiting those groups of small enterprises that already have a legal organization or the support of an external support organization, such as a trade association or cooperative.

FSC's 'multi-site' specifications are designed for single companies with multiple sites in which fundamentally the same functions, methods or procedures are carried out at a set of participating sites. Such sites may include manufacturers, sawmills and assembly plants.

A more recent example of efforts to adapt systems to cater for the needs of small and community enterprises are those aimed at finding and implement solutions to access to certification for small and low intensity operations. Such forests many include small woodlots, trees on farms, small family forests, small forest enterprises and community forestry operations.

#### **2.4 Non-certified wood fibre in FSC labelled products is legal**

FSC's chain of custody and labelling rules<sup>1</sup> put the onus on chain of custody certified businesses to ensure that any non-certified timber they use in a FSC labelled product is not illegally sourced. In some cases, these specifications have caused suppliers to change their purchasing policies and practices.

According to a recent survey<sup>2</sup> to assess the impacts of FSC's chain of custody and labelling rules, 20% of the manufacturers who responded reported that they had stopped sourcing from suppliers who could not demonstrate that their sources complied with the FSC requirements relating to controversial sources.

The report stated, "Some processors and retailers had changed their suppliers or had required their suppliers to change their sources as a result of the policy on controversial sources. The causes of this were products from illegally harvested areas; from areas with disputes over stakeholder rights or uncertified high conservation value forests".

#### **2.5 Certification facilitating trade**

FSC has emerged as a response to demand from certain markets for products that come with an environmental and social guarantee. Additionally certified products enhance legality in the international timber trade and demand for such products is increasing.

The FSC system provides a global network of (currently close to 3000) suppliers (i.e. certificate holders) operating according to the same global standard but with locally adapted systems and technologies. This system encourages trade by facilitating exchange between those suppliers in the network.

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<sup>1</sup> FSC Policy on Percentage Based Claims. 15 May, 2000 Section 3.2 and 3.2.1 Controversial sources including wood that has been illegally harvested. This provision applies to the legality of harvesting methods and sources, and the fulfillment of national regulations covering fees and other rules.

<sup>2</sup> Report on the questionnaire to assess the impacts of the FSC percentage based claims policy, February 2002

### 3. LINK 2: THE NEED FOR TOOLS TO VERIFY LEGAL COMPLIANCE

The high interest in the issue of legal compliance in the forestry sector has led to a widespread consensus that effective action must be taken by exporting and importing countries alike. One widely recommended action is the development and implementation of procurement policies in both the private and public sectors in order to avoid the purchase of illegally sourced forest products<sup>3</sup>.

A number of countries, municipalities and companies are developing or have developed such procurement commitments to avoid the use of illegally sourced forest products. However, reliable implementation requires the development of systems and tools that can be used to identify, verify and trace the legality of forest products in the supply chain. Such tools are still lacking.

#### **Box 4**

##### **Examples of commitments to legal sourcing/trade**

- 1 Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Great Britain and Northern Ireland on Cooperation to Improve Forest Law Enforcement and Governance and the International Trade in Illegally Logged Timber and Wood Products, April 2002.
- 2 Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of the People's Republic of China Concerning Cooperation in Combating Illegal Trade of Forest Products, 18 December 2002.
- 3 IKEA Solid Wood Merchandise Staircase Model. Step 2: Acceptable solid wood sources: known origin region within country; compliance with forest legislation; not from protected areas unless certified according to "step 4 standard" (well managed forests verified by compliance with official standard recognised by IKEA) or felled in accordance with management prescriptions; not from plantations established after Nov. 1994 by replacing intact natural forests.
- 4 ScanCom International Environmental Policy and direct auditing system.

One practical method that can be employed to help tackle the illegal forest products trade is the independent verification of "legal" forest products. This implies a direct link between certification and the verification of legal compliance.

This situation presents a number of opportunities and challenges.

Opportunities include, strengthened markets for legal and sustainable forest products; improved implementation of producer country national forest laws; and the possibility of stepwise approaches towards improved forest stewardship for companies for whom forest management certification may be to big a step.

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<sup>3</sup>E.g. "Controlling the international trade in illegally logged timber and wood products" D. Brack et al.



Challenges include how to define legality at the forest level; what tools can be used to verify this; how to ensure credibility and international applicability of any legal verification systems; how to deal with laws which are vague or contradictory; how to avoid excessive costs, how to ensure that such systems can be applicable to the needs of small or low intensity operations as well as large enterprises with multiple operations; how to build on existing certification and chain of custody systems as well as those employed to implement CITES.

### 3.1 FSC's perspective

Based on existing experience and expertise, tools could be made available which are necessary for a greater number of producers and suppliers to identify and ensure compliance with relevant laws, or other steps aimed at improving forest management. This would constitute a considerable improvement in the way forests are managed, and, by putting in place systems for compliance with legal requirements (or other important steps), may encourage progress towards full certification<sup>4</sup>. FSC is currently exploring options that would allow a phased approach to certification. Verification systems of legal compliance could be the first of a series of such phases, that could culminate with full certification once all phases are completed.

Many forest and trade businesses which currently feel that forest management certification is too big a step would have accredited certification bodies on their premises performing legality audits or audits related to other aspects of forest management. Full forest management certification might subsequently be a smaller step to achieve in the future.

Industry could benefit from incentives to move towards an improved forest management provided by their participation in buyers and producer groups. In FSC's case, members of the Global Forest and Trade Network (GFTN)<sup>5</sup> commit to gradually producing, trading and/ or sourcing products coming from independently certified well managed forests. Local networks strive to raise consumer and corporate awareness, as well as influence wood and paper procurement policies, both for the public and private sectors.

Verification of legal compliance should not be confusable with forest management certification. This can be achieved by ensuring that certification bodies are issuing 'Internationally applicable, credible and recognisable' certificates of legal verification and ensure that no label or public claims are associated with these. Incentives must not be based on messages to consumers, but may be based on business-to-business incentives (e.g. through procurement specifications) or government incentives (e.g. export tax incentives, export credit guarantees or grant support).

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<sup>4</sup> Other steps could be based on social aspects (managing community relations; ILO compliance), or ensuring that High Conservation Values have been identified and are being managed appropriately.

<sup>5</sup> The GFTN currently consists of 19 local Forest and Trade Networks active in nearly 30 countries. More than 800 companies are members of local GFTN networks. For lists of national GFTN contacts <http://www.fscoax.org/html/5-3-6.html>.

#### **4. CONCLUSIONS**

##### **OPPORTUNITIES FOR ACKNOWLEDGING AND IMPROVEING EXISITING SYSTEMS TO STRENGTHEN LEGAL COMPLIANCE IN THE FOREST PRODUCTS TRADE**

FSC certified products are legal. This means that today, using its current systems, FSC can offer a guarantee that purchasing certified products means at the same time purchasing wood and fibre products that are legal.

Additionally, synergies between FSC certification and legal compliance in the forest product trade present a number of opportunities to learn from experience, improve existing systems and collaborate with new partners to develop the tools that would be required to strengthen legal compliance in the forest product sector.

In September 2002, FSC adopted a new policy aimed at strengthening and extending FSC's requirements over the controls of the non-certified portion of wood in FSC labelled products. This has created an urgent need for credible systems for identification and monitoring of legally sourced material.

Existing FSC systems provide to a great extent the know-how needed to develop specific tools aimed at strengthening legal compliance in the forestry sector and timber trade. FSC will further develop and strengthen its existing systems and use the experience, expertise and credibility gained during close to a decade of forest management and chain of custody certification to provide a practical, and widely supported system to enable governments, companies and others to implement procurement commitments and policies which avoid the use of illegally sourced forest products.

Once developed, such systems will provide a tool that can be used not only by companies seeking FSC certification, but also by the many stakeholders- businesses and governments that are demanding an end to the trade in illegal forest products.

FSC is working to forge the links between forest certification and verification of legal compliance and contribute its expertise to the development of tools and systems for identifying and tracing independently certified legal forest products. The development and uptake of credible and appropriate systems for assuring legal compliance in the forest sector could lead to significant improvement in the way forests are managed as well as in the "legality" of timber trade.

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