



ASEAN Criteria and Indicators for Legality of Timber

BACKGROUND

At the 13th ASEAN Summit held in Singapore on 20 November 2007, the **ASEAN Economic Community Blueprint** was endorsed, which provides ASEAN Member States with a single reference point for ASEAN economic initiatives. As for the forestry sector, the Blueprint outlines that a regional reference framework on a phased-approach to forest certification shall be developed by 2015. In this context, the **Working Group on a Pan-ASEAN Timber Certification Initiative** has been operating since 2002. The Group's main objective is to encourage coordination and cooperation among the ASEAN Member States in their efforts to implement credible forest certification.

The Working Group's new **Terms of Reference**, agreed at its 7th Meeting in Myanmar in April 2008, further outline that the regional reference framework shall address the key criteria and indicators of Sustainable Forest Management (SFM), while ensuring minimum requirements to verify legal origin of timber. The presence of such a framework shall encourage further collaboration among ASEAN Member States towards promoting SFM in the region.

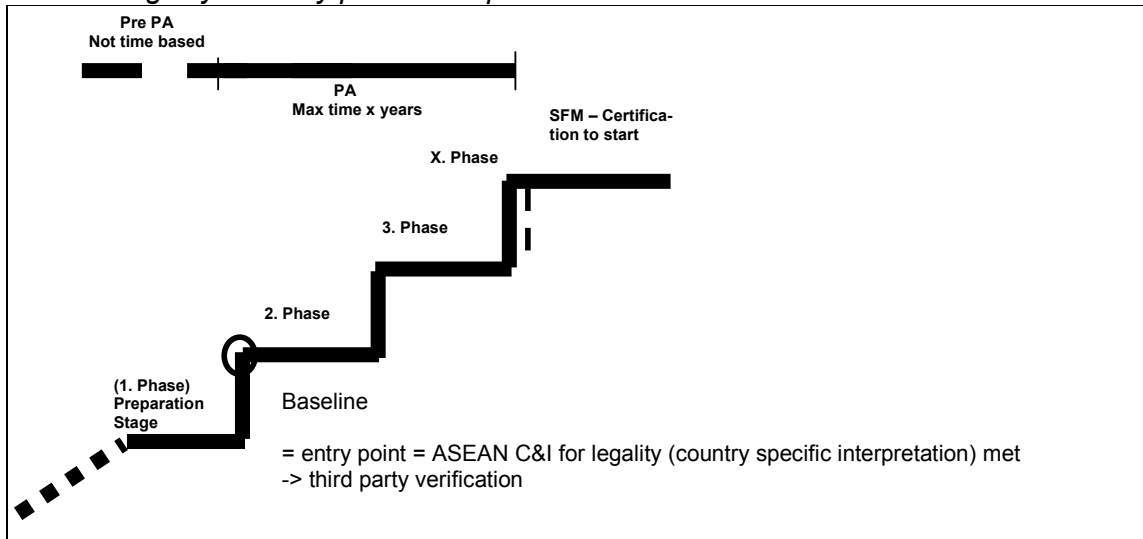
Already at the 5th Meeting of the Working Group in Chiang Mai in December 2005, the principles, procedures and governance aspects of the **ASEAN Guideline on Phased-approaches to Forest Certification (PACt)** were agreed. The PACt programme was defined as a series of planned actions carried out by Forest Management Enterprises (FMEs) with the purpose to conform to the standards of performance required by a certification scheme and verified by an independent body (third party). The meeting acknowledged that conformance with the criteria and indicators of a yet to be developed ASEAN Timber Legality Standard shall be a pre-requisite to enter into the PACt programme (first level of the step-wise approach to achieve SFM certification). Country specific specifications of the requirements for legality shall be developed, based on the existing laws and regulations in the respective ASEAN Member State.

At the 7th Meeting of the Working Group in April 2008, after almost two years of discussion, the **elements of the ASEAN Criteria and Indicators for Legality of Timber within the PACt Programme** were approved. The discussion reflected also upon ongoing deliberations on legality and legality verification in the international context (EU-FLEGT process, green public procurement policies, and business-to-business timber legality verifications). The following **six elements** were agreed:

- (1) Compliance with all relevant forest laws and regulations
- (2) Payment of all statutory charges

- (3) CITES compliance
- (4) Implementation of a system that allows for the tracking of logs to the forest of origin
- (5) The timber must be harvested by parties who have the legal rights to carry out the logging at the designated forest area based on an approved cut
- (6) The party which harvests the timber shall comply with the laws governing social and environmental aspects, i.e. workers' safety and health, as well as environmental impact assessment

Figure 1: Outline of the ASEAN Phased-Approach to Forest Certification (PACt): Timber Legality as entry point to stepwise reach SFM certification



TASK AND APPROACH OF THE CONSULTANCY

The Working Group asked the ReFOP Consultant to develop a common set of criteria and indicators for an ASEAN Timber Legality Standard, specifying each of the agreed upon elements, while taking local conditions in the ASEAN Member States into account.

The consultant drafted in October 2008 the requested C&I applying a **desk study** approach. Besides the related meeting reports produced by the ASEAN Working Group, a number of **additional documents** were taken into account:

- ASEAN Guidelines on Phased-approaches to Forest Certification (PACt), Version April 2008
- Strategic Schedule for ASEAN Economic Community 2008-2015 (FOOD, AGRICULTURE AND FORESTRY), Version August 2008
- ASEAN Criteria and Indicators for Sustainable Management of Tropical Forests
- Framework for ASEAN Regional Criteria and Indicators for Sustainable Management of Natural Tropical Forests (ASEAN Forestry Publication Series No.1)
- Malaysian Timber Legality Assurance System (draft developed within the EU-Malaysian VPA negotiations)

- Indonesian System of Timber Legality Verification (draft)
- Recommendations given at the ASEAN Training Workshop on Timber Verification of Legality Systems in Brunei on 21-23.7.2008.

Attention was also paid to **publicly available standards** of timber legality verification, e.g.:

- Generic standard for verification of legal origin developed by SmartWood (SW VL-01, November 2007)
- Generic standard for verification of legal compliance developed by SmartWood (SW VL-02, November 2007)
- Timber Legality & Traceability Verification (TLTV) developed by SGS (AD-TLTV-33_S-02, January 2008)
- Principles, Criteria and Indicators of Legality for Forestry Operations and Timber Processing developed by the Global Forest Trade Network
- FLEGT Briefing Note No. 2 (Legality)
- Revised ITTO criteria and indicators for the sustainable management of tropical forests including reporting format. ITTO Policy Development Series No. 15, 2005
- UK Government Timber Procurement Policy: Criteria for Evaluating Certification Schemes: Category A Evidence (CPET, May 2006)

Taking into account these documents, the agreed upon six elements were slightly re-grouped and re-structured and **6 Criteria and 13 Indicators** were formulated. Re-grouping and re-phrasing was conducted to ensure a good reading of the proposed standard and a straight-forward understanding of its meaning in the market place. Content and intention of the elements remained, as can be seen in the provided *Attribution of the proposed Criteria and Indicators of the ASEAN Timber Legality Standard to the Elements agreed by the Working Group on a Pan-ASEAN Timber Certification Initiative* (refer to Annex 1). A few options for amendments were formulated as input to further discussions.

PURPOSE AND SCOPE OF THE CRITERIA AND INDICATORS

The ASEAN Criteria and Indicator for the Legality of Timber shall provide a **regional reference** for the verification of timber legality in ASEAN Member States, particularly in those that are timber producer countries. The C&I are part of the PACt programme, targeting at the step-wise implementation of Sustainable Forest Management (SFM) on Forest Management Unit (FMU) level in the ASEAN region. The C&I shall be applicable to Forest Management Enterprises (FMEs) operating in areas under current or future long term forest management. Legality aspects of forests under conversion or timber originating from forests not belonging to FMUs are not covered.

The C&I present a credible and efficient reference framework for adaptation of **country specific Timber Legality Standards** under the PACt programme. Member States who wish to verify to markets that timber sourced from FMUs under their jurisdiction is in compliance with the laws and regulations of their respective country shall use the requirements laid out in the reference C&I for developing more detailed national specifications. Deciding which set of core laws and regulations constitute the relevant performance level (verifiers) of a national legality definition is the right and

obligation of each ASEAN Member State. Such a selection is best achieved through an open and transparent stakeholder process on national level.

The national standards for timber legality shall be applicable to producers of forest products within a defined supply chain. FMEs operating in FMUs shall be evaluated and be made accountable for full traceability of their forest products and for evidence of timber legality until their forest gates. Companies that purchased, manufactured, handled, and/or sold forest products from a legally verified forest source will have to document and control their timber intake through timber tracking or chain-of-custody systems, linking their products to the forests of origin. Criterion 6 of the ASEAN C&I for Legality of Timber describes the log tracking requirements within an FMU (harvesting sites until the forest gate) as one part of such a timber tracking or chain-of-custody system. Procedures for verifying the following steps of the system will be outlined in the ASEAN Guidelines for Chain-of-Custody of legal timber and of sustainable timber.

The ASEAN C&I for Legality of Timber describe the general administrative requirements of permitting, planning, taxing, and harvesting in a defined forest area (legal origin of timber). Its elements also contain compliance aspects related to environmental protection, health and safety, and community rights, exceeding the minimum requirements of a merely business-to-business verification scheme for the legal origin of timber. As a consequence, its national specifications are likely to match the requirements for legal timber specified in green public procurement policies in Europe, or mandated in 'due diligence' concepts by the private sector or by governments. Quick market acceptance can therefore be expected.

STRUCTURE OF THE CRITERIA AND INDICATORS

The document contains a core set of criteria and indicators for further national interpretation by ASEAN Member States. Each criterion is described by an explanatory sentence, and specified by a number of generic indicators.

DEFINITIONS

Chain-of-Custody: a system which provides a link between verified/certified material in a product or product line and the forest source of origin. It consists of documentation that describes the path taken by forest products from the harvesting site to the consumer, including all successive stages of processing, transformation, and distribution.

Forest Management Unit (FMU): area designated for forest management, characterized by a management and/or harvesting plan and a defined boundary (area of origin of the verified timber).

Forest Management Enterprise (FME): entity implementing forest management and harvesting activities at the defined forest management area. It can be a concessionaire, a governmental or public body, a private enterprise, a community based operation.

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Note: The ASEAN Criteria and Indicators for Legality of Timber is part of the ASEAN Phased-approach to Forest Certification Programme, targeting at the step-wise implementation of sustainable forest management at the forest management unit level in ASEAN Member States.

Criterion 1: The Forest Management Enterprise holds the legal right to operate and to harvest timber at the designated forest area.

The Forest Management Enterprise (FME) shall prove that it is formally registered with relevant government authorities and has validly obtained the legal right to operate within the Forest Management Unit (FMU) under verification. The legal status of the FMU shall be clearly defined and boundaries delineated.

Indicator 1.1: The FME has legal authorization to conduct forestry-related business in accordance with the requirements of the country where it operates.

Indicator 1.2: The FME has legal authorization to harvest in the FMU under verification, as proven by a valid permit or license issued pursuant to the laws and regulations governing the management of forest resources, including customary laws where legally recognized.

Indicator 1.3: The FMU is unambiguously delineated and dedicated to forest utilization.

Criterion 2: The Forest Management Enterprise holds approved authorization for its harvesting operations, based on an approved cut

The FME shall have received the necessary approvals for its utilization activities based on the relevant planning requirements legislated by the relevant authorities.

Indicator 2.1: The FME can demonstrate that it has received a valid approval by the relevant authorities for its current harvesting operations and other related activities, based on a proper planning process.

Criterion 3: The Forest Management Enterprise fulfils CITES compliance and the requirements of relevant environmental laws and regulations.

The FME shall demonstrate compliance with the applicable provisions of CITES and the relevant laws and regulations relating to environmental obligations of a forest management operation.

Indicator 3.1: The FME conducts environmental impact assessments where and when appropriate.

Indicator 3.2: The FME implements mitigation measures to minimize negative environmental impacts in accordance with its own assessments and relevant laws and regulations.

Indicator 3.3: The FME complies with the applicable provisions and requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Indicator 3.4: The FME fulfils required procedures for protected tree species within the FMU in accordance with the relevant laws and regulations.

Indicator 3.5: The FME cooperates with relevant agencies in implementing adequate measures to prevent any unauthorised activities by third parties within the FMU.

Criterion 4: The Forest Management Enterprise fulfils the requirements of relevant social laws and regulations.

The FME shall demonstrate compliance with relevant laws and regulations relating to the social obligations of a forest management operation.

Indicator 4.1: The FME fully observes the use rights of local communities in accordance with relevant laws and regulations.

Indicator 4.2: The FME complies with the relevant laws and regulations on employees' and workers' occupational health and safety requirements.

Criterion 5: The Forest Management Enterprise has paid all statutory charges directly related to timber harvesting and timber trade.

The FME consistently settles all due payments of obligatory taxes, fees and/or royalties associated with maintaining the legal right to harvest and permitted harvesting volumes to the appropriate authority in a timely manner.

Indicator 5.1: The FME has paid all applicable and legally prescribed fees, royalties, taxes and other charges to the appropriate authority in a timely manner, as documented through clear evidence.

Criterion 6: The Forest Management Enterprise implements a traceability system that allows for the tracking of all logs from the forest gate to the relevant harvesting sites.

Chain-of-custody provides a link between verified/certified material in a product or product line and the forest source of origin. Documented control of this chain is a fundamental requirement to ensure that separation is maintained between verified (legal) and non-verified products. Criterion 6 describes the requirements from the forest gate back to the point of harvest (log tracking requirements). Chain-of-custody or timber tracking of all later steps in the supply chain (manufacturing and trading steps) are specified in the ASEAN Chain of Custody Guideline.

Indicator 6.1: The FME applies a traceability system which properly controls and documents all timber flows from the harvesting area to the forest gate.

Indicator 6.2: The traceability system effectively controls the risk of mixing verified legal and non-verified forest products within the remit of the FME.

Indicator 6.3: Forest products verified as legal can be properly identified at the forest gate through a clear system of documentation and marking.

