Legality of Exporting Forest Products to the European Union, Australia and USA

City, Country
Date, 2013
Due Care/Due Diligence and General Guidance
Due care / Due Diligence =

take certain steps to do your best to ensure you are not violating the law

These are applied differently to different categories of persons with *varying degrees of knowledge and responsibility*. 
ANY ILLEGAL ACTIVITY anywhere along the Trade Chain = Illegal Product at the end of the Trade Chain
Demonstrating Due Care / Due Diligence

Ask questions

Compliance plan

Industry Standard

Make changes in response to practical experience

Record efforts
Due Care / Due Diligence – 3 Elements

**1. Information**
- Countries of Harvest,
- Species,
- Quantity,
- Legal Compliance, etc.

**2. Risk Assessment**
- Risk Assessment Criteria

**3. Risk Mitigation**
Minimise Risk:
- Take adequate and proportionate measures
- Follow procedures

Which system should an operator use?
1. Use their existing system
2. Set up a new system
3. Make use of a system set up by “monitoring organisation” (EUTR)
4. Make use of systems set up by FSC or PEFC (AILPA)
For this whole presentation, note that under Lacey, no certification or document will protect against liability where the US prosecutor can meet its own burden of proof.

It is hoped that the information presented will give you the confidence to demonstrate due care and in turn help your customer to do the same.

Persons seeking legal advice on compliance should consult with a legal professional.

No liability whatsoever resulting from this training can be accepted by the trainers or those who developed these materials.
Due Care / Due Diligence – The Problem

What is Legal?

- No generally agreed definition
- More focus on legality
- GFTN need – a common approach
- Business demand for clarity
- Capacity in multi-stakeholder processes

Business demand for clarity
**Goals**

- Support target countries
- Provide sub-set of forest focused laws
- Help regulators understand what is legal
- Provide a tool covering the whole supply chain
- Support the development of a more consistent framework
Due Care / Due Diligence

WWF-GFTN/TRAFFIC
Common Legality Framework

A broad set of principles & criteria

Indicators and guidance notes/verifiers are based on national legislative base
Due Care / Due Diligence

WWF-GFTN/TRAFFIC Framework - Development Process

1. Compiling the legal base
2. Initial stakeholder consultation
3. Drafting the national framework
4. Preparing a common framework
5. More stakeholder consultation and revise national framework
6. Legal and audit expert review
Due Care / Due Diligence

**WWF-GFTN/TRAFFIC Framework - Principles**

- Access, Use Rights and Tenure
- Harvesting regulations
- Transportation of logs & wood products
- Processing regulations
- Import and export regulations
- Environmental regulations
- Conservation regulations
- Social regulations
- Taxes, fees and royalties

**Principles**
Due Care / Due Diligence

WWF-GFTN/TRAFFIC Framework

- Advice for producer and consumer
- As a universal framework
- Capacity building for stakeholders
- Strengthening GFTN processes

Common Legality Framework

- A tool for addressing EU, Australian and US legislation
- Certification bodies’ legality verification Schemes
- Certification standards development
Due Care & Due Diligence

Possible Principles to meet requirements of Due care and Due diligence through WWF-GFTN/TRAFFIC Framework:

1. Access, use rights and tenure
2. Harvesting regulations
3. Transportation of logs and wood products
4. Processing regulations
5. Import and export regulations
6. Environmental regulations
7. Conservation regulations
8. Social regulations
9. Taxes, fees and royalties
What documents should I have?
Due Care

- Licence Records
- Removal pass
- Transport pass
- License Management Plans
- Harvesting Plans
- Timber Removal Pass
- Land use planning
- Allocation of logging permit/concessions

- Harvest / Forest
- Transport
- Processing
- Shipping
- Import

- Domestic sales
- Environmental/Conservation
- Fees

Legal verifier
Due Care

Example documents needed

- Import license
- Customs import declaration form 1
- Removal pass

- License according to products and company type with FD
- Register with relevant agencies
- Record of cess paid
- Export license
- Customs export Form

- Record of demarcated boundaries
- Environmental impact assessments
- Forest management plans
- Records of timber products, species and quantity
- Quarterly reports on areas harvested
- Records of silvicultural treatments
- Records of post-felling inventories

- Records of gazettement
- Records of classification
- Concessionaire agreements
# Due Care - Guidance for Establishing Legality

<table>
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<th>Stage in Supply Chain</th>
<th>Legislation Component</th>
<th>Relevant Laws to Comply With</th>
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| Forest                | Legal right of tenure, access, and harvest | All forest management enterprises, whether public, private, or Community managed, must be able to demonstrate that they have the right of:  
- Tenure  
- Manage the forest  
- Access the forest  
- Harvest forest products from the forest. | 1. Establish that there is permission to conduct management, harvest, transport and commerce in plant products (including trees or logs from trees).  
2. Establish that the company has the tenure to the harvest area.  
3. Establish that the company has access rights to the harvest area.  
4. Establish that there is authorisation for the harvest area.  
5. Establish that there is a legal or permissive right to harvest.  
6. Ensure that only species that can be harvested legally were harvested.  
7. Ensure that the harvesting was conducted in compliance with the harvesting conditions in the permission.  
8. Ensure that the harvest took place at the site defined within the permission.  
9. Ensure that the trees harvested are included within the scope of the permission such as quota and diameter at breast height limits.  
10. Ensure that third parties’ legal use and tenure rights are not affected by harvesting.  
11. Ensures environmental and social laws such as Environmental Impact Assessments and Social Impact Assessments, etc. are taken into account in management and harvesting plans.  
12. Ensures that conservation laws are followed, including CITES legislation.  

Evidence that the company has a valid agreement that covers the company’s right and permission to manage and harvest the forest. | 1. Theft of plants (including trees or logs from trees) such as:  
a. Taking plants (including trees or logs from trees) from an officially protected area, such as a park or reserve.  
b. Taking plants (logs) from other types of officially designated areas of protection that are recognized by a country’s laws and regulations.  
c. Taking plants (including trees or logs from trees) without, or contrary to, the required harvesting authorization.  
d. Taking plants (including trees or logs from trees) without the authorisation of pre-approval conditions such as social customary rights and tenure and environmental impact assessments.  
2. Taking plants from areas where environmental laws have been violated (e.g. forest buffer, steep slopes, etc.):  
a. Taking plants from areas where third party customary tenure rights are in place or in conflict.  
b. Taking plants from areas without taking into consideration measures outlined in environmental impact assessments, social impact assessments, etc.  
3. Documentation for tenure may have pre-conditions for a successful right to the forest. These pre-conditions may include payment of deposits, shortfalls in applicants, evidence of staff and equipment, social impact studies, environmental impact assessments, previously agreed consent, etc.  
4. Documentation for right to harvest will have many criteria which should be checked separately, such as:  
a. Inventories conducted.  
b. Boundary demarcation on the ground and on a identified scale map, which may be geo-referenced.  
c. Logging road and skid trail construction specifications.  
d. Identification and marking of protected species, fragile ecosystem, cultural and customary use areas.  
e. Identification of environmentally sensitive areas such as frequently flooded areas. |
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| Forest                | Legal Right to Harvest         | Forest management companies and harvesting companies are required to be legally registered to operate in this sector. Registration may require a number of other processes to be observed. | Evidence that the company is legally registered and has the required permissions to operate in the forest management and logging sectors. Ensure that all relevant documents and receipts are available including for pre-harvesting, during and post harvesting permission. Evidence that the company has a valid registration and license that confers on the company the right to manage and harvest the forest. Synonyms/Equivalent include:  
  - Business license  
  - Land use certificate  
  - Company establishment document  
  - Signed Decision on land allocation  
  - Contract of land use right transfer agreement  
  - Contract of land rental  
  - Document of community’s agreement  
  - Forest Authority Certificate | Checks for court cases concerning social or other issues that are pending in the harvest area to get a better overview about the risk and legal situation. In many countries the harvesting of timber is undertaken by third parties who are employed by the forest manager to undertake harvesting. Social issues and land tenure rights applies to sub-contractors as well. |
| Forest                | Payment of Taxes and Royalties | Companies are liable to pay taxes or fees to national or local government (or both) to authorize their management and harvesting. | Evidence that the company has paid any fees or taxes that must be paid to the state or local government in connection with obtaining the permission to manage or harvest; and any fees or taxes associated with the volume of timber actually harvested. Synonyms/Equivalent:  
  - Proof of payment of taxes and fees (e.g. Reforestation fee, Forest Resource Royalties, Value added tax, Income tax)  
  - Valid business license  
  - Tax registration documents  
  - Tax returns | Ensure that all relevant royalties, taxes or fees have been paid by the forest management company or harvesting company. |
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| Transport             | Legality of possession and transport | Forestry and transportation laws. Most countries require those transporting timber to be correctly licensed for this purpose and for them to carry required documentation and markings on the timber that identifies both the origin of any logs or timber, royalties paid, and the final destinations of the material being transported. | Evidence that the company has used the required documents when transporting logs or timber.  
Synonyms/Equivalents:  
- Timber transportation certificate  
- Conveyance certificate  
- License to carry logs or timber  
- Timber consignment documents  
- Removal pass  
- Removal permit  
- Packing lists  
- Lading bill  
Evidence that the company has used the required stamps or marks when transporting logs or timber.  
Synonyms/Equivalents:  
- Log tags  
- Log identification marks  
- Hammer marks  
- Paint marking | Some countries have highly regulated systems that require all logs or sawn wood that are being transported outside of the forest to carry markings that identify the wood with the original stump from which it was harvested. |
| Processing            | Legality of processing | Processors of logs or manufacturers using timber. Most countries require all sawmills, plywood mills, secondary manufacturers or pulp mills to be licensed and to pay for any fees and taxes to carry out these activities. | Evidence that the company has acquired any required license to process logs or timber. The license may state the production capacity.  
Synonyms/Equivalents:  
- Operating license  
- Timber processing certificate  
Evidence that the company has paid any fees or taxes that must be paid to the state or local government in connection with timber processing.  
Synonyms/Equivalents:  
- Valid business license  
- Tax registration documents  
- Tax returns  
Evidence that the company has documentation for timber trade records in connection with timber processing.  
Eg:  
- Log reservation quota  
- Shuttle returns  
- Monthly production returns  
- Log input book  
- Sales contract  
- Sales invoice | Some countries require submissions of records of inputs and outputs of the mills to the relevant government agencies for nominal monitoring.  
While the US, EU and Australian legislation does not make explicit mention of processors, their due care and due diligence requirements, processing is one stage in the supply chain and would be applicable as illegal timber could enter the supply chain during processing.  
However, for the EUTR, if the processing took place after the timber has been placed on the EU market, the company is deemed to be a trader and should know who they bought the products they used for processing from. |
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<td>Export</td>
<td>Legality of Sale and Export</td>
<td>Laws governing export or trans-shipment, such as a log-export ban.</td>
<td>Evidence that the company has the required permission to export forest products and that it complies with all the requirements for legal export of the product.</td>
<td>Export companies are required to be licensed to perform this function and should routinely provide sufficient documentation to allow the state authorities in the country of export and the country of import to monitor the transaction. Some countries ban the export of certain species or types of material (for example logs or sawn wood) or highly regulate the volume of these materials that can be exported. Companies importing timber products should request the Customs Export declaration form. Ensure that the company acting as the exporter is legally established and suitably licensed to export forest products. Ensure that the required export permits are complete, accurate and available. Ensure that the customs import and export documents are available.</td>
</tr>
<tr>
<td>Export</td>
<td>Payment of Fees and Royalties</td>
<td>Export companies are required to pay all appropriate taxes and duties when exporting forest products. This may include payment of Value Added Tax in some countries.</td>
<td>Evidence that the company has paid the appropriate tariffs associated with the products being exported.</td>
<td>The tariffs are usually administered by Customs during export. However, the tariffs may be imposed by other Ministries, including trade and industry, forestry, revenue, etc. Failure to get the Customs release for the shipment would render the consignment illegal as all trade of a country have to get customs approval for both import and export. While the EUTR and the Australia Illegal Logging Prohibition Act Ltd are not explicit in mentioning import and export, a due diligence system would need proof of legality for export and import in the traded commodity as a component of the supply chain legality management.</td>
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Due Care & Due Diligence

Organizations That Can Help

- USAID’s RAFT Programme
  http://www.responsibleasia.org
- WWF’s Global Forest & Trade Network
  http://gftn.panda.org
- Tropical Forest Trust
  http://www.tropicalforesttrust.com
- Tropical Forest Foundation
  http://www.tff-indonesia.org
- Rainforest Alliance
  http://www.rainforest-alliance.org
- EIA/WRI’s Forest Legality Alliance
  http://www.wri.org/fla
Any Questions?

- For more information, visit
- gftn.panda.org/legality