

# ASEAN Standard for Legality of Timber

*(The Revised ASEAN Criteria and Indicators for Legality of Timber)*

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## BACKGROUND

ASEAN Member States (AMS) have committed themselves to strengthen forest governance, and to develop national standards and systems for timber legality. In this context a work plan for Strengthening Forest Law Enforcement and Governance (FLEG) in ASEAN 2016-2025 is now firmly in place, having been endorsed by the ASEAN Ministers on Agriculture and Forestry (AMAF) in 2017. The FLEG Work Plan forms a reference framework for regional cooperation under the technical ASEAN Working Groups to advance forestry and timber issues, complement and strengthen the work of ASEAN in developing regional policy and facilitate ASEAN's economic and social integration.

The FLEG Work Plan while contributing to sustainable forest management has also been supporting the implementation of measures under the strategic thrust 2 of the Strategic Plan of Action (SPA) for ASEAN Cooperation in Forestry (2016-2025) to enhance trade facilitation, economic integration and market access. One of the measures relates to the effort to strengthen regional agreements to enhance intra-ASEAN timber trade, including the requirement for legal timber, and promote co-operation with ASEAN's external partners in the global timber trade.

Concerning the Strategic Plan of Action (SPA) for ASEAN Cooperation in Forestry 2016-2025 and the implementation of FLEG Work Plan, the 22<sup>nd</sup> ASEAN Senior Officials on Forestry (ASOF) in 2019 agreed the revision of ASEAN Criteria and Indicators (C&I) for Legality of Timber as a key deliverable for year 2020 for ASEAN Cooperation in Forestry. The revision of the ASEAN C&I is an important milestone towards the development of an ASEAN-Regional Mutual Recognition for Legality of Timber.

The revision of the ASEAN C&I was proposed to be made based on developments in timber legality assurance in AMS as well as to take into account international norms and developments. The revision contributes to support AMS efforts in meeting international market requirements for legality of timber. The Revised ASEAN C&I is expected to be adopted by the 42<sup>nd</sup> ASEAN Ministers on Agriculture and Forestry Meeting in Cambodia in late 2020.

The ASEAN C&I for Legality of Timber 2009 was crafted under the ASEAN Guideline on Phased Approaches to Forest Certification (PACT) programme. It was considered a first milestone in the step-wise approach to achieve regional sustainable forest management certification and was initiated in 2006. Legality compliance was determined at the Forest Management Enterprises (FMEs) level - in areas under current or future long term forest management. The ASEAN C&I 2009 therefore only covers legality requirements for harvesting in gazetted permanent forests and does not include processing by the downstream industry. It also does not cover trees harvested from stateland outside the gazetted permanent forests, trees outside forests and/or on alienated lands, trees on privately-owned lands and imported timber.

The ASEAN C&I were applicable to producers of forest products within a defined supply chain – e.g. FME operating in a designated Forest Management Unit (FMU) characterized by management and/ or harvest plans. The C&I therefore only covered traceability of forest products for evidence of timber legality until the FMU's forest gate. The C&I were however linked with the ASEAN Guidelines for Chain of Custody of Legal Timber and Sustainable Timber. This means that companies that purchased, handled, manufactured, and/or sold forest products from a legally verified forest source needed to have the applicable documents and be able to control their timber intake through a separate timber tracking or chain-of-custody system, linking their products to the forests of origin.

The ASEAN C&I for Legality of Timber 2009 had the following six elements:

- (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

## **SCOPE OF THE REVISION**

As the 2009 C&I was crafted for a FME unit-based certification concept and was therefore limited, revision of the C&I broadened the scope to reflect what countries are using in their Timber Legality Assurance System (TLAS) and other forest and timber legality approaches, referring also to the advancements made since 2009, from the perspective of the supply side.

In line with current developments in AMS, the revised C&I will be broadened to cover all sources of timber and combine FMU and Chain of Custody requirements into one standard. This means the ASEAN standard for legality of timber would cover timber from:

- 1) All domestic sources; and
- 2) Imports.

Inline with the 22<sup>nd</sup> ASOF guidance, the revision of the ASEAN C&I for Legality of Timber will be an important milestone towards the development of Mutual Recognition Arrangement (MRA) for Legality of Timber. Therefore it is important to consider upgrading the C&I to Principles and Criteria (P&C) to be in line with the advancement on legality definitions in the AMS. The P&C will also take into consideration applicable international conventions and requirements such as the CITES, and ASEAN's regional references such as the ASEAN

Guidelines for Chain of Custody of Legal Timber and Sustainable Timber and the ASEAN Voluntary Code of Conduct on Imports for Forest and Timber Companies.

## TASK AND APPROACH OF THE REVISION

The 22<sup>nd</sup> ASOF in 2019 requested the EU FLEGT Facility to provide technical expertise in conducting the revision of ASEAN C&I for Legality of Timber. A revision was made based on current developments in timber legality assurance in AMS and consideration towards trade facilitation in ASEAN as well as new developments at the global level. The revision of ASEAN C&I shall contribute to support AMS efforts in responding to international market requirements for legality of timber by serving as a benchmark.

The revision process started with a desk review of relevant developments and documents in each AMS by the EU FLEGT Facility's experts. The experts drafted a revised ASEAN C&I based on results from the desk review. The draft was forwarded to the ASEAN Secretariat (ASEC), for circulation to AMS for feedback. The ASEC then consolidates the feedback and consults with the EU FLEGT Facility experts. A consolidated draft (draft 2) of the ASEAN C&I will once again be circulated to AMS for comments. The second draft will be discussed at the ASEAN Technical Meeting on Revising the ASEAN C&I scheduled on 30 June 2020 in Shan State, Myanmar, back to back with the 16<sup>th</sup> ASEAN Working Group on Forest Management on 1-2 July 2020 where the draft shall be finalized. The ASEC will then submit the final draft to the 23<sup>rd</sup> ASOF in Thailand in July 2020 and forward it to the 42<sup>nd</sup> AMAF in Cambodia for adoption.

## PURPOSE AND SCOPE OF THE PRINCIPLES AND CRITERIA

The revised ASEAN C&I for the Legality of Timber, hereinafter referred to as *ASEAN Standard for Legality of Timber*, shall provide a **regional reference** for the definition and verification of legality of timber in AMS, covering timber originating from all sources in ASEAN.

*The ASEAN Standard for Legality of Timber* provides a credible and efficient reference framework for adaptation into **country specific Timber Legality Standards**. ASEAN MS who wish to verify that timber sourced in another ASEAN MS complies with the laws and regulations of sourcing country shall use the requirements laid out in Annex 1 to develop more detailed national specifications. Deciding which set of core laws and regulations constitute the relevant performance level (indicators/ verifiers) of a national legality definition is the right of each AMS. Such a selection is best achieved through an open and transparent stakeholder process on the national level - to be further discussed with AMS.

The national standards for timber legality shall be applicable to operator (*including operator's contractor and subsequent sub-contractor*) within a defined supply chain. Operator shall be evaluated and be made accountable for full traceability of their forest products and for evidence of timber legality throughout the supply chain. Operator 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. Principle 6 describes the timber tracking or chain-of-custody system. Procedures for verifying legality of timber throughout the supply chain reflect on the *ASEAN Guidelines for Chain of Custody of Legal Timber and Sustainable Timber*.

The *Standard for Legality of Timber* describes the general administrative requirements of permitting, planning, harvesting, trading, taxing, transporting, importing and exporting of

timber and wood based products. Its elements also contain compliance aspects related to environmental protection, social obligations, occupational health and safety, and forest management. As a consequence, its requirements will help to meet the requirements for legality of timber on the demand side, specified in public procurement policies or mandated in 'due diligence' or 'due care' concepts by the private sector or governments.

## STRUCTURE OF THE PRINCIPLES AND CRITERIA

Each Principle is described by an explanatory sentence and specified by generic Criteria.

The *ASEAN Standard for Legality of Timber* has six Principles, which include requirements concerning:

- Principle 1.** Rights to harvest timber on state-owned land and/ or privately-owned land
- Principle 2.** Forest management, including compliance with applicable environmental, labour and social regulations
- Principle 3.** Business operations, payment of taxes, royalties and fees
- Principle 4.** Timber processing
- Principle 5.** Trade, transport, import and export
- Principle 6.** Traceability along the production and processing chain.

## DEFINITIONS

While acknowledging the national circumstances in AMS, the following definitions are adapted from FAO's Forest Resource Assessment 2015.

*Chain-of-Custody:* refers to 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 market, including all successive stages of processing, transformation, and distribution.

*Conversion forest* refers to the clearing of natural forests (deforestation) to use the land for another purpose, often agricultural (growing crops like palm oil or creating pasture for cattle), but also for mines, infrastructure or urbanisation.

*Customary tenure:* refers to a set of rules and norms that govern community allocation, use, access, and transfer of land, forest and other natural resources. The term "customary tenure" invokes the idea of "traditional, native or indigenous" access and use rights to land, forest and other natural resources.

*Forest:* refers to land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use.

*Operator (including operator's contractor and subsequent sub-contractor):* refers to individual, community, organization or entity legally registered, licensed and/ or approved by the applicable authorities to conduct the defined activities in the supply chain as required by law.

*Privately-owned land:* refers to land owned by individuals, families, communities, private co-operatives, corporations and other business entities, private religious and educational institutions, pension or investment funds, NGOs, nature conservation associations and other

private institutions. It can include areas allocated as conversion, plantation, community or village forest land.

*State-owned land:* refers to land owned by the State; or administrative units of the Public Administration; or by institutions or corporations owned by the Public Administration. It can include areas such as production forest, conversion forest, plantation forest, community or village forest land.

Timber processing refers to activity to transform logs into new products. It includes sawmilling, wood, paper and furniture product manufacturing.

*Traceability:* refers to the ability to trace the history, application or location of an item or activity by means of recorded identifications. This involves two main aspects: on the one hand, identification of the product by marking; and, on the other, the recording of data regarding the product all the way along the production, processing and distribution chain.

## Annex 1. ASEAN Standard for Legality of Timber

### **Principle 1. Rights to harvest timber on state-owned land and/ or privately-owned land**

*The legal status of the state-owned and privately-owned land shall be clearly defined and boundaries delineated. On state-owned land, Operator shall prove that they hold authorisation or have a validly obtained applicable permit to operate within the allocated land. On privately-owned land, Operator shall prove legal ownership and rights to utilize forest resources within the land.*

#### **(i) On state-owned land**

**Criterion 1.1.** Operator has legal authorisation or permit to conduct forestry-related business within a delineated, allocated state-owned land in accordance with the requirements of the country where it operates.

#### **(ii) On privately-owned land**

**Criterion 1.3.** Operator has legal ownership and/or has the rights to utilise forest resources on the delineated privately-owned land.

### **Principle 2. Forest management, including compliance with applicable environmental, labour and social regulations**

*Operator shall demonstrate compliance with the applicable laws and regulations concerning of a forest management operation.*

**Criterion 2.1.** Operator implements mitigation measures to minimize adverse environmental and social impacts resulting from forestry activities in their areas.

**Criterion 2.2.** Operator implement measures to reduce the risk of any unauthorized activities within the allocated area.

**Criterion 2.3.** Operator complies with restriction on harvesting of nationally protected species and applicable provisions as specified in the licence/permit document.

**Criterion 2.4.** Operator recognises the rights of employees and meets requirements of occupational health and safety in forest management.

### **Principle 3. Business operations, payment of taxes, royalties and fees**

*Operator consistently makes all due payments of obligatory taxes, fees and/or royalties associated with maintaining the legal right to harvest and with harvesting, processing and trading activities.*

**Criterion 3.1.** Operator has paid all applicable and legally prescribed fees, royalties, taxes and other charges directly relating to timber harvesting, importing, processing and trade to the appropriate authority in a timely manner, as documented through clear evidence.

### **Principle 4. Timber processing**

*Operator shall demonstrate compliance with the applicable laws and regulations for timber processing and other wood-based products..*

**Criterion 4.1.** Operator has legal authorisation or permit to process timber and other wood-based products, where applicable.

**Criterion 4.2.** Operator implements mitigation measures to minimize adverse environmental impacts resulting from timber processing.

**Criterion 4.3.** Operator process timber and other wood-based products must processed such wood product within it's the plants daily rated capacity and annual log requirements.

**Principle 5. Trade, transport, import and export**

*Operator shall prove that it is formally registered with applicable government authorities or that it has obtained applicable permit(s) to trade, transport, import and export timber and wood-based products. Operator shall demonstrate compliance with the applicable laws and regulations concerning transport, trade, import and export procedures.*

**Criterion 5.1.** Operator has legal authorisation or permit to trade, transport, import and export of timber and wood-based products.

**Criterion 5.2.** Operator complies with applicable legal requirements and procedures concerning trade and transport of timber and wood-based products.

**Criterion 5.3.** Operator complies with regulations on customs procedures for import and export of timber and wood-based products, including requirements of CITES.

**Criterion 5.4.** Operator requests their international suppliers to provide information that allow them to verify the legality of imported timber and wood-based products.

**Principle 6. Traceability along the production and processing chain.**

*Operator shall demonstrate compliance with applicable legal sourcing reference / traceability requirements for wood-based products along the production and processing chain.*

**Criterion 6.1.** Operator applies applicable legal sourcing reference / traceability along the production and processing chain requirements for wood-based products to ensure that its origin can be referred to/traced along the supply chain through a system of documentation or marking, and in this way controls the risk of mixing verified legal and non-verified timber sources in the wood-based products.