

Timber Legality Risk Assessment Canada

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COUNTRY RISK
ASSESSMENTS



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The original document of FSC can be accessed here <https://ic.fsc.org/en/document-center>.

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B. Overview of legality risks

Timber Risk Score: 100 / 100 in 2017

This report contains an evaluation of the risk of illegality in Canada for five categories and 21 sub-categories of law. We found:

- Specified risk for 0 sub-categories.
- Low risk for 20 sub-categories.
- No legal requirements for 1 sub-category.

The Timber Risk Score for Canada is 100 out of 100, and no legality risks have been identified in this report.

This table summarises the findings of the timber legality risk assessment.

Legal Category	Sub-Category	Risk conclusion
		All forest
Legal rights to harvest	1.1 Land tenure and management rights	Low
	1.2 Concession licenses	Low
	1.3 Management and harvesting planning	Low
	1.4 Harvesting permits	Low
Taxes and fees	1.5 Payment of royalties and harvesting fees	Low
	1.6 Value added taxes and other sales taxes	Low
	1.7 Income and profit taxes	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Low
	1.9 Protected sites and species	Low
	1.10 Environmental requirements	Low
	1.11 Health and safety	Low
	1.12 Legal employment	Low
Third parties' rights	1.13 Customary rights	Low
	1.14 Free prior and informed consent	NA
	1.15 Indigenous/traditional peoples rights	Low
Trade and transport	1.16 Classification of species, quantities, qualities	Low
	1.17 Trade and transport	Low
	1.18 Offshore trading and transfer pricing	Low
	1.19 Custom regulations	Low
	1.20 CITES	Low
	1.21 Legislation requiring due diligence/due care procedures	Low

C. Overview of the forest sector in Canada

Nearly 90 per cent of Canada's forests are on public lands, owned and managed on behalf of Canadians by the provincial and territorial governments. Almost two per cent of forest land is under federal jurisdiction and two per cent is owned and managed by Aboriginal peoples. The remaining six per cent of forest land is on private property.

The federal government has legislative authority over forest resources where those resources affect, or are affected by, matters related to: the national economy, trade and international relations; federal lands and parks; and the government's constitutional, treaty, political and legal responsibilities for Aboriginal peoples.

The country's ten provinces and three territories (the territory of Nunavut has little to no forested lands) who own close to 90 per cent of Canada's forest land, have legislative authority over the conservation and management of forest resources on these public lands. This authority affords the provincial and territorial governments the ability to regulate and enforce how Canada's forests are managed.

Detailed files on all applicable legislation for each province, as well as forest classifications, permit types and how timber monitoring is done is available at <http://www.sfmcanada.org/en/forest-products/legal-forest-products>.

Canada is internationally recognized as a leader in forest governance. A very recent (Sept 2014) guideline prepared and endorsed by the Australian and Canadian Governments recognizes Canada's legislative framework provides assurances that timber products from Canadian forests are of low risk of being illegally harvested. It specifies the probability of illegal logging throughout Canada is negligible. This guideline is intended to assist businesses importing regulated timber products from Canada into Australia in complying with the Australian Illegal Logging Prohibition Act 2012 (see <http://www.daff.gov.au/forestry/policies/illegal-logging/information-resources>)

A study entitled, "Global Environmental Forest Policies: Canada as a Constant Case Comparison of Select Forest Practice Regulations" by Dr. Cashore of Yale University in 2004 compared forest policy and regulations across 38 jurisdictions around the world and "... the regime of forest management and conservation in Canada, is, in the aggregate, one of the most advanced in the world." (see a summary at fpac.ca/publications/2004_HowCanadaCompares.pdf)

A study entitled, "Comparison of Selected Forest Certification Standards" by the Finnish research company Indufor Oy in 2009 compared forest legislation and forest certification schemes in 11 jurisdictions around the world and found "Canada (British Columbia and Ontario) and in Australia (New South Wales) are the countries with the most demanding legislation on the studied elements." Further, the study found that "...the strength of the legislation contributes to the strictness of the standard more than does the type of the standard (FSC or PEFC)."

Canada has a robust system of procedures to ensure that its forests are governed in the public interest. Several reports and studies have confirmed that Canada's forest management policies and practices are among the most stringent in the world:

- Currently, the Spanish Timber Importers' Association (AEIM) assesses Canada as a very low risk for illegal logging (see maderalegal.info/fichas)

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- In 2014, the World Resources Institute referred to Canada's record of the lowest prevalence of suspicious log supply and corruption of any country (see wri.org/sites/default/files/wri_report_4c_report_legalityguide_final320.pdf)
 - In 2013, Forest Trends reported Canada as a low risk supply country for timber imports into the EU (see forest-trends.org/documents/files/doc_4085.pdf)
 - In 2012, the World Business Council for Sustainable Development and the World Resources Institute reported that Canada has the lowest occurrence of suspicious log supply and corruption of any country (see sustainableforestproducts.org/Legality)
 - In 2010, the UK Timber Trade Federation classified Canadian wood products as low risk with respect to illegality, and rated our documentation as highly reliable (see Country Guidance: Canada, UK Timber Trade Federation).
 - In 2008, in a report prepared by Indufor for the European Commission DG Environment, it found that in Canada, the risk of illegal logging was considered low (see ec.europa.eu/environment/forests/pdf/ia_report.pdf).

Canada is a country that respects the rule of law. It consistently earns ratings as a jurisdiction with a very low incidence of corruption (see indices maintained by the World Bank and Transparency International – currently 81/100, or 9th in the world). Findings by organizations in Canada's export markets also indicate that Canadian wood products are of negligible risk with respect to illegality.

The risk of illegal logging is negligible in all regions of Canada because of its forest governance framework. Details of this governance framework can be found at: <http://www.sfmcanada.org/en/forest-products/legal-forest-products>

D. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

(Forestry is mostly a provincial jurisdiction in Canada)

Land use laws for all provinces.

Land use rights on public land:

- In all provinces, public industrial forest leases/concessions (called forest tenures in the rest of this document) are co-managed to varying degrees together by the ministry of natural resources of each province and the tenure holder. The vast majority of productive forest land is public (Crown) land that is administered by provincial natural resource agencies but leased to large forest products corporation.

Ownership of Private Lands:

- Only 7% of Canada's forests are privately owned. Timber companies in some provinces own large tracts of forest (for example, in Nova Scotia, New Brunswick and British Columbia). The rest of the private forest land base is divided primarily among thousands of small family-owned forests and woodlots located across Canada. The stereotypical private woodlot is a rural resident's 5-75 hectares of forest land that may be used for hunting, berry-picking, maple syrup production, aesthetic enjoyment and other non-fibre uses in addition to moderate or occasional timber harvesting. The minority of woodlot owners that are interested in economic returns from fibre management are organized into formal woodlot owner associations, marketing boards and joint ventures.

1.1.2. Legal authority

For public land:

- Regulated and managed at the provincial level via the ministry of forests.

For Private land:

- Land title and registries are registered with provincial registry offices, and an assessment of property value takes place which determines the property tax rate.

1.1.3. Legally required documents or records

- Forest tenure contracts for public land.

- Ownership titles for private lands. Online records of allocated tenures exist in most provinces.

1.1.4. Sources of information

Government sources

- Natural Resources Canada, (2016). *Legality and sustainability*. [online] Available at: <http://www.nrcan.gc.ca/forests/canada/sustainable-forest-management/13303>
- Example: Ontario Forest Tenure Modernization Act, 2011, S.O. 2011, c.10. Available at: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_11o10_e.htm
- Nogueron, R. and Cheung, L. (N.Y) *Sourcing legally produced wood*. [online]. World Resource Institute. Available at: http://www.wri.org/sites/default/files/wri_report_4c_report_legalityguide_final320.pdf
- Example: British Columbia Forest Act part 3 Disposition of Timber by the Government, Division 1 — Forms of Rights to Crown Timber. Available at: http://www.bclaws.ca/Recon/document/ID/freeside/96157_03#part3_division8.2

Non-Government sources

- Beckley, T. M. (1998). Moving toward consensus-based forest management: A comparison of industrial, co-managed, community and small private forests in Canada. *The forestry chronicle*, 74(5), 736-744.
- National Council for Air and Stream Improvement, Inc. (NCASI), (2014). Compilation of Canadian provincial and federal regulations relevant to forest management activities. Special Report No. 14-03. [online] Research Triangle Park, N.C.: National Council for Air and Stream Improvement, Inc. Available at: www.ncasi.org/Downloads/Download.ashx?id=9485

1.1.5. Risk determination

Overview of legal requirements

Canada has established an extensive and rigorous system of forest governance to prevent abuses with regards to land tenure and ownership. Ontario, for example, adopted the Ontario Forest Tenure Modernization Act in 2011. This act is modernizing the system that governs Crown forest management and how companies get wood. This law was elaborated collaboratively with Aboriginal people and stakeholders.

Communities and individuals holding customary rights will often have resources to have their rights respected in forest management. Be it through municipalities, associations or federations like those of trappers and hunters, right holders have the means to see the legislation being applied when it comes to the protection of their rights inside public forests in Canada.

Description of risk

In 2014, the World Resources Institute referred to Canada's record of the lowest prevalence of suspicious log supply and corruption of any country. A low level of corruption coupled with

strong tenure governance systems throughout the country means a low risk of illegally obtained forest licenses or tax exemptions.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.1.6. Risk designation and specification

Low risk

1.1.7. Control measures and verifiers

N/A

1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

1.2.1. Applicable laws and regulations

- All provinces have relatively similar legislation and procedures for allocating forest tenures. The conditions often entail the creation or maintenance of some production facility within or adjacent to the area covered by the licence or agreement, and some responsibility for forest management within the same area.
- Many different provincial forest tenure types exist, though two predominate on provincial Crown forest land: One generally takes the form of a longer-term, area-based agreement which delegates considerable management responsibilities to tenure holders, whereas the second type is usually of shorter duration, volume-based, and delegates fewer management responsibilities to tenure holders. Tenures of the first type are frequently held by large, integrated or pulp producing companies, while those of the second type are often held by smaller non-integrated logging and/or sawmilling enterprises.
- The more comprehensive, long-term tenures have various titles, such as: Unités d'aménagement (UA) in Québec (under Québec Sustainable Forest Development Act, A-18.1), Tree Farm Licences (TFLs) in British Columbia, Forest Management Agreements (FMAs) in Alberta, Sustainable Forest Licences (SFL) in Ontario, Forest Management Licence Agreements (FMLAs) in Saskatchewan, and Forest Management Licences (FMLs) in Manitoba. Both tenure types allow firms to harvest timber under certain conditions (stated above).

1.2.2. Legal authority

- Provincial ministry in charge of forests.

1.2.3. Legally required documents or records

- Forest tenure contract.

1.2.4. Sources of information

Government sources

- Criteria and indicators framework, (2005). [Graphic from: Criteria and indicators of sustainable forest management in Canada. National Status 2005.] 2006. [online] Canadian Council of Forest Ministers, Ottawa. 1 p. Available at: <http://cfs.nrcan.gc.ca/publications?id=32560>
- (Example) Ontario Forest Tenure Modernization Act, 2011, S.O. 2011, c.10. Available at: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_11o10_e.htm
- (Example) British Columbia Forest Act, Part 3 (Disposition of Timber by the Government), Division 1 (Forms of Rights to Crown Timber). Available at: http://www.bclaws.ca/Recon/document/ID/freeside/96157_03#part3_division8.2
- (Example) The British Columbia Ministry of Forests, Lands and Natural Resource Operation, (2012). Timber Tenures in BC. [online] The British Columbia Ministry of Forests, Lands and Natural Resource Operation, pages 14-16. Available at: <https://www.for.gov.bc.ca/ftp/hth/external/!publish/web/timber-tenures/timber-tenures-2006.pdf>
- National Council for Air and Stream Improvement, Inc. (NCASI), (2014). Compilation of Canadian provincial and federal regulations relevant to forest management activities. Special Report No. 14-03. [online] Research Triangle Park, N.C.: National Council for Air and Stream Improvement, Inc. Available at: www.ncasi.org/Downloads/Download.ashx?id=9485

Non-Government sources

- Beckley, T. M. (1998). Moving toward consensus-based forest management: A comparison of industrial, co-managed, community and small private forests in Canada. *The forestry chronicle*, 74(5), 736-744.

1.2.5. Risk determination

Overview of Legal Requirements

Most timber harvest in Canada occurs on public land, where tenure rights are required. Forest tenures, along with forest legislation and regulations, help Canada's jurisdictions ensure that Crown forests are managed responsibly and that forest companies remain accountable to Canadians.

Description of risk

In 2014, the World Resources Institute referred to Canada's record of the lowest prevalence of suspicious log supply and corruption of any country. A low level of corruption coupled with

strong tenure governance systems throughout the country means low risk of obtaining forest licenses or tax exemptions illegally.

Competition for forest concession is high amongst forest industrials. The number of players also ensure a certain degree of scrutiny of the forest license allocation process.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.2.6. Risk designation and specification

Low risk

1.2.7. Control measures and verifiers

N/A

1.3. Management and harvesting planning

Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.

1.3.1. Applicable laws and regulations

- Forestry property rights have evolved differently across provincial jurisdictions, resulting in a mix of tenure arrangements across the country. However, the majority of Crown forest land is held in what are referred to as volume-based or area-based tenure agreements. Volume-based tenures allow companies to harvest a certain volume of timber from a broadly defined area, whereas area-based tenures require tenure holders to prepare forest management plans in return for the right to harvest timber over a specific land base.
- Private land is often also subject to requirements with regards to forest management in Canada. The regulator in those cases is usually the municipal government.

1.3.2. Legal authority

- Provincial ministry in charge of forests.
- Municipalities with by-laws covering forest management activities.

1.3.3. Legally required documents or records

- Forest tenure contracts.
- Publicly available forest management plans.
- Private land titles.

1.3.4. Sources of information

Government sources

- Criteria and indicators framework, (2005). [Graphic from: Criteria and indicators of sustainable forest management in Canada. National Status 2005.] 2006. [online] Canadian Council of Forest Ministers, Ottawa. 1 p. Available at: <http://cfs.nrcan.gc.ca/publications?id=32560>
- Natural Resources Canada, (2016). *Legality and sustainability*. [online] Available at: <http://www.nrcan.gc.ca/forests/canada/sustainable-forest-management/13303>
- (Example) The British Columbia Ministry of Forests, Lands and Natural Resource Operation, (2012). Timber Tenures in BC. [online] The British Columbia Ministry of Forests, Lands and Natural Resource Operation, pages 14-16. Available at: <https://www.for.gov.bc.ca/ftp/hth/external!/publish/web/timber-tenures/timber-tenures-2006.pdf>
 - Australian Government and Government of Canada, (N.Y.). *Country specific guidelines for Canada*. [pdf] Australian Government and Government of Canada. Available at: http://www.agriculture.gov.au/Style%20Library/Images/DAFF/_data/assets/pdffile/003/2406072/canada-country-specific-guideline.pdf
 - Sfmcanada.org, (N.Y) *Canada's Legal Forest Products*. [online] Available at: <http://www.sfmcanada.org/en/forest-products/legal-forest-products>
- National Council for Air and Stream Improvement, Inc. (NCASI), (2014). Compilation of Canadian provincial and federal regulations relevant to forest management activities. Special Report No. 14-03. [online] Research Triangle Park, N.C.: National Council for Air and Stream Improvement, Inc. Available at: www.ncasi.org/Downloads/Download.ashx?id=9485

1.3.5. Risk determination

Overview of Legal Requirements

Forest management on private lands is primarily governed by provincial and municipal regulations and guidelines. Some provinces have laws that set standards for forest management practices on private lands, and many private landowners have forest management plans and participate in government programs to guide their stewardship and harvesting activities.

Provinces in which harvesting on private land for commercial purposes is more common, often put in place legislation to regulate this activity. For example, the province of British Columbia has the Private Managed Forest Lands Act, the province of New Brunswick has the Natural Products Act which includes the development, conservation and management of forest resources on private woodlots and the Scalers Act in Nova Scotia applies to both public and private lands. Most provinces have regulatory mechanisms in place to track timber harvested from private lands so that it can be differentiated from public timber (for which royalties must be paid). These mechanisms include regulations for timber scaling, timber marking and transportation. In provinces where there are no specific statutes related to

forest harvesting on private lands, landowners can rely upon laws of general application to protect their property from trespass or timber theft.

Failure by a tenure holder to comply with approved plans and harvesting permits can result in stiff penalties, from fines or the suspension of harvesting authorities to seizure of timber and even imprisonment.

Description of Risk

Provincial forest authorities (ministries of forests) have established offices in the forested regions of the provinces. These offices have inspectors with capacity (GPS equipment, maps, 4x4 vehicles, ATVs and other vehicles) and authority to sanction forest operators if they do not respect the forest management as planned. Inspectors have the power to issue fines or suspend operations if they detect management outside of what was planned.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.3.6. Risk designation and specification

Low risk

1.3.7. Control measures and verifiers

N/A

1.4. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

- Provincial forest acts and other related documents regulating forest management, forest road construction, water crossings, etc.
- Federal laws that apply to all forestry operations: While the provinces and territories have authority over the management of most forested land in their jurisdictions, forestry operations are also bound by national legislation. The comprehensive laws and regulations enforced by the provinces and territories are therefore designed to address

the requirements of federal legislation relevant to forests, such as the Species at Risk Act, the Fisheries Act and the Canadian Environmental Assessment Act.

- Forestry activities must also comply with international agreements Canada has signed, such as the Convention on Biological Diversity and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

1.4.2. Legal authority

- Provincial ministries of the environment, of forests and natural resources.

Legal authority for federal laws applicable to forest harvesting:

- Minister responsible for the Parks Canada Agency
- Minister of Fisheries and Oceans with respect to aquatic species
- Minister of the Environment

1.4.3. Legally required documents or records

- Province issued harvesting permits.
- Private forest landowners do not require permits for harvesting on their lands.

1.4.4. Sources of information

Government sources

- Natural Resources Canada, (2016). *Legality and sustainability*. [online] Available at: <http://www.nrcan.gc.ca/forests/canada/sustainable-forest-management/13303>
- National Council for Air and Stream Improvement, Inc. (NCASI), (2014). Compilation of Canadian provincial and federal regulations relevant to forest management activities. Special Report No. 14-03. [online] Research Triangle Park, N.C.: National Council for Air and Stream Improvement, Inc. Available at: www.ncasi.org/Downloads/Download.ashx?id=9485
- (Example Quebec) Sustainable Forest Development Act section VI Droits Forestiers, line 73. Available at: <https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-18.1/latest/cqlr-c-a-18.1.html>
- (Example on conditions for obtaining harvesting permits in British Columbia) British Columbia Forest Act part 3 Disposition of Timber by the Government, Division 1 — Forms of Rights to Crown Timber. Available at: http://www.bclaws.ca/Recon/document/ID/freeside/96157_03#part3_division8.2
- (Example British Columbia) Forest Act, Licence to cut regulation. Available at: http://www.bclaws.ca/Recon/document/ID/freeside/221_2006

Non-Government sources

- Transparency.org, (2016). Corruption Perceptions Index 2016. [online] Available at: <http://cpi.transparency.org/cpi2013/results/>

1.4.5. Risk determination

Overview of Legal Requirements

Each provincial and territorial jurisdiction closely monitors the companies operating in public forests, and require formal reporting on their activities. As well, the provinces and territories use systems of checks and controls to track the timber that is removed from these lands. Provincial government agencies responsible for enforcement conduct compliance audits. Where there is evidence of any contraventions, more detailed investigations may be carried out.

Enforcement activities may lead to the issuance of warnings, tickets, fines or other penalties. The most serious infractions are prosecuted through the court system.

Description of Risk

On private lands, discouraging illegal and unsustainable activities is done through landowners and nearby communities who tend to be diligent about monitoring activities in private forests because those forests provide sources of income, employment, recreational opportunities and important ecological benefits. In provinces without statutes related to forest harvesting on private lands, landowners can rely on general civic or commercial law to protect their property from trespass or timber theft.

Canada has a very good Corruption Perception Index (82), as measured by Transparency International (2016).

Corruption associated with timber sales and harvest permits in Canada is rarely an issue.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.4.6. Risk designation and specification

Low risk

1.4.7. Control measures and verifiers

N/A

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.

1.5.1. Applicable laws and regulations

- Canadian forests exist mainly on what is considered to be crown land, under the provincial governments' control. Legislation dictates the fees that Canadian firms will pay for stumpage, and long-term agreements are reached regarding the management and harvesting performed on crown land. These long term agreements, called tenures, commonly involve 20 year concessions, with "rolling renewable" provisions, whereby the firm is capable of retaining a given management area. Crown forest tenures confer the right to harvest timber. In return, tenure holders must pay different types of fees to the Crown, including stumpage fees, holding or rental charges, and protection or management fees.
- Provincial forest acts usually cover the payment of stumpage and other harvesting fees.
- Some provinces such as British Columbia have a separate logging tax act.
- Federal and Provincial tax policies.

1.5.2. Legal authority

- Provincial ministers of forests.

1.5.3. Legally required documents or records

- Stumpage and other fee payment receipts, including fire and insect protection fee receipts.

1.5.4. Sources of information

Government sources

- Quebec Forest Act 1986. Available at: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/F_4_1/F4_1.html
- (Example Quebec) Sustainable Forest Management Act section VI Droits forestiers. Available at: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/A_18_1/A18_1.html
- (Example) British Columbia Logging Tax Act 1996. Available at: http://www.bclaws.ca/civix/document/id/complete/statreg/96277_01
- (Example) Crown Forest Sustainability Act 1994, Section V. Available at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_94c25_e.htm#BK54

Non-Government sources

- Transparency.org, (2016). Corruption Perceptions Index 2016. [online] Available at: <http://cpi.transparency.org/cpi2013/results/>

1.5.5. Risk determination

Overview of Legal Requirements

Royalties and harvesting fees (also called stumpage fees in Canada) are applicable to Crown land. They are administered at the provincial level. Provincial agencies who administer stumpage fees have well developed programs for regulating timber and timber harvest. Provincial government inspectors verify and validate, often through sampling, the grading and measuring made by the company. Errors are sanctioned with penalties.

Description of Risk

Corruption associated with stumpage and harvest permits in Canada is rarely an issue. Canada has a very good Corruption Perception Index (82), as measured by Transparency International (2016). Also, the relative low diversity of commercial species, which is typical of the temperate and boreal forests, reduces the risk of voluntary or involuntary errors in the determination of the stumpage.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.5.6. Risk designation and specification

Low risk

1.5.7. Control measures and verifiers

N/A

1.6. Value added taxes and other sales taxes

Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.6.1. Applicable laws and regulations

- The Income Tax Act ("ITA") and Excise Tax Act ("ETA") govern the CRA's ability to collect income tax debts and HST debts, respectively.
- The Harmonized Sales Tax (HST) is a consumption tax in Canada. It is used in provinces where both the federal Goods and Services Tax (GST) and the regional Provincial Sales Tax (PST) have been combined into a single value added sales tax.
- Canadian and provincial tax legislation.

- Sales taxes are administered both at the federal and the provincial level.
- Companies in Canada charge HST, GST and PST to their clients, and companies themselves pay HST, GST sales taxes on their business purchases. Companies file a return showing the amount they collected in sales taxes but they also get a credit for the amount they paid on their own business purchases.

1.6.2. Legal authority

- The HST is in effect in five of the ten Canadian provinces: Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island.
- The HST is collected by the Canada Revenue Agency, which remits the appropriate amounts to the participating provinces. The HST may differ across these five provinces, as each province will set its own PST rates within the HST.
- In Quebec, Revenu Québec administers the GST/QST (Québec Sales Tax).

1.6.3. Legally required documents or records

- Tax payment receipts.
- Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return Working Copy: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/bspsbch/rtrns/wkcpy-eng.html>

1.6.4. Sources of information

Government sources

- Canada Revenue Agency, (2016). *GST/HST for businesses*. [online] Available at: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/menu-eng.html>
- Revenu Quebec, (2015). *Consumption Taxes*. [online] Available at: http://www.revenuquebec.ca/en/entreprise/taxes/tvq_tps/
- Canada Revenue Agency, (2016). *Criminal investigations actions, charges, and convictions*. [online] Available at: <http://www.cra-arc.gc.ca/nwsrm/cnvctns/menu-eng.html>

1.6.5. Risk determination

Overview of Legal Requirements

Sales tax collection and remittance fraud in Canada happens primarily in cash transactions. The CRA has a Criminal Investigations Program whose mandate is to investigate suspected cases of tax evasion, fraud and other serious violations of tax laws. Tax fraud and evasion represent the most flagrant instances of non-compliance with tax statutes.

Data specifically for the forest sector is not available. Information on the monitoring and enforcement of tax laws in Canada is general is available. The Canada Revenue Agency (CRA) has taken measures to detect and prevent tax evasion. The Informant Leads Program gathers information on suspected or known tax evaders. Informants can report information online, by mail or by phone. The CRA has a Criminal Investigations Program whose mandate is to investigate suspected cases of tax evasion, fraud and other serious violations of tax laws.

Every corporation, estate, trust, or individual who has to pay taxes is required by law to determine their taxes payable for the year and to file a tax return. Tax audits are conducted to verify that these amounts are accurately reported, and the tax payable is correctly calculated.

Description of Risk

In 2013, there were 27.8 million tax returns filed in Canada. Of these, 25% were assessed by the Canada Revenue Agency, 36% were assessed in 2013. The audit process ensures that Canada's tax system is fair, and that everyone pays their required share.

Audit workloads are segregated into three broad categories: International and Large Businesses (ILB), Small and Medium Enterprises (SME), and GST/HST. 2012-13 Key Results:

- International and Large Businesses (ILB): completed 21,427 files and reassessed 85% of the files audited
- Small and Medium Enterprises (SME): completed 171,028 files and reassessed 79% of the files audited
- GST/HST: CRA completed 89,409 GST/HST audits, reassessed 67% of the files audited

During 2012-2013, 71 income tax and GST/HST investigations were referred to the Public Prosecution Service of Canada (PPSC) for prosecution, compared to 120 cases in the previous year. As a result of referrals to the PPSC (current and previous years), 128 cases resulted in convictions for tax evasion or fraud in 2012-2013. The courts imposed \$9.95 million in fines and 53.5 years of jail sentences. These convictions related to revenue loss of \$32.6 million. The CRA obtained convictions in 96% of cases prosecuted.

The Ministère du Revenu du Québec, on behalf of Canada Revenue Agency, referred 27 GST investigation cases for prosecution and, based on these and previous year referrals, Quebec courts convicted individuals and businesses in 58 cases, and imposed \$3.1 million in fines. Quebec GST convictions related to revenue loss of \$4.4 million.

Court convictions are publicized in local, regional and national media to communicate the consequences of fraud committed against the Canadian public and to maximize the deterrent effect of these convictions.

CRA is responsible for excise tax act (ETA), which lays out all the rules for HST GST. The CRA conducts compliance collection audits to ensure compliance with the ETA. The Criminal Investigations Program investigates instances of tax evasion and refers cases to the Public Prosecution Service of Canada.

Given the scale of the timber industry in Canada, it is extremely unlikely that wood products would be exchanged between companies as cash transactions. This means that sales tax fraud is less likely in the forestry context. Given the above statistics relate to all tax fraud in Canada and there is no information available that would indicate the timber industry is more at risk than another industry, it is concluded that the risk must be considered low in this sub criteria

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.6.6. Risk designation and specification

Low risk

1.6.7. Control measures and verifiers

N/A

1.7. Income and profit taxes

Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.

1.7.1. Applicable laws and regulations

- Federal Income Tax Act, Part 1.
- Provincial income tax laws
- Income and profit taxes are levied at the federal and provincial level (in Quebec only), and administered by the Canada Revenue Agency and Revenu Québec

1.7.2. Legal authority

- Canadian Revenue Agency
- Revenu Québec

1.7.3. Legally required documents or records

- Federal T2 Corporation Income Tax Return
- Provincial income tax returns

1.7.4. Sources of information

Government sources

- Canadian Income Tax Act 1985. Available at: <http://laws.justice.gc.ca/eng/acts/I-3.3/>
- Canada Revenue Agency, (2017). *Cooperation income tax return*. [online] Available at: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/crprtns/rtrn/menu-eng.html>
- Canada Revenue Agency, (2016). *Criminal investigations actions, charges, and convictions*. [online] Available at: <http://www.cra-arc.gc.ca/nwsrm/cnvctns/menu-eng.html>
- Canada Revenue Agency, (2016). *Individual income tax return statistics for the 2017 tax-filling season*. [online] Available at: <http://www.cra-arc.gc.ca/nwsrm/t1stts-eng.html>

Non-Government sources

- Intuit TurboTax, (N.Y). *Penalty for tax evasion in Canada*. [online] Available at: <http://turbotax.intuit.ca/tax-resources/tax-compliance/penalty-for-tax-evasion-in-canada.jsp>

1.7.5. Risk determination

Overview of Legal Requirements

Income and profit taxes are levied at the federal and provincial level (in Quebec only), and administered by the Canada Revenue Agency and Revenu Québec. Federal and provincial revenue agencies control fraud by conducting tax audits.

Data on instances of fraud and enforcement specifically for the forest sector is not available. Information on the monitoring and enforcement of tax laws in Canada is generally available. The Canada Revenue Agency (CRA) has taken measures to detect and prevent tax evasion. The Informant Leads Program gathers information on suspected or known tax evaders. Informants can report information online, by mail or by phone. The CRA has a Criminal Investigations Program whose mandate is to investigate suspected cases of tax evasion, fraud and other serious violations of tax laws.

Tax fraud and evasion represent the most flagrant instances of non-compliance with tax statutes. Every corporation, estate, trust, or individual who has to pay taxes is required by law to determine their taxes payable for the year and to file a tax return. Tax audits are conducted to verify that these amounts are accurately reported, and the tax payable is correctly calculated.

Description of Risk

In 2013, there were 27.8 million tax returns filed in Canada. Of these, 25% were assessed by the Canada Review Agency, 36% were assessed in 2013. The audit process ensures that Canada's tax system is fair, and that everyone pays their required share.

Audit workloads are segregated into three broad categories: International and Large Businesses (ILB), Small and Medium Enterprises (SME), and GST/HST. 2012-13 Key Results:

- International and Large Businesses (ILB): completed 21,427 files and reassessed 85% of the files audited
- Small and Medium Enterprises (SME): completed 171,028 files and reassessed 79% of the files audited
- GST/HST: CRA completed 89,409 GST/HST audits, reassessed 67% of the files audited

During 2012-2013, 71 income tax and GST/HST investigations were referred to the Public Prosecution Service of Canada (PPSC) for prosecution, compared to 120 cases in the previous year. As a result of referrals to the PPSC (current and previous years), 128 cases resulted in convictions for tax evasion or fraud in 2012-2013. The courts imposed \$9.95 million in fines and 53.5 years of jail sentences. These convictions related to revenue loss of \$32.6 million. The CRA obtained convictions in 96% of cases prosecuted. The Ministère du Revenu du Québec, on behalf of Canada Revenue Agency referred 27 GST investigation cases for prosecution and, based on these and previous year referrals, Quebec courts convicted individuals and businesses in 58 cases, and imposed \$3.1 million in fines. Quebec GST convictions related to revenue loss of \$4.4 million.

Court convictions are publicized in local, regional and national media to communicate the consequences of fraud committed against the Canadian public and to maximize the deterrent effect of these convictions.

Many forest companies are large corporations with public financial reports available. Given the above statistics relate to all tax fraud in Canada and there is no information available that would indicate the timber industry is more at risk than another industry, it is concluded that the risk must be considered low in this sub criteria.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.7.6. Risk designation and specification

Low risk

1.7.7. Control measures and verifiers

N/A

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.

1.8.1. Applicable laws and regulations

- The 10 different forest acts (one for each province) in effect in Canada include comprehensive sets of regulations covering the items identified in the sub criteria.
- Federal laws also apply to all forestry operations: While the provinces and territories have authority over the management of most forested land in their jurisdictions, forestry operations are also bound by national legislation. The comprehensive laws and regulations enforced by the provinces are therefore designed to address the requirements of federal legislation relevant to forests, such as the Species at Risk Act, the Fisheries Act and the Canadian Environmental Assessment Act.
- Forestry activities must also comply with international agreements Canada has signed, such as the Convention on Biological Diversity and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These are all translated into provincial laws.

1.8.2. Legal authority

- Regulated at the provincial level by each province's forestry services (Ministry of Forests).
- Each province's Ministry of Transport
- Provincial and Federal Ministries of Environment.

1.8.3. Legally required documents or records

- Provincial cut permits
- Provincial government approved management plan
- Wood transport slips

1.8.4. Sources of Information

Government sources

- Natural Resources Canada, (2016). *Legality and sustainability*. [online] Available at: <http://www.nrcan.gc.ca/forests/canada/sustainable-forest-management/13303>
- (Example Quebec) *Règlement sur les normes d'intervention dans les forêts du domaine de l'État*. (Regulation respecting standards of forest management for forests in the

domain of the State, chapter A-18.1, r.7) Available at:

<https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-18.1/latest/cqlr-c-a-18.1.html>

- Forêts, Faune et Parcs Quebec, (2016). *Règlement sur les normes d'intervention dans les forêts du domaine de l'État*. [online] Available at: <http://www.mffp.gouv.qc.ca/forets/amenagement/amenagement-RNI.jsp>
- (Example Ontario) Crown Forest Sustainability Act 1994, Part 4. Available at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_94c25_e.htm#BK54
- Ontario.ca, (2014). Forest operations and silvicultural manual. [online] Available at: <https://www.ontario.ca/environment-and-energy/forest-operations-and-silviculture-manual>

1.8.5. Risk determination

Overview of Legal Requirements

In all provinces where forest harvesting on public land is a significant economic activity (all except P.E.I), provincial forest authorities (ministries of forests) have established offices in the forested regions of the provinces. These offices have inspectors with capacity (GPS equipment, maps, 4x4 vehicles, ATVs and other vehicles) and authority to sanction forest operators if they do not respect timber harvesting regulations.

Description of Risk

While infractions with harvesting regulations can be relatively common, they will usually be minor in nature and rarely on purpose or systematic. Failure by a tenure holder to comply with approved plans and harvesting permits can result in stiff penalties, from fines or the suspension of harvesting authorities to seizure of timber and even imprisonment.

Provinces are transparent in the publishing of infractions with harvesting regulations. For example in Quebec those are available online:

<http://www.mffp.gouv.qc.ca/forets/infractions/>

British Columbia Compliance and Enforcement annual reports:

<http://www.for.gov.bc.ca/hen/reports.htm>

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.8.6. Risk designation and specification

Low risk

1.8.7. Control measures and verifiers

N/A

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

- Over 95% of the protected areas in Canada are in IUCN categories 1 to 4, which means these are strictly protected and there will be no harvesting, mining or development activities in these areas.
- The provinces and territories generally designate protected areas in Canada, although there are also protected areas on federal lands, such as national parks and migratory bird sanctuaries. It is also becoming more common now to see protected areas created by communities who want to set aside and protect significant or cultural or spiritual aspects associated with their community.
- Canada Wildlife Act (CWA)
- Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act
- Migratory Birds Convention Act (MBCA)
- Parksville Protocol 1995
- Species At Risk Act (SARA)
- Canadian Environmental Assessment Act (CEAA)
- Wildlife Area Regulations (WAR)
- Migratory Bird Sanctuary Regulations (MBSR)

1.9.2. Legal authority

- Environment Canada
- Provincial Ministries of the environment
- Canadian Wildlife Service

1.9.3. Legally required documents or records

- Environment and Climate Change Canada, (2017). *Canada's Protected Areas*. [online] Available at: <https://www.ec.gc.ca/indicateurs-indicators/default.asp?lang=en&n=478A1D3D-1>

1.9.4. Sources of Information

Government sources

- Environment and Climate Change Canada, (2017). *Acts and Regulations*. [online] Available at: <http://www.ec.gc.ca/ap-pa/default.asp?lang=En&n=86E31D77-1>

- Canada Wildlife Act (CWA) 1985. Available at: <http://laws-lois.justice.gc.ca/eng/acts/W-9/>
- Environment and Climate Change Canada, (2017). *The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRITA)*. [online] Available at: <http://www.ec.gc.ca/alef-ewe/default.asp?lang=en&n=65FDC5E7-1>
- Migratory Birds Convention Act 1994 (MBCA). Available at: <http://laws-lois.justice.gc.ca/eng/acts/M-7.01/index.html>
- Species At Risk Act 2002 (SARA). Available at: <http://laws-lois.justice.gc.ca/eng/acts/S-15.3/index.html>
- Canadian Environmental Assessment Act 1992 (CEAA). Available at: <http://laws-lois.justice.gc.ca/eng/acts/C-15.2/index.html>
- Wildlife Area Regulations (WAR). Available at: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1609/index.html
- Migratory Bird Sanctuary Regulations (MBSR). Available at: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1036/index.html
- Parksville Protocol 1995.

Non-Government sources

- Iucn.org, (2017). *Protected Areas Categories*. [online] Available at: http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_pacategories/

1.9.5. Risk determination

Overview of Legal Requirements

Canada has a broad and comprehensive legal structure surrounding species protection and the protection of socially and ecologically important sites, administered at both the provincial and Federal level. Protection of wildlife and its habitat in protected areas is achieved through legal securement of land and regulation, permitting, enforcement, assessment and monitoring as prescribed in management plans.

Environment Canada works with Aboriginal peoples, communities, partner organizations and other governments and federal departments to enhance compliance and protection.

The Canadian Wildlife Service (CWS) has an enforcement branch employing sworn, armed Peace Officers, known as Game Officers. These officers are responsible for the enforcement of federal legislation with regards to wildlife and the environment. CWS game officers also work in cooperation with provincial wildlife enforcement agencies. Provincial wildlife officers will often team up with CWS officers to patrol areas which require a significant officer presence

Description of Risk

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.9.6. Risk designation and specification

Low risk

1.9.7. Control measures and verifiers

N/A

1.10. Environmental requirements

National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.

1.10.1. Applicable laws and regulations

- Assessment of environmental impacts of forestry operations is covered by provincial timber harvesting regulations.
- The 10 different forest acts (one for each province) in effect in Canada include comprehensive sets of regulations covering the items identified in the sub criteria.
- Forest acts are accompanied by practical on the ground regulations like Quebec's Règlement sur les Normes d'interventions, which cover environmental impacts such as buffer zones for watercourses and breeding sites, requirements for machineries, water crossings, etc.
- Federal laws also apply to all forestry operations: While the provinces and territories have authority over the management of most forested land in their jurisdictions, forestry operations are also bound by national legislation. The comprehensive laws and regulations enforced by the provinces are therefore designed to address the requirements of federal legislation relevant to forests, such as the Species at Risk Act, the Fisheries Act and the Canadian Environmental Assessment Act.

1.10.2. Legal authority

- Regulated at the provincial level by each province's forestry services (Ministry of Forests).
- Each province's Ministry of Transport
- Provincial and Federal Ministries of Environment.

1.10.3. Legally required documents or records

- Provincial cut permits
- Provincial government approved management plan

1.10.4. Sources of information

Government sources

- (Example Quebec) Règlement sur les normes d'intervention dans les forêts du domaine de l'État. Available at:
http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/A_18_1/A18_1R7.HTM
- Forêts, Faune et Parcs Quebec, (2016). *Règlement sur les normes d'intervention dans les forêts du domaine de l'État*. [online] Available at:
<http://www.mffp.gouv.qc.ca/forets/amenagement/amenagement-RNI.jsp>
- Ontario.ca, (2014). Forest operations and silvicultural manual. [online] Available at:
<https://www.ontario.ca/environment-and-energy/forest-operations-and-silviculture-manual>

1.10.5. Risk determination

Overview of Legal Requirements

Harvesting regulations and guidelines covering environmental impacts in each province are elaborated under the authority of the provincial forest acts. These rules and guidelines require the forest manager to assess and manage environmental impacts on soil, water, biodiversity, etc.

Provincial forest authorities (ministries of forests) have established offices in the forested regions of the provinces. These offices have inspectors with capacity (GPS equipment, maps, 4x4 vehicles, ATVs and other vehicles) and authority to sanction forest operators if they do not respect harvesting regulations.

Description of Risk

Failure by a tenure holder to implement environmental impact mitigation measures can result in stiff penalties, from fines or the suspension of harvesting authorities to seizure of timber and even imprisonment.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.10.6. Risk designation and specification

Low risk

1.10.7. Control measures and verifiers

N/A

1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- Canada is a model for health and safety in the workplace, and in forestry harvesting activities in particular. All provinces have very comprehensive legislation with regards to workers safety.
- On the federal level: Canada Labour Code

1.11.2. Legal authority

- For example, in Québec: Ministère de la Santé et des Services sociaux's, Commission de la Santé et de la Sécurité du Travail (CSST) and Commission des normes du travail.
- British Columbia: Ministry of Labour, Citizens' Services and Open Government's Worksafe BC.
- Safe Manitoba under the Department of Health, Healthy Living and Seniors

1.11.3. Legally required documents or records

- Proofs of contribution to premiums for CSST (Quebec), Worksafe BC, Alberta Workers compensation board and other provinces.

1.11.4. Sources of information

Government sources

- Worksafebc.com, (N.Y). *Part 26 Forestry Operations and Similar Activities*. [online] Available at: <http://www2.worksafebc.com/publications/ohsregulation/Part26.asp>
- Occupational Health and Safety Act 1996, Saskatchewan, Part XXVIII (Forestry and Mill Operations). Available at: <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/O1-1R1.pdf>
- Occupational Health and Safety Act, Alberta. Available at: <http://work.alberta.ca/occupational-health-safety/307.html>
- Occupational Health and Safety Regulation, Alberta. Available at: http://www.qp.alberta.ca/1266.cfm?page=2003_062.cfm&leg_type=Regs&isbncln=9780779776221&display=html

- Occupational Health and Safety Code, Alberta. Available at: http://work.alberta.ca/documents/whs-leg_ohsc_2009.pdf
- Règlement sur la santé et la sécurité dans les travaux d'aménagement forestier - Loi sur la santé et la sécurité du travail, Quebec. Available at : http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/S_2_1/S2_1R12_1.HTM
- Safemanitoba.com, (2017). *Legislation*. [online] Available at: <https://www.safemanitoba.com/Topics/Pages/Legislation.aspx>

Non-Government sources

- British Columbia Forestry Industry Claims Statistics 2008-2012

1.11.5. Risk determination

Overview of Legal Requirements

Workers compensation boards have inspectors who sample work sites including forest operations, and can fine employers if case H&S regulations are not respected.

Description of Risk

Workers unions, government organizations, independent auditors as well as the employers themselves regularly monitor and verify Health and safety, safety equipment and use of safe practices by workers.

Due to the closely regulated, controlled and enforced H&S regulations across Canada, as well as the strong H&S culture amongst companies and workers, the risk of significant illegal practices in the domain of H&S is considered low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.11.6. Risk designation and specification

Low risk

1.11.7. Control measures and verifiers

N/A

1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

1.12.1. Applicable laws and regulations

- Labour is a provincial jurisdiction. All provinces have employment standards acts covering the elements described in the sub criteria (minimum wage, working age, content of contracts, freedom of association, etc.)
- Worker's compensation liability insurance requirements are regulated at the provincial level. All provinces require worker's comp insurance (WorkSafe BC, CSST in Québec, Safe Manitoba, etc.).

1.12.2. Legal authority

British Columbia:

- Ministry of Labour and Citizens' Services
- Employment Standards Branch

Alberta:

- Employment and Immigration
- Employment Standards Branch

Saskatchewan:

- Advanced Education, Employment and Labour Standards

Manitoba:

- Manitoba Labour and Immigration
- Employment Standards

Ontario:

- Ministry of Labour
- Employment Standards Branch

Quebec:

- Commission des normes du travail

New Brunswick:

- Department of Post-Secondary Education,
- Training and Labour

Nova Scotia:

- Labour and Workforce Development
- Labour Standards Division

Prince Edward Island

- Communities, Cultural Affairs and Labour
- Employment Standards Branch

Newfoundland and Labrador:

- Human Resources, Labour and Employment
- Labour Relations Agency

1.12.3. Legally required documents or records

- Employment contracts
- Proof of insurance
- Competence certificates
- Receipts of tax payment

1.12.4. Sources of information

Government sources

- Labour Code 1985, Canada. Available at: <http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>
- Employment Standards Act 1996, British Columbia. Available at: http://www.bclaws.ca/Recon/document/ID/freeside/00_96113_01
- Employments Standards Code, Alberta. Available at: <http://www.qp.alberta.ca/documents/acts/e09.pdf>
- Manitoba, (N.Y). *Employment standards*. [online] Available at: <http://www.gov.mb.ca/labour/standards/>
- The Saskatchewan Employment Act 2013. Available at: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S15-1.pdf>
- Employment Standards Act, Quebec. Available at: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/N_1_1/N1_1_A.html

1.12.5. Risk determination

Overview of Legal Requirements

A contract of employment need not be in written form in Canada. Terms can be made by express or implied oral agreement and even through the conduct of the parties. The absence of written contracts does not exempt employers and employees from compliance with labour laws.

Unions are common in the forest industry and ensure a certain degree of compliance with collective agreements and labour laws for their members. For union as well as non-union workers, agencies of ministries of labour in each province perform inspections and can issue fines to employers who do not respect labour codes of the province.

Description of Risk

Like in many other countries of the Northern Hemisphere, forced or compulsory labour is uncommon in Canada. So is child labour. Legally hired migrant workers are increasingly present in tree planting and silviculture. They are not immune to discrimination, but very few are involved in harvesting (the only activity concerned by this sub criteria) and again,

inspections by provincial labour agencies provide a certain guarantee their rights are respected.

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.12.6. Risk designation and specification

Low risk

1.12.7. Control measures and verifiers

N/A

THIRD PARTIES' RIGHTS

1.13 Customary rights

Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.

1.13.1. Applicable laws and regulations

- Treaty and aboriginal rights relating to hunting, fishing and trapping are recognized and affirmed as part of the Constitution of Canada by Section 35 of the Constitution Act, 1982.
- Provinces have also adopted legislation protecting forest rights holders, indigenous and non-indigenous.
- For example in Manitoba, the Natural Resources Transfer Agreement (NRTA), which forms part of the Constitution Act, 1930, provides that Indian people "have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which (they) may have a right of access."
- In Quebec, the Forest Act says that in order to take into consideration the interests and concerns of the other users of the land in the forest management unit and to avoid disputes concerning the carrying out of forest management activities, the agreement holders must issue invitations to take part in the preparation of the general plan to: (1) the regional county municipalities and, where applicable, the urban community whose territory contains any part of the management unit concerned ; (2) the Native communities concerned, represented by their band councils ; (3) any person or body that, for the area covered by the forest management unit concerned, in accordance with the Act respecting the conservation and development of wildlife (chapter C-61.1), has entered into an agreement for the management of a controlled zone, is authorized to organize activities or provide services in a wildlife sanctuary, or holds an outfitter's licence ; and to (4) any person holding a sugar bush management permit in an area intended for forest production within the management unit and any person leasing land within such an area for agricultural purposes. The agreement holders may also issue invitations to any other person, organization or body to take part in the preparation of the plan.

1.13.2. Legal authority

- Federal and provincial governments.
- Forest ministries of each province verify that consultation with customary rights holders and indigenous have been carried out before approving forest management plans.
- Federal and provincial ministries of Indian affairs.

1.13.3. Legally required documents or records

- Government approved forest management plans incorporating demonstration of consultation with affected First Nations and other rights holders.

1.13.4. Sources of information

Government sources

- Forest Act, Quebec, Article 52. Available at: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/F_4_1/F4_1_A.html
- Manitoba, (N.Y). Fishing, Hunting & Gathering The Rights and Responsibilities of First Nations People in Manitoba. [online] Available at: <http://www.gov.mb.ca/sd/firstnations/>

1.13.5. Risk determination

Overview of Legal Requirements

Forest management legislation in the provinces of Canada focus on consultation of affected rights holders. Following consultation, forest management decisions are taken either by provincial forest authorities or by forest management companies themselves. These decisions can be challenged by other rights holders and brought to arbitration. Industrial wood harvesting rights holders have to respect this whole process in order to obtain their annual logging permit. Ultimately, where rights holders are discontent with the process or the result of consultations, forest management companies do have to let the arbitration process unfold in order to obtain their logging permit.

Description of Risk

Cohabitation of overlapping forest tenure holders is always a challenge. It is further complicated by the fact that industrial wood harvesting is often considered of greater economic importance (number of jobs created; direct and indirect economic activity created by the forest company in a region; income tax revenue for governments; etc.) than other rights.

Due to closely regulated, controlled and enforced forest management planning regulations on public land across Canada, the incidence of logging companies operating illegally without a duly approved logging permit is very low. For this permit to be issued, forest management companies must have a government approved management plan. For this management plan to be approved, First Nations and other rights holders must have been consulted. Therefore, the risk of illegality with regards to requirements that rights holders be consulted on forest management is low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.13.6. Risk designation and specification

Low risk

1.13.7. Control measures and verifiers

N/A

1.14. Free prior and informed consent

Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.

1.14.1. Applicable laws and regulations

N/A (There is no legislation on Free prior and informed consent in Canada per se. Hence there can be no illegal activity for this category. However, free and prior informed consent is the mitigation measure to manage the specified risk on Sub Criteria 1.15 below.)

1.14.2. Legal authority

N/A

1.14.3. Legally required documents or records

N/A

1.14.4. Sources of information

N/A

1.14.5. Risk determination

Overview of Legal Requirements

Public views and values are considered before forest companies can harvest timber, build roads or undertake other forest activities on public forest land. Prior to government approval of forest management plans, companies must invite and consider comments by Aboriginal communities and the public. Opportunities for detailed public consultation during the development of forest management plans are provided for all citizens.

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.

1.15.1. Applicable laws and regulations

Canada's relationship with the indigenous peoples within its borders is governed by a well-developed legal framework that in many respects is protective of indigenous peoples' rights.

The 19th century Indian Act is a central piece governing indigenous rights, but there are also approximately 70 recognized pre-1975 treaties that form the basis of the relationship between 364 First Nations, representing over 600,000 First Nations people, and Canada. In addition, 24 modern treaties are currently in effect. Building upon the protections in the

British Crown's Royal Proclamation of 1763, Canada's 1982 Constitution recognized and affirmed the aboriginal and treaty rights of the Indian, Inuit, and Métis people of Canada.

The provincial and federal Crown is under a duty to consult when its actions or decisions threaten to interfere with Aboriginal rights, lands, traditional land uses or interests.

In the 2004 Haida case, British Columbia's Court of Appeal expanded the Crown's fiduciary duty to consult to forest companies holding licenses for timber harvesting on public lands. The court held that the company, in acquiring an exclusive licence to harvest timber, assumed a fiduciary obligation to Aboriginal Peoples which carried with it a duty to consult and seek accommodation with them about their operations.

The company must satisfy itself that any infringement of Aboriginal rights in which it participates is justified, and if justification requires consultation, that adequate consultation with affected Aboriginal Peoples has taken place. This consultation obligation is shared with the Crown. For those activities which fall within the company's management responsibilities and upon which the Crown has no day-to-day control, the duty to consult falls on the company alone and is not shared by the Crown.

Forest management planning processes dictated by provincial forest acts include the duty to consult affected indigenous peoples and include grievance mechanisms.

But most importantly, the recent (2014) Tsilhqot'in First Nation aboriginal title decision in Canada shows that First Nations with proven aboriginal title now have exclusive control over land use decisions. This means that in such cases, industry will have to approach the First Nation to negotiate permission to use the land. In cases of claimed aboriginal title not yet proven, there is no change in the law and the government has a duty to consult and if warranted, accommodate the First Nation depending upon the strength of the claim. Industry, in cases of claimed but unproven aboriginal title, has no obligation to consult and if warranted, accommodate. In that case, that obligation remains on the Crown.

As of this writing, no other First Nation has proven Aboriginal title in Canada's courts. Proof of aboriginal title will require First Nations to bring their case to court for decision.

1.15.2. Legal authority

- Federal and provincial governments.
- Forest ministries of each province verify that consultation with the indigenous has been carried out before approving the plans.
- Federal and provincial ministries of Indian affairs.
- Since the 2004 Haida case: Companies holding an exclusive licence to harvest timber
- Since the 2014 Tsilhqot'in First Nation ruling: First Nations with proven aboriginal title on the land.

1.15.3. Legally required documents or records

- Government approved forest management plans incorporating demonstration of consultation with affected First Nations.
- First Nations proof of title rights.

- On land where a First Nations holds proven title, evidence of FPIC.

1.15.4. Sources of information

Government sources

- (Example) Saskatchewan's Forest Resources Management, Clause 39 section 2(c). Available at: <http://www.qp.gov.sk.ca/documents/english/statutes/statutes/f19-1.pdf>
- Forest Act, Quebec, Articles 24.5, 54. Available at: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/F4_1/F4_1_A.html

Non-Government sources

- Ross, M. M. and Smith, P. (2003, September). Meaningful consultation with indigenous peoples on forest management in Canada. *In XII World Forestry Congress* (pp. 21-28).
- CBC News, (2014). *Tsilhqot'in First Nation granted B.C. title claim in Supreme Court ruling*. [online] Available at: <http://www.cbc.ca/news/politics/tsilhqot-in-first-nation-granted-b-c-title-claim-in-supreme-court-ruling-1.2688332>
- Australian Government and Government of Canada, (N.Y.). *Country specific guidelines for Canada*. [pdf] Australian Government and Government of Canada. Available at: http://www.agriculture.gov.au/Style%20Library/Images/DAFF/_data/assets/pdffile/0003/2406072/canada-country-specific-guideline.pdf
- Ohchr.org, (N.Y.). *United Nations Special Rapporteur on the rights of indigenous peoples*. [online] Available at: <http://www.ohchr.org/en/issues/ipeoples/srindigenoupeoples/pages/sripeoplesindex.aspx>

1.15.5. Risk determination

Overview of Legal Requirements

This assessment deals specifically with forest activities.

Aboriginal peoples own and manage two per cent of Canada's forests. Aboriginal communities have increasing access to land beyond their territory through various mechanisms including access to tenure from public forests. According to the National Aboriginal Forestry Association, Aboriginal interests hold Crown land tenure exceeding 27 million m³ in annual sustainable timber harvest – more than 13 per cent of the total Crown forest harvest volume in Canada in 2013. This volume is expected to continue to increase through various mechanisms including modern treaties, government-led tenure reform, and joint ventures with industry.

Aboriginal communities can leverage their access to land and tenure to create economic opportunities and the forest sector is recognized as one mechanism to promote economic development in Aboriginal communities. The forest sector provides an important source of employment (11,000 jobs) for Aboriginal communities, representing two per cent of all jobs held by Aboriginal workers.

Aboriginal people can also access smaller volume timber allocations through personal use cutting permits. These permits are allowed under existing treaties and can be utilized to provide materials for shelter, cultural activities and heating.

Description of Risk

On First Nations right to exclusive control over land use decisions:

The risk forest companies operating illegally on land where a First Nation has proven title (only 1 in Canada at this point, the Tsilhqot'in First Nation) is low. In a country with an effective rule of law like Canada, forest companies will abide by court decisions and will not harvest on titled land where they do not have permission to do so.

It is likely other First Nations will try to obtain recognition of their ownership of the land in Canada. As aboriginal titles get proven by the courts, forest companies operating on those lands will either obtain FPIC from the First Nation or must stop their operations on that land.

On the right to be consulted and accommodated (on non-proven titles):

Due to the closely regulated, controlled and enforced forest management planning regulations on public land across Canada, the incidence of logging companies operating illegally without a duly approved logging permit is very low. For this permit to be issued, forest management companies must have a government approved management plan. For this management plan to be approved, First Nations must have been consulted. Therefore, the risk of illegality with regards to First Nation's right to be consulted and accomodated on forest management is low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.15.6. Risk designation and specification

Low risk

1.15.7. Control measures and verifiers

N/A

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

1.16.1. Applicable laws and regulations

- Provincial laws on the cutting and measuring of timber and required payment of taxes.

1.16.2. Legal authority

- Provincial ministries of forests

1.16.3. Legally required documents or records

- Bills of lading.
- Receipts of payment of stumpage.

1.16.4. Sources of information

Government sources

- British Columbia, (N.Y.) *Timber Scaling Manual*. [online] Available at: <http://www2.gov.bc.ca/gov/content/industry/forestry/competitive-forest-industry/timber-pricing/timber-scaling/timber-scaling-manual>
- Quebec regulation for timber measurement. Available at: <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=40351.PDF>
- Direction de la gestion des forêts Ressources naturelles, (2012). *Manuel de mesurage du bois du Nouveau-Brunswick*. [online] New Brunswick, 4th edition. Available at: <http://www2.gnb.ca/content/dam/gnb/Departments/nr-nr/pdf/fr/ForetsEtTerresDeLaCouronne/ManuelDeMesurageDuBoisDuNB-4Edition-2012Juillet.pdf>

Non-Government sources

- Transparency.org, (2016). *Corruption Perceptions Index 2016*. [online] Available at: <http://cpi.transparency.org/cpi2013/results/>

1.16.5. Risk determination

Overview of Legal Requirements

Provincial laws cover the cutting and measuring of timber and required payment of taxes. These requirements include a report showing the species, quantities and value of the harvested timber, and this information is required to be reported to the province.

Description of Risk

The risk of incorrect classification of harvested material to reduce/avoid payment of legally prescribed taxes and fees is low because of the controls that are made by provincial forest authorities. Provincial government inspectors verify and validate, often through sampling, the grading and measuring made by the company. Ministry of forests inspectors verify company measurements and species identifications by sampling harvested wood piles on roadsides, landings and log yards. Errors are sanctioned with penalties.

Corruption associated with stumpage and harvest permits in Canada is rarely an issue. Canada has a very good Corruption Perception Index (82), as measured by Transparency International (2016). Also, the relatively low diversity of commercial species, which is typical of the temperate and boreal forests, reduces the risk of voluntary or involuntary errors in the determination of the stumpage.

Therefore the risk of illegal activity with regards to this requirement is low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.16.6. Risk designation and specification

Low risk

1.16.7. Control measures and verifiers

N/A

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- Softwood Lumber Agreement between the Government of Canada and the Government of the United States of America
- Bill C-24, which implements the Canada-U.S. Softwood Lumber Agreement
- Bills of Lading Act
- Freight Integration and Motor Carrier Policy
- Coasting Trade Act

- Canada Marine Act
- Canada Shipping Act
- Canada Transportation Act
- Canadian Environmental Protection Act
- Canadian National Montreal Terminals Act
- Canadian Transportation Accident Investigation and Safety Board Act
- Department of Transport Act
- Motor Vehicle Safety Act
- Motor Vehicle Transport Act
- Railway Safety Act
- Safe Containers Convention Act

1.17.2. Legal authority

- Transport Canada
- Provincial forest ministries
- Canadian Department of Foreign Affairs and International Trade
- International Standard for Phytosanitary Measures No. 15 (ISPM No. 15).
- Canada customs.

1.17.3. Legally required documents or records

- Load tickets or reports providing information on volume, species, origin, destination, etc.

1.17.4. Sources of information

Government sources

- Transport Canada, (2016). *List of Acts*. [online] Available at: <https://www.tc.gc.ca/eng/acts-regulations/acts.htm>
- Global Affairs Canada, (2017). *Softwood Lumber Agreement*. [online] Available at: http://www.international.gc.ca/controls-controles/softwood-bois_oeuvre/other-autres/agreement-accord.aspx?lang=eng
- Transport Canada, (2016). *Coasting trade in Canada*. [online] Available at: <https://www.tc.gc.ca/eng/policy/acf-acfs-menu-2215.htm>

Non-Government sources

- International Plant Protection Convention (IPPC)

1.17.5. Risk determination

Overview of Legal Requirements

Canada has laws and signed international agreements covering all aspects of trade and transport. Those are controlled and enforced by various ministries and government agencies at the federal and provincial levels.

Logs hauled by trucks from Canadian crown forests to mills are accompanied by trip tickets, copies of which are left at the forest gate and/or at the mill gate. Hauling trucks can be controlled by government agents for safety and to make sure the trip ticket accurately reflects the right volumes and species.

Description of Risk

Illegal transport of wood could be linked to illegal logging, which as we have seen in previous criteria is not a significant problem in Canada.

Canada has a very good Corruption Perception Index (82), as measured by Transparency International (2016). Corruption associated with trading permits and transport documents is rarely an issue.

Based on these findings, the risk of illegal activity with regards to trade and transport is low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.17.6. Risk designation and specification

Low risk

1.17.7. Control measures and verifiers

N/A

1.18. Offshore trading and transfer pricing

Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.

1.18.1. Applicable laws and regulations

- Income Tax Act 1985, Canada, Section 247.

1.18.2. Legal authority

- Canada Revenue Agency

1.18.3. Legally required documents or records

The CRA has rules requiring transfer pricing documentation:

- Section 247 of the Income Tax Act requires that Canadian taxpayers document non-arm's length transactions with non-residents and use arm's length transfer price.
- Section 247 contains a provision that deems the taxpayer not to have made "reasonable efforts" to determine and use arm's length transfer prices unless the taxpayer has compiled certain information and analyses in the form of contemporaneous documentation.
- Taxpayers are required to update the documentation for any material changes, and provide the documentation to the CRA within three months of a written request that is served personally or by registered or certified mail.

1.18.4. Sources of information

Non-Government sources

- Oecd.org, (2016). *Canada – OECD Anti-Bribery Convention*. [online] Available at: <http://www.oecd.org/daf/anti-bribery/canada-oecdanti-briberyconvention.htm>
- Eoi-tax.org, (N.Y). *Exchange of information relationships – Canada*. [online] Available at: <http://www.eoi-tax.org/jurisdictions/CA#agreements>
- Eoi-tax.org, (N.Y). *Peer Review Report - Combined: Phase 1 and 2, incorporating Phase 2 ratings - CANADA*. [online] Available at: <http://www.eoi-tax.org/jurisdictions/CA#latest>
- PriceWaterhouseCoopers, (2012). *International transfer pricing 2012*. [online] Available at: http://download.pwc.com/ie/pubs/2012_international_transfer_pricing.pdf
- Bdo.co, (2014). *Transfer Pricing – Newsflash: Transfer Pricing Reporting*. [online] Available at: <https://www.bdo.ca/en-ca/insights/tax/international-tax/expatriate-newsletter/transfer-pricing-newsflash-transfer-pricing-reporting/>
- KPMG, (2015). *Global Transfer Pricing Review – Canada*. [online] KPMG International. Available at: <https://home.kpmg.com/content/dam/kpmg/pdf/2015/12/tp-review-canada-v5.pdf>

1.18.5. Risk determination

Overview of Legal Requirements

The international tax standard, developed by OECD and supported by the UN and the G20, provides for full exchange of information on request in all tax matters without regard to a domestic tax interest requirement or bank secrecy for tax purposes. Currently all 30 OECD member countries, including Canada have endorsed and agreed to implement the international tax standard. Furthermore, all offshore financial centres accept the stand.

Canada has exchange of information relationships with 128 jurisdictions through 95 DTCs, 23 TIEAs and 1 multilateral mechanism, Convention on Mutual Administrative Assistance in Tax Matters.

Canada has recently been increasing its scrutiny of offshore trading and transfer pricing. Canada has extensive regulation on this matter and enforces it through the Canada Revenue

Agency (CRA). Apart from audits, CRA measures to detect and prevent tax evasion include the Informant Leads Program, which gathers information on suspected or known tax evaders. Informants can report information online, by mail or by phone.

The CRA also has a Criminal Investigations Program whose mandate is to investigate suspected cases of tax evasion, fraud and other serious violations of tax laws. Each CRA tax services office has international tax auditors who either conduct the transfer pricing audit or act in an advisory role to regular corporate auditors. Supporting these international auditors when necessary are teams of economists, lawyers or more senior international auditors located at the CRA's head office. The CRA may also engage outside consultants when necessary to provide expertise in specific areas; this is normally done at the appeal level when preparing for litigation, but may also occur during the audit process. As the CRA views transfer pricing audits as high risk, it is placing more international auditors and economists in the field.

Companies face the following sanctions related to transfer pricing audits, adjustments and penalties:

- The statute of limitations is six years for Canadian-controlled private corporations and seven years for foreign controlled corporations and public corporations
- Section 247 allows the CRA to adjust a Canadian taxpayer's transfer prices or cost allocations where the transfer prices or cost allocations do not reflect arm's length pricing
- Where the CRA has made a transfer pricing adjustment, it can also impose penalties in circumstances where a taxpayer has failed to prepare and maintain contemporaneous documentation supporting transfer prices.

Court convictions are publicized in local, regional and national media to communicate the consequences of fraud committed against the Canadian public and to maximize the deterrent effect of these convictions. Two important transfer pricing cases were considered by Canadian courts in 2010/2011:

- On 24 March 2011, the Crown's application for leave to appeal to the Supreme Court of Canada (SCC) in the GlaxoSmithKline case was granted, as was the taxpayer's application for leave to cross-appeal. This will be the first transfer pricing case to be heard by the SCC.
- On 15 December 2010, the Federal Court of Appeal (FCA) dismissed the Crown's appeal of the 2009 TCC decision in the General Electric Capital Canada case, which favoured the taxpayer.

The CRA may not be targeting any particular industry for transfer pricing audits, but it has begun to adopt an industry-based audit approach by developing tax service offices (TSOs) that have expertise in specific industries, including pharmaceutical (TSO in Laval, Quebec), automotive (Windsor, Ontario), banking (Toronto, Ontario) and oil and gas (Calgary, Alberta).

Description of Risk

Based on these findings, it is concluded that the risk must be considered low in this sub criteria.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.18.6. Risk designation and specification

Low risk

1.18.7. Control measures and verifiers

N/A

1.19. Custom regulations

Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).

1.19.1. Applicable laws and regulations

- Canada Customs Act 1985
- CITES
- Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act 1992 (WAPPRIITA)
- The Canada–U.S. Softwood Lumber Agreement (SLA) is an important policy issue affecting forest products trade and competitiveness between Canada and the U.S

The following regulations also apply when exporting Canadian wood:

- Technical Heat Treatment Guidelines and Operating Conditions Manual (PI-07)
- Canadian Debarking and Grub Hole Control Program (CDGHCP) for the export of Cedar Forest Products to the European Union
- Canadian Heat Treatment Wood Products Certification Program (CHTWPCP)
- Canadian Wood Packaging Certification Program (CWPCP)
- Guidelines for the Phytosanitary Certification of Lumber for Export
- Notification of New or Revised Plant Quarantine Import Requirements
- Phytosanitary Certification Requirements for the Export of Untreated Canadian Conifer Logs to China
- Requirements for Firewood and Spruce Logs from Canada

1.19.2. Legal authority

- Federal Customs and Border Patrol
- Transport Canada
- Environment Canada

1.19.3. Legally required documents or records

- Customs declaration forms
- Treatment and phytosanitary certificates
- CITES permits

1.19.4. Sources of information

Government sources

- Canadian Food Inspection Agency, (2016). *Forestry – Exports*. [online] Available at: <http://www.inspection.gc.ca/plants/forestry/exports/eng/1300380523318/1300380612246>
- Global Affairs Canada, (2017). *Softwood Lumber Agreement*. [online] Available at: http://www.international.gc.ca/controls-controles/softwood-bois_oeuvre/other-autres/agreement-accord.aspx?lang=eng
- U.S Department of Homeland Security and Government of Canada, (2013). *Beyond the Border Action Plan*. [online] Available at: <https://portal.iecanada.com/public/file/USCBP-CBSA%20data%20alignment%20package.pdf>
- Natural Resources Canada, (2016). *Legality and sustainability*. [online] Available at: <http://www.nrcan.gc.ca/forests/canada/sustainable-forest-management/13303>

1.19.5. Risk determination

Overview of Legal Requirements

The forest products sector in Canada and the United States is highly integrated, with logs and other timber products crossing the border to supply mills in both countries. Under the Canadian Customs Act, all goods imported into Canada must be reported to the Canada Border Services Agency. Border services officers may examine any goods that are imported or exported, and can detain goods until the agency is satisfied that the importation or exportation complies with the Customs Act or any other act of Parliament.

Description of Risk

Canada is the second largest exporter of primary forest products in the world, but it also imports wood and wood products. Most of these imports and exports are associated with cross-border trade with the United States, which is a low-risk jurisdiction for illegal harvesting and border/customs governance.

This governance system combined with the resources and rigour of Canadian and US customs agencies, result in a low risk of illegal practices with regards to customs regulations.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.19.6. Risk designation and specification

Low risk

1.19.7. Control measures and verifiers

N/A

1.20. CITES

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).

1.20.1. Applicable laws and regulations

- Commercial trade in wildlife must be conducted in compliance with the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA). This law stipulates the federal permit requirements for the international trade of wildlife, their parts, and products made from them. WAPPRIITA is the legislation through which Canada enforces and administers its responsibilities under CITES.

1.20.2. Legal authority

- Environment Canada is the lead agency responsible for implementing CITES on behalf of the federal government
- Provincial ministries responsible for wildlife.

1.20.3. Legally required documents or records

- If you are trading species or products that contain CITES listed species you will need a CITES permit in addition to any other trade documents.

1.20.4. Sources of information

Government sources

- Environment and Climate Change Canada, (2017). *CITES*. [online] Available at: <http://www.ec.gc.ca/cites/>

1.20.5. Risk determination

Overview of Legal Requirements

Canada is a party to CITES. Trade rules apply to CITES-listed tree species, such as ebony, ramin and rosewood. These materials cannot be imported without an accompanying CITES permit. To enforce the convention, Canada has enacted WAPPRIITA. Environment Canada is the lead federal agency responsible for enforcing this act.

WAPPRIITA is used not only to enforce CITES in Canada, but also to control imports of non CITES-listed species that have been obtained illegally. Environment Canada works with a broad range of partners, including the Canada Border Services Agency, to ensure that

imports comply with CITES and with relevant legislation and regulations in foreign countries for non CITES-listed species.

Differentiating between wood products from CITES-listed tree species and tree species not listed under CITES can be technically challenging. To help address this problem, Environment Canada has created and internationally distributed the CITES Identification Guide – Tropical Woods. Canada is also working on ways to increase the reliability of species identification on trade permits, customs forms, border declarations and associated documents. For instance, through the Single Window Initiative (see link in column H) Canada is examining the feasibility of a digital coding system for taxonomic names that international customs and other regulatory authorities could use to better capture electronic trade data for plants and animals. Digital coding would give authorities a greater ability to intercept timber and timber products from protected tree species, and even those harvested illegally.

Environment Canada works with a broad range of partners, including the Canada Border Services Agency, to ensure that imports comply with CITES and with relevant legislation and regulations in foreign countries for non-CITES-listed species.

Description of Risk

There are no Canadian tree species on the CITES list of species. Therefore, the risk of illegal harvest of CITES species is low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.20.6. Risk designation and specification

Low risk

1.20.7. Control measures and verifiers

N/A

1.21. Legislation requiring due diligence/due care procedures

Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.

1.21.1. Applicable laws and regulations

- The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act 1992 (WAPPRIITA)

1.21.2. Legal authority

- Environment Canada
- Canadian Ministry of Labour Relations and Workplace Safety
- Provincial ministries of forests.

- Canadian Customs and Border Patrol
- Transport Canada

1.21.3. Legally required documents or records

- Demonstration of due diligence
- CITES permits
- Customs declaration forms

1.21.4. Sources of information

Government sources

- U.S Department of Homeland Security and Government of Canada, (2013). *Beyond the Border Action Plan*. [online] Available at: <https://portal.iecanada.com/public/file/USCBP-CBSA%20data%20alignment%20package.pdf>
- Natural Resources Canada, (2016). *Legality and sustainability*. [online] Available at: <http://www.nrcan.gc.ca/forests/canada/sustainable-forest-management/13303>
- Australian Government and Government of Canada, (N.Y.). *Country specific guidelines for Canada*. [pdf] Australian Government and Government of Canada. Available at: http://www.agriculture.gov.au/Style%20Library/Images/DAFF/_data/assets/pdffile/0003/2406072/canada-country-specific-guideline.pdf

1.21.5. Risk determination

Overview of Legal Requirements

Canada's Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) legislation and its enabling regulations (the Wild Animal and Plant Trade Regulation) prohibit the import of illegal timber and timber products.

For interprovincial transport subsection 7.(2) of WAPPRIITA states:

'No person shall transport from a province to another province any animal or plant, or any part or derivative of an animal or plant, where the animal or plant was taken, or the animal, plant, part or derivative was possessed, distributed or transported, in contravention of any provincial Act or regulation.'

For imported materials subsection 6.(1) of WAPPRIITA states:

'No person shall import into Canada any animal or plant that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.'

The Act also states that no person shall knowingly possess an animal or plant, or any part or derivative of an animal or plant,

- (a) that has been imported or transported in contravention of this Act;
- (b) for the purpose of transporting it from one province to another province in contravention of this Act or exporting it from Canada in contravention of this Act; or
- (c) for the purpose of distributing or offering to distribute it if the animal or plant, or the

animal or plant from which the part or derivative comes, is listed in Appendix I to the Convention.

This legislation and regulation makes it illegal to transport from a province to another province timber products into which were produced or acquired in contravention of any provincial laws .

Description of Risk

This governance system as a whole result in a low risk of illegal practices with regards to due diligence for timber harvested in Canada.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.21.6. Risk designation and specification

Low risk

1.21.7. Control measures and verifiers

N/A



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About

Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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