



Timber Legality Regulation in China




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- **In December 2019, China revised its Forest Law to include Article 65, banning "purchase, process, or transport" of illegally sourced timber.**

Article 65 Timber operating and processing enterprises shall establish the input and output ledger for raw materials and products. No entity or individual may purchase, process, or transport timbers that are knowingly sourced illegally.

- **In July 2022, the draft of the Forestry Law Implementation Regulation came out. International observers could not find anything related to article 65 or timber legality.**
- **What happened?**

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- Implementation Regulation of a Chinese law -- to resolve technical problems and give details and specifics that are necessary to implement the law, usually when the language or a concept in the law itself is vague, or if an article in the original law is too general in terms and to implement it would require further clarification.
 - It is not legislative but interpretative in nature.
 - Usually drafted by an administrative agency under the supervision of the State Council, very often with the assistance of legal experts associated with the agency. After public notice and comment, it will be officially decreed by State Council.
 - State Council and NFGA do not think the language of Article 65 is vague or the article needs further clarifications. Therefore, Implementation Regulation leaves Article 65 untouched.

Forest Law, Chapter Two

第十四条 森林资源属于国家所有。由法律规定属于集体所有的除外。
国家所有的森林资源的所有权由国务院代表国家行使。国务院可以授权国务院自然资源主管部门统一履行国有森林资源所有者职责。

第十五条 林地和林地上的森林、林木的所有权、使用权，由不动产登记机构统一登记造册，核发证书。国务院确定的国家重点林区（以下简称重点林区）的森林、林木和林地，由国务院自然资源主管部门负责登记。

森林、林木、林地的所有者和使用者的合法权益受法律保护，任何组织和个人不得侵犯。
森林、林木、林地的所有者和使用者应当依法保护和合理利用森林、林木、林地，不得非法改变林地用途和毁坏森林、林木、林地。

第十六条 国家所有的林地和林地上的森林、林木可以依法确定给林业经营者使用。林业经营者依法取得的国有林地和林地上的森林、林木的使用权，经批准可以转让、出租、作价出资等。具体办法由国务院制定。

林业经营者应当履行保护、培育森林资源的义务，保证国有森林资源稳定增长，提高森林生态功能。

第十七条 集体所有和国家所有依法由农民集体使用的林地（以下简称集体林地）实行承包经营的，承包方享有林地承包经营权和承包林地上的林木所有权，合同另有约定的从其约定。承包方可以依法采取出租（转包）、入股、转让等方式流转林地经营权、林木所有权和使用权。

第十八条 未实行承包经营的集体林地以及林地上的林木，由农村集体经济组织统一经营。经本集体经济组织成员的村民会议三分之二以上成员或者三分之二以上村民代表同意并公示，可以通过招标、拍卖、公开协商等方式依法流转林地经营权、林木所有权和使用权。

第十九条 集体林地经营权流转应当签订书面合同。林地经营权流转合同一般包括流转双方的权利义务、流转期限、流转价款及支付方式、流转期限届满林地上的林木和固定生产设施的处置、违约责任等内容。

受让方违反法律规定或者合同约定造成森林、林木、林地严重毁坏的，发包方或者承包方有权收回林地经营权。

第二十条 国有企业事业单位、机关、团体、部队营造的林木，由营造单位管护并按照国家规定支配林木收益。

农村居民在房前屋后、自留地、自留山种植的林木，归个人所有。城镇居民在自有房屋的庭院内种植的林木，归个人所有。

集体或者个人承包国家所有和集体所有的宜林荒山荒地荒滩营造的林木，归承包的集体或者个人所有；合同另有约定的从其约定。

其他组织或者个人营造的林木，依法由营造者所有并享有林木收益；合同另有约定的从其约定。

第二十一条 为了生态保护、基础设施建设等公共利益的需要，确需征收、征用林地、林木的，应当依照《中华人民共和国土地管理法》等法律、行政法规的规定办理审批手续，并给予公平、合理的补偿。

第二十二条 单位之间发生的林木、林地所有权和使用权争议，由县级以上人民政府依法处理。个人之间、个人与单位之间发生的林木所有权和林地使用权争议，由乡镇人民政府或者县级以上人民政府依法处理。


当事人对有关人民政府的处理决定不服的，可以自接到处理决定通知之日起三十日内，向人民法院起诉。

在林木、林地权属争议解决前，除因森林防火、林业有害生物防治、国家重大基础设施建设等需要外，当事人任何一方不得砍伐有争议的林木或者改变林地现状。

Draft Implementation Reg, Chapter Two

第六条 国务院确定的国家重点林区（以下简称重点林区）的范围和组成单位目录，由国务院林业主管部门报国务院批准后公布。

第七条 涉及重点林区林地所有权和使用权争议，由重点林区林地所在地省级人民政府依法处理。处理结果涉及重点林区原林权确权登记经营范围变动的，应当事先征得国务院林业主管部门和自然资源主管部门同意。

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- **The result -- Article 65 remains in the law of the land. Since no further interpretation or clarification is given in the implementation regulation, NFGA now has the legal mandate to implement Article 65 according to its original language.**
 - **Once Implementation Regulation is officially decreed, NFGA could start rulemaking and enforcement associated with article 65.**
 - **NFGA may consider making administrative or departmental regulations. NFGA may also use "administrative interpretation" to further clarify article 65. NFGA enjoys more autonomy when it comes to further rulemaking under article 65, but NFGA must faithfully enforce the law as is. NFGA regulation and interpretation must not contradict the language of Article 65.**
 - **For law enforcement, if none-criminal, administered by the forest authorities, NFGA or local, provincial forest bureaus. If criminal activity involved, the Ministry of Public Security and the local public security bureaus at various levels and public security forces for forest would be in charge of investigation, central or local procurators will prosecute an offense. The court system will adjudicate and determine a case. The role of NFGA and local forest bureaus will still be significant but runs parallel to the system of public security, procurator, and court.**

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- **Shifting Policy Landscape: Commerce Development Plan for the 14th Five-Year Plan Period (MofCOM 商务部 《“十四五”(2021-2025)商务发展规划》)**
 - **Like most of the five-year plans in China, the plan decreed a vision and ten major tasks.**
 - **A vision for 2035 -- make positive progress on green and low carbon trade, maintain the legality and compliance of international trade, make more prominent contributions to international economic governance and its reform.**

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- **Major task #4 (trade digitalization) -- promote the use of Internet platforms to improve management and efficiency, promote paperless import and export licenses, accelerate the use of blockchain technology in the field of trade to improve service and regulatory efficiency.**
 - **Major task #5 (Build a green trade system) -- establish a green trade evaluation index system, build a number of green and low-carbon trade platforms, strengthen carbon footprint tracking and monitoring, use demonstration zones, local pilots to jumpstart green and low carbon trade. (“green and low carbon trade” -- improve industrial practice, optimize energy usage, green and innovate production processes, and using green raw materials)**
 - **Major Task #10 Create a good environment for Chinese trade -- deepen bilateral and regional cooperation. Particularly, it mentioned “maintaining economic and trade communication with U.S. governments at all levels and the business community to promote bilateral trade and investment cooperation.” Constructively participate in negotiations and discussions on issues such as environment and trade, actively participate in the formulation of rules in emerging areas such as digital economy and green development.**

Thank you!