

SUMMARY

**CONTROLLING IMPORTS OF
ILLEGAL TIMBER**

Options for Europe



FERN



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www.fern.org

www.riia.org/sustainabledevelopment

Full report available on www.fern.org

I Introduction

This briefing presents a series of recommendations for the institutions of the European Union (EU), and for the governments of the EU member states, on means to control the import of illegally sourced timber and wood products into the territory of the EU. It is a summary of a larger report¹, jointly prepared by FERN and the Sustainable Development Programme of the Royal Institute of International Affairs.

The full report identifies existing legislation that may be applicable in controlling imports; looks at ways of promoting legal products in the market and of controlling flows of investment to potentially illegal forestry activities; examines existing global frameworks that may be applicable; analyses new approaches that are currently being discussed – in particular the option of a new EU legislation, including a licensing scheme for legal timber, enabling member states to control the entry of illegally sourced timber into the EU; and considers the practical issues, including identification systems, that must be addressed.

¹ *Controlling the imports of illegally sourced timber: options for Europe: www.fern.org*

The report contains recommendations across a wide range of areas, summarised here. Clearly, some will have greater impact than others; our recommended key priorities for action are:

- **Adopt new EU legislation to ban the entry of illegally sourced timber into the EU; this should include establishing systems to identify legal production in producer countries (with their agreement), and a requirement for evidence of legal production to be presented at the point of import into the EU.**
- **Provide capacity-building assistance to producer countries to establish legality verification systems and reform their forestry sectors, and possibly forest laws.**
- **Use government procurement policy to source legal and sustainable products, excluding illegally sourced timber from an important section of the market.**
- **Regulate sources of finance for the forestry industry, steering investment flows away from potentially illegal activities.**
- **Where possible, use existing legislation on illegal goods and money laundering to target illegal timber.**



2 Background

Concern over the extent of illegal logging around the world has grown significantly in recent years, with discussions taking place in many international forums, including the G8 and the World Summit on Sustainable Development. This heightened awareness has developed in part as a response to growing evidence of the destruction of forests and the accompanying serious loss of government revenue; in part it is an offshoot of the growing stress on 'good governance' in international policy; and in part it reflects the increasing recognition of the role of consumer countries in fuelling demand for illegal products.

The effective control of illegal logging will require action across many policy areas: the promotion of good governance, action to tackle corruption, land reform, industrial and fiscal policy reform, development assistance and so on. This briefing only deals with the single issue of the control of imports of illegally produced timber into the EU. Decisive action to exclude illegal products from European markets – and the EU is the world's largest importer – should act both as a demonstration of political will and as an incentive to pursue activities across the wider arena.

From the point of view of EU member states, the control of imports must be pursued at the European level. Not only has the single European market created a trading area without internal frontiers, international trade policy is an area of exclusive EU competence and individual member states cannot erect trade barriers by themselves.



Illegal logging and international trade in illegally-sourced timber

There is no doubt that illegal logging is pervasive and causing enormous damage to forests, forest peoples and the economies of producer countries. Some estimates suggest that the illegal timber trade may comprise over a tenth of a total global timber trade, worth over \$150bn a year.² It seems likely that at least half of all the logging activities in particularly vulnerable regions – the Amazon Basin, Central Africa, Southeast Asia and the Russian Federation – is illegal.³

Illegal logging takes place when timber is harvested, transported, bought or sold in violation of national laws. The harvesting procedure itself may be illegal, including corrupt means to gain access to forests, extraction without permission, cutting of protected species or extraction of timber in excess of agreed limits. Illegalities may also occur during transport, including illegal processing and export, misdeclaration to customs and avoidance of taxes and other charges.

The clandestine nature of the illegal trade makes its scale and value difficult to estimate, but it is true to say that extensive unlawful operations have been uncovered whenever and wherever authorities have tried to find them. As the World Bank's 1999 review of its global forest policy observed, "countries with tropical moist forest have continued to log on a massive scale, often illegally and unsustainably. In many countries, illegal logging is similar in size to legal production. In others, it exceeds legal logging by a substantial margin".⁴

To give a few examples, illegal logging in Russia, mostly in Siberia, may be 20% of the total industry. The Indonesian government's own estimate for illegalities in the Indonesian timber industry is of over 70%. Over 80% of logging in the Amazon may not be compliant with government controls.⁵

² OECD *Environmental Outlook* (Paris: OECD, 2001), p. 122.

³ For further details on illegal logging, see Duncan Brack and Gavin Hayman, *Intergovernmental Actions on Illegal Logging* (Royal Institute of International Affairs, March 2001) and Duncan Brack, Gavin Hayman and Kevin Gray, *Controlling the International Trade in Illegally Logged Timber and Wood Products* (Royal Institute of International Affairs, February 2002); both available from www.riia.org/sustainabledevelopment.

⁴ World Bank, *Forest Sector Review* (New York: World Bank, 1999), p. XII.

⁵ All figures: Neil Scotland and Sabine Ludwig, 'Deforestation, the timber trade and illegal logging', paper for EC workshop on Forest Law, Enforcement, Governance and Trade, Brussels, 22-24 April 2002.





3 Targeting illegality

Intuitively, illegal products should not be allowed to enter EU markets and be put on sale. A range of existing laws and regulations, at EU level and in member states, may be effective in controlling trade in illegally sourced timber. These include laws on stolen goods, fraud, forgery, money laundering, bribery and corruption, as well as CITES (the Convention on International Trade in Endangered Species).

Illegal goods

Every EU member state possesses legislation on stolen-goods including theft and receiving stolen-goods and in most EU member states this applies to goods that have been stolen abroad. Stolen-goods laws can provide a legal means to halt import of timber coming from local people's lands, where land rights have been legally recognised, and from protected areas. We recommend that:

- **EU governments should assist producer country governments, or local people with land titles, to start a court case under laws on stolen property; in some cases it may be possible for the producer country government to initiate a case on behalf of local communities. One successful and high profile case could have a major demonstration effect.**

Money laundering

Every EU member state possesses legislation on money laundering – the disposal of the assets of criminal activities. If illegal logging and the trade in illegally-sourced timber are criminal activities under member states' law, then the proceeds of these activities could be subject to money laundering legislation, provided they were deposited or disposed of within the EU. The fact that the activities themselves may take place overseas and be carried out by non-EU nationals is not relevant. A third EC Directive on money laundering is foreseen within four years. We recommend that:

- **When the third EC Money Laundering Directive is drawn up, illegal logging should fall within the revised definition of offences covered.**
- **EU governments should inform and guide institutions that may handle the proceeds of crime – banks, accountants, lawyers, etc. – to the possibility that clients with interests in the forestry sector, particularly in countries where illegal logging is widespread, may be engaging in money laundering.**
- **EU member states should investigate the possibilities for taking action against illegal imports under national money laundering legislation; UK legislation in particular appears to allow for this.**

CITES

The Convention on International Trade in Endangered Species (CITES) provides an existing international framework to control trade in illegal timber, though it applies only to a limited number of tree species. We recommend that:

- **A more coherent approach to checking the validity of CITES export permits at the point of import should be adopted, if necessary through an amendment to the EU CITES Regulation, clarifying under what circumstances importing authorities are justified in requiring more information on the validity of export permits.**
- **EU governments should attempt to include more timber species on the CITES annexes and should encourage producer countries to list more timber species under Appendix III of CITES.**

OECD guidelines

The OECD Guidelines for Multinational Enterprises, though not binding on companies are binding on the signatory governments and are of potential relevance. We recommend:

- **National Contact Points should promote and evaluate the use of the Guidelines amongst forestry companies based in their countries, including their overseas operations, and make the results publicly available.**



4 Promoting legal products in the market

A range of policy measures exist or can be developed to increase market share for products that can be positively identified as having been legally produced. We recommend that:

- **Forest certification schemes operational in the EU market should require forest laws and regulations to be abided by, and have a credible system for identifying and monitoring chain of custody.**
- **All EU member states should adapt their government procurement policies to incorporate legality and sustainability criteria.**
- **The current draft EU Directive on Government Procurement should be modified to make clear that legality and sustainability criteria are permissible at both tender and award stage.**



5 Controlling sources of investment

Finance from public and private sources in the EU is an important source of investment for many logging companies and other sectors of the forestry industry in producer countries; and, since much of this activity is illegal, a proportion of this money is helping to sustain illegality. We recommend that:

- **EU governments should ensure that EU legislation regulating the financial sector and protecting social rights and the environment is effectively applied to the operations and projects financed and insured by EU Export Credit Agencies (ECAs)⁶; and that ECAs apply best available environmental and social practice to all their operations.**
- **European financial sector regulators securities commissions should issue specific industry guidelines for forestry sector activities specifying that companies wishing to raise equity on EU financial markets must disclose potential risks linked to forestry crime; this should encourage all financial institutions in the EU to adopt specific policies and guidelines for investment in the forestry sector.**
- **EU governments should encourage marine insurers and underwriters to adopt and enforce strict rules removing all insurance cover from ships carrying illegal timber.**

⁶ *Export Credit Agencies and Investment Insurance Agencies are public or semi public agencies that provide government backed loans, guarantees and insurance to corporations seeking to do business in a country where the investment climate is judged to be too risky for conventional corporate funding.*





6 New approaches

Although there are many opportunities for reducing the extent of illegal logging and imports of illegal timber to the EU through the approaches outlined above, none are precisely targeted on illegal logging and the timber trade. We believe, therefore, that there is a need for new approaches. We recommend that:

- **The EU should negotiate a series of bilateral or regional agreements with as wide a range of producing and exporting countries as possible; the UK-Indonesia Memorandum of Understanding provides a model, which can be adapted to suit local circumstances. These agreements should be built around establishing a system of independently monitored legality verification in the producer country.**

The control of imports into the EU, however is impossible without new EU legislation. We recommend that:

- **The EU should establish a licensing system for imports of timber and wood products, similar in principle (though different in detail) to the approach adopted under CITES, and under the Kimberley Process on conflict diamonds.**

The Regulation would need to define what type of trade would be controlled (entry for free circulation, for transit, etc.); what type of products would be controlled; the states whose exports would be controlled; the type of proof of legal production; and the competent authorities for issuing and verifying the licence. Customs agencies are already used to operating such systems (e.g. under CITES), and implementation should not prove too difficult, although of course additional capacity is likely to be necessary.

It is highly likely, however, that some producer countries would not wish to enter into such agreements with the EU. Therefore, in order to provide an additional defence against imports of illegal timber, we recommend that:

- **The new EU Regulation should include a clause making illegal the import, export, transport, sale, receipt, acquisition, or purchase of timber produced in violation of the laws of foreign countries.**

7 Practicalities and conditions

A number of important practical issues must be addressed if the measures outlined above are to be effective. We recommend that:

- Any actions EU governments embark on should take into account the underlying causes of illegal logging as well as the difficulties in defining what is legal and whether what is legal is just; simple crack down actions adopted in isolation could just backfire.
- EU governments should support and facilitate producer country governments in carrying out a detailed assessment of existing chain of custody schemes and define and develop custody schemes at national or regional level.
- EU governments should support and facilitate independent monitoring activities by local communities and local and national NGOs and, where these are not possible, by international NGOs.
- Capacity-building assistance should be provided for the design and establishment of legality verification schemes; this may include some elements of law reform in the producer countries, and should include fully participatory processes with all stakeholders.
- Capacity-building assistance should be provided for producer country customs agencies, particularly for establishing cooperative and data exchange relationships with EU customs agencies.
- The WTO implications of any trade-restrictive measure must be taken into account, but the systems we contemplate, which revolve around bilateral agreements between the EU and producer country governments to license trade, should raise no WTO implications; nevertheless, EU negotiators should raise the issues within the WTO trade talks, and promote awareness and discussion of the issues.

8 Conclusion

As can be seen, there is a wide range of options for the institutions of the EU and for EU member state governments. Inevitably, they vary substantially in terms of their complexities and implications, the amount of resources (finance, human capacity and time) they would require, and in terms of payback. Given that resources are always limited, we believe that the following measures should be adopted as key priorities for action:

- **Adopt new EU legislation to ban the entry of illegally produced timber into the EU; this should include establishing systems to identify legal production in producer countries (with their agreement), and a requirement for evidence of legal production to be presented at the point of import into the EU.**
- **Provide capacity-building assistance to developing countries to establish legality verification systems and reform their forestry sectors, and possibly forest laws.**
- **Use government procurement policy to source legal and sustainable products, excluding illegal timber from an important section of the market.**
- **Regulate sources of finance for the forestry industry, steering investment flows away from potentially illegal activities.**
- **Where possible use existing legislation on illegal goods and money laundering to target illegal timber.**

