



# Facing Reality

How to halt the import of illegal timber in the EU



**GREENPEACE**



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**Cover photo: Penan blocking road in a peaceful protest against loggers in Sarawak, Malaysia.**

*Photo: Greenpeace/Bruno Manser*



**Mahogany tree in the Amazon forest, Brasil**

*Photo: Greenpeace/Greig*

**“The EU currently launders large volumes of illegally sourced timber each year.”**

## Foreword

By mid-2004, the European Commission is due to report back to the Council of the European Union with its proposals for implementing the EU Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) that it released in May 2003.

FERN, Greenpeace and WWF welcome the Plan and aim, with this report, to provide further recommendations to EU policy makers that will assist their efforts to ensure its successful implementation.

Given the stage of development of the FLEGT Action Plan, this report will focus primarily on criminal aspects of the timber industry. However, it is important to remember that much legal logging is also highly destructive – and that ultimately it is the issue of forest sustainability that needs to be addressed.

As the environmental NGO community has repeatedly shown, the impacts of illegal logging on wildlife and human welfare are devastating. Illegal logging contributes to deforestation and loss of biodiversity; fuels civil wars and threatens international security through bribery, organised crime and human rights abuses; cuts tax revenue of producer countries; destabilises international markets and undermines both legitimate business and responsible forest management.

As a major buyer and importer of illegal forest products, and with European timber companies heavily implicated in this trade, the European Union has the duty as well as the power to curtail criminal activities linked to it.

We believe that, to be successful, the FLEGT process cannot be restricted to voluntary mechanisms. Illegal logging has reached an unprecedented high level, proving that voluntary measures, together with industry self-regulation, have been insufficient to stop illegal logging.

Therefore, although we welcome the planned EU regulation for a voluntary licensing scheme and the development of voluntary partnership agreements, we believe that the EU must develop a regulation to outlaw the import of illegally sourced timber and forest products. This regulation must be implemented at the same time as the regulation for the voluntary licensing scheme and should allow EU enforcement officials to seize illegally sourced forest products and to prosecute those that trade in them.

We also ask the European Union to build political support within producer countries for the voluntary partnership agreements proposed by the FLEGT Action Plan. The negotiations of these agreements should bring together all stakeholders in producer and consumer countries in developing solutions and promoting responsible forest management.

However, to be effective, the partnership agreements need to be based on a proper review of all existing forest-related laws and, where needed, encourage legislative and policy reform to ensure that the enforcement of these laws does not increase poverty or create conflict, yet does strengthen environmental standards. The EU will therefore have to ensure that these agreements are developed in a fair and transparent manner, with the prior and informed consent of all stakeholders, particularly indigenous peoples and local communities.

While the European Commission will present its measures to implement the EU FLEGT Action Plan, EU Member states should promote responsible forest management by reviewing existing national and European legislation: first, by amending money laundering legislation; second, by adopting green procurement policies; and third, by using the OECD Convention on Bribery.

The European Union has regularly spoken out against the trade in illegal timber. We therefore expect that the recommendations presented in this document, including those regarding new legislation, will form part of the European action, and will help to put an end to illegal and destructive forest practices.

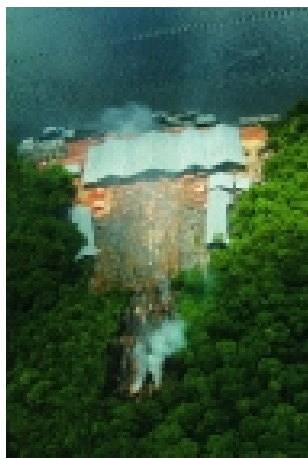
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**Greenpeace activists in Amsterdam protest against timber imports from two companies known to be operating illegally in Africa.**  
*Photo: Greenpeace/Remkes*





**A working sawmill, believed to be illegal, on the Lamandau River near Borneo's Tanjung Puting National Park.**

*Photo: Greenpeace/Behring-Chrisholm*

## Introduction

### The problem

Illegal logging is a pervasive problem, causing enormous damage to forests, to local communities and to the economies of producer countries. And since the EU is one of the largest importers of timber and forest products, the consumption of the member states continues to fuel illegal logging and related criminal activities. Yet the EU still has no legal means to halt the import of illegally sourced forest products.<sup>1</sup> All the main EU institutions have recognized this problem; however, insufficient action is being taken to address this issue. This report aims to outline what we believe can and should be done to implement effective solutions that governments and other stakeholders can act on.

### What is illegal logging?

Illegal logging activities include the harvest, transportation, purchase or sale of timber in violation of national laws. The harvesting procedure itself may be illegal, including using corrupt means to gain access to forests; extraction without permission or from a protected area; the cutting of protected species; or the extraction of timber in excess of agreed limits (see, for example, Box 1). Illegalities may also occur during transport, such as illegal processing and export; fraudulent declaration to customs; and the avoidance of taxes and other charges. It should be noted, however, that much destructive logging is however legal and that legal and illegal logging are often linked. Therefore addressing only illegally sourced timber is not sufficient. See also page 6.

#### Box 1

##### Logging in national parks: the case of Korindo (Indonesia)

In March 2004, Greenpeace carried out a series of actions against a cargo ship transporting timber from the Indonesian company Korindo, which was being imported into France, UK, Belgium and the Netherlands. Korindo is a company proven to be using illegal timber from the last rainforests of Indonesia. In May 2003, an Indonesian Government investigation confirmed that Korindo was receiving illegal timber from notorious timber barons known to obtain timber from an orang-utan refuge – the Tanjung Puting National Park.<sup>2</sup>

Tanjung Puting National Park is a 400,000 hectare conservation area of global importance. It is recognised as a world biosphere reserve by the United Nations and forms the largest protected area of swamp forest in South-East Asia.

<sup>1</sup> With the exception of CITES which is only partly applicable. See page 15.

<sup>2</sup> Environmental Investigation Agency (2000) *Illegal Logging in Tanjung Puting National Park*. See: <http://www.eia-international.org> ; Greenpeace (2003) *Partners in Crime: A Greenpeace investigation of the links between the UK and Indonesia's timber barons*. See: [www.saveordelete.com](http://www.saveordelete.com) ; Greenpeace (2004) *Protect Life on Earth Today : Tanjung Puting National Park under siege*. see: [www.saveordelete.com](http://www.saveordelete.com)

## The scale and the consequences of the problem

Some estimates suggest that the illegal timber trade may comprise over a tenth of the total global timber trade, worth more than \$150 billion a year.<sup>3</sup> Although exact figures are difficult to obtain, given the illegal nature of the activity, reliable estimates (see Box 2) indicate that more than half of all logging activities in particularly vulnerable regions – the Amazon Basin, Central Africa, Southeast Asia, the Russian Federation and some of the Baltic states – is illegal.<sup>4</sup>

“Some estimates suggest that the illegal timber trade may comprise a tenth of the global timber trade.”

Box 2:

### Illegal logging: some facts

- A joint UK-Indonesian study of the timber industry in Indonesia in 1998 suggested that about 40% of throughput was illegal, with a value in excess of \$365 million.<sup>5</sup> More recent estimates, comparing legal harvesting against known domestic consumption plus exports, suggest that 88% of logging in the country is illegal in some way.<sup>6</sup> Malaysia is the key transit country for illegal wood products from Indonesia.<sup>7</sup> See page 24 regarding problems related to rules of origin.
- In Brazil, 80% of logging in the Amazon violates government controls.<sup>8</sup> At the core of illegal logging is widespread corruption. Often referred to as ‘green gold’, mahogany can fetch over US\$1,600 m<sup>-3</sup>. Illegal mahogany opens the door for illegal logging of other species, and for widespread exploitation of the Brazilian Amazon. Recent Greenpeace investigations in the Brazilian state of Pará reveal just how deeply rooted the problem remains. No reliable legal chain of custody exists for mahogany, and the key players in its trade are ruthless.<sup>9</sup>
- The World Bank estimates that 80% of logging operations are illegal in Bolivia and 42% in Colombia,<sup>10</sup> while in Peru, illegal logging equals 80% of all activities.<sup>11</sup>
- Research carried out by WWF International<sup>12</sup> in 2002 shows that in Africa, rates of illegal logging vary from 50% for Cameroon and Equatorial Guinea to 70% in Gabon and 80% in Liberia – where revenues from the timber industry also fuelled the civil war.
- WWF estimates that illegal logging in Russia is at least 20%, reaching up to 50% in its far eastern regions (WWF press release, 30 March 2004).

3 OECD (2001) OECD Environmental Outlook. p 122.

4 For further details on illegal logging, see: Duncan Brack and Gavin Hayman (2001) *Intergovernmental Actions on Illegal Logging*. Royal Institute of International Affairs; Duncan Brack, Gavin Hayman and Kevin Gray (2002) *Controlling the International Trade in Illegally Logged Timber and Wood Products*. Royal Institute of International Affairs. Both available at [www.riia.org/sustainabledevelopment](http://www.riia.org/sustainabledevelopment)

5 Indonesia-UK Tropical Forestry Management Programme (1999) *Illegal Logging in Indonesia*. ITFMP Report No. EC/99/03

6 Greenpeace (2003) *Partners in Crime: A Greenpeace investigation of the links between the UK and Indonesia's timber barons*. See: [www.saveordelete.com](http://www.saveordelete.com)

7 Environmental Investigation Agency and Telepak (2004) *Profiting from Plunder: How Malaysia Smuggles Endangered Wood*

8 WWF International (2002) *The Timber Footprint of the G8 and China*

9 Greenpeace (2001) *Partners in Mahogany Crime : Amazon at the mercy of gentlemen's agreements*.

10 World Bank (2004) *Forest Law Enforcement*

11 The Peruvian Environmental Law Society (2003) *Case Study on the Development and Implementation of Guidelines for the Control of Illegal Logging with a view to Sustainable Forest Management in Peru*

12 WWF International (2002) *The Timber Footprint of the G8 and China*

Illegal logging is not only a problem in the South or Russia. In Estonia illegal logging is estimated to reach 50%<sup>13</sup> and in Latvia rates of 15-20% have been documented, while anecdotal evidence points towards 25%<sup>14</sup> of logging being illegal.

Illegal logging contributes to deforestation, causes loss of biodiversity and undermines the rule of law. These illegal activities undermine responsible forest management, encourage corruption and tax evasion and reduce the income of the producer countries, further limiting the resources producer countries can invest in sustainable development (see Box 3). Illegal logging has serious economic and social implications for the poor and disadvantaged.

Furthermore, the illegal trade of forest resources undermines international security, and is frequently associated with corruption, money laundering, organised crime, human rights abuses and, in some cases, violent conflict. In the forestry sector, cheap imports of illegal timber and forest products, together with the non-compliance of some economic players with basic social and environmental standards, destabilise international markets. This unfair competition affects those European companies, especially the small and medium sized companies that are behaving responsibly and ready to play by fair rules.

#### Box 3:

#### Loss of revenue to governments of producer countries

The scale of illegal logging represents a major loss of revenue to many countries and can lead to widespread associated environmental damage. A senate committee in the Philippines estimated that the country lost as much as US\$1.8bn per year during the 1980s.<sup>15</sup> The Indonesian government estimated in 2002 that costs related to illegal logging are US\$3bn each year.<sup>16</sup> The World Bank<sup>17</sup> estimates that illegal logging costs timber-producing countries between 10 and 15 billion euros per year. This compares with 10 billion euros disbursed as EC aid in 2002.<sup>18</sup>

### The need for assessing forest laws

Every country has forest laws that aim to regulate the management and the protection of forests, as well as the way local people use the forest. These forest-related laws include: customary laws, international laws relating to trade, human rights and the environment, national and local laws relating to land tenure, human rights, conservation, wildlife and forestry. Rights of ownership, use and

13 Estonian Green Movement (2004) Illegal forestry and Estonian timber exports

14 WWF Latvia (2003) The features of illegal logging and related trade in Baltic Sea region; WWF International (2002) The Timber Footprint of the G8 and China

15 Debra Callister (1992) Illegal tropical timber trade: Asia Pacific. TRAFFIC International

16 ICG (2001) Natural Resources and Law Enforcement in Indonesia

17 World Bank (2002) Revised Forest Strategy

18 Annual report 2003 from the Commission to the Council and the European Parliament on the EC Development Policy and the implementation of External Assistance in 2002



access to forests by local communities are often not recognised in forest-related laws. In many countries, therefore, forest management laws tend to restrict the forest use by local communities and give preferential access to large-scale industrial forestry.

As noted by CIFOR, among others, it is clear that forestry laws have typically been influenced by the timber industry. Illegal forest use is therefore not just an outcome of poor governance and corruption but often an integral part of local and national political economies. Revenues from illegal forest exploitation keep existing political parties, policies and practices in operation. Or, as the Indonesian NGO Walhi describes:<sup>19</sup>

*“illegal logging is connected to, and dependent upon, ‘legal logging’. This is so because of the misuse of the permits which are issued by government officers, bribed police and military officers, usually with support of economically and politically powerful interests. A technical focus on ‘Illegal logging’ fails to target the real criminals; those behind the operations. Instead it risks targeting poor people who have no financial alternative, and are often forced to participate in the logging operations.”*

Hence, simple law enforcement, in countries such as Indonesia, Malaysia and Russia may therefore increase conflict and poverty and not contribute to better forest management. Therefore, as noted by the Commission in its Action Plan<sup>20</sup> and by the Council in its Conclusions,<sup>21</sup> law enforcement efforts should start with a proper political dialogue with producer countries to instigate forest sector governance reforms. See chapter IV for detailed recommendations.

### **Legal – yet destructive – logging**

Legal logging does not mean sustainable logging. Half of the world’s forests have disappeared, and only 20% remain as large relatively undisturbed tracts.<sup>22</sup> This 20% contains the natural habitat of two-thirds of the earth’s known terrestrial species,<sup>23</sup> and provides the livelihoods and cultural foundation for indigenous peoples and local communities. More than 1.2 billion people worldwide depend to varying degrees on forests for their livelihoods.<sup>24</sup> Yet these forests are disappearing at an alarming rate. Logging, both legal and illegal, is one of the main causes.

Today around 10 million hectares of forest are destroyed each year. That’s an area the size of 32 soccer fields every minute. Clearly there is a need for national governments to tackle this crisis by making a greater commitment to the

19 WALHI’s Statement to the RIIA Meeting on December 2, 2003: *A Moratorium on Industrial Logging is the solution to Indonesia’s “Illegal Logging” problem*

20 [http://europa.eu.int/comm/development/body/theme/FLEGT\\_en.pdf#zoom=100](http://europa.eu.int/comm/development/body/theme/FLEGT_en.pdf#zoom=100)

21 Council of the European Union (2003) *Council Conclusions 13 October 2003, 2534 Council meeting*

22 World Resources Institute (WRI) (1997) *The Last Frontier Forests: Ecosystems and Economies on the Edge*. WRI, Washington DC. Available at: [http://pubs.wri.org/pubs\\_description.cfm?PubID=2619](http://pubs.wri.org/pubs_description.cfm?PubID=2619)

23 WRI (2000) *World Resources 2000-2001: People and Ecosystems: The Fraying Web of Life*. Oxford University Press, Oxford

24 World Bank (no date) *Sustaining Forests*. Available at:

[http://lnweb18.worldbank.org/ESSD/ardext.nsf/14ByDocName/ForestStrategyBooklet/\\$FILE/Forest+Strategy+Booklet.pdf](http://lnweb18.worldbank.org/ESSD/ardext.nsf/14ByDocName/ForestStrategyBooklet/$FILE/Forest+Strategy+Booklet.pdf)

protection and sustainable use of their forest heritage, and to implement commitments made under the Convention on Biological Diversity, the various international Human Rights Conventions, the Intergovernmental Panel on Forests, and the World Summit on Sustainable Development, among others.

There is a clear danger that the EU's efforts to curb illegal logging will unwittingly encourage national governments to water-down their existing environmental laws rather than strengthening them. This could lead to weakening existing forest laws, or even to legalising current illegal practices, in order to satisfy the EU and other international markets. The challenge, therefore, is to ensure that the illegal logging debate is not focused on legality at the risk of encouraging destructive logging practices. It is therefore essential to start a political dialogue with producer countries focused on forest sector reform, increasing transparency, strengthening land tenure and access rights, and reducing corruption. This will not only address the illegal forestry practices but also lead to forest sector reform which is, in many cases, desperately needed to halt destructive logging.

**Malaysia, Penan man standing next to a Shin Yang Timber passing truck loaded with logs.**

*Photo: Greenpeace/NGO*





**Greenpeace declares the UK's Cabinet Office a forest crime scene after investigating the government's timber procurement policy.**

*Photo: Greenpeace/Cobb*

**“Illegal logging has serious economic and social implications for the poor and disadvantaged.”**

## Chapter I

### Current EU activities

#### The international framework

Discussions on illegal and destructive logging have taken place in a number of fora as the concern over the extent of illegal logging has increased. Measures are proposed to address illegal logging and associated trade at national and EU level as well as at inter-regional and multilateral levels. This chapter provides the context for the development of the FLEGT Action Plan, a summary of its contents and the mandate provided by the Council and the European Parliament for the Commission to pursue its work.

#### G8

In 1998 at the Birmingham G8 Summit, an Action Plan on Illegal Logging<sup>25</sup> was adopted. It stated that:

*“illegal logging robs governments, forest owners and local communities of significant revenues and benefits, damages forest ecosystems, distorts timber markets and forest resource assessments and acts as a disincentive to sustainable forest management. International trade in illegal harvested timber including transfer pricing, under invoicing and other illegal practices, exacerbates the problem of illegal logging. Better information on the extent of the problem is a prerequisite to developing practical and effective counter measures.”*

The G8 governments therefore affirmed their commitment to:

- Assess the effectiveness of internal measures to control illegal logging and international trade in illegal harvested timber and identify areas to improve;
- Work both with partner countries and through international organisations to develop their own capacity to assess illegal logging and trade in illegally harvested timber and develop and implement counter measures.

#### Convention on Biological Diversity and World Summit on Sustainable Development

The Convention on Biological Diversity (CBD) provides some guidance for the measures that need to be developed and implemented to promote responsible forest management and eliminate illegal logging and related trade. All EU member states as well as the European Community are signatories to the CBD and hence legally bound by its decisions.

<sup>25</sup> G8 Action Plan on Forests 9 May 1998

In 2002, at the meeting of the 6th Conference of the Parties, the CBD adopted a work programme on forests. The parties to the CBD agreed to promote forest law enforcement and address related trade, notably by supporting: the evaluation and reform of legislation to include clear definition of illegal activities and to establish effective deterrents; the development of methods and capacity-building for effective law enforcement; and regional cooperation and assistance to develop tracking and chain of custody systems for forest products to ensure that these products are legally harvested.<sup>26</sup> The state parties to the CBD also agreed to:

*“apply the ecosystem approach to the management of all types of forests; promote the sustainable use of forest biological diversity; enhance the institutional enabling environment; address socio-economic failures; and increase public education, participation and awareness.”<sup>27</sup>*

In February 2004, at the COP 7 meeting in Malaysia, the state parties to the CBD renewed their commitments and agreed to:

*“take further steps in curbing the illegal exploitation and trade of resources, particularly from existing protected areas and from areas of ecological importance for biodiversity conservation.”<sup>28</sup>*

They also committed themselves<sup>29</sup> to contribute to achieving the 2010 targets contained in the Plan of Implementation of the World Summit on Sustainable Development,<sup>30</sup> and in particular the attainment of the Millennium Development Goals.<sup>31</sup> Furthermore, the Plan of Implementation adopted at the World Summit on Sustainable Development in September 2002<sup>32</sup> states that:

*“Governments should take action on law enforcement and the illegal international trade in forest products. The international community should provide human and institutional capacity building related to the enforcement of national legislation in those areas.”*

**“In the EU there is currently no Community legislation prohibiting the import and marketing of timber or timber products produced in breach of the laws of the country of origin.”**

## **EU level activities**

### **The Commission’s action plan**

In May 2003, the European Commission adopted an Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT).<sup>33</sup> The Action Plan recognises the seriousness and complexity of the issue as well as the EU’s responsibility to contribute to solutions. Last, but not least, the Commission recognises that law enforcement – without changing unjust laws – can make the situation worse for poor people.

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26 UNEP/CBD/COP/6/L.27 - 19 April 2002 (Programme element 2. Goal 1. Objective 4)

27 UNEP/CBD/COP/6/L.27. 19 April 2002

28 Final draft decision UNEP/CBD/COP/7/L.32: Protected areas (Article 8 (a) to (e))

29 Final draft decision UNEP/CBD/COP/7/L.32: Protected areas (Article 8 (a) to (e))

30 [http://www.johannesburgsummit.org/html/documents/summit\\_docs/2309\\_planfinal.htm](http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm)

31 <http://www.un.org/millenniumgoals/>

32 Paragraph 45c: Plan of implementation adopted at the World Summit on Sustainable Development (WSSD) in September 2002

33 [http://europa.eu.int/comm/development/body/theme/FLEGT\\_en.pdf#zoom=100](http://europa.eu.int/comm/development/body/theme/FLEGT_en.pdf#zoom=100)

The central activity of the Action Plan is to develop bilateral or regional partnership agreements, with the aim of creating a caucus of the main wood-producing and importing countries. These voluntary partnership agreements would initially cover a limited range of solid products and eventually be extended to other categories. The agreements would be based on verifying that timber imports from partner countries were harvested in conformity with their national legislation. Some elements will be common to each partnership agreement. These include:

- A commitment to ensure that laws are consistent, enforceable and supportive of sustainable forest management;
- The development of technical and administrative systems to monitor logging operations and track timber from the point of harvest to the market;
- The set-up of checks and balances in the tracking and licensing system, including the appointment of an independent monitor.

In order to implement these partnership agreements the Commission must draft a regulation that will form the legal basis for a voluntary licensing scheme.<sup>34</sup> This licensing system must be effective, reliable, and publicly verifiable and must not penalize legitimate business.

The FLEGT Action Plan also mentions the possibility of encouraging private and public banks and financial institutions to assess the risks attached to investing in activities that could exacerbate<sup>35</sup> illegal practices; to look into the possibilities of the EU Money Laundering Directive; to tighten up CITES; to use the OECD Convention on Bribery; and to adopt green procurement policies. These issues are dealt with in Chapter III.

### **The Council conclusions on the action plan**

In October 2003, the Council of the European Union adopted Conclusions,<sup>36</sup> endorsing the Commission's Action Plan and confirming that action is taken in the context of the international commitments made by the European Union. All member states are asked to enter into discussion with producer countries and report back to the Council, by mid-2004, on their readiness for, and their views on, these partnership agreements. The results of these discussions will form the basis for future debate on the mandate given to the Commission to negotiate with interested partner countries. The Council has asked the Commission to draft a regulation setting up a voluntary licensing scheme for identifying for legal timber and wood products under these partnership agreements.

The Commission and the Council recognise, however, that not only are a significant number of producer countries unlikely to enter into such agreements,

34 There are two types of EU Law: a Regulation and a Directive: a Regulation is directly implemented by all member states, while a Directive has first to be transposed into national law.

35 For example, the development of a large paper mill in an area where forest resources are limited could encourage illegal and unsustainable extraction to supply such a mill's ready demand.

36 Council of the European Union (2003) Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan - Council Conclusions

but also that illegal timber traders will import illegally sourced forest products via third countries that have no such agreement with the EU. In addition, it is clear that the development of these agreements is time consuming. The Council has therefore asked the Commission to review the options for, and the feasibility of, further legislation to control imports of illegally harvested timber, including, money laundering legislation and stolen goods legislation, and to present its findings to the Council by mid-2004. Key decisions and significant progress are therefore expected from European governments under the Dutch Presidency of the European Union, which starts in July 2004. Finally, the Council Conclusions show that it is fully aware of the political nature of the issue, as the Council calls on the European Community and its member states to:<sup>37</sup>

- strengthen land tenure and access rights especially for marginalized, rural communities and indigenous peoples;
- strengthen effective participation of all stakeholders, notably of non-state actors and indigenous peoples, in policy-making and implementation;
- increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring;
- reduce corruption in association with the award of forest concessions and the harvesting and trade of timber;
- engage the private sector of the timber producing countries in the efforts to combat illegal logging.

### The EU Parliament

In January 2004 the EU Parliamentary Industry and Trade Committee (ITRE) delivered its opinion<sup>38</sup> on the Commission's Action Plan. In a letter to the Commission and the Council it stated that while it welcomed the Commission's Action Plan it felt that:

*“Although a voluntary licensing scheme would prevent unlicensed timber from participating countries being released for free circulation within the EU, not all producing countries are likely to agree to enter bilateral agreements. A coherent solution to this problem cannot rest solely on partnership agreements with willing countries. Binding legislation is required to tackle the trade in illegally logged timber and forest products directly, irrespective of the countries of origin so as to enable the authorities in EU Member States to prosecute companies and individuals importing or marketing illegally sourced timber and forest products.”*

In its letter, the ITRE Committee dismissed concerns that such measures would be incompatible with WTO rules and requested that the Commission draft legislation that would prohibit the importing and marketing of all illegally-sourced forest products, and that it report back to both the Council and the European Parliament by June 2004. It suggests that Articles 175 EC and/or 179

37 Council of the European Union (2003) Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan - Council Conclusions. p 3

38 Motion for a European Parliament resolution on the Commission Communication On Forest Law Enforcement, Governance and Trade (FLEGT), Proposal for an Action Plan - B5-0397/2003; 19 January 2004

EC of the Treaties should be used as the legal bases for any legislation, both to reflect the environmental and developmental objectives of the FLEGT Action Plan and to ensure that full Parliamentary scrutiny is guaranteed. (See Annex III for the text of the Articles)

Council, Commission and Parliament are therefore all open to new legislation, both for a voluntary licensing scheme and, possibly, for legislation outlawing the import of illegal forest products.

**The Kiunga Aiambak 'road' in Papua New Guinea allows access for illegal loggers.**

*Photo: Greenpeace/Sabbath*





**Illegal and destructive logging threaten the survival of the world's last orangutans.**

*Photo: Greenpeace/Verbelen*

## Chapter II

### New EU legislation outlawing import of illegal timber and forest products

As the Commission's Action Plan correctly points out: *"In the EU there is currently no Community legislation prohibiting the import and marketing of timber or timber products produced in breach of the laws of the country of origin"*.<sup>39</sup> Currently, law enforcement agencies cannot prosecute individuals or companies that are trading in illegally sourced timber and forest products or even seize these products on entry into the EU.

Therefore legislation is required that will outlaw the import into the EU of illegally sourced forest products. Under this legislation, sanctions (fines or imprisonment) must be sufficiently dissuasive to ensure that a company will not re-offend. In France, customs legislation provides for a prison sentence of up to three years, seizure of illegal goods and a fine equal to or double the value of the illegal goods.<sup>40</sup> Furthermore, this legislation must allow common interest groups to bring cases and participate as third parties.

A recent report<sup>41</sup> drafted for the European Commission confirms the current negative role of the timber and retail industry stating that:

*"There are many indications that illegal logging relies on structures of organised crime.... Considering the fact that European buyers of timber have in-depth knowledge of the industry, it may be concluded that they are informed of the illegal source of the wood. It is safe to assume that these buyers thereby sanction illegal logging, due to the strong competitive pressure, in order to cut expenses."*

Experience has shown that, to be effective, such legislation needs to cover all forest products, while any – inevitable – transition period can cause further problems: according to Global Witness<sup>42</sup> a UN Security Council resolution<sup>43</sup> that banned exports of round logs from Cambodia had several unintended consequences. First, the log ban did not take immediate effect, resulting in a logging frenzy as the loggers raced to beat the December deadline. Second, the resolution did not ban processed timber, resulting in the proliferation of rogue sawmills across the country with logs being sawn and legally exported.

<sup>39</sup> [http://europa.eu.int/comm/development/body/theme/FLEGT\\_en.pdf#zoom=100](http://europa.eu.int/comm/development/body/theme/FLEGT_en.pdf#zoom=100)

<sup>40</sup> l'article 414 du Code des douanes, " Sont passibles d'un emprisonnement maximum **de trois ans**, de la **confiscation** de l'objet de fraude, de la confiscation des moyens de transport, de la confiscation des objets servant à masquer la fraude **et d'une amende comprise entre une et deux fois la valeur de l'objet de fraude**, tout fait de **contrebande** ainsi que tout fait d'importation ou d'exportation sans déclaration lorsque ces infractions se rapportent à des marchandises de la catégorie de celles qui sont prohibées ou fortement taxées au sens du présent Code ".

<sup>41</sup> Organised environmental crime in the EU Member States see:

[http://europa.eu.int/comm/environment/crime/organised\\_environmental\\_crime\\_in\\_member\\_states.pdf](http://europa.eu.int/comm/environment/crime/organised_environmental_crime_in_member_states.pdf)

<sup>42</sup> Global Witness (2002) *The Logs of War: The Timber Trade and Armed Conflict*

<sup>43</sup> Number 792/1992



In order to verify the legality of forest products entering the European market, the European Commission, within the FLEGT Action Plan, proposes the development of a Regulation for a voluntary licensing scheme, combined with the negotiation of voluntary partnership agreements between producer and consumer countries. Although we welcome these proposals, we believe that for the FLEGT process to be successful, it cannot be limited to these voluntary mechanisms.

We therefore believe that the EU must develop a new regulation, at the same time as the regulation for the voluntary licensing scheme, to outlaw the import of illegal timber and forest products. This regulation should rely on national laws of producer countries and international law, and allow EU enforcement officials to seize illegally sourced forest products and prosecute those that trade in them.

This new regulation could be an improved EU version of the US Lacey Act<sup>44</sup> that outlaws the import, transshipment, purchase, sale and receipt of products obtained or sourced in violation of the laws of a foreign state or of an international treaty. Timber is not covered by the Lacey Act, apart from those species that are either listed under CITES or identified as endangered in a US state. The Lacey Act also requires that shipments of fish and wildlife be accurately marked and labeled on the shipping containers. Failure to do so (a ‘marking offence’) is a civil offence punishable by a fine. In all cases, federal agents are authorised to seize any wildlife that they have reasonable grounds to believe was taken, held, transported, or imported in violation of any provisions of the underlying laws. This is true even if the defendant can show that they were not aware that the wildlife was illegally obtained. US prosecutors make frequent use of the Lacey Act. In 1999, for example, the US Fish and Wildlife Service was involved in almost 1,500 cases.<sup>45</sup>

**“Six out of nine EU member states do not have a national policy on procurement of timber from legal and sustainable sources.”**

The model provided by the Lacey Act is of obvious relevance to illegal logging and related illegal practices. Proving illegality would not always be straightforward, not least because of a lack of knowledge – or a lack of clarity – about the foreign laws in question. US courts have interpreted the term ‘any foreign law’ broadly, including regulations as well as statutes, and have not restricted the laws in question to those aimed directly at wildlife conservation. This should also be true for the new EU legislation but the concept of ‘any foreign law’ must also include legally binding international agreements. In a Lacey Act proceeding, courts are given broad discretion because of the general lack of availability of foreign law materials and expert opinion. Sources used by courts have included affidavits and expert testimony from foreign judges, government ministers and lawyers; foreign case law; law review articles and translations of foreign decrees; information obtained from foreign officials; and the court’s own research and analysis.

44 the US Lacey Act, which makes it “unlawful for any person ... to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce ... any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law” 16 USC; SS 3372 (2a).

45 Animal Welfare Institute Quarterly 49:4 (Fall 2000). It is difficult to acquire precise figures, as cases may often be coded as import violations or CITES violations.

As a cautionary note, this type of provision might be vulnerable to a producer country lowering the threshold of legality to get round the law – though the act of giving additional powers to customs to make seizures might have quite a rapid deterrent effect. Despite these caveats, there is obvious value in giving willing authorities a clear and logical mandate to stop illegal products entering their jurisdiction. It provides a strong signal to participants in the market, and shifts the balance of what is perceived to be acceptable behaviour.

### **Legal basis for EU legislation**

Any EU legislation will need a legal basis emanating from the Nice Treaty, the specific legal basis adopted depending on the objectives of the existing legislation. In the case of measures to combat illegal logging, the aim is to: prevent loss of biodiversity; ensure respect for the rights of indigenous peoples and local communities; ensure prudent and rational use of natural resources; promote responsible forest management; and support sustainable development. It would, therefore, be inappropriate to use, as a basis for the new legislation, Article 133 of the Nice Treaty, which covers commercial policy, since these crucial issues are not included in the aim of that legislation.

Rather, the two most appropriate legal bases of the Nice Treaty would be Articles 175 (Environment) and/or 179 (Development). Another advantage of the use of these Articles over Article 133, is that these Articles would require the employment of the co-decision procedure, which gives equal power to Parliament and Council in adopting a Regulation. Article 133 would exclude the Parliament from any formal decision making role. See Annex III for the text of the relevant Articles.

**“The scale of illegal logging represents a major loss of revenue to many countries.”**

### **The WTO and controlling illegally sourced timber**

It is sometimes suggested that WTO rules would prevent the outlawing, under EU legislation, of timber and forest products that have been harvested, transported, purchased or sold in violation of national laws or international treaties. Greenpeace has obtained expert legal advice on this (a summary of which is included in Annex II). The advice concludes that it is unlikely that outlawing the import of illegally sourced timber and forest products would be held to contravene WTO rules. Whilst such a measure might constitute a quantitative restriction on imports contrary to Article XI.I of the GATT, and may also constitute a discriminatory measure contrary to Article III.4, it could successfully be defended under Article XX, which allows for measures that are necessary to protect exhaustible natural resources; measures to protect human, animal or plant life or health; and measures necessary to secure compliance with existing laws or regulations.

### Recommendations

- The European Commission should prioritise the development of a Regulation that will allow EU enforcement officials to seize illegally sourced forest products and prosecute those that trade in them. This Regulation must cover all wood products and must allow common interest groups to bring cases and participate as third parties;
- The legal basis for this Regulation should be Article 175 (Environment) and/or Article 179 (Development) of the Nice Treaty as the aim of the legislation is environmental protection, sustainable development and respect for human rights.

**Following years of campaigning, mahogany was successfully listed on CITES Appendix II in November 2002.**

*Photo: Greenpeace/Rudhart*





**View of Kostomuksha district.**

Photo: Greenpeace / Kantor

## Chapter III

### Other actions needed

Legislation to make it illegal to import or sell illegally sourced forest products in the European Union is a cornerstone of any action taken by the Commission and the Council in the context of the FLEGT Action Plan. However, other existing legislation and policy options at national and EU level can also be used and reinforced to address destructive logging and illegal practices. Several options are described below.

#### CITES

The Convention on International Trade in Endangered Species of Fauna and Flora (CITES)<sup>46</sup> is currently the only worldwide legal agreement that could be used to control a part of the trade in illegally sourced timber. It is also the only legal agreement to have been used by some member states to halt the import of illegally sourced timber. The advantages of CITES are therefore that it already exists and is widely, if imperfectly, implemented. The treaty has had some success in preventing the extinction of particular endangered species but weaknesses in checking export permits has undermined its ability to operate effectively. To extend its coverage to a substantial volume of international trade in timber species does not seem feasible. However, it should be used as a safety net to protect individual endangered tree species.

At present, 23 tree species and two genera (*Gonystylus* and *Guaiacum*) are listed on CITES Appendices.<sup>47</sup> However, an evaluation of 255 tree species carried out in 1998 against the CITES listing criteria found that around 15 new species could be added to Appendix I and almost 100 to Appendix II, if there were the political will to do so.<sup>48</sup>

CITES alone cannot be expected to address the problem of illegal logging as a whole, but with regard to certain listed tree species CITES' track record has been proven over three decades. Nevertheless, difficulties persist surrounding fraud in permits, the listing of timber species and the willingness of authorities to take action even when aware of problems.

46 The 1973 Convention on International Trade in Endangered Species (CITES) aims to protect endangered species from over-exploitation by employing a system of import and export permits to control international trade. Species are placed on different lists: Appendix I includes all species that are threatened with extinction; trade in these species "must be subject to particularly strict regulation" and is only authorized in exceptional circumstances. Appendix II includes species that are "not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival"; this further includes other species that must be subject to regulation in order to control the targeted species effectively. Appendix III includes species that a party identifies as being subject to regulation within its jurisdiction for the purposes of preventing or restricting its exploitation, and where it needs the co-operation of other parties in controlling trade. Amendments to Appendices I and II are implemented by the Conference of the Parties, whilst Parties themselves can place species on Appendix III.

47 [http://www.traffic.org/cop12/timber\\_conf.pdf](http://www.traffic.org/cop12/timber_conf.pdf)

48 World Conservation Monitoring Centre (1998) Contribution to an evaluation of tree species using the new CITES listing criteria. The species evaluated were chosen to provide 'a reasonable representation of tree species from various regions, climates and grades of commercialisation and conservation' (p 2). The availability of information on individual tree species varied considerably.

### Recommendations

- Governments should include more timber species on the CITES appendices as well as encourage producer countries to list more timber species under Appendix III of CITES;
- Governments should adopt a more coherent approach to checking the validity of CITES export permits at the point of import.

### Greening of procurement policies

Government purchases account for a substantial proportion of world trade in timber products. A recent report for WWF<sup>49</sup> estimated that the governments of the G8 purchase 18% of the timber products imported into their countries, generating a bill of over 20 billion US\$ annually. Governments thus have enormous power to exert influence through the supply chain to encourage responsible forest management and reduce the demand for illegally sourced forest products. Yet most EU member states do not have a national policy on procurement of timber from legal and sustainable sources.<sup>50</sup> Only the UK and Denmark are operating substantive policies that recognise the complexity of defining ‘legal and sustainable’ sources and provide guidance on how to determine compliance (See Annex I). However, Denmark’s policy is limited to timber products originating in tropical forests, and the UK’s policy still needs to be fully implemented.<sup>51</sup>

The various stages of the procurement process provide purchasers with opportunities to insist on timber products deriving from legal and sustainable sources. The EU’s rules (recently revised following agreement on new Directives governing public procurement) and the WTO’s Government Procurement Agreement do allow for green procurement, as is shown by recent research published by FERN.<sup>52</sup>

The possibilities for EU member states to implement green procurement policies are threefold: i) to include ‘legal and sustainable’ as contract conditions; ii) to include ‘legal and sustainable’ in technical specifications; iii) to include ‘legal and sustainable’ in award criteria. The new EU Directive is, however, ambiguous regarding the last two possibilities. Authorities would need to specify, in terms that could be evaluated objectively, what they mean by ‘legal and sustainable’ sources. In this respect, the work already done by the UK and Danish governments provides a basis for all EU member states to develop the necessary guidelines to procure only products that are ‘legal and sustainable’.

**“Governments have enormous power to exert influence through the supply chain to encourage responsible forest management and reduce the demand for illegally source forest products.”**

49 WWF International (2002) *The Timber Footprint of the G8 and China. Making the case for green procurement by government*

50 FERN (2004) *To Buy or Not to Buy: Timber procurement policies in the EU*

51 Tessa Robertson, WWF-UK Forests Programme Leader, personal communication March 2004

52 FERN (2004), *ibid*

### Recommendations

- EU member states must use their purchasing power to combat trade in illegal forest products, develop guidelines to procure legal goods and promote responsible forest management. Measures must be implemented and effectively enforced;
- The European Commission must develop and implement a green timber procurement policy for European institutions.

### Money laundering

Money laundering refers to the processing of the proceeds of crime in order to disguise their illegal origin. At a global level, money laundering is a problem of vast proportions: one recent estimate puts worldwide money laundering activity at roughly \$1 trillion per year; another, by a former IMF Director, placed this at 2 to 5 percent of the world's gross domestic product. This would be between \$800 billion and perhaps as high as \$2 trillion.<sup>53</sup> National legislation allowing authorities to tackle money laundering and seize the proceeds of criminal activity has traditionally focused on the illegal trade in narcotics. But over the past decade, the need to expand the focus to include crimes that threaten international security has increasingly been recognized. There is a clearly documented link between illegal logging and threats to national and international security: (illegal) logging can be linked with arms sales and civil wars – as in Sierra Leone and Liberia.<sup>54</sup> Logging companies often side with whoever controls the forest – which in some instances means insurgent groups. Timber has, therefore, in certain parts of the world, become a resource of choice for warring factions, criminal networks and arms-dealers, providing both finances and logistical capabilities.

At the EU level, the first European Directive on Money Laundering (1991) applied only to the proceeds of drug-related crimes.<sup>55</sup> In June 2003, a second Directive entered into force<sup>56</sup> that extended the scope of the 1991 legislation. Every EU member state therefore has legislation on money laundering, which has the potential to be effective against the trade in illegal timber. If illegal logging and the trade in illegally sourced timber are criminal offences under member states' law (as in the UK and the Netherlands), then the proceeds of these activities are subject to money laundering legislation, provided that such proceeds 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.

53 [http://www.fincen.gov/int\\_main.html](http://www.fincen.gov/int_main.html)

54 UN Security Council Resolution 1521 (2003), of 22nd December 2003

55 Directive 91/308/EEC.

56 Directive 2001/97/EC.

To date, however, no EU country has attempted to use this legislation to tackle this issue. The Indonesian government, in contrast, amended its money laundering legislation in September 2003 to include illegal logging.

The new law requires that Indonesia's banks report any transactions suspected of being connected with illegal activities and ensure that their customers are not engaged in illegal logging activities, prior to loaning any money. The onus is now on the banks to report any transactions suspected of being connected with crimes such as illegal logging. This example could easily be followed by all EU governments and incorporated into national legislation and the new Directive on Money Laundering that EU member states are committed to agreeing within the next three years.

The main advantage of money laundering legislation is that the international pressure to eradicate money laundering has increased. Although applying this legislation to the proceeds of the illegal timber trade involves problems of proof and the willingness of political and institutional actors to take meaningful action, where there is political will, this is possible.

#### Recommendations

- EU member states should amend national and EU money laundering legislation so as to include illegal logging;
- Member states must shift the burden of proof so that banks have to report on any activity that they consider suspicious based on the information they have available.

#### Bribery and corruption

Corruption is the most pernicious and deep-rooted cause of forest degradation. Corruption in forestry has many manifestations, ranging from give-away logging concessions, log smuggling, and illegal logging operations, to fraud and tax evasion schemes. Such corruption reflects the lack of accountability of corporations, governments, and other actors involved in the forestry sector. Corruption undermines efforts to achieve sustainable forest management, and renders most regulations and control mechanisms worthless.<sup>57</sup>

The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* entered into force in 1999. It is a legally binding instrument whose requirements must be incorporated into, or implemented by, the national legislation of its parties (OECD members) and other signatory governments.<sup>58</sup> The Convention makes it a criminal offence to bribe a foreign public official. As illegal logging, in a number of cases, involves

57 Transparency International Forest Integrity Network (FIN): Background and Concept Paper' October 2002

58 As of February 2003, 34 countries had ratified it, including Chile, Brazil and Argentina.

bribery, the OECD Convention clearly has a role to play in tackling it, although the problem often lies in proving that bribery has taken place. The Convention's effectiveness would increase, however, if all parties to the Convention implemented the recommendations made by the OECD, such as excluding companies that have been found guilty of bribery from bidding for public contracts.

Because this Convention addresses the supply of bribes it also adds a valuable dimension to efforts to eradicate corruption, since it does not rely solely on the will of the government receiving such income to address the problem. For example, under this Convention, a western company providing a bribe can become a target for legal action. One of the Convention's most interesting features, however, is the monitoring and follow up it foresees. This incorporates a process of peer review to be carried out within the context of the OECD Working Group on Bribery in International Business Transactions, involving questionnaires that governments must complete.<sup>59</sup> Both OECD and non-OECD parties gather to examine, in a first phase, the harmonization of national legislation with the Convention's obligations. During a hearing between examining countries and the State party under examination, the quality of the transposition is assessed. In a follow up, the country's response to remedy shortcomings noted during the phase one assessment is itself assessed. The phase two evaluation implies an assessment of the Parties' efforts on a practical level, including the resources dedicated to the effort, the number and training of personnel, the structures in place for dealing with cases, and the identification of obstacles to initiating prosecutions. It may also include an on-site visit. The procedure is open to members of civil society who can, and have, contributed written comments.

### Recommendations

- EU governments should develop – at national, international or regional level – forest sector guidelines for tax inspectors and public prosecutors to help them identify the possible forms that bribery and corruption that can take in the forestry sector;
- Governments should send a questionnaire to all public prosecutors to ensure that they report on all cases involving the application of bribery legislation to forestry sector-related crimes. Problems preventing prosecutions should also be reported.

### Regulating the timber trade

Some European timber trade federations are already taking action to reduce their dependence on illegally sourced timber. For example, the Dutch Timber Trade Federation has committed itself to halt illegal imports by 1 January 2005 and

<sup>59</sup> These questions cover issues such as public procurement sanctions, export credit agencies, blacklisting, codes of conduct, and accountancy provisions (such as clear and accurate reporting).



more than 250 timber companies have already signed up to this statement. It is, however, unclear as to how the federation will reach this objective, given that such a large volume of timber imports are illegally sourced.

Industrial logging in countries such as Cambodia, Cameroon and Indonesia, contributes little (net) to the economies of these countries, while creating conflicts with local people and proving detrimental to their livelihoods. As highlighted by the statement by the Indonesian NGO Walhi (see page 6), in many countries addressing illegal logging means addressing industrial logging itself. This is an impossible task for the timber industry on its own. With this issue in mind, at the Johannesburg World Summit on Sustainable Development, Greenpeace called on World Governments to endorse the Bhopal Principles on Corporate Responsibility.<sup>60</sup>

### Recommendations

- The EU and its member states should not fund or subsidise any industrial logging operations;
- The EU should publish a blacklist of companies that have been involved in illegal logging;
- The EU should promote the adoption of an international legally-binding instrument on corporate accountability and liability.

**“There are many indications that illegal logging relies on structures of organised crime.”**

### Regulating the financial sector

Finance from private sources – banks, investment and pension funds – can be an important source of revenue for logging companies and other sectors of the forestry industry. Some, notably ABN-AMRO and CITIBANK, have already announced that they will not fund any forestry companies involved in, colluding with, or purchasing timber from, illegal logging operations. Other financial institutions should follow this example. EU and member state authorities should require that financial institutions draw up policies and action plans to ensure that they do not finance companies involved in illegal logging practices. This would also facilitate the implementation of any money laundering legislation.

A 2002 study by Profundo<sup>61</sup> identified 21 financial institutions prominently involved in financing logging operations in the Congo Basin, including ABN-AMRO, HSBC, Credit Lyonnais and Deutsche Bank. A study<sup>62</sup> by FERN strongly links illegal forestry activities to the lack of due diligence in researching proposed activities on the part of both export credit agencies and private financial institutions. The study links the involvement of ten export credit agencies to illegal practices in Indonesia, Bolivia and Peru. Without the financial backing of these institutions, many destructive and illegal activities

60 For the Bhopal Principles, see Greenpeace (2002) *Forest Crime File: Corporate Crimes - The need for an international instrument on corporate accountability and liability*.

61 Jan Willem van Gelder (2002) *The financing of African logging companies*. Profundo.

62 Chantal Marijnissen (2002) *Export credits: Fuelling illegal logging*. FERN

would not be possible. Yet despite this, the role of these institutions has been given very limited attention in intergovernmental debates on illegal logging. This is a mistake.

When addressing illegal practices such as illegal logging, the role that financial institutions play cannot be overlooked. Although private commercial banks as well as (semi-) public export credit agencies appear to be looking more seriously into risk assessments of their lending practices, more is still needed. Governments have a role to ensure that private and public financial institutions are not involved in supporting unsustainable or illegal practices.

### Recommendations

- Financial sector regulators should issue specific industry guidelines for forestry sector activities specifying that companies wishing to raise equity on financial markets must disclose potential risks linked to forestry crime; this should encourage all financial institutions to adopt specific policies and guidelines for investments in the forestry sector;
- Governments should ensure that export credit agencies apply best available environmental and social rules and procedures to all their operations; should increase the information disclosure practices of their export credit agencies on basic project information and on environmental, social and human rights impact assessments and economic analyses; and should implement independent third-party monitoring of the projects against the above-mentioned rules, once in force.<sup>63</sup>

### Customs cooperation

Whilst the European Commission, member states and partner countries are developing necessary measures to eradicate illegal logging, increased customs cooperation both within the EU and between the EU and partner countries is a first step towards addressing the import of illegally sourced timber. Increased customs cooperation could start with increased flow of information and the identification of capacity reinforcement required for both European customs and partner countries.

European member states should therefore allocate adequate financial and human resources to their customs agencies, while appropriate training should be developed and provided to customs officials to facilitate their work. This should be accompanied by other institutional mechanisms such as setting up, at the national level, a task force to combat environmental crime. Such a task force would comprise the public prosecutor, customs, financial crimes units, law enforcement agencies and environmental experts. At the European level,

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63 A coalition of over 60 European NGOs has presented a list of environmental and social guidelines for ECAs, available at [www.fern.org](http://www.fern.org).

Europol<sup>64</sup> and Eurojust<sup>65</sup> could coordinate national efforts and facilitate the information flows.

### Recommendations

- Increased customs cooperation could start with increased flow of information and identification of capacity reinforcement required for both European customs and partner countries;
- Member states should provide sufficient resources, both human and material, for customs authorities to carry out the increased workload effectively;
- At the European level a task force on environmental crime should be created. This should include all competent experts and departments such as the public prosecutor, customs, police, environmental experts and financial crimes units working together at national level and coordinating under Europol and Eurojust.

**Greenpeace discovers an illegal logging operation in the Brazilian Amazon, with at least 200km of roads serving the operation.**

*Photo: Greenpeace/Beltrá*



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64 Europol is the intergovernmental office of criminal police that facilitates the exchange of information between national police forces on drugs, terrorism, international organised crime and paedophilia.

65 Eurojust is an EU body set up to reinforce the fight against serious organized crime.



**A road is being run into the forests of Chiloe Island**

Photo Greenpeace/Beltrá

## Chapter IV

### EU partnership agreements

Bilateral and regional approaches are a key step in the fight against illegal logging. The EU should therefore continue to support the Asia and Africa<sup>66</sup> FLEG processes. If these processes prove to be successful, a similar process should be developed in the context of South and Central America, as well as Russia. Bilateral and regional partnership agreements are the cornerstone of the EU FLEGT Action Plan, as outlined in chapter I. To be effective these partnership agreements, and the licensing scheme accompanying these agreements, need to be developed in a proper participatory process and must address the real and underlying issues, as described below.

#### The need for just legislation

In many countries, forestry legislation remains unclear, or even contradictory. For example, while Indonesia has hundreds of laws pertaining to the production of timber,<sup>67</sup> a 2003 overview of Indonesian forest governance revealed that 90% of state forestlands have never been legally transferred to the jurisdiction of the Forestry Department.<sup>68</sup> This means, in practice, that most ‘legal’ forestry operations in Indonesia are in fact of dubious legality. More importantly, in many countries, forestry laws have typically been heavily influenced by the timber industry, often with the support of aid agencies, and without much regard for the traditional and customary rights of local and indigenous peoples. It is therefore not surprising that a recent study by CIFOR notes:<sup>69</sup>

*“Many existing forest and conservation laws have unacceptable negative impacts on poor people, ethnic minorities, and women, and in many places they are enforced in a fashion that is discriminatory and abusive.”*

The development of bilateral and regional partnership agreements must therefore be an opportunity to address the problems associated with illegal and destructive forestry activities and to ensure that the regulatory framework has a positive impact on the rural poor. In many cases this will mean a revision of forest-related laws, including strengthening land tenure and access rights, especially for marginalized groups, rural communities and indigenous peoples – as already pointed out by the Council.<sup>70</sup> Legality should also be based on laws that support sustainable forest management.<sup>71</sup>

It is therefore essential that every partnership agreement starts with a thorough assessment of the potential positive and negative impacts, as well as the appli-

66 For more information see the Ministerial Declaration on African Forest Law Enforcement and Governance (AFLEG), 13-16 October, 2003, Cameroon

67 WWF/World Bank Alliance (2002) *Regulation, Law and Illegal Logging in Indonesia*

68 AMAN, WALHI and Rainforest Foundation (2003) *Implementation of principles 2 and 3 in Indonesia: Obstacles and Solutions*

69 David Kaimowitz (2003) *Forest Law Enforcement and Rural Livelihoods*. CIFOR

70 Council of the European Union (2003) *Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan - Council Conclusions*

71 WWF/World Bank Alliance (2002) *Regulation, Law and Illegal Logging in Indonesia*

cability – or lack thereof – of all existing forest-related laws, outlined in the introduction, see page 7. Only once forest laws are acceptable to the majority of the population, and notably to the indigenous groups in that country, can a licensing agreement be adopted.

### Recommendations

To ensure partnership agreements contribute to better forest management they must be based on real commitment to reform from national governments and:

- Be developed through processes of broad engagement with civil society organisations and favourable towards community forestry;
- Be aimed at creating public accountability and transparency in the management of natural resources;
- Be based on a proper assessment of the country's national forest and related laws (including customary laws, human rights laws and others);
- Be linked to governance reform programmes, including improving the independence of the judiciary.

### Licensing scheme and rules of origin

Once there is agreement in the producer country of the forest-related laws or new definitions of legality have been established, the second step in controlling illegal sourcing of forest products is the establishment of a system to identify legally produced timber and forest products. This would be the voluntary licensing scheme proposed by the Commission.

The licensing scheme for imports of timber and forest products could be similar in principle to the approach adopted under CITES, with its requirement for a transportation document (export and/or import permit) to accompany any consignment of controlled species. The licensing scheme must be based on independent, third party verification of legality in producing countries and a credible chain of custody.<sup>72</sup> Independent monitoring of the certification bodies certifying the chain of custody is also necessary. Civil society must be included in the development of the independent third party monitoring process. This implies that civil society must effectively participate in the development of the licensing scheme and in its subsequent implementation. The inclusion of appropriately trained civil society representatives will provide greater confidence and credibility to the scheme,<sup>73</sup> though there will remain a need for international oversight to ensure the scheme is not easily corruptible.

The licensing scheme proposed by the Commission would initially cover a limited range of solid products and eventually be extended to other categories.

<sup>72</sup> WWF (2003) *The EU Action Plan on Forest Law Enforcement Governance and Trade*

<sup>73</sup> Dave Currey, Environmental Investigation Agency, personal communication March 2004

However, as we have seen in Cambodia (see chapter II, Page 12), this approach can have a negative impact. Therefore we argue that the licensing scheme will need to cover all forest products including those, such as paper, that are made from multiple sources.

The partnership agreements and the licensing scheme to be set up to verify legality will be complicated by the EU's rules of origin.<sup>74</sup> These rules state that a product's origin is the country of last major transformation, which is not necessarily the same country as the country where the timber was harvested. Any licensing scheme should clearly go beyond these rules of origin and include a chain of custody from the source of the timber product. Moreover, within the EU, the responsibility to declare the origin of the timber or forest products entering the internal market falls on the importer. Again this is complicated as the definitions of 'rules of origin' applied by foreign producers are not necessarily identical to the definition applied by the EU.

If the problems these EU rules of origin pose are not addressed in a licensing scheme, the implication could be that the EU would negotiate a partnership agreement with a country that would continue to source timber and other forest products illegally from its neighbours and transform these forest products before re-exporting them to Europe. This kind of partnership agreement could then contribute to, if not accelerate, forest destruction.

**“Timber has ... become a resource of choice for warring factions, criminal networks and arms dealers.”**

#### Recommendations

- The licensing schemes will have to be based on independent, third party verification of legality in producer countries and be based on credible chains of custody, which include civil society participation in the development and implementation of the monitoring;
- The licensing schemes will need to cover all forest products including those, such as paper, that are made from multiple sources;
- An international harmonisation is required for the definition of 'rule of origin' in order to take into account the issues raised in relation to the illegal trade in forest products. EU rules of origin must not hamper a proper tracking and tracing system to the source of the product.

#### Development cooperation

If this work is to be successful then adequate financial and technical support must be allocated to measures to combat illegal logging. Although this section focuses on EC aid, its recommendations are also valid for other donors. Within the EC, funding for initiatives in partner countries and accession countries will come from existing funds such as the 9th European Development Fund, the budget lines for Asia and Latin America, and TACIS.<sup>75</sup>

<sup>74</sup> EEC Regulation n° 802/68 (OJ n° L 148) 28 June 1968, amended by Regulation n° 1318/71 ( OJ n° L 139).

<sup>75</sup> The TACIS programme is the EC aid programme providing technical assistance to 12 countries of Eastern Europe and Central Asia (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan).

The European Commission and its partner countries must also reallocate funds to forest sector governance. This will require the revision Country Strategy Papers (CSPs) and in particular Regional Strategy Papers (RSPs). The mid-term reviews of CSPs and RSPs due to begin in mid-2004, and the drafting of new CSPs and RSPs in 2006, constitute important opportunities to ensure that appropriate allocations of funds are made available.

The Delegations of the European Commission have an important role to play in the negotiation of partnership agreements, given that they are in charge of the European Community's aid programme and are in close contact with the local and national authorities of the potential partners.

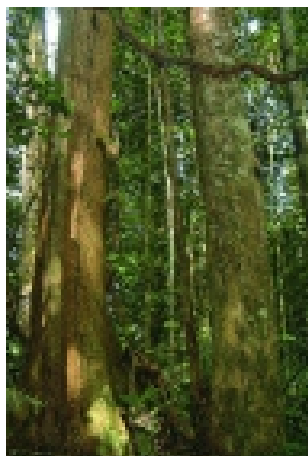
### Recommendations

- The Commission must integrate a full environmental profile into every Country and Regional Strategy Paper. In addition, a specific forest-sector analysis should be provided for all potential FLEGT partner countries focused on the four recommendations for just legislation, as mentioned above. This response must be accompanied by appropriate amendments to the financial allocations under the National and Regional Indicative Programmes;
- The Commission's headquarters in Brussels should provide the delegations with an outline of the necessary information to be included in the forest profile with specific reference to addressing illegal logging. This would include guidelines for consultation with non-state actors in country.

### Forest in Far Eastern Russia.

*Photo: Greenpeace/Kantor*





**Primary forest in Indonesia**

*Photo Eric Wakker*

## Conclusion

As clearly highlighted in this report, the impacts of illegal and destructive logging on wildlife and human welfare are devastating. As a major buyer and importer of illegal forest products, and with European timber companies heavily implicated in this trade, the European Union has a duty to curtail criminal activities and to ensure the legality of the products imported into its market. This report provides recommendations to EU policy makers to urgently address the imports of illegally sourced timber.

The recommendations include the development of a new regulation to outlaw the import of illegally sourced forest products into the European market. This regulation must allow EU enforcement officials to seize illegally sourced forest products and prosecute those that trade in them.

The report further concludes that the planned development of partnership agreements with producer countries, as part of the EU FLEGT process, provides a good opportunity to identify the legality of forest products and promote responsible forest management.

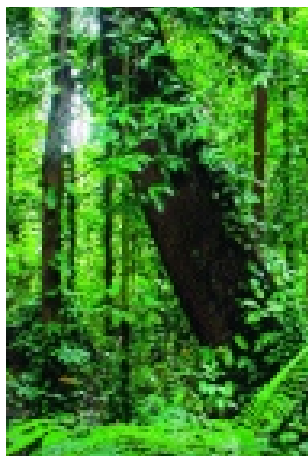
A precondition to the success of these partnership agreements is a proper analysis of all existing forest-related laws, including trade, human rights and customary laws. This is needed as currently in many countries forestry legislation discriminates against the most vulnerable groups in society and is biased towards timber industry interests.

The EU will therefore have to ensure that these partnership agreements are developed in a fair and transparent manner, with the prior and informed consent of all stakeholders, particularly indigenous peoples and local communities.

In the interim, national and EU policies and legislation should be strengthened and implemented to address the import of illegally sourced timber. These measures include CITES, money laundering and public procurement policies. All of these can be amended, enforced or implemented to capture some aspects of illegal and destructive forestry activities.

If the European Union fails to take immediate action to shut down the market for illegal timber and to actively promote responsible forest management and forestry reform, illegal and destructive logging will continue and the world's last forests will disappear forever.





**Primary forest in Indonesia**

Photo Eric Wakker

## Annex I

### Summary of country timber procurement policies

*To Buy or Not to Buy: Timber procurement policies in the EU, FERN 2004 (www.fern.org)*

Country	Is a policy in force?	Date present policy adopted	Scope of application/Comments
Denmark	Yes	June 2003	Serve as guidelines for 'public and semi-public' institutions. Cover raw materials, finished goods and intermediate products incorporating wood from tropical forests, whether they be natural forests such as rainforests, or plantations. Recycled wood and paper products are not covered.
Finland	No	–	
France	No	–	A report for WWF The Timber Footprint of the G8 and China <sup>76</sup> noted that in 2002 the French Minister for the Environment stated that: "The government has decided to include criteria in its public procurement practices which will favour the purchase of timber by FSC or equivalent certification systems". There is no evidence of progress.
Germany	Yes	1998	The Federal Government's policy is to check that purchases of tropical timber are supported by reliable certificates. However, the government has not published any criteria for assessing whether a certificate can be considered 'reliable'. The government is currently developing a broader procurement policy that will cover tropical wood and non-tropical wood. The policy will establish criteria to evaluate certification systems. The criteria will use the Forest Stewardship Council's (FSC) system as a benchmark.
Ireland	No	–	Enquiries to the Ministry of Finance, which is responsible for procurement policy, and searches of the Ministries of Finance and other government web sites revealed no evidence of a policy to take account of environmental considerations in procurement.
Italy	No	–	
Netherlands	No	–	
Portugal	No	–	
United Kingdom: UK	Yes	July 2000	Mandatory for all UK central government departments and executive agencies. Covers solid and engineered wood products and paper. Policy is different on paper and focuses on recycled content. We can provide details.
Northern Ireland	No	–	
Scotland	Yes	July 1999	Mandatory for all departments of the Scottish Executive. Serves only as guidance for other public authorities in Scotland. Covers solid and engineered wood products and paper.
Wales	No	–	The Welsh Assembly's procurement policy includes consideration of environmental and social factors in procurement although timber and timber products are not mentioned expressly.
USA	No	–	

76 WWF International (2002) The Timber Footprint of the G8 and China: Making the case for green procurement by government

## Annex II

### Summary of a legal opinion on new legislation to make it illegal to import illegally sourced timber and the WTO

By Kate Cook, Barrister (Member of Matrix Chambers)

The full legal advice is available at [www.saveordelete.com/legal.htm](http://www.saveordelete.com/legal.htm)

I am asked to advise Greenpeace in relation to a possible proposal for a European Union (EU) trade ban on illegally-sourced timber and timber products. I am asked to consider whether or not such a measure, if adopted by the EU, would be likely to contravene the rules of the World Trade Organisation (the WTO), specifically the 1994 General Agreement on Tariffs and Trade, which incorporates the 1947 Agreement, (the GATT) and the Technical Barriers to Trade Agreement (the TBT Agreement).

By way of background, I am referred to the EU Commission's Communication "Forest Law Enforcement, Governance and Trade (FLEGT) Proposal for an Action Plan" (COM 2003 251 final), together with a Motion for a European Parliament Proposal on the Communication (B5-0397/2003) and various policy papers and briefings on the issue of the proposed EU measures on illegal logging produced by Greenpeace, Forests Monitor, FERN/RIIA and other NGOs.

I have also considered a number of international environmental treaties including the 1992 Convention on Biological Diversity (the CBD) and the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

#### In summary, my views are as follows:

- There has not as yet been an environmental case before the WTO involving a trade ban on goods of illegal national origin but a number of the WTO's decisions on trade-related environmental measures provide good indications as to whether such a measure would fall foul of the WTO's rules as indicated below;
- It is unlikely in my view that an import ban in the form proposed by the European Parliamentary Committee and others would ultimately be held to contravene the rules of the GATT since, whilst such a measure is likely to constitute a quantitative restriction on imports contrary to Article XI.1 - and may also constitute a discriminatory measure contrary to Article III.4 - it could successfully be defended under Article XX para (g) and possibly (b) and (d) (see below);
- It could be argued that Article III of the GATT does not apply to the proposed ban on the basis that illegally sourced timber is not a 'like product' as compared with legally sourced timber of domestic origin but in my view such an argument has only low to moderate chances of succeeding bearing in mind the approach of the WTO Appellate Body in the Asbestos decision;

- In relation to Article XI, it is likely that the proposed measure would contravene Article XI.1 as a measure prohibiting or restricting trade;
- In my view the measure could however be justified under paragraphs (b), (d) and, in particular, (g) of Article XX, taking into account the requirements of the chapeau to that Article, provided that:
  - the EU continues, at the same time as adopting the ban, to pursue serious good faith efforts to negotiate with all the exporting countries concerned with a view to achieving bilateral/regional agreement on the issue of halting and preventing trade in illegal timber;
  - the EU continues to pursue good faith efforts at the international level to achieve an international standard on illegal logging by means of multilateral agreement;
  - the EU adopts (or maintains) measures to prohibit internal and external trade in illegally sourced timber produced within the EU;
  - the EU adopts or maintains other supportive measures in order to assist exporting countries affected by the ban including capacity building and technical assistance in the enforcement of national legislation and in promoting sustainable and legal logging.
- There is in my view room for doubt as to whether the proposed import ban would constitute a technical regulation and thus fall within the scope of the TBT Agreement, however it is possible that the measure does constitute a technical regulation and for this reason the issue of contravention is considered below;
  - If the measure were held to be a technical regulation such that the TBT Agreement applies, in my view, the measure could probably be justified within the terms of Article 2.2 of the Agreement on the basis that it constitutes a measure which is no more trade restrictive than necessary (subject to the production of cogent evidence) and pursues at least one of the legitimate objectives expressly provided for (environmental protection);
  - Alternatively, in relation to Article 2.1 of the Agreement, it could also be argued that illegal timber is not a like product as compared with legally logged timber and thus that provision does not apply in this case.

**Annex III:****Relevant Articles of the Treaty establishing the European Community****Title IX****Common Commercial Policy***Article 133*

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.

By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.

This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or

international organisations in so far as such agreements comply with Community law and other relevant international agreements.

6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.

In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States.

Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.

**Title XIX****Environment***Article 174*

1. Community policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems.

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental

protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.

3. In preparing its policy on the environment, the Community shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Community,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Community as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300. The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

#### *Article 175*

1. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 174.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

- provisions primarily of a fiscal nature;
- measures affecting:
  - town and country planning,
  - quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,
  - land use, with the exception of waste management;
- measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the first subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

3. In other areas, general action programmes setting out priority objectives to be attained shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for

the implementation of these programmes.

4. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of:

- temporary derogations, and/or
- financial support from the Cohesion Fund set up pursuant to Article 161.

#### *Article 176*

The protective measures adopted pursuant to Article 175 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.

## Title XX

### Development cooperation

#### *Article 177*

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
- the smooth and gradual integration of the developing countries into the world economy,
- the campaign against poverty in the developing countries.

2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

#### *Article 178*

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

#### *Article 179*

1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.

2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph
3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

*Article 180*

1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.
2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

*Article 181*

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300. The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

**Illegal logging in Indonesia**

*Photo Eric Wakker*





Photo: Greenpeace/Kantor



**GREENPEACE**

