

Intergovernmental Actions on Illegal Logging

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Phase I study

- Producer country measures
- Consumer country measures
- International frameworks

Available at:

www.riia.org/Research/eep/eep.html



Phase II study (1)

Options for intergovernmental agreement to control trade in illegal timber, including consideration of:

- WTO implications
- Need for regulatory authority/capacity of importers
- Relevance of existing intergovernmental agreements (including those covering bribery and money laundering)
- Suitable international frameworks for action



Phase II study (2)

Not included:

- Analysis of extent of illegal trade
- Enforcement activities in producer countries
- Focus on legality, not sustainability



Objectives

- Overriding aim is to add value to enforcement efforts in producer countries
- Deny markets to illegal products in importing/ consuming countries
- No reduction in market access for legal products
- Administratively simple scheme of identification
- Capacity-building assistance where needed to implement scheme
- Multilateral framework as final objective, but smaller agreements possible as initial steps



Elements

- Identification at point of production/export
- Detection at point of import and seizure of illegal/unidentified goods
- International framework for action



Identification at source (1)

Certification/licensing:

- CITES/Montreal Protocol model of import and export licenses (note no independent monitoring)
- Voluntary schemes for identifying sustainability of production (e.g. FSC)

Technical means of identification:

- Dyes; bar-coding; transponders; genetic fingerprinting; etc.



Identification at source (2)

Certification/licensing requires monitoring for illegal activity all along chain of custody (logging, processing, export) – need for:

- Accredited certifiers (government, NGO, company)
- Independent monitoring
- Tamper-proof accompanying documentation/information transfer
- Note capacity-building requirements, and need for intra-government cooperation (new agency?)



Detection and seizure (1)

Requires:

- Means of identification (checking certificates, markers, etc)
- Training, technical support and resources for customs agencies
- Collaboration with phytosanitary inspectors?
- System for rapid exchange of information between exporters and importers (risk assessment?)



Detection and seizure (2)

Requires:

- Legal powers – questions of due process, etc.
- Probably existing customs powers adequate (i.e. no new legislation needed)
- But ‘extraterritorial’ legislation may assist in prosecutions?



Detection and seizure (3)

Other means of denying market access:

- Requirements to show legality of product at every stage of chain of custody in importer country (importing company, wholesaler, retailer, etc) – requirement on business?
- Government procurement policies



International frameworks: Enforcement collaboration

- Data exchange – ITTO (note ‘review’ of unreported production)
- Customs collaboration – WCO
- Enforcement collaboration – Interpol



International frameworks: Institutions and agreements

Existing legal frameworks:

- CITES (note Traffic/WCMC data monitoring)
- CBD (note link to GEF; also Cartagena Protocol)
- Lusaka Agreement

Other forums for discussion:

- UNFF, FAO

Corruption and organised crime:

- OECD Anti-Bribery Convention
- UN Organised Crime Convention (plus protocols)



International frameworks: WTO issues

- Non-discrimination between 'like products'
- Generally interpreted to cover means of production
- But savings clauses (e.g. GATT Article XX)
- But note recent disputes, e.g. shrimp-turtle
- Potential (but not real) conflict with MEAs

- TBT Agreement
- Agreement on Government Procurement



Options for action: unilateral (1)

Unilateral decision by single importing country to ban imports of illegal timber – implies:

- Some form of identification – or blanket ban on imports from particular country(s)?
- Possible new legislation?



Options for action: unilateral (2)

Advantages:

- Simple

Disadvantages:

- Almost impossible to distinguish illegal products without exporter cooperation
- WTO conflict likely on unilateral trade restrictions



Options for action: bilateral (1)

Bilateral agreement between single producing country and single importing country – implies:

- Certification/ID system only for exports to one importing country
- Some information exchange (customs, forestry, environment ministries?)
- Capacity-building assistance needed



Options for action: bilateral (2)

Advantages:

- Simple
- Expandable (but later problems with harmonisation?)
- No WTO implications

Disadvantages:

- Limited impact on illegal trade
- Licence requirements for export only to one country burdensome?



Options for action: multilateral (1)

Multilateral agreement open to all producing and exporting countries – implies:

- New international legal instrument (or adaptation of existing one?)
- Single certification/ID system
- World-wide information exchange (secretariat)
- Implementing legislation in signatory countries
- Financial mechanism



Options for action: multilateral (2)

Advantages:

- Global in coverage
- Single world-wide system
- Robustness against WTO (but note non-parties problem?)

Disadvantages:

- Difficult and long-drawn-out negotiations
- Establishment of new institution/system (with financing)



Next steps

- Feedback at FLEG
- Consultation with relevant agencies (e.g. WCO, WTO)
- Final report mid November
- G8 report due 2002



Conclusions

- Central aim is to establish system that makes producer country enforcement efforts effective at an international level
- Deny markets to illegal products and set up data exchange system
- Additional capacity required in producer countries – implies need for financial and technology transfer from importer countries
- Not unique problem – diamonds, firearms, etc.



INTERGOVERNMENTAL ACTIONS ON ILLEGAL LOGGING

Options for intergovernmental action to help combat illegal logging and illegal trade in timber and forest products

A scoping study prepared for
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Executive Summary

This report presents a brief overview of the range of options for intergovernmental action to help combat illegal logging and trade in illegal timber and forest products. Actions by individual producer and consumer governments could be complemented by international collaboration. Many of the options listed could be phased; and are also not mutually exclusive.

Producer country measures

This section presents a range of options for dealing with illegal behaviour at source in producing and exporting countries. These include:

- Reform of legislation to include clear **definition of illegal activities** and to establish effective **deterrents**; streamlined taxation and better economic intelligence to improve tax revenues.
- Improved industry **regulation**, including open, transparent bidding for concessions; restricted allocation of processing licences to reduce over-capacity; clearly designated liability and performance incentives such as performance bonds; the development of professional ethics; the reform of inward investment laws; and restrictions on export points.
- Enhanced **enforcement**, including the establishment of specialised enforcement units, strengthening of resources, improved information and tracking, the use of novel enforcement methodologies such as markers and satellite imaging, and a more systematic approach to intelligence gathering, including the use of NGOs.
- Investment in **alternative employment** opportunities and small-scale and community-based initiatives; improved planning for domestic requirements for timber; and the use of positive incentives for compliance.

Consumer country measures

Consumer/importer countries, either by themselves or in groups (such as the G8), can introduce a range of measures. These depend, however, on some system for identification of illegal products, which needs to be developed with producer countries within a bilateral, regional or global framework. Options include:

- The devotion of resources and political will to enhanced **border controls** for illegal products, and legislation to allow the **prohibition of import and sale** of illegally-sourced timber and timber products.
- **Tariff reductions** linked to timber production demonstrating compliance with particular standards.
- **Government procurement** policies to improve purchasing practices for timber and timber products, including requirements for chain-of-custody documentation.
- Encouragement for **market-based instruments** such as labelling and certification, particularly where they include requirements for chain-of-custody documentation; investigation of measures to avoid misleading 'green claims'; and encouragement for investors to require enhanced information from forestry companies about their activities.

International frameworks

This section identifies options for intergovernmental initiatives, amongst consumer countries and between consumers and producers, and the scope offered by existing international agreements and institutions. Options include:

- Improved **enforcement collaboration**, including greater exchange of data between consumer and producer countries and enhanced customs collaboration.
- **Linking of financial assistance**, whether bilateral or multilateral, to reforms of forestry practices, the engagement of domestic constituencies for reform, and encouragement for the role of independent monitors.
- The development of a suitable **legal framework** for establishing international regulations identifying legality of production, ranging from a voluntary framework encouraging data exchange and cooperation to a legally binding multilateral agreement requiring signatory governments to take steps to identify and seize illegal products, together with capacity-building and financial assistance clauses.
- The pursuit of initiatives on illegal logging through appropriate **international forums**, including the UN Forum on Forests, the ITTO, CITES (where Appendix III listings provide opportunities for monitoring international trade) and the Biodiversity Convention.
- Building on the cooperation already established between the World Customs Organisation and Interpol, and UNEP and convention secretariats, in the area of **international environmental crime**, to improve information exchange and analysis and to provide training and technical support (including through the G8 Environment Crime working group).
- Investigation of the potential role of the **OECD Anti-Bribery Convention** in permitting customs to act against timber shipments if bribery can be shown to be involved at any point along the supply chain.
- Discussion of the **WTO implications** of trade measures directed against illegally produced timber and timber products and the treatment of labelling, certification and government procurement policies.

1 Introduction

1.1 This report presents a brief overview of the range of options for intergovernmental action to help combat illegal logging and trade in illegal timber and forest products. A complex and interlocking set of factors – including corruption, lack of enforcement capacity and lack of alternative employment possibilities – drive these illegal activities. Although this paper touches on national remedies, both in producing and consuming nations, it concentrates mainly on intergovernmental and international frameworks that can be used to tackle sources of demand and the illegal trade itself. A wide range of options are available and the main ones are listed below; they are not mutually exclusive but should be seen as a series of complementary actions.

1.2 The paper focuses on issues of *legality*; the *sustainability* of the international timber trade raises a broader and more controversial set of questions.

Scope and scale of the problem

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

1.4 At some point, most logs enter legitimate commerce and some form of documentation is produced to cover the illegal origins. Common methods of laundering illegally cut timber include mixing it with that derived from legitimate concessions, clandestine export, confiscation and re-sale, or use of old log collection permits as cover to gather illegal timber. Appendix 1 provides a list of the potential illegalities associated with the timber trade.

1.5 The clandestine nature of the illegal trade makes its scale and value difficult to estimate. Extensive unlawful operations have been uncovered whenever and wherever authorities have investigated. As the World Bank's recent review of its global forest policy observed, 'countries with tropical moist forest have continued to log on a massive scale, often illegally and unsustainably. In many countries, illegal logging is similar in size to legal production. In others, it exceeds legal logging by a substantial margin ... poor governance, corruption, and political alliances between parts of the private sector and ruling elites combined with minimal enforcement capacity at local and regional levels, all played a part.'¹ Appendix 2 summarises the reported scale of non-compliance and market irregularities in a number of producing countries.

1.6 The 'political economy' of illegal logging has been exacerbated in developing countries as management resources are limited, international companies which offer investment are proportionately more powerful, and civil society is weaker. Allocation of timber concessions has often been used as a mechanism of mobilising wealth to reward allies and engender patronage. Protected by powerful patrons, timber companies may evade national regulations with relative impunity. State forestry institutions may be subject to regulatory capture, becoming clients of concession-holding industrial interests of the ruling elite, exercising their powers as a form of private

¹ World Bank, *Forest Sector Review* (New York: World Bank, 1999), p. xii; *Financial Times*, 11 February 2000, 'World Bank sees flaws in forest policy'.

property rather than as a public service. Illegal logging and the illegal timber trade also directly disempowers civil society by undermining the 'rule of law' and promotes social conflict. Revenues from illegal activity sometimes fund national and regional conflicts.

1.7 The illegal timber trade should be seen as a developmental as well as an environmental issue. Illegal harvesting, tax evasion and transfer pricing artificially depress the stumpage value of logs and undervalue domestic forest resources, favouring their rapid liquidation. The annual losses to national budgets can run into billions of dollars and, in some cases, may have seriously undermined the economic progress of developing nations and served to eliminate a valuable source of future revenue. Damage caused in illegal logging operations may also compromise future harvests. Cheap, abundant supplies of illegal timber favour the development of an inefficient domestic processing sector, which in turn becomes a further source of black market demand.

1.8 Illegal trade may also distort the entire global marketplace for a number of key timber products, making it difficult for sustainable management – which has to endure additional costs from good husbandry and proper tax declaration – to survive. As the World Bank reported, 'widespread illegal extraction makes it pointless to invest in improved logging [practices]. This is a classic case of concurrent government and market failure.'²

² Ibid. p.40.

2 Producer country measures

2.1 Any consideration of measures to tackle illegal logging and the illegal timber trade cannot ignore conditions in producer countries – otherwise, intergovernmental initiatives may simply displace or drive further underground illegal activities. This section presents a range of possible options for dealing with illegal behaviour at source through enhancing domestic regulatory frameworks and their enforcement, and reducing or eliminating the financial incentives for illegal behaviour. Needless to say, capacity-building investment is necessary to achieve most of these objectives – but should also enhance revenue collection, providing an additional source of funding.

Legislative reform

2.2 **Reform of domestic forestry law.** Forestry legislation is often clearly inadequate or an outdated relic from colonial times unsuited to controlling modern industrial timber extraction. For example, a 1998 review of Cambodian forest legislation by the legal firm White & Case found it was ‘difficult to obtain, difficult to analyse, provides few objective standards for forest protection and provides no integrated guidelines or standards for forest management’.³ Possible reforms include creating clear definitions of illegal activities, including corrupt or improper allocation of concessions, establishing significant deterrent sanctions, including powers to confiscate equipment, and specifying enforcement responsibilities at every stage in the timber commodity chain. Frequent changes in legal controls, however, leave enforcement agencies playing catch-up and losing stakeholder credibility.

2.3 **Streamlined taxation.** Tax rates calculated to cover the opportunity cost of the foregone forest services and the loss of natural capital would help prevent over-harvesting. Area-based taxation systems, although dependent on reliable inventories, may avoid the incentive for under-declaring that exist with volume-based revenue instruments. Concession areas not undergoing extraction can be taxed at a lower rate to avoid predatory extraction (as in Brazil).

2.4 **Economic intelligence units.** Revenue collection may also be aided by units providing a recommended price list against which export declarations could be checked. The Timber Control Unit of the Ministry for Forests, Environment and Conservation in the Solomon Islands, for example, frequently detected under-quoting by US\$10–15/m³ while it was in operation.

Regulation of the industry

2.5 **Reform of concession allocations.** Financially transparent contracts based on open, competitive bidding help to avoid the corruption fostered by closed systems of concession allocation by administrative authorisation. Constraints on concession owners are also possible, e.g. a requirement to demonstrate proof of professional competence to engage in forestry (including industry accreditation, staff training programmes, etc.). Concession sizes could also be limited to those which can be adequately monitored. In some producing countries, large swaths of the country have already been allocated as concessions in which the maximum return from sustainable, legal logging may be so low (due to the degraded state of the resource and previous illegal harvests) that it makes almost no sense to allow harvesting at all. Governments could evaluate the economic realism

³ White & Case. 1999. Report to Senior Officials of Royal Government of Cambodia and International Donors. Summary of Recommendations. p.1.

of such allocations to redress the incentive that these provide for illegal logging and laundering of timber.

2.6 Restricted allocation of processing licences. Over-allocation of processing licences helps to increase domestic demand for illegal logging and can be avoided if licensing and concession allocation authorities coordinate their work.⁴ Licences could be issued only to companies that can guarantee access to legal timber supplies. Where over-capacity is evident, governments could intervene to buy out or eliminate the excess.

2.7 Often over-allocation of licences is related to poor industrial performance. For example, about 8% of the non-performing loans held by the Indonesia Bank Restructuring Agency (IBRA) relate to the forestry sector; this ‘high level of non-performing loans held by forest conglomerates can be attributed to the fact that they have often been able to obtain finance for their investments with minimal due diligence’.⁵ Indeed, after two big forest conglomerates entered receivership in 2000, the IBRA ended up as the single most important forest asset owner in the country. If the legal right to call in non-performing loans exists in this sector, governments have a ready means to quickly reduce over-capacity.

2.8 Clearly designated liability and good behaviour incentives. Senior employees of large forestry companies would be encouraged to comply with regulations, on behalf of both their own companies and their contractors, by a requirement that they hold personal liability for compliance. Companies could also be obliged to post a performance bond to ensure good behaviour; such bonds have been extensively and successfully used in the waste disposal industry to encourage corporate compliance with export rules. Similarly, the provision of low-interest loans, or tax offsets, for business development could be made conditional on maintaining a good compliance record.

2.9 Development of professional ethics. Professional ethics for foresters can be promoted through internationally recognised unions, the International Tropical Timber Organisation (ITTO) and industrial bodies. The 1995 Charter of Rio Branco, by the Brazilian National Federation of Workers in the Industry of Construction and Timber, for example, opposes illegal timber extraction because of the industry’s poor record of worker remuneration and safety.

2.10 Reform of inward investment laws. Investment laws may be reformed to stipulate clear provisions for transparent business practices and to facilitate legally binding investment obligations. A requirement for independent auditing of concessionaires’ accounts would further aid transparency.

2.11 Restriction on points of export. Limited export points would allow concentration of customs expertise. In Russia, the St Petersburg Government has announced plans to institute a series of centralised warehouses – ‘forest customs depots’ – which will store timber to be exported from the Karelia region and its environs to ensure that taxes are collected and declarations correctly made.

⁴ For example, the imbalance between legal supply and total demand of wood in Indonesia – estimated at some 32m m³ per year – has arisen partly because the Ministry of Industry and Trade licenses processing mills whilst forest exploitation is separately controlled by the Ministry of Forestry and Estate Crops.

⁵ *Jakarta Post*, 27 January 2000, ‘Over-capacity in the forestry sector’.

Enhanced enforcement

2.12 Specialised enforcement units. Special enforcement units, connected directly to top management and bypassing district and regional bureaucracies, have had a positive record in gathering intelligence, performing market surveillance, pursuing allegations of corruption and prosecuting corporate investigations. In Malaysia, for example, a relatively effective task force has been set up by the police, Anti-Corruption Agency, Forestry Department and the army. Private transnational industrial surveillance companies can also be used, with the additional advantage that they will lose a lucrative contract if irregularities are demonstrated. SGS, for example, has been called in to monitor customs departments, and increase revenue collection, in a number of countries including Cameroon, Ghana, Indonesia and Malaysia.

2.13 Strengthening of enforcement resources. Enforcement efforts often fail because forestry staff are inadequately trained, equipped and paid. Improved enforcement should follow from investment in resources, including transport.

2.14 Improved information resources and tracking. A wide range of options are available for improving the information available to enforcement agencies: accurate chain-of-custody tracking systems for accounting and inventory control, which may include the use of tagging, bar-coding and transponder technologies; registers of logging equipment (chainsaws etc.); mandatory registration of processing and harvesting facilities with central government authorities; and research to identify bottlenecks in trade where controls can most effectively be applied.

2.15 Novel enforcement methodologies. Forestry enforcement agents from producing countries can be assisted to disseminate and share enforcement experiences. Novel enforcement methodologies such as the use of UV-sensitive dyes, transponders, etc., can be developed and promoted. Remote imaging technologies can be employed – in December 1999, for instance, NASA launched two environmental satellites (LANDSAT 7 and EOS TERRA) that should allow routine production of accurate forest maps and monitoring of some aspects of concession management. The forthcoming Forest Law Enforcement Conference in Asia provides an ideal opportunity to disseminate new enforcement methodologies.

2.16 Receipt and collation of independent information. Processes can be set up to allow field observation and intelligence from independent monitoring to be relayed through appropriate government and enforcement agencies. Independent monitoring by local communities and NGOs can support and empower civil society and promote greater transparency in investment decisions. In many important producers, established networks of local and international NGOs already exist, and can be further promoted and developed.

The wider development framework

2.17 Alternative employment opportunities. Many of the measures above will fail unless an emphasis is also placed on the wider development framework within which illegal forestry occurs. Alternative employment opportunities, in particular, are particularly important in tackling small-scale illegalities. A Philippines Department of Environment and Natural Resources crackdown on illegal logging in 1998, for example, involved providing investment to sustain displaced workers and to encourage small-scale business ventures. In one instance, former illegal loggers and their communities were provided with the start-up capital to grow 100,000 seedlings that were then used for reforestation. Small-scale, local harvesting initiatives may eliminate local incentives for illegal

logging. In the Solomon Islands, for example, six regional projects culminated in the formation of the Sawmill Owners' and Timber Producers' Association to promote sustainable practices and to coordinate marketing, quality control and training. Data from the Islands' Central Bank suggests that this approach may earn forty times the local revenue from industrial logging.

2.18 Improved planning for domestic requirements. Export-oriented concession policies may generate significant incentives for illegal harvesting in order to meet basic domestic needs. Industrial concession holders need not be granted exclusive access to forest – local communities can also be given clearly defined rights of access to meet their own domestic needs in accordance with long-standing cultural requirements. Integrated and coherent planning at a national level for domestic and export needs can address this problem.

2.19 Positive incentives for compliance. An incentive structure that encourages legal activities can also be created; regulation and positive incentives can be used in tandem. Incentives can include, for example, providing concessionaires in compliance with secure and transferable rights to resources, in order to encourage long-term husbandry; or ensuring that local communities benefit in a sustained manner from inward forestry investment. The practice of 'short-funding' civil and military institutions could also be reformed to remove the necessity to seek external sources of revenue.⁶

⁶ For example, the upsurge in illegal activity in 1998 in Indonesia's forestry sector has been attributed to the military's budgetary shortfall, which led to only 25% of their funding been met by the state. Military (and police) units then exploited opportunities for graft from legal and illegal logging operations, and promoted their own.

3 Consumer country measures

3.1 This section looks at measures that individual consumer/importer countries can introduce. They centre around improving detection of imports from illegal sources and denying market share to illegal forest products. The Okinawa communiqué from the G8 leaders notes the potential for individual consumer country action to tackle illegal logging. A coordinated response from the G8 countries would provide a powerful incentive for action, although European members of the G8 must also, of course, coordinate with relevant European policy.

3.2 The major problem for consumer countries is the determination of what is illegal. Importing countries cannot decide unilaterally what is an illegal product in the absence of information from the producing/exporting country. Some form of identification system could therefore be agreed with producers, either bilaterally, regionally or globally; the award of a license (or certificate or label) would be dependent on the material being produced in accordance with domestic legislation. In turn this will require capacity-building in producing countries, in terms of establishing and monitoring the system for awarding the licenses, and ensuring it is not abused or evaded.

3.3 Several multilateral environmental agreements, including CITES and the Montreal Protocol, have already established licensing systems, and valuable lessons can be learned from their experience. As a trade measure, such a scheme could potentially fall under the disciplines of the WTO; see further in para 4.24. However, the costs and benefits of such a system need to be carefully considered, as it would require an additional regulatory layer. An alternative focus may lie in improving and enforcing domestic legislation and in developing certification schemes which incorporate a requirement for legal compliance and evidence of chain of custody (see paras 3.10 – 3.13).

Improved border controls

3.4 In common with many other areas of ‘international environmental crime’, such as illegal trade in endangered species or in ozone-depleting substances, customs authorities often lack the experience, ability and resources to detect imports of illegal timber or timber products. Nevertheless, as other areas, such as those just referred to, have shown, given the political will and appropriate training, equipment and resources, enforcement agencies such as customs and police can have a major impact. (See also para. 4.4, on customs collaboration.)

3.5 Most consumer countries currently lack a clear responsibility for domestic authorities such as customs to act in cases where shipments have been identified as of illegal origin. There is a need for domestic legislation to include a clear definition of illegally-sourced timber and timber products (based on the identification methods discussed above in para 3.2), and the prohibition of the sale and import of such products. Such legislation may also have ‘extra-territorial’ effects, blocking imports that can be shown to have been produced or obtained in contravention to forestry legislation in the producer country (using provisions similar to those of the US Lacey Act, which provides for such action in cases of species covered by CITES or by domestic legislation such as the US Endangered Species Act).

Tariff reductions

3.6 Favourable import status and tariff reductions may be granted to timber that can positively demonstrate compliance with particular standards; this measure is doubly attractive, as it places the

administrative burden of proving compliance on the importing company. The EU, for example, added labour and environmental clauses to its generalised scheme of tariff preferences in June 1998. Countries proving compliance with specific International Labour Organisation and/or ITTO sustainability standards may be eligible to receive special tariff reductions of about 25%. Tropical wood originating in Malaysia, for example, and respecting both the labour and environment clauses, could attract a tariff reduction of 50%. Where this procedure is covered by the Generalised System of Preferences, it may be WTO-compatible (subject to no GSP beneficiaries filing a complaint) but where it is offered to all countries it may suggest a process standard, which may have WTO implications (see para 4.21). Implementation and uptake of the EU's scheme has been piecemeal, and its profile could usefully be raised.

Government procurement policies

3.7 A number of initiatives are in progress among governments, municipalities and large retailers to improve purchasing practices for timber and timber products, aiming to source primarily from sustainable and legal sources – for example those certified under the FSC or other certification schemes (see paras 3.10 – 3.13). To avoid purchasing illegal products, procurement policies would have to adhere to a standard that offers chain-of-custody certification. Under the OECD Anti-Bribery Convention (paras 4.15 – 4.19) one of the sanctions available to be applied against companies which have been engaged in bribery of a foreign public official is exclusion from participation in public procurement.

3.8 As with certification, national government procurement policies raise potential WTO issues (see para 4.27), including limits on the extent to which they can specify exact forms of identification, though it is worth noting that local government and the private sector have more latitude. In one recent case, representatives of the Malaysian Chamber of Commerce lobbied against procurement measures by the New York and Los Angeles authorities requiring tropical timber to be certified because the move did not require certification for all timber products from all sources.⁷

Market-based instruments

3.9 A series of market-based measures, including labelling and certification, already provide additional information to consumers for the whole range of wood products, including those containing wood fibre, plywood and MDF, as well as rough-sawn timber and finished furniture. No existing schemes identify products on the basis of the legality of their production, but those based on sustainability criteria almost invariably in practice imply legal production. It is important to emphasise that all such measures currently in existence are voluntary schemes; mandatory government schemes raise WTO-related issues and are touched on below in paras 4.21 – 4.28. The question of the inter-relationship of existing schemes and any putative identification system for legal production (as discussed in para 3.2) needs to be considered with care; there is obviously some potential for confusion between systems identifying 'sustainably-produced' and straightforward 'legally-produced' timber.

3.10 **Labelling and certification.** Chain-of-custody identification is important in the context of illegal logging as it enables tracking back through every stage of the supply chain. Only some of the various international timber certification schemes – such as that of the Forest Stewardship Council

⁷ *Far Eastern Economic Review*, 4 February 1999, Letters to the Editor: 'Timber certification'.

(FSC) – recognise chain of custody as a component. This requirement is quite different to certification schemes that seek to classify an organisation or company in terms of its ability to manage all aspects of its business in an environmentally sound manner (such as the European Eco-Management and Audit Scheme, or ISO 14000, which are based on reviewing the management structures in place) or those based around criteria and indicators of forest management at a given site (such as the Pan-African Forest Certification Scheme). Chain-of-custody documentation seems a necessary requirement to detect laundering or admixing of illegal material with material that may have been certified as sustainably produced at a given site or concession.

3.11 Existing schemes can potentially, however, be elaborated and adapted. For example, although the popular industry standards – ISO 14001 and 14004 – lack a requirement for chain-of-custody documentation, this could be incorporated through ISO 9000, an increasingly widespread quality standard system (including the demonstration of meeting regulatory requirements). Dialogue between bodies accrediting different standards, and with large purchasers and consumer information groups, could be encouraged.

3.12 Since 1996, the number of certification initiatives has more than doubled and there are now over forty schemes under development in more than thirty different countries.⁸ As a result, increasing attention needs to be given to the concept of mutual recognition, including addressing the sensitivity of different schemes to laundering and contraband. One anticipated problem is that large suppliers face a more onerous requirement for chain-of-custody documentation, as they also process third-party products.

3.13 One possible model for reciprocal recognition is the Netherlands Keurhout scheme, established by government and industry. The scheme operates a labelling system guaranteeing the sustainable origin of timber by verifying certificates of origin and sustainable production through third-party assessment against a set of agreed ‘minimum standards’ derived from ITTO guidelines, FSC principles and ISO standards and guidelines. The scheme also monitors the chain of custody of imported and local timber from the point of entry into the Netherlands. The Keurhout hallmark has verified and accepted certificates from the FSC and some national standards such as those of the Canadian Standards Authority. The scheme is also working to recognise a timber tracking system developed by Coopers & Lybrand and being tested in Ghana, and the Malaysian National Timber Certification Council initiative, which itself is currently reviewing certification and chain-of-custody monitoring procedures by SGS.

3.14 **Policing green claims.** Almost all consumer countries have general fair trade laws to prevent misleading advertising and misleading ‘green claims’.⁹ Controls are almost always based on a complaints procedure enforced by advertising or trading standards authorities. These authorities have complete discretion as to which cases to pursue, and tend not to feel competent to make judgements about the presumed sustainability of timber. Making judgements about the legality of the source, however, may be easier if chain-of-custody documentation is a requirement. The International Chamber of Commerce Code on Environmental Advertising and the new ISO procedure (14021) on environmental claims made during advertising may provide suitable frameworks in which to develop appropriate systems.

⁸ I. Ruge, *Progress in Timber Certification Schemes World-wide* (London: Forests Forever, December 2000).

⁹ Although Sweden also has laws specifically covering misleading environmental claims.

3.15 **Responsible investment.** In many countries, financial investors (banks, investment trusts, and so on) are increasingly requiring enhanced information from the companies or projects that they supply with capital. Partly this is a response to the expansion of the ethical investment sector, supporting clients who seek out environmentally and socially responsible investments. Partly, however, it is also simple self-protection, aiming to avoid supporting companies which may end up being held liable for environmental damage or illegal activities. Governments can encourage the application of such due diligence requirements to the forestry sector.

4 International frameworks

4.1 Action on the part of individual consumer or importer countries to tackle the global nature of the problem of illegal trade obviously suffers from limitations. This section identifies options for intergovernmental initiatives, amongst consumer countries and between consumers and producers, and the scope offered by existing international agreements and institutions. There are clearly considerable benefits to multilateral approaches (broader coverage, less likelihood of a WTO challenge to contentious measures, etc.) but there are also costs, such as slower implementation.

Enforcement collaboration

4.2 **Data exchange.** Currently, international trade data are of poor quality, precluding rational threat assessment and the identification of illegal trade problems. As the ITTO remarked, ‘production statistics ... are often weak or non-existent. The primary problem in many producer countries is the lack of a comprehensive forest out-turn measurement system as well as any kind of regular industrial survey to obtain production figures’.¹⁰ Consumer countries are usually unable to distinguish the processing of types of timber: ‘many make errors or omissions in providing trade data ... [and] also have serious problems in their customs statistics.’¹¹ The ITTO, FAO, UN Economic Commission for Europe and the EU have begun to streamline international reporting procedures, submitting joint questionnaires to national forest administrations for the first time in April/May 1999. The effort saved from duplicating reporting practices is to be put into gathering international data on price, industry structure, secondary-processed products and ‘undocumented production and trade’.

4.3 **Customs collaboration.** More effective networks of cooperation could be developed between producer and consumer countries, including bilateral memorandums of understanding and regularised enforcement contacts, to enable potential enforcement data from licensing and shipment information to be shared. For example, a producer country may like to know what volume of material is being declared to a consumer country’s authorities for taxation purposes. A producer could also check shipment records with consuming countries to make sure it has kept track of exports and alert others to illegal logs and timber coming from their countries. Systems can be developed to promote reciprocal recognition of trade restrictions, ensuring consuming countries aid compliance with producer country measures.

4.4 Consumer country customs controls might follow a ‘red – amber – green’ approach to investigating illegal timber shipments. For example, exports from countries with known illegal logging problems could be flagged for further inspection; information on the shipment could then be exchanged with national authorities in the producer country.

Financial assistance

4.5 A mid-term review of the cost of implementing the ITTO’s Year 2000 Objective to promote sustainable timber trade estimated the combined cost of institutional strengthening and capacity-building as \$22.5bn.¹² Estimates may come out much lower, however, if the exercise concentrates on the relatively few major players in the global marketplace. There are only six big producers –

¹⁰ ITTO 1999. *Annual Review and Assessment of the World Tropical Timber Situation 1998*. ITTO, Yokohama.

¹¹ Ibid.

¹² M. Adams, ‘Resources needed but directed where?’ *ITTO Newsletter* 7(3), 1997.

Indonesia, Malaysia, Brazil, Bolivia, Cameroon and Gabon – together accounting for 60–80% of world markets. Overall, some 70–100 concession holders harvest around 25–30% of all the tropical timber entering the global market. Concentrating financial and technical assistance and monitoring on these concessions could reap early rewards.

4.6 So far, three adjustment loans with forest-specific reforms have been given to Indonesia, Papua New Guinea and Cameroon, as part of the World Bank's Adjustment Lending Policy in conjunction with IMF stabilisation packages. They have met with varying degrees of success; as a recent policy review commented, 'the World Bank has approached the use of conditionality for environmentally-oriented reform as a high-stakes poker game ... the assumption implicit in this bargaining approach is that the borrower government is a unitary actor, and that there is little genuine motivation for reform ... The twisting-of-arms approach by itself is of limited use even in achieving the limited goal of getting forest laws and regulations on the books'.¹³

4.7 There have been genuine problems generating domestic impetus for reform. Options such as tying each tranche of assistance to achievement of reform targets, and independent third-party monitoring, could be considered. Aid institutions also need to draw forestry reform out of the narrow circle of partisan advisers and to engage wider domestic constituencies. Again, independent monitoring can accelerate this process. The activities currently taking place under the World Bank-funded Forestry Reform Project in Cambodia provide a useful model, not least because of the establishment of a Forest Crime Monitoring Unit (funded by a UNDP trust fund through DFID and Aus Aid) involving an independent monitor – an NGO, Global Witness (funded by Danida) – to increase the monitoring system's transparency and credibility.

International institutions and agreements

4.8 A number of multilateral agreements and international institutions are of relevance in the development of initiatives to tackle illegal logging and the illegal timber trade. This section reviews the main ones and suggests some options for consideration. One key point is which institution, if any, might provide a suitable legal framework for establishing international regulations identifying legality of production. A range of options are possible, extending from a voluntary framework encouraging data exchange and enabling producer countries to request various actions (such as impounding illegal products) of consuming countries, to a legally binding multilateral agreement requiring signatory governments to take steps to identify and seize illegal products, together with capacity-building and financial assistance clauses. As in other areas of international environmental law (such as chemicals), the 'softer' approach may lead, in an evolutionary manner, to the 'harder' outcome.

4.9 **UN system.** The UN Forum on Forests is currently being established, replacing the Intergovernmental Forum on Forests, with the aim of promoting the management, conservation and sustainable development of all types of forests. It is due to hold its first full meeting in June 2001, where it will adopt a multi-year programme of work and develop a plan of action; it is also supposed to consider the prospects for a legal framework on all types of forests within five years. This provides an obvious forum for global discussion on the issues raised by illegal logging, and the development of any framework for handling illegal products discussed above in para 4.8. The Collaborative

¹³ N. K. Dubash and F Seymour, 'The political economy of "environmental adjustment": the World Bank as midwife of forest policy reform'; Paper at 'International Institutions: Global Processes – Domestic Consequences', Duke University, April 1999, p. 14.

Partnership on Forests (the successor to the Interagency Task Force on Forests) coordinates the work carried out by various forest-related agencies whose work programmes include studies on the illegal trade issue.

4.10 International Tropical Timber Organisation. The ITTO provides a framework for data collection and already makes efforts to investigate inconsistent export and import data which may represent illegal trade. This work could be expanded, under its Year 2000 objective, to establish a more comprehensive system for verification of the legality of shipments and to promote customs cooperation. The Organisation's Market Information Service can provide useful pricing information for tropical log exports to national customs authorities.

4.11 Convention on International Trade in Endangered Species. CITES provides the only existing international framework for the licensing of imports and exports. Its relevance to logging is restricted, of course, to endangered or threatened species; currently, fifteen tree species are listed under CITES, although the World Conservation Monitoring Centre has identified over 300 Asian and African species in trade. However, individual countries may unilaterally list any species which they wish to protect on Appendix III, and then trade cannot proceed without an export permit. A CITES listing is, of course, a species-specific measure, but would, for example, give consumer country authorities the mandate to refuse shipments of certain precious wood species that may have been illegally obtained in producer countries. A timber working group has existed under CITES since 1994, and has carried out some useful work on the application of CITES listings to commercially traded species.

4.12 Convention on Biological Diversity. Although the CBD establishes only a general framework for the conservation of biodiversity, it possesses the benefit of linkage to a funding mechanism, the Global Environment Facility, and has also enabled the negotiation of one more specific environmental agreement (the Cartagena Protocol on biosafety). The 2002 meeting of the Convention is to consider a programme of work on forest biodiversity. However, it is fair to say that the majority of the forestry industry remains suspicious of the CBD, which is generally seen as a tool of environmentalists. Illegal trade issues may be appended to a more general project looking at forestry law and legislation governing protected areas.

4.13 World Customs Organisation. The WCO is collaborating increasingly with UNEP and environmental convention secretariats in tackling international environmental crime. Memoranda of understanding currently exist between the WCO and the CITES and the Basel Convention secretariats covering information exchange, joint technical meetings, cooperation between environment and customs officials at national level, and training and awareness-raising exercises. The WCO also oversees the Harmonised System of commodity classification and coding, and is currently engaged in discussions with the Montreal Protocol secretariat to modify the codes to facilitate detection of illegally traded ozone-depleting substances. These are all models which could be followed in the case of illegal logging, though the lack of a global agreement like CITES or the Montreal Protocol poses some problems of coordination, underlining the need for a clearer international legal framework.

4.14 Interpol. Interpol facilitates information exchange between national police authorities; it does not investigate or prosecute cases itself. The organisation has adopted an eco-message format for reporting environmental malfeasance to other national authorities where such information may be actionable. As yet, no cases have appeared to involve illegal logging or illegal timber exports, but some pre-existing infrastructure exists that may be adapted. As with the WCO, Interpol possesses memoranda of understanding with the CITES and the Basel Convention secretariats. The Interpol

Working Party on Environmental Crime was set up in 1993, with subgroups on wildlife crime and hazardous wastes, with the aim of improving information exchange and analysis. Interpol has supported regional working groups of law enforcement officers in these areas and begun ‘training for trainers’ courses on environmental criminal investigations. As with the WCO, these are models which could be followed in the case of illegal logging.

4.15 OECD Anti-Bribery Convention. The OECD Convention on Combating Bribery of Public Officials in International Business Transactions entered into force in 1997. Although the precise nature of the offences depends on the implementing legislation within a given OECD country, the Convention makes an offence of ‘active corruption’ or ‘active bribery’, meaning that the offence is committed by the person who promises or gives the bribe ‘irrespective of, *inter alia*, the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage’ (Article 1).

4.16 The Convention also covers undue indirect influence, making it an offence if ‘an executive of a company gives a bribe to a senior official of a government, in order that this official use his office – though acting outside his competence – to make another official award a contract to that company’. Article 3.3 establishes the ‘proceeds’ of bribery to be the profits or other benefits derived by the briber from the transaction or other improper advantage obtained or retained through bribery;¹⁴ hence, it appears that forestry products from an improperly-obtained concession could be subject to sanction, establishing a clear mandate for a signatory’s customs to act against timber shipments if bribery can be shown to be involved.

4.17 Companies which are required to issue financial statements disclosing their contingent liabilities will need to take into account their full potential liabilities under the Convention – in other words, losses which might flow from conviction of the company or its agents for bribery, exclusion from government contracts, or any other penalty. Provisions are also made in the Convention for legislation against money laundering to be used against the proceeds of the act of bribery, providing for more robust corporate investigations against corrupting companies.

4.18 The Convention is not limited to OECD members; it can be signed by non-members which become full participants in the OECD Working Group on Bribery in International Business Transactions. This provides a route for producer country-based logging interests to be covered by such rules, should their host countries wish to sign it. It appears that the costs of inclusion for such participants can be met under the OECD’s financial mechanism. There is scope for collaboration with other international anti-corruption initiatives, such the Inter-American Convention against Corruption – of particular interest as its current signatories contain both significant producers and consumers of tropical timber.

4.19 Investigations into allegations of bribery and corruption will require significant levels of cooperation and collaboration between the countries involved. Also, details of implementation may differ between OECD countries; for the Convention to provide a useful mechanism against trade in illegal timber, implementing legislation needs to establish that the proceeds of bribery, rather than the act itself, can be sanctioned. The UK, for example, is to revise its laws addressing bribery and corruption in line with the Convention in the near future. Resource management issues and proceeds

¹⁴ Such that ‘the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable’.

of bribery could be incorporated into revised legislation. The Convention may provide a suitable home for the development of a legal framework on the identification of legally produced material, though it is not clear whether this would only cover one category of products (such as timber).

4.20 **G8.** The G8 itself has the opportunity of acting in a number of the forums identified above to stimulate discussion and action and demonstrate a clear lead. For example, it could trigger debate within the UNFF, and elsewhere, on the need for a multilateral framework, and individual G8 countries could explore bilateral approaches with exporting nations on the identification of illegal material. In 1999 the G8 established the G8 Nations' Lyons Group Law Enforcement Project on Environmental Crime; this group provides a ready-made forum for discussion of the enforcement issues related to illegal logging and timber trade.

WTO issues

4.21 Any government-mandated restrictions on trade, including labelling requirements, tariffs and taxes, trade embargoes, or any form of discrimination in trade, are potentially subject to the disciplines of the trade agreements administered by the World Trade Organisation (WTO) and centred around the General Agreement on Tariffs and Trade (GATT). Generally speaking, WTO agreements follow the GATT principles of non-discrimination between 'like products' originating from any WTO member and between domestic and foreign production. Although the GATT does not define precisely what it means by a 'like product', this principle has been interpreted, in a series of disputes, as disallowing discrimination on the basis of 'non-product related processes or production methods' (PPMs). (Article 36 of the International Tropical Timber Agreement also calls on parties to prevent discrimination between like products.)

4.22 The agreements also, however, usually contain 'savings clauses' (such as GATT Article XX) under which exceptions can be made. Recent disputes, notably the well-known shrimp-turtle case, have offered signs that the WTO dispute settlement system may be modifying this interpretation, and potentially allowing, under the 'savings clause', PPM-based discrimination – as long as it is applied consistently between WTO members and between domestic and foreign production. The main WTO agreements relevant to this discussion are touched on below, though others may also be of potential relevance and could usefully be discussed further.

4.23 Corruption and bribery are not issues addressed specifically in the WTO agreements. However, as the OECD Trade Directorate commented in August 2000, '... a number of WTO provisions can have a bearing on bribery and corruption inasmuch as the latter distort international trade'¹⁵ and because they contravene the WTO principles of non-discrimination, transparency, stability and predictability, and limitations to arbitrary action. Transparency remains one of the main topics of the WTO's work on trade facilitation, and bribery and corruption were among the most important topics at a Trade Facilitation Symposium held in Singapore in 1997. Specific proposals were also forwarded by Venezuela in January 1999.¹⁶

¹⁵ OECD Trade Directorate, Trade Committee, *Potential Anti-Corruption Effects of WTO Disciplines*, TD/TC/(2000)3/Final, (Paris: OECD Paris, August 2000), p. 4, para. 4. (www.oecd.org/ech).

¹⁶ In a non-paper on 'Transparency in Government Procurement and the fight against Corruption', Working Group on Transparency in Government Procurement, JOB(99)481 of 28 January 1999.

4.24 Several multilateral environmental agreements (MEAs), including CITES, the Montreal Protocol and the Basel Convention, require parties to control or restrict trade in various ways, including imposing requirements for import and export licences or for different forms of prior informed consent, and applying total or partial bans in trade (in the products controlled by the agreement) with non-parties or with non-complying parties. The past few years have seen much debate about the extent to which these trade measures are compatible with WTO disciplines. Since there has never been a WTO dispute involving an MEA-mandated trade measure, it is impossible to predict what the outcome of such a dispute would be. However, it seems most likely that WTO problems would probably not arise in cases where the trade measures were taken between parties to the MEA, but are more likely to arise where they were directed against non-parties. This discussion is relevant, of course, to the development of any multilateral agreement on illegal timber.

4.25 **Technical Barriers to Trade Agreement.** Under the TBT Agreement, WTO members are supposed to ‘take such reasonable measures as are available to them to ensure compliance’ with the Agreement of technical regulations (such as labelling or certification) applied by local government and non-governmental bodies (Article 3.1). In 1992, Austrian plans for mandatory labelling of tropical timber with an additional voluntary label for sustainably sourced timber were abandoned after complaints from Indonesia and Malaysia; the scheme was made voluntary and extended to timber from all sources. The TBT Agreement related primarily to government-mandated technical requirements, though a number of proponents have argued that voluntary certification or labelling schemes should also be subject to the Agreement, or possibly ‘not as a TBT itself but using the discipline of the TBT process’.¹⁷

4.26 The question of issuing labels or certificates or applying other trade restrictions on the basis of illegal origin has not, so far as we are aware, been discussed within the WTO; debates have tended, not unnaturally, to focus on sustainability criteria. The relationship of illegal origin to the TBT Agreement’s exclusion of PPMs as a basis for trade discrimination is not entirely clear. Article 2.8 of the Agreement states that technical regulations shall be ‘based on product requirements in terms of performance rather than design or descriptive characteristics’. However, Article 2.2 recognises the right to take the necessary measures to fulfil a legitimate objective such as ‘the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment’.

4.27 **Agreement on Government Procurement (GPA).** Government procurement measures are subject to another WTO Agreement, the GPA, although this is a plurilateral agreement, which not all WTO members have signed. Its basis rests on the familiar WTO principles of non-discrimination between like products from foreign and domestic suppliers. The discussion above in para 4.26 of whether legality is an appropriate measure to include as product characteristic is again relevant. Article XXIII of the GPA includes exceptions to its obligation for reasons of public morals or protection of human, animal and plant life.

4.28 **General Agreement on Tariffs and Trade.** Article VIII(1a) of the GATT specifies that in trade, ‘all fees and charges of whatever character ... shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection.’ If bribery in connection with import and export activities can be construed as ‘charges of whatever character’ then Article VIII could be brought to bear on them. As the OECD Trade Directorate remarked, ‘it should be noted that Article VIII applies explicitly to a number of areas where corrupt practices are often thought to be, or

¹⁷ At a Forestry Roundtable held under Chatham House Rules at the RIIA in July 2000.

identified as, a serious problem, including, *inter alia*, consular transactions, licensing, exchange control, documents, documentation and certification, and analysis and inspection.’¹⁸

¹⁸ OECD, *Potential Anti-Corruption Effects of WTO Disciplines*,. p.12–13, para. 42.

5 Summary of policy options

5.1 The table summarises the measures to tackle illegal logging discussed in this paper. Each option is listed and cross-referenced to the relevant paragraph. The table also attempts to identify the characteristics of each measure under the following criteria:

- Ease of implementation: ‘easy’ implies a relatively simple fit with existing legislation and management structures; ‘technical’ implies that management reform and capacity-building are necessary; ‘development needed’ means that the measures may not work ‘as is’ and further elaboration will be needed.
- Timescale: whether the measure can be implemented in the short, medium or long term.
- Cost: whether the measure should generate additional revenue, therefore paying for itself (after some initial investment and capacity-building), or whether it will imply moderate or higher costs.
- Conflict with special interests: is the measure likely to generate opposition from the special interests that profit from the current arrangements?

Summary of policy options for combating illegal logging

Policy Option	Ease of implementation [Easy/technical/ development needed]	Timescale [Short/ medium/ long-term]	Cost [Pays for self/ moderate/ high]	Conflict with special interests?	Comments (inc. reference in main document)
Producer country measures					
Legislative reform					
Reform of domestic forestry law	Technical	Medium	Moderate	Yes	2.2 Inc. objective standards, transparent administrative procedures, enforcement programme with clear responsibilities.
Streamlined taxation	Technical	Short	Pays for self	Yes	2.3 Inc. opportunity cost of forestry
Economic intelligence units	Easy	Short	Pays for self	No	2.4 Also use of ITTO's market information.
Industry regulation					
Reform of concession allocations	Technical	Short – long	Pays for self	Yes	2.5
Restricted allocation of processing licences	Easy	Short	Pays for self	Yes	2.6 – 2.7 Limited to companies demonstrating legal supplies of timber.
Designated liability	Easy	Medium	Pays for self	Yes	2.8 Already proved as effective enforcement strategy in other 'hard to police' sectors like hazardous waste trade.
Good behaviour incentives	Easy	Short/medium	Moderate	No	2.8 Good behaviour bonds, conditional loans and tax offsets etc.
Developing professional ethics	Technical	Long	Moderate	No	2.9 Inc. bottom-up initiatives addressing abuse of workers in the illegal sector. Harvesting licence dependent on training etc.
Reform of domestic inward investment laws	Technical	Medium	Moderate	Yes	2.10 Inc. transparent auditing of concessionaires accounts.
Restriction on points of export	Easy	Short	Pays for self	Yes	2.11 Used successfully in CITES, allowing concentration of expertise.
Enhanced enforcement					
Specialised enforcement units	Technical	Short/medium	Pays for self	Yes	2.12 Eg. US, Malaysia. Includes private sector expertise such as SGS.
Strengthening of enforcement resources	Easy	Short/medium	Pays for self (but diminishing returns)	Yes	2.13 Switching from reactive to proactive, intelligence-based enforcement.

Intergovernmental actions on illegal logging

Policy Option	Ease of implementation [Easy/technical/ development needed]	Timescale [Short/ medium/ long-term]	Cost [Pays for self/ moderate/ high]	Conflict with special interests?	Comments (inc. reference in main document)
Improved information resources and tracking	Technical	Short/medium	Pays for self	Yes	2.14
Novel enforcement methodologies	Technical	Medium	Pays for self /moderate	No	2.15 Inc. use of transponders, dyes, satellites etc.
Receipt and collation of independent information	Easy	Short/medium	Pays for self/ moderate	Yes	2.16 Inc. intelligence from local communities, forest dwellers and national and international NGOs.
Wider context					
Alternative employment opportunities	Easy	Medium/long	Moderate/high	No	2.17 Especially to remove incentive for small-scale illegal logging by disposed locals.
Community forestry initiatives	Technical	Medium/long	Pays for self/moderate	Yes	
Improved planning for domestic requirements	Technical	Medium	Moderate	No	2.18
Positive compliance	Easy/technical	Medium/long	Moderate	Yes	2.19
Consumer country measures					
Improved border controls					
Improved threat assessment	Easy	Short	Moderate	No	3.4
Improved legislation	Development needed	Medium	Moderate/high	No	3.5
Tariff reductions	Easy	Short	Moderate/high	No	3.6 Existing schemes need more publicity.
Government procurement policies	Technical	Medium/long	Moderate	No	3.7 – 3.8 Could provide major incentive for certification.
Market-based instruments					
Labelling and certification	Technical	Medium/long	Pays for self – high	No	3.10 – 3.13 Depends on market premium certified products can command.
Policing green claims	Technical	Medium/long	High	Yes	3.14
Responsible investment	Easy/technical	Short/medium	Moderate	No	3.15. Inc. improving 'due diligence'.

Policy Option	Ease of implementation [Easy/technical/ development needed]	Timescale [Short/ medium/ long-term]	Cost [Pays for self/ moderate/ high]	Conflict with special interests?	Comments (inc. reference in main document)
International frameworks					
Enforcement collaboration					
Improved data exchange	Easy	Short/medium	Moderate	No	4.2
Improved customs collaboration	Easy	Short/medium	Moderate	No	4.3
Financial assistance					
Conditionality on development assistance	Easy – technical	Medium	Moderate	Yes	4.7 Model of World Bank Forestry Reform Project in Cambodia useful. Third party monitoring may be important to provide credibility.
International institutions and agreements					
UNFF	Development needed	Medium/long	Moderate	No	4.9 Obvious forum for full review of issues surrounding illegal logging using information from all available sources.
ITTO	Technical	Short – long	Moderate	No	4.10 Expansion of work under Year 2000 objective.
CITES	Easy	Short – long	Moderate	Yes	4.11 Existing international framework and enforcement structure.
Biodiversity Convention	Technical	Long	Moderate	Yes	4.12 Direct attachment to funding mechanism through GEF but minimal competence over trade issues.
WCO and INTERPOL	Technical	Medium	Moderate	No	4.13 – 4.14 Existing structures of working groups and collaboration with MEAs.
OECD Convention on Combating Bribery	Technical	Medium/long	Moderate – high	Yes	4.15 – 4.19 Would allow customs officers in signatory countries to impound shipments of timber where allegations of bribery or corruption are involved along the commodity chain.
G8	Technical	Short/medium	Moderate	No	4.20. Opportunities for taking lead in other forums. Existing Environmental Crime working group.
WTO issues	Development needed	Long	Moderate	Yes	4.21 – 4.28 Various issues around labelling, certification, procurement, transparency.

Appendix 1: Illegal activities associated with the timber trade¹⁹

Illegal logging

- Logging in breach of contractual obligations (e.g. without an EIA)
- Illegally obtaining concessions through, for example, corrupt means
- Logging nationally-protected species without explicit permission
- Logging outside concession boundaries
- Logging in prohibited or protected areas such as steep slopes or river catchments
- Removing under-sized or over-sized trees
- Laundering illegal timber through a concession
- Use of old log permits or licences to collect illegally felled timber to 'sanitise' illegal timber

Timber smuggling

- Log import/export in defiance of trade restrictions and/or national control measures
- Unauthorised or unreported movements across state boundaries
- Avoidance of CITES restrictions

Misclassification

- Under-grading and misreporting harvest
- Under-valuing exports
- Misclassification of species to avoid trade restrictions (eg. mahogany) or higher taxes

Transfer pricing

- Nil profit accounting and manipulating revenue flows for services to avoid revenue

Illegal processing

- i.e. at unlicensed facilities

Grand corruption

- Characterised by long-term, strategic alliances with high level of mutual trust. For example, companies providing support to senior politicians, political parties or major components of the state's apparatus to:
 - obtain or extend a concession or processing licences;
 - avoid prosecution or administrative intervention for non-compliance with national legislation;
 - negotiate favourable terms of investment, ie. tax holidays or non-collection of statutory duties etc.

Petty corruption

- Shorter-term, more tactical, employer-employee relationship, facilitated by and may develop into grand corruption. Most obvious as graft given to or solicited by junior officials to:
 - falsify harvest declarations;
 - avoid reporting restrictions;
 - overlook petty infringements;
 - ignore logging or laundering of logs from outside proscribed boundaries.

¹⁹ For a more extensive discussion, see D. J. Callister, *Corrupt and Illegal Activities in the Forest Sector: Current Understandings and Implications for World Bank Forest Policy: Draft for Discussion* (World Bank Forest Policy Implementation and Strategy Development Group, May 1999).

Appendix 2: Levels of non-compliance/irregularities in international timber trade

Sector	Date	Volume of illegality	Value
World Bank – world-wide illegal logging ^a	1990s	5,000km ²	–
Approx. global trade irregularities ^b	mid-1990s	15% global trade	c. US\$15bn
Brazil – Amazon supply and demand and satellite data ^c	1998	80% of 20-25m m ³ supply illegal = 8,000-10,000km ³ illegal forestry	–
Brazil – Mahogany concession audit by IBAMA ^d	1996–97	70% of 1,964 concession plans non-compliant	–
Burma ^e	1995	276,000m ³ under-declared by comparing import-export data	\$86m, 48% of official timber export revenues.
Cambodia ^f	1997	4.3m m ³ – almost ten times legal harvest	>US\$200m in pay-offs, loss of over \$60m to national treasury
Cameroon ^g	1994	50% of production ‘indeterminate’	US\$4.3m in unpaid taxes
Ghana ^h	1993	Cut exceeded allowable limits by 30%	c. US\$29m or 2% of GDP.
Indonesia – ITFMP supply and demand analysis ⁱ	1998	32, 613 m ³ – 40% total timber throughput	>US\$364.9m
Indonesia – Ernst & Young review of reforestation fund ^j	December 1999	–	US\$4.17bn across 1990s
Malaysia ^k	1995	One third all logging	–
Malaysia (Sabah)	Early 1990s	30–40% exports improperly documented ^l	40% of logging ships avoid duty ^m
Papua New Guinea ⁿ	1982–87	–	US\$100m-327m in transfer pricing + US\$30m-80m in export tax evasion.
Papua New Guinea ^o	1994	–	193m Kina (c. \$193m) in avoided revenue
Philippines ^p	late 1970s – mid ‘80s	9m m ³	17% of rents worth US\$1bn; US\$110m-120m per year
Philippines (trade to Japan) ^q	1981–85	Exports under-declared by 59.1% (c. 813,000 m ³)	Exports under-declared by 46–73%
Russia – Siberia ^r Inst. for Economic Research	1998	20% illegal. In 1999, Vladivostok police investigated 261 related crimes and seized 15,000m ³ of illegal timber. ^s	
Russia (Atlantic forests)	1998	30–50% exports improper; volume under-declared by 40%	15bn roubles (c.US\$2.6m)
Solomon Islands ^t	1994	–	SI\$36-130m forgone
Suriname ^u	1995	30% undeclared	-
Tanzania ^v	2000	130–500,000ha	9/10 th revenue evaded tax c. US\$30-35m
US ^w	1990s	Thefts from all 156 national forests	US\$10–100m

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- ^a D. Callister, *Illegal Tropical Timber Trade: Asia-Pacific* (Cambridge TRAFFIC International, 1992).
- ^b Friends of the Earth International, *The Chase For Quick Profit*. (London, March 1995).
- ^c AFP, March 1998: 'Bresil: le marche noir du bois devaste la forest Amazonienne'; BBC News Online, 12 April 2000: 'Amazon tree loss continues'.
- ^d R. Glastra (ed.), *Cut and Run: Illegal Logging and Timber Trade in the Tropics* (Ottawa: International Development Research Centre, 1999), p. 39.
- ^e World Resources Institute, *Logging Burma's Frontier Forests: Resources and the Regime* (Washington DC, 1997), p. 15.
- ^f Global Witness, *The Untouchables: Forest Crimes and the Concessionaires – can Cambodia afford to keep them?* (London: Global Witness, 1999).
- ^g F. H. Toornstra, G. A. Persoon, and A. Youmbi, *Deforestation in Context: a Cameroon Case Study* (Yaoundé, Cameroon, Enviro-Protect, 1994).
- ^h Glastra, *Cut and Run: Illegal Logging and Timber Trade in the Tropics*, p. 66–67.
- ⁱ Indonesia UK Tropical Forestry Management Programme, *Illegal Logging in Indonesia*,. ITFMP Report No. EC/99/03 (Jakarta, 1999).
- ^j Indonesian National News Agency Antara, 29 December 1999: 'Reforestation Fund: management inefficiency causes \$5.25bn loss'.
- ^k N. Dudley, (ed),. *Bad Harvest* (WWF UK, 1995).
- ^l *Far Eastern Economic Review*, 4 July 1991, pp. 43-46: 'Cutting down to size'.
- ^m P. Hurst, *Rainforest Politics: Ecological Destruction in South-East Asia* (London: Zed Books, 1990).
- ⁿ J. Jackson,. *A Study of Timber Transfer Pricing in Papua New Guinea*, (New York: UNCTNC, 1990).
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