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Illegal logging, and the global trade in illegally sourced timber; a crime against forests and peoples

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Illegal logging, and the trade in illegally sourced timber, is on the increase in tropical, temperate and boreal forests. It is one of the main causes of forest loss, undermines the rule of law and leads to substantial revenue loss for the state. It encourages forest crime, corruption and tax evasion, and has serious economic and social implications for the poor and disadvantaged.

Due to the nature of the crime, it is difficult to obtain statistics. It is, however, widely believed that approximately 50% of imports of tropical timber and about 20% of timber from boreal forests into the EU is illegally sourced¹.

Governments, in both producer and consumer countries, should urgently address the trade in illegally sourced forest products by using existing tools and developing new approaches to combat illegal logging.

To be effective, the EU should pay particular attention to the **underlying causes** of illegal logging. These include: overcapacity in the forestry industry (Indonesia is a very clear case); violation of tenurial rights of local communities and Indigenous Peoples, and a blatant lack of transparency in the forestry sector.

Source	Estimated % of illegal logging
Indonesia	73% ²
Cameroon	50% ³
Brazil	80% ⁴
Russia	20-50% ⁵
Estonia	50% ⁶

¹.Special Report: EU illegal timber imports; EU Forest Watch July/Aug 2001; European League Table of Imports of Illegal tropical Timber, Friends of the Earth, November 2001.

² Indonesia-UK tropical, Forest Management Programme (2000); 'Roundwood Supply and Demand in the Forest Sector in Indonesia'.

³ World Resources Institute (2000) 'An overview of logging in Cameroon'.

⁴ Brazilian Secretariat for Strategic Affairs (1997).

⁵ Illegal logging in the southern part of the Russian Far East: Problem Analysis and Solution. WWF 2002

⁶ Ahas, Illegal Logging in Estonia, Presentation to the FME meeting April 2002

1. Make illegal what is illegal.

The clearest option open to EU member states is to make sale or import of illegally sourced timber and timber products an offence. This would require new legislation prohibiting timber that has been sourced in contravention of the laws of another state, or legislation that establishes some form of external standards, which products would have to meet; such as evidence of independently verified chain of custody monitoring. Thereafter imports not complying with those standards would be subject to sanctions. Governments should start developing this legislation immediately.

What is illegal?

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 protected areas, cutting of protected species or extraction of timber in excess of agreed limits. Illegalities may also occur during transport, including illegal processing and export, mis-declaration to customs, or avoidance of taxes and other charges.

There is no internationally accepted definition of what is illegal, but in many of the above-mentioned countries legislation is clear and adequate, only enforcement is lacking. This is where consumer countries can take immediate action, by supporting producer countries with enforcement.

One note of caution: Legal does not mean sustainable and sustainable does not mean legal. Legally harvested timber can come from very badly managed forests, and harvests from well-managed forests can be illegal. Therefore forest certification to identify well-managed forests, according to the Forest Stewardship Council's principles and criteria, needs to continue unabated.

2. Identify what is legal and increase transparency.

In order to determine what is illegal it is essential to know first what is legal. The first step in controlling the international trade in illegally sourced timber is the establishment of a system to identify legally produced timber and timber products. There are no insuperable technical obstacles to overcome; however any system is only as good as the people applying it. Therefore increasing transparency and eliminating corruption are major first hurdles to take before putting any system in place. The EU should contribute to increasing transparency by focusing on the following action points

- The EU and other donors should make any assistance in the forest sectors of producing countries contingent on the publication of information. See below
- All legislation, rules and regulations, concession maps, details of concession companies, cutting licences and transport permits should be made freely available. Forestry Departments should be encouraged and supported to make these data available.

- Relevant politicians and officials in consumer and producer countries should be required to disclose financial and familial links with the forestry industry, the military and the judiciary.

With regard to monitoring the following action points should be noted

- Certificates are open to fraud, a tighter control within the chain of custody and a combined enforcement agreement between producer and consumer countries should therefore be adopted. More technically sophisticated solutions, of which there are many, may be needed⁷.
- Data on export and import of timber should be collected and exchanged more systematically between producer and consumer countries.
- The EU should introduce uniform trade statistics that facilitate analysis and increased transparency and should harmonise custom codes for timber and timber products.

3. Co-operate to combat what is illegal

Both producer and consumer countries can agree to various steps through either bilateral or multilateral agreements. The EU should initiate talks to find bilateral and regional measures to help reduce illegal logging. Developing bilateral and regional enforcement treaties to encourage countries to engage in prior-notification of large shipments is a first quick step to start addressing the problem. Any large shipment without prior notification would be seen as suspicious and therefore subject to inspection. Only once there are several bilateral or regional agreements, can steps be taken to develop an international agreement to work from the bottom-up rather than from the top down.

4. Don't buy what is illegal.

As the EU is a major buyer of wood products, its procurement policies should only allow for legally produced timber, guaranteeing it a substantial share of the market. Furthermore, EU governments should be encouraged to take steps to develop policies requiring that timber comes from well managed forests, as certified according to the principles and criteria of the Forest Stewardship Council.

Purchasing illegally sourced timber contributes to corruption something the OECD Anti-Bribery Convention⁸ seeks to eradicate. This Convention allows for sanctions against companies, which have been engaged in bribery and all Parties to the Convention (including the EU) should enforce it.

⁷ These can include barcodes, micro-chips, tracer paints etc. See Brack et al; Controlling the International Trade in Illegally logged timber and forest products, RIIA November 2001

⁸ OECD 1997; Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions

5. Use existing financial instruments to address illegal activities

Financial and investment instruments offer many opportunities to address illegal activities by large, specifically EU based, companies. Three of the most clearly defined opportunities are:

- **Money laundering.** Money laundering takes place when companies engaged in illegal activities deposit the proceeds of these activities in banks. In November 2001 the EC extended its Directive on money laundering⁹ to include all the proceeds of serious crime. The Directive requires Member States to “examine with special attention any transaction they regard as particularly likely, by its nature, to be related to money laundering”. This legislation, as well as many others, applies to many forestry crimes and should be actively used to halt these activities. The EU should actively inform banks, financial intelligence units and financial institutions about the implications of involvement in forestry activities.
- **Binding guidelines.** Many EU based companies are directly involved in illegal logging activities¹⁰ and many EU based banks and Export Credit Agencies are financing these activities. The development of binding environmental and social guidelines for Export Credit Agencies is a first step to halt financing illegal activities; codes of conduct by private banks will also help curb illegal logging. Guidelines requiring forestry companies to show where their raw material comes from and halt all public funds if these companies are engaged in illegal activities are further EU action points to be implemented.

Bans can be WTO compatible

All measures listed here are in principle WTO compatible, and all options should be considered. Governments citing the WTO as a reason why they cannot take trade related actions, are badly informed and show a lack of political will to seriously address the issue.

Even a ban on illegally sourced timber is not against WTO rules, if well argued. The recent verdict of the WTO's appellate body in the shrimp turtle case shows that bans are possible, if well argued, even if producer countries disagree¹¹.

The draft EU Regulation to combat illicit traffic in conflict diamonds may set a relevant precedent. The Council recently adopted a common position¹² on combating the traffic in conflict diamonds and a Regulation¹³ prohibiting the imports of rough diamonds from Sierra Leone.

⁹ 2001/97/EC

¹⁰ Forests Monitor, Sold down the River, March 2001; Logging companies in Cameroon; EU Forest Watch Special Report.

¹¹ US/Shrimp Turtle, Recourse to Article 21.5 of the DSU by Malaysia, AB Report, 22 October 2001, WT/DS58/AB/RW

¹² 2001/758/CFSP: Council Common Position of 29 October 2001 on Combating the illicit traffic in conflict diamonds, as a contribution to prevention and settlement of conflicts

¹³ Council Regulation (EC) N° 303/2002 of 18 February 2002 concerning the importation into the Community of rough diamonds from Sierra Leone.

The measures listed above should be complemented by measures to be taken in the producer countries, which the EU should support. These include:

- Local communities and Indigenous Peoples should be included in all decision making processes in the forestry sector, thereby promoting transparency, reducing corruption, ensuring greater equity and minimizing undue influence of privileged groups¹⁴.
- The insecurity of tenurial rights of local communities and Indigenous Peoples over forest areas (in countries as Indonesia, Cameroon, Canada etc) has caused widespread forest destruction, both legal and illegal. The EU should therefore support producer countries to make an immediate effort to recognise Indigenous Peoples' rights and rights of local communities and develop a tenurial system as an incentive for people to guarantee protection of their forests¹⁵.
- Development assistance should target producer countries, forestry services, local communities, NGOs and Indigenous Peoples as part of a strategy of building a consensus for reform, including land reform, within producer countries.
- Capacity building among NGOs, local communities, and Indigenous Peoples to address illegal logging, as well as national forestry services to monitor forestry activities, is essential to effectively address the problem of illegal logging and related trade.
- In many countries, including Indonesia, Cameroon and Cambodia, industrial logging, embodied in the concession system as it currently functions, is one of the main drivers of illegal logging. It contributes little (net) to the economies of these countries, creates conflicts with local people and is detrimental to their livelihoods. Addressing illegal logging means addressing industrial logging itself. The EU should support the development of verification systems of community-based forest management systems as a step to controlling illegal logging.
- For the accession countries such as Latvia and Estonia, the EU enlargement process should be used to effectively address the issue of illegal logging in the accession countries.

¹⁴ As acknowledged in the Declaration of the Forest Law Enforcement and Governance Conference in Bali, September 2001.

¹⁵ The Bali Declaration (see footnote 14) calls for integration of customary law into formal law and capacity building for legislative and judicial institutions, including the integration of customary institutions.