

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**

**Current State of Discussion and Implementation Related to Illegal  
Logging and Trade in Forest Products**

**A Background paper for the Global Project: Impact Assessment of Forest  
Products Trade in Promotion of Sustainable Forest Management**

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**Report  
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# **Current State of Discussion and Implementation** **Related to Illegal Logging and Trade in Forest** **Products**

## **1. Background**

Worldwide, illegal logging and trade threaten the environment, the forest economy and rural livelihoods. In many forest rich countries, particularly those in the developing world, illegal logging exceeds legal operations, sometimes by a large margin. Illegal logging worldwide is a multibillion-dollar operation, reaching as much as \$ 10 billion a year. In addition, failure to collect appropriate rents from timber concessions – some of which may be due to practices that violate the law -- is estimated to cost countries some \$ 5 billion a year in lost government revenues (World Bank, 2002). An undetermined but substantial volume of forest products is also traded illegally.

Illegal logging and trade is a worldwide phenomenon present not only in developing countries, where the problem is more serious, but also in several industrialized countries. Moreover, an assortment of corporations from advanced countries illegally harvest and trade forest products in both, home countries and abroad. Thus, actors from both the developing and the industrialized worlds are engaged in illegal logging and trade.

Illegal logging and trade has a number of intensely deleterious effects. Besides losses of Government revenues they result in patterns of use of resources that have little to do with economic efficiency or environmental quality. Illegal activities undermine sustainable forest management operations. They also tend to work against the well being of the rural poor, when these lose out to powerful interests that, using fraudulent methods, take control of forest resources of vital importance for their subsistence. In various cases, illegally sourced and exported timber has been instrumental in financing regional or national conflicts, the so-called “Conflict Timber” (Marijnissen, 2003).

Global awareness of the many problems associated with illegal logging and trade has increased sharply during the last few years. While in various countries some of the actions that contribute to the control of illegalities, such as legal reforms and improved monitoring of forest resources, were in the past included in initiatives to enhance the levels of forest governance, there were few specific concerted efforts to attack illegal acts *per se*, to mainstream law compliance considerations in policy and legislative design. Some activities such as those associated with corruption were considered as taboo and avoided in debates at international forums.

Today, it is recognized that controlling illegal activities in the forest sector is a necessary condition for sustainable forest management. Furthermore, it is now widely accepted that, in this undertaking, advanced and developing countries share a responsibility because of the influence of trade and highly mobile investment in the improving law compliance in the sector.

The idea of managing trade of forest products by rejecting imports of those that could not be proven to be legally sourced, while favoring or accepting those that can, has gained considerable acceptance during the last few years.

But controlling trade is just one tool. Industrialized countries and other groups, recognizing the limited impact that an international trade exclusion could have on the overall volume of illegally sourced and traded wood (only a small proportion of the total volume of wood harvested in developing forest rich exporter countries), also started implementing initiatives to improve law compliance in exporting countries, including measures not directly related to international trade, such as reforming policy and legislation and supporting mechanisms for increasing transparency in decision making.

Further, while national governments remain the most important actors with regard to legislation and enforcement, NGOs, private businesses, institutional investors and consumer groups are also playing a role in shaping new policy instruments for the control of unauthorized activities in the forest sector. In particular, international NGOs have been effective in raising awareness of the nature and magnitude of the problems and in prodding governments to organize corrective actions. Boundaries between initiatives by different groups interested in controlling illegal logging and trade are becoming blurred as coalitions involving various actors organize joint actions. For example, there are several cases of international NGOs and advocacy groups acting in concert with interested government in detecting forest crime and documenting illegal activities as well as in designing policy reforms.

This paper reviews the main international initiatives and instruments designed to curb illegal logging and trade in forest products and the current state of the international debate on their implementation. The next section discusses the basic concept and definition of illegal logging and associated trade while the section after that describes the magnitude of illegal logging and trade. Section 4 examines the elements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora that are relevant to illegal logging and trade, and the section after that, with the Convention on Biological Diversity. Section 6 focuses on Other Multilateral Agreements and Initiatives and section 7 looks at Bilateral Agreements Against Illegal Logging and Trade. Section 8 describes the recent USA President's Initiative Against Illegal Logging. Section 9 focuses on International Organizations and Partnerships while sections 10 and 11 examine "non-state" initiatives, namely Certification and Corporate Codes of Conduct. Section 12 looks at NGO Programs while section 13 the report analyses the WTO Implications of Schemes that

Discriminate Against Trade of Illegally Sourced Wood. The last section summarizes the report's conclusions.

## **2. What is illegal logging and trade?**

The international debate has yet to agree on a proper definition of illegal logging and trade. The main issues in achieving a widely accepted operational definition of illegal activities are;

- What is the scope of illegal acts?
- How to harmonize societal objectives in different societies?
- How to handle the dynamic nature of laws and regulations that constantly change over time?
- How to distinguish between laundered wood and other illegal wood?
- Should we distinguish between illegal and criminal acts?

### ***What acts should be included in a definition of illegal logging and trade?***

In its narrower connotation, illegal logging occurs when timber is harvested in unauthorized ways, in violation of established laws and regulations (See Callister, 1999; FAO 2002; Commission of the European Communities, 2003). For example, wood may be harvested in excess of legal limits, in places where such harvest is prohibited such as in national parks and protected areas, in locales where forests provide essential environmental services such as upper watersheds and riparian zones. Wood may be simply stolen from the rightful owners

The production, trade and consumption chain is long, involving many other activities associated with just cutting wood and some of these activities are often included in the definition of illegal logging. For example, the definition of illegal logging in Malaysia includes unauthorized construction of infrastructure and forest roads, encroachment of forest reserves for agricultural activities, the employment of unlicensed workers and contractors, unregistered machinery and "other" (unspecified) breaches of rules and regulations (MTC, 2002).

The Royal Institute of International Affairs has adopted a broader definition of illegal logging:

*“Illegal logging takes place when timber is harvested, transported, bought or sold in violation of national laws. The harvesting process itself may be illegal, including corrupt means to gain access to forests, extraction without permission of from 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, misdeclarations to customs, and avoidance of taxes and other charges”*

There are no clear rules for establishing the boundaries of the set of activities covered under the definition of illegal logging and trade. For example, should wood originating in forest lands acquired with illegal proceeds be considered illegal, when the enterprise has followed all rules and regulations related to land acquisition and forest management? The economic and social environment in which wood is produced, harvested, transported and sold is broad and a single activity in the forest sector could be related to many others in other sectors, some of which may be illegal. Obviously, at some point a boundary must be set but it is not clear, or universally accepted, where this boundary should be.

In this report, and interpreting the span of actions discussed in the international debate on the subject, we have adopted the categorization “illegal logging and trade” to encompass illegal harvest, transportation, processing and trade of wood products. Thus, practically all unauthorized major activities in the forest sector are part of “illegal logging and trade” concept. The box below contains a list of examples of illegal logging and trade activities.

## **Examples of illegal logging and trade activities**

### **Illegal logging**

- Logging protected species
- Duplication of felling licenses
- Girdling (ring barking) to kill trees so that they can be legally logged
- Contracting with local entrepreneurs to buy logs from protected areas
- Logging in protected areas
- Logging outside concession boundaries
- Logging in prohibited areas, such as steep slopes, riverbanks and water catchments
- Logging under/oversized trees from public forests
- Extracting more timber than authorized
- Reporting high volumes extracted in forest concessions to launder wood extracted from non-authorized areas outside the concession.
- Logging without authorization

### **Illegal timber transport**

- Transporting wood without authorization
- Transporting illegally harvested timber
- Falsifying and/or reusing transportation documents

### **Illegal trade**

- Smuggling timber
- Exporting and importing tree species banned or restricted international law, such as CITES
- Exporting and importing wood in contravention of national bans
- Trading in species or dimensions or types of wood forbidden by law
- False export or import declarations

### **Illegal forest products processing**

- Operating without a processing license
- Ignoring environmental, social and labor laws and regulations
- Using illegally logged wood in industrial processing

### **Abuse of transfer pricing, use of illegal accounting practices, money laundering and other financial crimes**

- Declaring lower values and volumes exported
- Declaring higher purchase prices of inputs such as logging, transportation and processing machinery and services from associated companies
- Manipulating cash flows to transfer money to subsidiaries or to parent company to avoid paying taxes in the country of operation
- Money laundering
- Under grading, undervaluing, under measuring and misclassification of species exported or for sale in the local market to avoid tax liabilities.

### **Corrupt activities**

- Obtaining logging concession through bribes
- Bribing road and customs police and other controllers
- Restricting information about timber concessions to a few favored companies
- Establishing unnecessary qualification requirements to exclude unwanted companies from concession contracts
- Leaking confidential concession bidding information to preferred contractors
- Other manipulation of bidding processes to suppress competition.

### ***Diverse societal objectives, diverse laws.***

What is considered, and desired, as legal in a country may not be acceptable and therefore declared as illegal in another. This makes the implementation of an international scheme to fight illegal activities difficult.

Because laws are expected to embody society's objectives, activities that defy the law, work against the values of society. Those values may differ, sometimes in contrasting ways, from country to country. There is no set of globally accepted objectives related to forests that could be used as framework to differentiate between legal and illegal acts. Thus, while securing sustainable forest management is a fairly universal objective, countries may diverge when it comes to the relative importance of, for example, strict preservation of tropical forests. Some societies may want to see any action outside severe preservation as illegal, while others may have different priorities. Given the absence of universal set of ends encompassing not only the widely accepted sustainable forest management objectives, but others related to biodiversity conservation, government ownership of forests, rights of traditional communities to forest resources, to name a few, it is not surprising that what is legal in one country may be considered as illegal, or at least undesirable, in another.

The international debate is also influenced by the problem that some countries from the south see some objectives embodied in international schemes to fight illegal acts as imposed by countries of the industrialized world, objectives not necessarily shared by developing countries. Thus, when reaching the operational details of schemes to fight illegal acts in the forest sector, concepts of illegality may differ.

### ***The dynamic nature of societal objectives, laws and regulations***

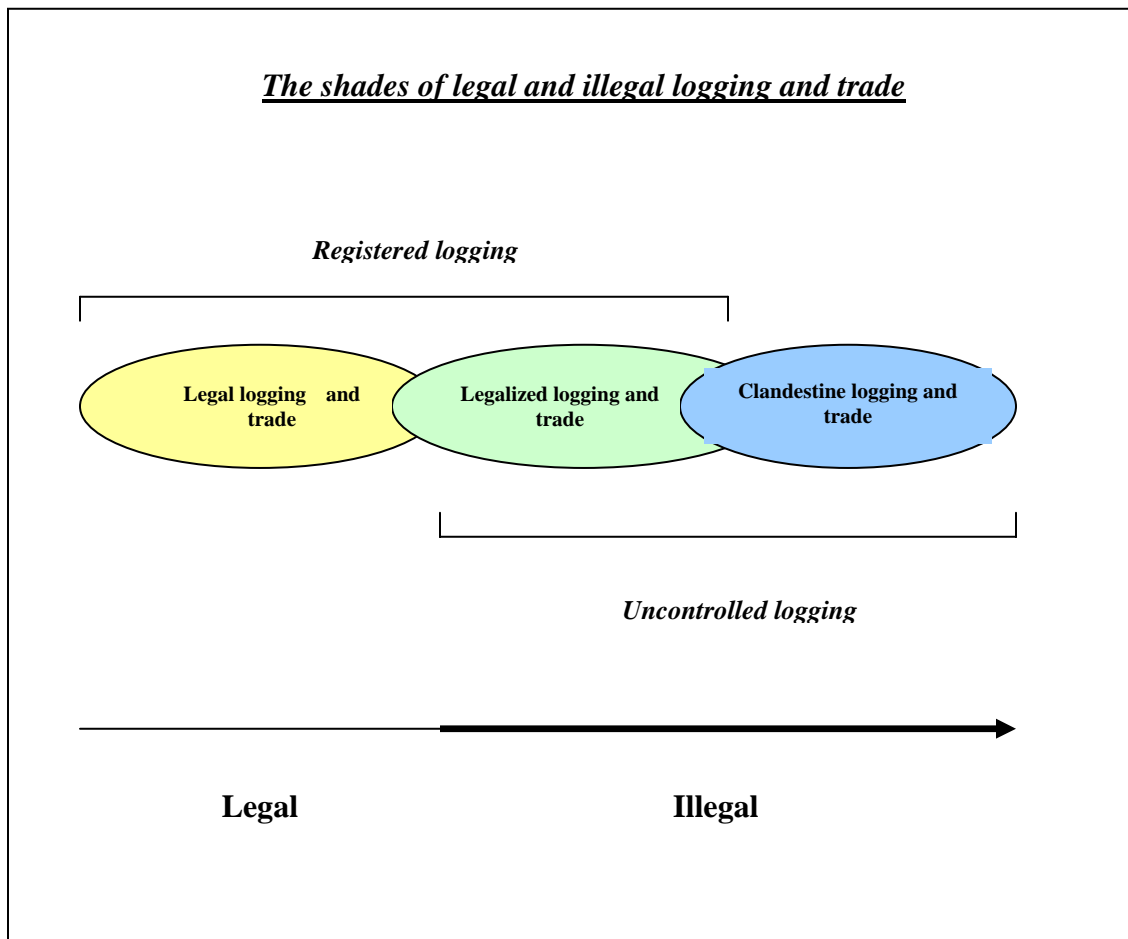
An additional dimension is that society's objectives change over time and therefore it is natural to expect laws to also change as time passes, with activities previously considered illegal now becoming legal and vice versa. Some offences periodically drift in and out of forestry legal frameworks. Some may be legal only for a period. An example is the use of temporary log export bans as tools to help conservation of some forest species or to promote industrialization.

Existing international schemes to control illegal logging and trade go around these definitional problems by declaring illegal anything that contravenes laws of the country of origin or of the importing country. Lacking universally accepted standards of what should be legal and what should not, this is probably the most realistic point of view. Such approach also avoids fostering the mentioned perception of industrialized countries imposing values (and therefore legal prescriptions) on exporting developing countries. However, it does nothing to control actions that may be legal but perceived as "illegitimate" by many (granting logging concessions on traditionally owned, but not legally recognized indigenous lands), or that lead to

environmental degradation (deforestation as a way to prove presence and obtain land ownership rights).

***Illegal wood and laundered wood***

The implementation of schemes to restrain illegal activities in the forest sector is complicated by the amount of illegal wood that is legalized or “laundered”. There are various creative ways to launder wood including the falsification of certificates, providing permits for harvesting “salvage wood” when in fact only perfectly healthy wood is involved and so on. Documentation in all these cases appears to be legitimate, taxes and fees are duly paid and harvesting transportation and sales of wood are registered as legal in official records. This contrast with unambiguously unauthorized or clandestine wood, that is officially inexistent, is not affected by taxes or fees and is not included in anyway in official records (See below).



In this paper, illegal wood is understood to include laundered or legalized wood as well as that that is clearly illegal, or “clandestine”.

That being said, it is particularly difficult to ascertain what proportion of the total cut is laundered but it is fair to expect that incentives to legalize illegally sourced wood may increase in the future, as a way to evade increasing controls.

### ***Illegal or criminal?***

Further to these operational considerations, the discussion on illegal activities has also centered in the definitional differences between activities that are of a criminal nature and those that are not. Again, there is not international consensus on this theme, except that only certain severe forest illegal activities could be considered as criminal. This seemingly banal difference has consequences in terms of the instruments that can be used to reduce illegal logging and trade, because penalties for illegal acts are commensurate to the nature of the offence and this in turn depends on the legal classification of the activity adopted in various countries (See box below).

#### **Illegal or criminal?**

The current debate on illegal activities often makes use of the word crime to characterize illegal forest acts. What is the difference between both connotations?

In its broadest legal interpretation, normally a crime is an act that violates a law that forbids it and for which a court can impose punishment, including removal from office, a fine or imprisonment (and in certain cases death, when there is a capital offence). However this conceptualization is evidently too broad. Some analysts distinguish between misdemeanors and felonies. In general a felony is a very serious offence punishable by imprisonment (or even death). Homicide is such a crime. In the forestry sector, various laws provide for imprisonment which in certain cases – arson for example --could involve several years. Misdemeanors are less serious and generally punishable by shorter prison terms, one year or less, or a fine. In the forest sector, illegal transportation of wood could be considered as a misdemeanour in many legal texts. Finally, analysts also distinguish a third set of offences, which normally are not punishable with prison terms, but just a fine. Certain laws allow the government to confiscate illegally-sourced timber as the only punishment for the perpetrator.

Because the concept of crime is highly emotional and invariably suggest a serious offence, many prefer to use the term illegal act as a more neutral one.

### **3. The scale of illegal logging and trade**

While a comprehensive global measurement of illegal logging and trade is not yet available, numerous studies carried out indicate that the problem is of a large magnitude and pervasive in many countries. The World Bank estimates that the economic value of illegal logging alone may be some US\$ 10 billion per year, several times the amount of all official development forest sector assistance which is in the order of US\$ 1.5 billion a year.

Illegal logging and trade is more important in developing countries where the state is weak, corruption is more prevalent, the power of companies relatively stronger and

institutions of the civil society that could play a watchdog role also generally weak. In many developing forest rich countries, illegal logging exceeds the legal harvest, sometimes by a large margin.

In Cambodia illegal logging was around 90 percent of the total forest harvest in the late nineties, while in Brazil's Amazon it exceeds 80 percent. In Indonesia, more than 70 percent of the forest harvest was illegal a few years ago, with a vast majority of the timber concessionaires violating regulations. These conditions have most certainly worsened in the last few years when illegal operations have accelerated, with loggers having few scruples in entering national parks, including the precious Gunung Leuser in Sumatra and the Tanjung Putting in Kalimantan (Scotland, 2000). About 40 percent of the large Indonesian pulp and paper wood supplies come from unauthorized sources (Barr, 2000).

Massive illegal logging led to rapid deforestation in the Philippines during the eighties to the extent that today some 90 percent of the primary forest is gone (World Commission on Forests and Sustainable Development, 1999). Yet, the disappearance of the natural forest did not discourage illegal loggers that still supplied almost half of the country's requirements in the late nineties (Acosta, et al, 2000).

More than half the logging licenses in Cameroon were illegal and in many others, legality was in doubt just a few years ago (WRI, 2000).

Other studies in Russia, Honduras, Nicaragua, Bolivia, Liberia and so on confirm the widespread breakdown in law enforcement and the pervasiveness of illegal logging.

The international market provides an attractive outlet for illegal wood. Logs from the Russian Far East are exported to China in unauthorized ways or are laundered using false certificates. There is an intense traffic of illegal timber between Indonesia, Malaysia and Singapore. Logs are smuggled from various producing countries to ready markets in the developed world. More than half the wood imported into the European Union and a third of that imported by the G8 and China from developing countries appears to be illegally sourced. International trade even involves species protected by CITES. For example, about 25 percent of all mahogany imported into the United States has illegal origins (Contreras-Hermosilla, 2002).

It must be emphasized that these various estimates of illegal activities understate the magnitude of forest crime. In many cases local officials are reluctant to report illegal acts either because of fear of reprisals from criminals or because of their own involvement in illegal schemes. Companies, using imaginative procedures, conceal their unlawful extractions and through complex methods of documentary fraud and corruption. In all these cases, a proportion of illegal acts stay undetected. Because of this, in many countries, the exploitation of forests is an important part of the "shadow" economy with illegal acts remaining undisclosed, or otherwise laundered and recorded as legal.

Illegal logging also occurs in industrialized countries but it is more acute in developing and in eastern countries. In any case, corporations from industrialized countries are often involved in illegal logging and trade in developing countries.

Thus, a variety of actors from industrialized and developing countries participate in illegal logging and trade.

The following sections of this report examine various international initiatives that either contain elements or are entirely dedicated to combating the origins and pernicious effects of illegal logging and trade.

#### **4. The Convention on International Trade in Endangered Species of Wild Fauna and Flora**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora. CITES can be considered as an instrument of global reach as some 160 countries have signed it. The Convention is legally binding. CITES provides different levels of protection to species listed in its three Appendixes. Appendix I includes a list of species threatened with extinction. Trade involving these species can only be allowed under exceptional circumstances. Appendix II contains species that, although not threatened with extinction, need to be protected by controlling trade that may eventually lead to its extinction. Appendix III includes species that are protected in at least one country that has asked another CITES signatory to cooperate in controlling trade.

Parties are asked to report every two years on measures taken to implement the Convention and penalize trade in violation of the Convention. CITES requires that parties keep records of all transactions involving protected species and these records must be made available every year to the CITES Secretariat to keep current data of international movement of species.

According to the Appendix category, different documents must be presented by trading partners but, in all cases, species traded must have a documented legal origin. CITES permits are verified at the moment of export as well as when the wood is imported, thus providing a dual check of the legality of the product traded.

The effectiveness of the Convention as an instrument to prevent illegal wood has been tested in various cases including illegal exports of *Fitzroya cupressoides*, *Araucaria araucana*, *Gonystylus sp.* and, recently a widely publicized case of illegal exports of *Swietenia macrophylla* from Brazil to the United States. The Convention has contributed to stopping the illegal trade of certain species but its overall effectiveness in terms of the broad problem of illegal activities in the sector is limited. First, the Convention can only cover certain species that are either already threatened or expected to be endangered in the near future. The Convention is less than comprehensive, as it has been invoked to protect only a limited number of tree species out of far larger universe of endangered trees. 93 tree species are listed in

Appendixes I and II. According to some analyses of 255 possible candidate species, 15 new species could be added to Appendix I and nearly 100 to Appendix II. Adding a substantial number of tree species would probably not be a realistic possibility as the process is likely to be controversial (Brack, Gray and Hayman, 2002).

Second, this instrument does address illegalities in domestic logging and trade as it has been designed to control international trade only.

Third, CITES must deal with the persistent problem of false documentation. There are countless opportunities to tamper with the permit system but CITES lacks a permit monitoring and tracking system.

Fourth, international law in general, and despite the quasi-legislative nature of some agreements such as CITES, do not have the same potency as national law. CITES does not have a centralized and effective enforcement mechanism to ensure compliance. CITES depends on the political commitment of parties to comply with the agreement and, that failing, on “mobilization of shame” for non-compliance or imperfect compliance. An example of going around the rules is the reported import into the United States of ramin, a highly valuable and endangered tree species that is found only in Malaysia and Indonesia. Under CITES, Indonesia has included ramin wood and ramin products in Appendix III and, further, in August 2001 banned the harvesting and export of the species (with the small exception of certified operation in Sumatra). According to CITES’ Appendix III, all exports of the species must be listed by a certificate issued by the exporting country government. The Indonesian Government has issued no ramin export certificate since December 2001. Exports from Malaysia require a certificate of origin. Reports indicate that imports of ramin without the required certificates into the US in the ten month period between September 2001 and July 2002 reached some \$ 9 million (EIA and Telapak, 2003).

Fifth, responsibility for controlling harvests, national trade and exports usually resides in different institutions of government and cross communication between these agencies is usually quite weak. Frequently, resources for control of trade of CITES species are not available to enforcement agencies, particularly so in exporting countries.

An intangible but real benefit of the Convention is that it has been instrumental in raising international awareness of the problem of valuable species extinction driven by global markets and, arguably, this has contributed to creating political willingness to imposing restrictions on the international trade of some highly visible species, such as *Swietenia macrophylla* (broadleaf mahogany).

## **5. The Convention on Biological Diversity**

In 2002 the Convention on Biological Diversity’s Sixth Conference of the Parties approved an Expanded Work Program including studies to assess the effects of

unauthorized forest harvesting on fauna and flora, on indigenous communities and on government revenue. The debate was conflictive and even the term “illegal” was controversial, hence the adoption of the word “unauthorized” instead.

Another issue to be addressed was the relationship between consumption in consumer countries and unauthorized harvesting activities including those through international trade. Other activities included the evaluation and reform of legislation to include clear definitions of illegal activities, develop methods and build capacity for effective law enforcement, develop codes of conduct, and the development of product tracking systems.

These initiatives are too recent to have produced substantive results yet. The first output of all these actions will be reported at the 7<sup>th</sup> session of the Conference of the Parties in February 2004.

## **6. Other Multilateral Agreements and Initiatives**

The origin of the most important initiatives to combat illegal logging and trade can be traced to a political commitment by the G8 reached in 1997 to support proposals advanced by the Intergovernmental Panel on Forests and other ideas for the better management of global forests. This commitment spawned the FLEG regional strategies, and various bilateral agreements between producing and consuming countries to jointly combat illegal logging and trade. Arguably, it contributed to galvanizing EU countries in their drive against illegal logging and trade, typified by the recent launching of the EU Plan of Action on Forest Law Enforcement, Governance and Trade.

### ***The G8 Action Program on Forests***

At their 1997 Summit in Denver, USA, the G8 agreed to launch a Program on Forests to accelerate the implementation of proposals for action advanced by the then Intergovernmental Panel on Forests. A major commitment was made at the G8 meeting in Birmingham in 1998 when the Program was formally launched. The Program had five areas of action: i) monitoring and assessment, ii) national forest program, iii) protected areas, iv) private sector and, the subject of this report, v) illegal logging (See box below).

The G8 initiative squarely put the issue of illegal logging in the international debate and agenda on global forests by establishing a clear support to the concepts issued by the Intergovernmental Panel on Forests. It substantially increased the visibility of the international debate at the political level.

Although the final report of the G8 Program was issued in 2002, the Banf G8 Environment Ministers meeting on the WSSD last year contained a statement aimed

### **The G8 Action Program on Forests: Initiatives Against Illegal Logging**

Recognizing the continuing pressure on the world's forests and the positive contribution that sustainable forest management can make to sustainable development, the G8 members at Denver expressed their commitment to implement the proposals for action contained in the report of the Intergovernmental Panel on Forests and agreed to support an Action Program. The Program focused on domestic measures in the G8 member countries and on areas where they could make unique contributions through their bilateral assistance program and their support to intergovernmental processes. On illegal logging, the G8 decided to:

- encourage the sharing of information and assessments on the nature and extent of international trade in illegally harvested timber as a basis for developing practical and effective counter measures;
- identify and assist in implementing measures to improve economic information and market transparency regarding the international timber trade, including through International Forum on Forests and International Tropical Timber Organization;
- identify and assess the effectiveness of their internal measures to control illegal logging and international trade in illegally harvested timber and identify areas needing improvement;
- take measures to implement their obligations under international agreements aimed at combating bribery and corruption in international business transactions as they pertain to trade in timber;
- work with interested partner countries and through international organizations including the International Tropical Timber Organization to develop their own capacity to assess the nature and extent of illegal logging and trade in illegally harvested timber and their capacity to develop and implement counter measures.

at fostering actions against illegal logging and trade and the April 2003 G8 Environment Ministers' Paris Communiqué promised to support actions against illegal logging in Africa. The Chair summary of the 2003 Evian meeting, confirmed the G8 commitment to continue to support actions against illegal logging. The Evian declaration also contained a statement committing G8 members to continue to assist countries in the adoption of modern technologies, such as satellite imaging, to help combat illegal logging. In this way the G8 have repeatedly expressed their political commitment to combat illegal logging and trade.

### ***Regional Forest Law Enforcement and Governance Processes (FLEG)***

As an aftermath to the launching of the G8 Action Program on Forests, the World Bank, the Governments of the UK and the USA, and other partners organized regional Forest Law Enforcement and Governance (FLEG) processes to foster political commitments in Asia, and Africa. Similar actions will possibly take place in Latin America and Europe in the near future.

The FLEG process fosters discussion of issues of common interest, political commitment to fight illegal logging and trade, as well as cooperation between main consumer and producing countries. The initiative has generated bilateral agreements and has contributed to creating momentum for the production of the EU Plan of Action discussed later in the text. The FLEG process aims at improving governance and combating illegal logging and trade and is complementary to other initiatives that pursue broader goals of sustainable forest management and conservation.

*a) FLEG South East Asia*

In September 2001, and following a series of technical meetings, Ministers from countries of East Asia and the Pacific, Europe and North America meeting in Bali, Indonesia, agreed to undertake actions to improve law compliance. The meeting included 20 countries, international governmental and non-governmental organizations and the private sector. Some national Indonesian NGOs also participated. The Ministers issued a Declaration that contained various pledges to fight violations of forest law and forest crime, in particular, illegal logging and trade as well as corruption, by strengthening bilateral, regional and multilateral collaboration.

The Bali Declaration broke the traditional reticence to discuss the problem of illegal logging and trade as well as associated evils that previously were taboo. The Declaration recognized 50 national actions and 20 at the regional and inter regional level as essential for combating illegal logging and trade. Main actions at the regional and inter regional level included several aimed at the better management of international trade. These are the harmonization of custom codes, design and implementation of protocols for sharing international trade data, the installation and harmonization of chain of custody audit and negotiation systems, adoption of schemes of prior notification between importing and exporting countries, development of bilateral agreements, promotion of certification and support to research on illegal logging and trade. Actions at the national level focus on the creation of political commitment, rationalization of functions and authority of different levels of government, capacity building, improving the administration and effectiveness of concession policies, public awareness, transparency and participation and the promotion of transboundary cooperation (See Annex). While the programmed actions foresee coordinated initiatives by the group of countries, the declaration also flexibly promotes simpler bilateral agreements as a first step in the control of illegal trade. The program of regional and national activities amounts to an innovative, comprehensive and integrated effort to tackle illegal logging and trade practices in a group of countries. It is remarkable for the visibility that accords to the problems of illegal logging and trade and for the high levels of political endorsement by Ministers. It is first initiative of this nature in the world.

In May 2002, a meeting -- also taking place in Bali -- created a Regional Task Force and Advisory Group that proceeded to analyze concrete ways to give operational meaning to the Declaration. Initial ideas were discussed at the first meeting of the Task Force in Jakarta in January 2003 when plans were developed for initiating the implementation of actions to curb illegal logging centering on the main objectives:

- a) information sharing,
- b) learning and networking; and
- c) planning specific FLEG initiatives.

The Task Force identified 4 actions for priority attention and discussed concrete plans and delivery mechanisms, including timetables, and coordinators to link actions in the different countries:

- i. To develop a clearinghouse mechanism for transparent reporting for all matters on forest governance.
- ii. To develop and compile a format to share information on progress made at country and regional level on FLEG implementation
- iii. To develop the overall strategic framework for FLEG implementation at national and regional level.
- iv. To carry out research on timber supply and demand.

The Task Force planned tasks and assigned responsibility for their implementation to individuals working under an agreed timetable. Currently, four working groups carry out activities in the areas of action above while efforts are under way to secure funding to finance future activities.

Further technical meetings and one of the Task Force and Advisory Group to review progress on the 4 areas of action are expected to take place before the end of the year. A second Ministerial meeting to review progress is planned for 2004.

The Ministerial Conference, Declaration and Task Force created the framework for a cooperative effort to improve law compliance and governance in East Asia. Some of the importing countries committed themselves to introduce policy and legislative reforms to reduce those incentives to illegal logging that operate through trade relationships.

Indonesia and several importing countries have concluded bilateral agreements to work in coordination to reduce illegal logging and associated trade (see below). Indonesia has also secured cooperation from international organizations, with the same end. In this way, Indonesia has been able to mobilize financing and technical support to devise a strategy for combating illegal logging and trade. Other producing countries in the region have yet to reach this stage. The next few years will reveal whether these initiatives are effective in making a difference.

#### ***b) Other regional FLEG.***

Similar initiatives are now under way in Africa and are planned for Latin America and Europe. The Africa Forest Law Enforcement and Governance project is designed to fit within the New Partnership for Africa's Development (NEPAD) and aims at increasing the visibility of illegal activities in the forest sector, and at galvanizing key actors' commitment for action as well as generating the policy, legal and institutional conditions that will help improving the levels of governance in the sector. A technical meeting to discuss a regional strategy took place in Congo Brazzaville in 2002. A Ministerial meeting is planned to take place in Yaoundé,

Cameroon in October 2003. A declaration expressing commitment to controlling illegal acts and endorsement of a program of action are expected at that time.

The FLEG process has been widely applauded for raising the visibility of illegal activities in the forest sector and for mobilizing a political commitment to undertake remedial actions in the countries participating in the process.

***The Communication from the Commission to the Council and the European Parliament and Proposal for an EU Action Plan***

In May 2003, the European Commission issued the above communication proposing a package of measures to address the problem of illegal logging and trade (Commission of the European Communities, 2003). Together with the regional FLEG, the plan is one of the most comprehensive international initiatives to fight illegal logging and associated trade to date. Through the Plan of Action, the EU will help interested countries set up a voluntary scheme of licenses to check the legal origin of forest products. Producing country partners would allow wood exports to the European Union only when their legal origins can be validated according to a standardized procedure. The process would be monitored by independent entities. The EU would also support activities aimed at restricting investments in activities that may induce illegal activities, and address problems arising from the use of illegally sourced forest funds to finance armed conflicts.

Specifically, the Plan would:

- i) Foster development cooperation to implement measures to reduce the illegal logging problem but avoiding actions that would have adverse impacts on poor people and in improving the capacity of countries to monitor and segregate illegal forest products, to increase transparency and promoting policy reform. The Plan would also help producing countries improve their government capacity to prevent, detect illegal logging and to enforce the law.
- ii) Manage trade in timber, by extending international cooperation, developing a multilateral framework and a voluntary licensing scheme to attest the legality of timber that is exported to the European Union.
- iii) Guide public sector procurement to deal with legality when specifying procurement procedures.
- iv) Promote private sector initiatives to encourage actors in the corporate sector to favor good practices in the forest sector and to source only legal timber.
- v) Encourage financing and investment safeguards, aimed at banks and financial institutions that invest in the forest sector to mainstream environmental and social impact as well as explicit conformity with legislation in their operations.

The Plan focuses exclusively on the legality issue and not on sustainable forest management. It does recognize that some activities may be legal but may not lead to

sustainable forest management (for example the authorized conversion of forest lands to alternative uses) or vice versa, that some activities may be illegal but could result in sustainable forest management (traditional community lands, not legally recognized as community owned, but often managed in sustainable ways). It justifies this approach by indicating that the law usually requires sustainable forest management and that therefore following legal prescriptions would result in well managed forest resources. Should this not be the case, the EU would encourage and provide support for a revision of the legal framework. The Plan recommends that all donors attach importance to community-based forest management and to addressing some of the underlying causes of illegal acts, such as land tenure and access to forest resources and facilitate the adoption of policy reforms to reduce the impact of these causes. The Plan would promote transparency and dissemination of information to the public.

Recognizing the importance of the EU as a market for exporting countries and its responsibility not only to work to stop imports of illegally sourced timber but also help exporting countries to ensure better law compliance, the Plan includes the installation of an independent and voluntary legal timber verification system. Once legal timber has been identified, partner exporting countries would voluntarily issue an export certificate without which timber would not be released for circulation within the European Union. Since wood may be exported from non-partner third countries, the Plan aims at developing a system to verify that timber imports from these countries is also legal. This would be facilitated if a regional agreement could be developed and therefore the Plan suggests constructing an agreement between the EU and the ASEAN countries as a first step in this direction.

Noting that there is no Community legislation to make it illegal to import illegally sourced wood and to impound illegally sourced wood, the Plan proposes further research on how to reverse this situation. The questions to be investigated include how such legislation may impact the work of customs services responsible for enforcing the law and the procedures to be followed for segregating illegal wood arriving into the European Union from exporting countries that do not participate in the voluntary licensing scheme; and what to do with shipments from non-partner countries which are suspected to be of illegal origin.

The Plan also includes exhortations to EU member states to adopt policies to exclude illegally sourced wood from public procurement. The Commission also proposes to address the promotion of voluntary corporate codes of conduct. And noting that investment entities can exert a strong influence in shaping activities they finance, the Commission proposes to encourage banks and financial institutions to consider environmental and social considerations when assessing investments in the forest sector. The plan would also foster procedures for project screening, to reduce illegal forest sector activity, by Export Credit Agencies, the European Investment Bank and the Cotonou Investment Facility. The Commission plans to investigate ways to integrate illegal logging activities into the money laundering legislation.

In addition, the Plan proposes actions to strengthen the operation of CITES, carry out work to define conflict timber and address in cooperation programs the problem of using forest resources as an instrument for sustaining armed conflict.

The Commission would prepare country and regional strategy papers to help plan joint activities. Focus would be kept on countries that have mustered the necessary political will to tackle illegal activities in the forest sector. Initially, the partnership agreements would cover a limited range of solid wood products (roundwood and rough sawnwood) due to the difficulties of ascertaining the origin of timber products with a more advanced degree of industrial processing.

A Joint Work Program is being prepared with Member States to facilitate the implementation of the Action Plan. Through an agreement with the Government of Indonesia the European Commission is supporting, with an €2 million contribution, the establishment of an Illegal Logging Response Centre. The Centre will build up the capacity of the Government of Indonesia to combat illegal logging, particularly in national parks and protected areas, disseminate information, provide evidence for supporting legal action against transgressors and research underlying causes of illegal activities in the sector.

Some observers have criticized the Action Plan for not securing effective participation of civil society and forest peoples in decisions that may affect them. FERN also called the attention to the fact that, in certain countries, participation of vulnerable groups may be difficult and even dangerous and suggests therefore that the Plan include measures to ensure that forest peoples views are integrated in the design of corrective actions without threatening their integrity and human rights. FERN also suggests that the EU ensure the inclusion of illegal logging in reviews of money laundering legislation. For example, illegal logging could be listed as an offense under the Third Directive on Money Laundering in the legislative proposal that the Commission is about to submit to the Council and the Parliament, thus making it imperative for Banks to report any activity considered suspicious.

Furthermore, the Plan has been criticized because it does not provide a concrete and workable way to actually stop illegal wood from entering the EU. The Plan only promises to research this issue. The WWF pointed out that the Action Plan does not acknowledge the problems of illegal timber trade in the accession countries despite the fact that they have been openly recognized at the recent Ministerial Conference for the Protection of Forests in Europe. Based on this analysis FERN has made concrete proposals for attacking these problems (See Box below).

## FERN Recommendations

FERN recommends the Council to:

- provide the European Commission with a mandate to negotiate bilateral agreements to ensure legality in the trade of forest products that include certificates of legality based on a system of independently-monitored legality verification in the producer country. These agreements need to be fair and workable, include the participation of affected communities and respect human rights.
- make it illegal to import illegally-sourced timber into the EU.

In addition to new legislation FERN believes that it is important for the Council to:

- ensure mandatory application of best available environmental and social standards and procedures by European ECAs to all their operations and instruct the European Commission to develop and apply binding standards and procedures to the Cotonou Investment Facility;
- ensure all EU member states adapt their government procurement policies to incorporate legality criteria as well as sustainability criteria for timber and wood products;
- instruct the European Commission to include illegal logging in the list of offences in the draft of the new Money Laundering Directive, to be agreed within the next three years, and shift the burden of proof so that banks have to report any activity they should consider suspicious based on the information they have available;
- ensure all member states implement the EU Money Laundering Directive in such a way that banks have to report on any activity they should consider suspicious and that all criminal activities are eligible;
- instruct the European Commission to include funds for the prevention of illegal logging under the programming of Country Strategy Papers;
- request the European Commission to develop concrete strategies to address illegal logging in accession countries and Russia.

Source: FERN, July 2003

Despite these perceived deficiencies, the Plan is perhaps the most concrete and decisive international initiative to combat illegal logging and associated trade. Its future effectiveness will depend on the ability of the Commission to establish partnership agreements with a substantial number of producing exporting countries and thus avoid the diversion of illegal timber exported through third countries. It will also depend on the possibilities of making illegal any import of illegally sourced timber into the European Union. This implies installing credible and effective tracking systems and the necessary institutional infrastructure in partner exporting countries. Effectiveness will also require an EU tight customs system that would be able to detect and enforce prescriptions against illegally sourced products. As discussed later in the text, its effectiveness would also depend on surviving WTO disputes. These are all formidable challenges.

The Plan may also encourage exports of illegally sourced wood to other world markets that do not demand validation of product legality. Furthermore, there is always the open question of whether the simple threat of the restriction would not

generate powerful short-term incentives to illegal logging by all those operators that want to export as much as possible before rules come into effect.

Understandably, in its first stages, the Action Plan focuses on solid wood products with low processing (roundwood and sawnwood), as the feasibility of tracking products with a greater degree of industrial processing having a complex mix of wood raw material inputs, is rightly judged to be low. However, this will also limit the impact of the Plan. Although the European Union weighs heavily among importing regions of roundwood and sawnwood, these internationally traded products conform only a tiny proportion of logging in exporting countries. These countries produce some 420 million cubic meters of industrial roundwood but less than 20 million, or less than 5%, are exported. Also, they produce some 90 million cubic meters of sawnwood but only 13 million or some 14% enter the international market. Both products combined represent about \$ 6 billion in exports (total developing country forest products exports are some \$23 billion, while global trade of all forest products is about 130-140 billion per year). Total trade of forest products has increased only by 18% since 1990, which is much less than the growth in other sector manufactures. Further, exports of roundwood show a decreasing trend while those of sawnwood, only a moderate increase. Trade in ITTO primary products has in fact decreased by almost 40% since 1990, from \$13 billion to \$8 billion today<sup>1</sup>. They accounted for 80% of total trade value in 1990 but today this proportion is only 42%.

However, these exports are concentrated on a few countries (Indonesia, Malaysia, Brazil, Gabon, and Cameroon) and therefore, should the plan manage to involve those countries from the very beginning, its impact would be greater than the numbers above may suggest. Nevertheless, the fact remains that the roots of illegalities in the forest sector are overwhelmingly a domestic economy problem and that trade can have a moderate impact only. The future importance of the Plan may reside more in the other activities that will support, such as capacity building and policy and legislative reform, in raising awareness of the problem and fostering political commitment to solutions. This, of course it is not a limitation of this scheme only, but of all initiatives that rely on managing international trade to reduce illegal logging in forest rich exporting developing countries.

With the Plan being sent to the Council and the European Parliament, discussions will likely focus on some of these issues. The Group on Forests will formally discuss the Plan at a meeting that will take place in September 2003. During the Italian Presidency (July-December 2003), the Council is expected to produce its conclusions on the Plan.

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<sup>1</sup> Plywood, sawnwood, venner, logs, furniture, moulding, woodwork, etc.

### ***The Ministerial Conference on the Protection of Forests in Europe***

The Ministerial Conference on the Protection of Forests in Europe, MCPFE, is a high level political initiative integrated by 40 European countries and the European Community launched in 1990 to take advantage of opportunities and combat threats to forests and promote the sustainable management of forests in Europe. The dialogue also involves as observers non-European countries, non-governmental and international organizations, forest owner's associations and the forest industry. The MCPFE is a forum for cooperation for ministers responsible for forests focusing of priority common concerns about forests and forestry in Europe. The Conference has contributed to various international processes including the Convention of Biodiversity and the United Nations Forum on Forests. It has links to other regional processes in the world.

The MCPFE process is based on a series of ministerial conferences. Ministerial decisions are then implemented on a voluntary basis by signatory states and the European Community.

At its fourth meeting in Vienna, Austria in late April 2003, the representatives of the Signatory States and the European Community signed the Vienna Living Forest Summit Declaration: European Forests, Common Benefits, Shared Responsibilities, which commits parties to 26 actions. Two in particular have direct incidence on improving governance and fostering sustainable forest management not only in Europe but also in other regions of the world:

- To promote incentives for the protection and sustainable management of forests, and remove incentives with a negative impacts on forests and their biodiversity,
- To take effective measures to promote good governance and forest law enforcement, and to combat illegal harvesting of forest products and related trade, and contribute to international efforts to this end.

Signatories committed themselves to develop a work program for the implementation of the commitments of the Fourth Ministerial Conference.

Given that this initiative is quite recent, it is yet too early for the Conference's program of work to produce concrete results.

### ***The Asia Forest Partnership***

This initiative was launched at the WSSD in Johannesburg in 2002 as a "type 2" action oriented information exchange initiative". The Partnership present partners

include 14 country Governments, the European Commission, 8 international organizations and a civil society organization<sup>2</sup>.

Recognizing that there are many initiatives to support sustainable forest management and the control of illegal forest activities in Asia, the purpose of AFP is to further promote cooperation in addressing urgent forest issues. The Partnership is not exclusively focused on illegal activities, although the combat of illegal logging and law enforcement figure prominently among its intended objectives:

- i. Good governance and forest law enforcement
- ii. Developing capacity for effective forest management
- iii. Control of illegal logging
- iv. Control of forest fire
- v. Rehabilitation and reforestation of degraded lands.

The parties are expected to cooperate in various areas, many of which are of direct relevance to the control of illegal activities in the forest sector:

- i. Guidelines for controlling illegal logging,
- ii. Developing and enhancing log tracking capacity and introduction of verification systems such as labeling,
- iii. Promotion of measures I exporting and importing countries to eliminate export and imports of illegally harvested timber,
- iv. International cooperation and coordination on trade statistics, information exchange on illegal logging and illegal trade,
- v. Development of a regional data sharing program on illegal logging
- vi. Undertaking research on the impact of illegal logging
- vii. Awareness raising through holding seminars on combating illegal logging.

The first meeting of the Partnership took place in November 2002 in Tokyo, supported by the leading partners: the Japanese and Indonesian Governments, the Center for International Forestry Research and the Nature Conservancy. That meeting agreed to promote the exchange of information. Each partner also agreed to further their own activities and induce others to join the AFP.

In May 2003, the International Tropical Timber Council decided to support the Partnership by contributing to cover the costs of a regional workshop and developing a network for sharing information among participants. The workshop discussed ways to refine and operationalize the goals of the Partnership, to extract and integrate lessons from similar experiences, solicit views and contributions of a wider range of

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<sup>2</sup> Countries: Australia, Cambodia, China, Finland, France, Indonesia, Japan, Republic of Korea, Malaysia, Russian Federation, Switzerland, Thailand, United Kingdom, United States. International organizations: European Commission (EC), Asian Development Bank (ADB), Asian Productivity Organization (APO), Center for International Forestry Research (CIFOR), Food and Agriculture Organization of the United Nations (FAO), International Tropical Timber Organization (ITTO), Secretariat of the United Nations Forum on Forests (UNFF), United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), United Nations University (UNU). Civil society organizations: the Nature Conservancy (TNC).

stakeholders from the civil society and the private sector, to create an information network and produce further recommendations for strengthening the Partnership.

The second meeting to further discuss strategies and progress achieved took place in Yogyakarta, Indonesia on 9-10 July 2003. Activities for joint efforts were discussed including:

- Exchange of information
- Technical meetings
- A program for fostering certification
- Working group to develop voluntary codes of conduct
- Development of strategies and mechanisms for cooperation in combating illegal trade

Progress at this meeting, in areas related to forest law enforcement, was scanty. There is still uncertainty about how the Partnership would make an incremental contribution to existing initiatives in the region. For example, the FLEG regional initiative is already dealing with some of the areas of interest of AFP and there are other groups at the regional level, such as FAO's Asia Pacific Forestry Commission, that already provide a forum for regional governments and other actors to exchange information and plan common activities. A concrete action program that would add value to other initiatives in the region is yet to be articulated. Funding needs and potential financial sources also have to be identified.

### ***The Consultative Group on Indonesia***

The Consultative Group on Indonesia (CGI) is a group of some 30 bilateral and multilateral donors who consult with government and each other on Indonesia's development priorities and the external financing the country needs to meet those priorities. It is an example of an informal group of international support agencies working to help a developing country implement sound policies for development. While the Group's range of discussion themes is wide, early in 2000 it focused its attention on the forestry sector. At that time, illegal logging exceeded legal extractions and deforestation as well as forest degradation. The group analyzed various options and issued recommendations for reversing the situation. Reacting to the concerns and recommendations of the CGI meeting, the government at that time designed an action plan that including combating illegal logging as one of the foremost priorities. The CGI and the Ministry of Forests early recognized that solutions to the problems of illegal logging and associated trade needed cross sector actions and therefore the Government created an Interdepartmental Committee on Forestry (IDCF) to facilitate links between government institutions, the civil society and NGOs.

While the Ministry of Forests implemented these and other initiatives to deal with the problem, actual results have been less than impressive. The assessment of donors in January 2003 stated that "Today, there appears to be little change other than an increase in the amount of illegal logging that is taking place, despite the high profile

forestry has been given in the CGI”. As described by the Donor statement “Court cases are manipulated and indefinitely postponed, illegal vessels are released without penalties being served, protection areas are now open for exploitation, etc”. And, “It is allegedly reported that the transport of illegal timber through the Indonesia-Malaysia border in Sanggau District is increasing. Approximately, it is informed that 100 trucks loaded with 5m<sup>3</sup>/truck cross the Indonesia-Malaysia border daily” (CGI, 2003).

The lack of interest and political commitment in various government agencies distracted by loss of control associated with the decentralization drive and, perhaps more likely, the influence of vested interests operating in different parts of the government are at the root of the lack of results. At the last meeting of the Group, the government recognized that the problem of illegal logging could not be tackled without the concerted action of relevant government agencies and agreed to increase the communication and participation of various stakeholders in the process. But more than enhanced participation and communication is needed.

## **7. Bilateral Agreements Against Illegal Logging and Trade**

Among exporting countries, Indonesia is the one that has been more active in seeking bilateral agreements to reduce its notable volume of illegal logging and exports

### ***Indonesia-UK.***

Following G8 discussions on illegal logging and trade, the Governments of Indonesia and of the UK signed in 2002 a Memorandum of Understanding (MoU) that commits them to implementing a series of actions for preventing harvesting, export and trade of illegally logged timber and wood products:

- i. Identification, by both Governments, of any reform of forest and related legislation and action requires preventing harvesting, exporting, and trading in illegally logged timber and wood products.
- ii. Support by both Governments for the development, testing and implementation of systems or the verification of legal compliance based on independently verified chain of custody tracking and identification systems, in due course to be applied throughout Indonesia.
- iii. The provision of technical and financial capacity-building assistance by the UK to support the design and implementation of these systems of compliance verification and the necessary accompanying legal and administrative reforms.
- iv. Support by both Governments for the involvement of the civil society in the effort to curb illegal logging and trade and particularly in monitoring the implementation of compliance verification
- v. The joint development of systems for the timely collection and exchange of data on timber trade and wood products between the two Governments.

- vi. The joint development of effective collaboration between enforcement agencies and network in the two countries, aiming to provide mutual assistance in the application of Indonesian law and UK law.
- vii. Encouragement by both Governments for action by industry to reduce and eventually eliminate the volume of illegal timber and wood products transported and sold, including sourcing only timber and wood products identified as legal through the compliance verification systems referred to above, or through other, equally effective, means of identification.

The MoU emphasizes involvement of various groups in decision making and ensuring transparency as well as greater equity in the management of forest resources.

Both governments agreed to implement an Action Plan, which now is under preparation (MoU, 2002). The Action Plan will detail the responsibilities of both partners and the mechanisms for implementation. An essential component of this scheme is the development of an effective and efficient system of verification of legal compliance based on an independent chain of custody tracking and product identification system. The Government of the UK is providing technical assistance to facilitate the design of the Action Plan.

#### ***Indonesia-Norway.***

In August 2002, Indonesia also signed a letter of intent with the Government of Norway. According to that letter, Norway tentatively would help in the development and enforcement of policy reforms, laws and regulations and to capacity building of judicial, legislative and administrative institutions to combat illegal logging. The letter of intent indicates “the Norwegian Agency for Development Cooperation in close cooperation with the Norwegian Ministry of Environment will enter into an agreement with the Indonesian State Ministry for Environment to this effect”.

#### ***Indonesia-Japan.***

In June 2003, Indonesia signed a Joint Announcement with the Government of Japan that serves as a framework for cooperation between the two countries for actions to combat illegal logging and associated illegal trade. Both sides have prepared a Plan of Action to secure the achievement of the Joint Announcement’s objectives. This Plan of Action focuses on the following themes:

- i. Development, testing and implementation of the systems for verification of legal compliance in due course to be applied throughout Indonesia and Japan, in respect of timber and wood products imported directly and indirectly from Indonesia.
- ii. Encouraging involvement of the civil society in the effort to combat associated illegal trade and illegally harvested timber and wood products and

particularly in monitoring the implementation of the systems for verification of legal compliance.

- iii. Joint development of systems for the timely collection and exchange of data on timber trade and wood products between the two countries.
- iv. Effective collaboration between enforcement agencies and network in the two countries aiming to mutually provide information on the application of relevant laws and regulations of the respective countries.
- v. Human resources development including expert training as well as basic and higher education to strengthen the implementation of sustainable forest management.

### ***Indonesia-People's Republic of China.***

Late in 2002, Indonesia signed a Memorandum of Understanding with the Government of the People's Republic of China, a main importer of forest products, which promises joint actions to combat illegal trade and improve law enforcement. The MoU commits both countries to developing a Plan of Action.

The objectives of this cooperation are:

- i. Combating illegal trade in forest products, including endangered species of flora and fauna, on the basis of mutual respect, equality and mutual benefit, and in all level, to ensure the sustainability of forest resources;
- ii. Improving forest law enforcement for controlling the associated illegal trade and illegally harvested or obtained forest products;
- iii. Increasing the awareness on the threats which forest destruction poses to future environmental, economic and social well-being;
- iv. Promoting adaptive forest practices toward sustainable forest management.”

The Memorandum also advanced possible areas of action including:

- i. Identification of illegally harvested forested products and illegal trade
- ii. Support for the involvement of the civil society in monitoring the implementation of compliance verification;
- iii. The joint development of systems for the timely collection and exchange of data;
- iv. Exchange of information on respective forest laws, regulations and their enforcement.
- v. Enhancement of economic cooperation related to the forest sector;
- vi. Criteria for sustainable forest management and certification.

All these agreements are in the earlier stages of implementation and have not yet reached full operational force. The most advanced one is the agreement between Indonesia and the Government of the UK, but even in this case, partners are still

wrestling with some of the operational issues that arise during implementation. Critical issues include the need to have a clear way to identify legal and illegal products in operational terms and how to design practical and effective mechanisms to track the movement of products so that legal ones will not be contaminated with illegal components.

In addition, ways must be found to successfully prevent the laundering of wood products through third countries.

Bilateral agreements also produce trade distortions that have an effect on economic efficiency. However, there is always the possibility of moving towards establishing multiple agreements between producers and consumers thus creating a more even playing field and thus reduce the impact of trade distortions.

But perhaps the most important issue not only in the case of this type of agreements but in general, is how to secure concerted action from different parts of the government needed to enforce the law but that respond to different interests and motivations (see section on CGI below). For example, Malaysia in agreement with the Government of Indonesia issued a ministerial level statement to ban on the imports of logs from Indonesia, and this should be easy to monitor because the product is so easily identifiable: anytime a log crosses the border, it should automatically be considered as illegal. However, according to observers, authorities continue to ignore illegally felled logs, which continue to flow across the Indonesia-Malaysia border in East and West Kalimantan. It is reported by investigating NGOs that in the period of one hour 32 Indonesian vessels loaded with illegal logs arrived at the port of Muar in Peninsular Malaysia. On the other hand, in September 2002, the Malaysian Customs Service did seize 24 boatloads of imported Indonesian logs in Southern Peninsular Malaysia. However, these encouraging enforcement cases unfortunately are still the exception rather than the norm.

This illustrates the concept that pure enforcement is unlikely to ever stop illegal logging and trade and that a more focused attack on the causes of illegal activities would increase efficiency if the systems of incentives affecting major actors can be changed somehow.

## **8. The USA President's Initiative Against Illegal Logging**

On 28 July, the USA formally launched the President's Initiative Against Illegal Logging. This scheme initially will focus on three regions, i) the Congo Basin, ii) the Amazon Basin and Central America and iii) South and Southeast Asia. It is built on four pillars:

- Good Governance, building country capacity to establish and strengthen legal regimes and enforcement of laws affecting forest management, especially those aimed at illegal logging;

- Community-Based Actions, enhancing community involvement in forest governance and related wildlife issues;
- Technology Transfer, developing integrated monitoring systems and building in-country capacity to monitor forest activity and compliance with laws, including using remote sensing and ground-based technologies to monitor changes in forest conditions, and
- Harnessing Market Forces, promoting good business practices, transparent markets and legal trade, including country capacity to implement obligations under the Convention on International Trade in Endangered Species.

The Initiative has initial funding of \$ 15 million. The initiative pledges to work with partners, including other governments (such as those participating in the Congo Basin Forest Partnership), the private sector and NGOs.

At the moment of this writing, it is not clear how this initiative provides incremental inputs to ongoing programs and projects or to what extent it is just a consolidation of existing activities in a coherent initiative. Funding also is quite unexceptional.

## **9. International Organizations and Partnerships**

### ***The Food and Agriculture Organization of the United Nations.***

FAO has dedicated attention to issues related to law enforcement, by raising the visibility of illegal activities and therefore awareness of their importance in its report on the State of the World Forests 2000 and by developing analytical material related to policy options to improving law enforcement in the forest sector as well as analyses of ways to enhance the contribution that corporate entities can provide for improving law compliance and the impact of forest products trade on governance. These analytical studies and associated expert consultations have provided valuable insights into methodologies for combating illegal logging and trade and have contributed to the advice that the organization lends to interested countries. The organization is currently considering initiating a study that, combining sound conceptual analysis and the experiences on the various initiatives described in this report, would produce guidelines to employ best practices that governments could employ to improve law compliance in the forest sector. FAO in partnership with FRR, a UK based consultancy, is also compiling a catalogue of forest laws – Forest Law information Service -- in various countries, that will provide information about documents, procedures and mechanisms that need to be used to comply with the law. FAO is also developing case studies to scrutinize factors of the policy and legal framework that facilitate or compel actors to engage in illegal actions. Furthermore, FAO is also developing guidelines and identifying best practices for improving law compliance in the sector. DFAO is supporting concrete actions for improving law enforcement in Mozambique.

The FAO National Forest Program Facility contributes to policy reform in member countries by strengthening their knowledge basis and facilitating its dissemination to

the public, decision-makers and other interested parties thus increasing awareness and contributing to facilitating policy and legal reforms. The Facility can integrate considerations about illegal activities in its programs of action.

### ***The Center for International Forestry Research***

CIFOR, with support from PROFOR and DFID, has initiated a research project to examine the impact of law enforcement on rural livelihoods. CIFOR has planned five cases studies in Africa, Asia, Latin America and North America to analyze in detail how strict enforcement of the law (sometimes biased against local communities) may affect the rural poor and how rural communities could be engaged in legislative reforms and law enforcement.

### ***The World Bank***

The new World Bank Forestry Strategy prominently includes improving governance and the control of illegal activities and corruption through improved forest laws, regulations and enforcement among its priority areas of support.

The World Bank is the coordinating agency for and has taken a leading role in the organization of the regional Forest Law Enforcement and Governance initiatives in Asia and Africa discussed above. The FLEG process is one of the pillars of the World Bank's Forest Governance Program<sup>3</sup>.

The Bank has also contributed to fighting illegal activities in the forestry sector of various countries by including action with this purpose in various of its sector policy work and dialogue with countries and its support to specific projects. Thus the Bank has, for example, supported activities against illegal acts in Cambodia and Laos and has contributed to the policy dialogue on approaches to combating illegal logging and trade in Indonesia through its role in the CGI described above.

Although the Bank has been actively engaged in supporting countries in their efforts to improve law compliance in the forest sector, this experience has not been analyzed. The last attempt to do so took place during the evaluation of the prior forest policy but those studies are, at least in this respect, rather obsolete as the field has changed so quickly in the last few years.

### ***WBCSD CEO Forum***

In 1998, the World Bank initiated the CEOs Forum on Forests, to provide an opportunity for discussion of global forestry issues with chief executive officers of large forest firms, to establish partnerships with the private sector and in general to get the private sector more involved with other stakeholders in the global policy debate. Since then retailing firms and some major international and national NGOs

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<sup>3</sup> See <http://lnweb18.worldbank.org/ESSD/ardext.nsf/14ByDocName/ForestGovernanceProgram>

joined the debates of the Forum. The World Business Council for Sustainable Management now coordinates the CEO Forum.

The 2001 meeting of the Forum dedicated considerable attention to the forest illegal acts theme. Among the themes debated was the need to reform the legal framework in many countries and to focus on the institutional capacity and transparency of operations of public agencies to enforce the law rather than make the private sector exclusively responsible for illegal acts. The next meeting of the Forum is planned for October 2003.

It is not easy to assess the impact of the Forum. Participation is voluntary and agreements and recommendations are not binding. Therefore, there is no program of action for members to implement.

### ***World Bank/WWF Alliance***

The Alliance is helping the Government of Indonesia to develop a strategy for fighting illegal logging in the country in consonance with the recommendations and agreements under the FLEG initiative. The procedure is based on consultations with various stakeholder groups. These consultations have the great advantage of throwing light on the linkages between the components of the strategy and the feasibility – particularly the political and institutional dimensions -- of the actions that are proposed for adoption. The process has the advantage of promoting dialogue between different actors -- the private industry, experts, government officials, and so on – obtaining a perspective of their priorities and interests, and will hopefully lead to the crystallization of a feasible and effective strategy and identification of the roles and tasks that these different actors will play in trying to control illegal logging in Indonesia.

The project intends to provide a coherent view of the entire logging system in Indonesia, its problems, possible solutions, main actors and key points for implementing promising corrective actions. Discussions as well as analytical work are focused on prevention and enforcement. Prevention activities depend on a proper study of the causes of illegal logging and this is a study currently under way, recognizing that this is a very complex subject and that many of the causal factors leading to illegal logging escape the domain of the forest sector. Studies and discussions on the enforcement component have concluded that given the socio-economic and political features surrounding illegal acts in the sector in Indonesia, the most important strategic action in the near future should be the installation of a case tracking system. Discussions are still under way to determine whether, to be effective, this action needs to be accompanied by other activities.

The initiative is expected to produce concrete strategic proposals for action by September this year.

## ***International Tropical Timber Organization***

ITTO has a membership of 57 countries that have three quarters of the world's tropical forests and are involved in 95% of the global trade in tropical timber. ITTO acts as a forum for debates on forest trade and sustainable forest management and also funds projects, some of which directly deal with governance issues and illegal trade. In November 2001 the International Tropical Timber Council (ITTC) adopted a decision on "forest law enforcement in the context of sustainable timber production and trade" authorizing the implementation of various projects and studies particularly dealing with the consistency of international statistics on export and import of forest products. The decision encouraged member countries to submit project proposals dealing with better law enforcement for consideration. Now ITTO is conducting a study to assess the consistency of export and import data on tropical timber and tropical timber products. It is also assisting member countries to design frameworks for law enforcement in the forest sector and supporting the Asia Forest Partnership as described above. The ITTO is also studying phased approaches to certification in tropical timber producing countries to help the dissemination of certification in unfavorable conditions. An important step in these phased approaches is the verification of legality of wood.

An ITTO/WWF project in partnership with the Indonesian Ministry of Forestry is for the "Development and Implementation of Guidelines to Control Illegal Logging for Sustainable Forest Management in Indonesia" based mainly on cases in Riau and West Kalimantan. The project carried out surveys of timber flows and trade to identify sources and procedures used in illegal activities. Guidelines for controlling illegal logging are under production as well as training activities for rangers and officers in local offices. The project is now near completion. ITTO is also supporting an analysis of illegal logging in Peru.

A new International Tropical Timber Agreement, defining the ITTO, its mandate and scope of action, will start in 2006 and negotiations have already started. The new Agreement could have a more aggressive position on illegal logging and trade.

One issue prominently featured in the discussion is the weakening effect of trade in this type of mechanisms that rely on national exporter actions. Importers have their own laws and obviously measures at the exporting countries cannot affect them. Thus, trade remains a weak link in these efforts.

## ***Program on Forests***

PROFOR, a World Bank hosted multi-donor initiative established in 1997 to implement some of the recommendations of the Intergovernmental Panel on Forests, aims at enhancing the contribution of forests to poverty reduction, sustainable development and protection of environmental services, includes forest governance – and within it, forest policy and law enforcement – as one its four thematic areas of concentration. PROFOR develops its activities in partnership with other programs. It

is supporting the FIN initiative hosted a Transparency International and described above.

### ***The United Nations Forum on Forests***

This initiative, in existence since 2000, was created to promote the implementation of IPF/IFF proposals for improving forest management, conservation and the sustainable development of global forests. The UNFF was created for a period of 5 years as a subsidiary body of the UN Economic and Social Council (ECOSOC). At their last meeting in Geneva, in May-June 2003, the Forum discussed issues related to illegal logging and associated trade. The resolution of the Forum exhorted countries to improve law enforcement in the forest sector and control illegal trade of forest products. It also requested the support of the international community to provide the resources to enhance human and capacity building to improve law enforcement.

### ***The Collaborative Partnership on Forests***

This is a group of international organizations, bodies and convention secretariats that have programs on forests, conceived in 2001 to support the work of the United Nations Forum on Forests<sup>4</sup>. The main activities of partners in the area of forest law enforcement are described in the individual agency sections.

## **10. Certification**

Forest certification helps consumers discriminate products originating in well-managed forests. Certification evaluates forests against a set of standards and if these are satisfied the owner has the right to label the products from the forest. The label tells the buyer that the product is originating in well-managed forests. As such, certification is a market driven mechanism. Certification is a complement to government-based approaches for better forest governance.

The first certification program, the Forest Stewardship Council, supported by the NGO community, was quickly followed by competing industry and forest landowner initiatives emerging in North America and Europe. Today, although there are several certification schemes, four dominate the market, the Forest Stewardship Council

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<sup>4</sup> Present partners include the Center for International Forestry Research (CIFOR), The Food and Agriculture Organization of the United Nations (FAO), the International Tropical Timber Organization (ITTO), the International Union of Forest Research Organizations (IUFRO), the Secretariat of the Convention on Biological Diversity, the Secretariat of the Global Environment Facility, the Secretariat of the Convention to Combat Desertification, the Secretariat of the UN Convention on Climate Change, the United Nations Secretariat (Department of Economic and Social Affairs), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the World Agroforestry Center (ICRAF), the World Bank and the World Conservation Union (IUCN).

(FSC), the Canadian Standards Association's Sustainable Forest Management Standard (CSA), the Sustainable Forest Initiative of the American Forest and Paper Association (SFI) and the Pan European Forest Certification Scheme (PEFC). To date, the area of forests certified under these various schemes is about 130 million hectares. Tropical countries, however, account for only about 10 million hectares. In tropical countries, the dominant system is the FSC. In developing countries, a substantial proportion of FSC certified forests are plantations.

Of all these schemes, the most complete standards are those of the FSC. FSC is also the only global scheme.

Most schemes require wood to be legal in order to be certified, but standards used by certification systems are different. There is always the possibility of harmonizing the few dominant schemes but this may lead to the adoption of the lowest possible common denominator, driving down standards and eventually undermining the whole certification process. Various international seminars have been held in the last years where experts have met to analyze ways to arrive to a scheme of mutual recognition but an acceptable operational solution to creating a web of compatible certification systems has yet to be achieved. The obstacles to reaching such mutual recognition are many, including the prevailing lack of trust between supporters of the different schemes, insufficient objective assessments of the various schemes, the competition between the international schemes, FSC and PEFC, and general concerns, particularly among developing countries and small scale operators, about cost impacts ( Ebaá Atyi and Simula, 2002).

The two international schemes of direct relevance to developing countries, where most of the illegal logging and trade take place, are the FSC and the PEFC. The PEFC is a mutual recognition program of national initiatives, and therefore its substantive rules and their discretionary nature change from country to country.

FSC certification implies legality of forest management and through the chain of custody. Legality at the forest management level is insured by compliance with FSC Principle 1 (Compliance with Laws and FSC Principles). There are also other principles that address illegality such as principle 2 (Tenure and Use Rights and Responsibilities), principle 3 (Indigenous Peoples Rights) and Principle 4 (Community Relations and Workers Rights). The scheme also requires certified suppliers to demonstrate that their products originated in certified forests. Tracing and tracking forest products to the original certified forest are required for chain of custody certification (See Box Below).

The PEFC also has several references to compliance with the law. For example, its operational Guidelines instruct, "legal, customary and traditional rights related to the forest land should be clarified, recognized and respected". The basis for certification schemes includes a proviso that "National laws, regulations, programs and policies shall be respected in forest management and certification. Certification schemes may

### Selected excerpts from FSC Principles

#### PRINCIPLE #1: COMPLIANCE WITH LAWS....

Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory....

- Forest management shall respect all national and local laws and administrative requirements.
- All applicable and legally prescribed fees, royalties, taxes and other charges shall be paid.
- In signatory countries, the provisions of all binding international agreements such as CITES, ILO Conventions, ITTA, and Convention on Biological Diversity, shall be respected.
- Forest management areas should be protected from illegal harvesting, settlement and other unauthorized activities.

#### PRINCIPLE #2: TENURE AND USE RIGHTS AND RESPONSIBILITIES

Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

- Clear evidence of long-term forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be demonstrated.
- Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.
- Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation.

#### PRINCIPLE #3: INDIGENOUS PEOPLES' RIGHTS

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

- Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.

#### PRINCIPLE #4: COMMUNITY RELATIONS AND WORKER'S RIGHTS

Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.

- Forest management should meet or exceed all applicable laws and/or regulations covering health and safety of employees and their families.
- The rights of workers to organize and voluntarily negotiate with their employers shall be guaranteed as outlined in Conventions 87 and 98 of the International Labour Organisation (ILO).

not contradict legislation...”. Also the basis integrates prescriptions for the respect of international agreements and conventions.

The specific ways in which the principles are satisfied in concrete situations depends on the procedures established by national or regional certification bodies. In general, the onus of proof of compliance rests with the operator seeking certification.

The need for more specific guidance on the legality issue is motivating analyses of the possibilities of implementing verification systems of legal compliance building on FSC chain of custody experiences. As mentioned, the ITTO is also considering options to implement a scheme that would validate the legal origins of wood.

In this case, verification of legal compliance would be a first step on the road to full certification (Ryder and Amariei, 2003). As mentioned before, the EU Plan of Action and other international schemes require some sort of validation of legality and

therefore the demand for this kind of services is bound to increase sharply in the next few years. The staged approach would have the additional benefit of addressing protests by some critics that see present full certification schemes as inflexible.

The development of a scheme of validation of compliance with the law requires a clear definition of legal wood and protocol with clear standards to evaluate such compliance. Such set of standards against which wood legality could be evaluated is yet to be produced and this will not be an easy task. It also requires an effective system for tracing legal wood through the production and marketing channels.

Specialists also warn about the dangers of confusing legal products with products certified as originating in sustainable managed forests. One way to avoid confusion would be to ensure that certification bodies issue certificates of legal validation with avoiding labels or public claims associated with such validation. Incentives instead would be based on business-to-business transactions and government incentives such as tax incentives or export credit guarantees (Ryder and Amariei, 2003)

Any such validation scheme will probably have a limited effect on law compliance in the countries that need improvements in legality the most. As mentioned, only 130 million hectares or about 3% of the world's forest area is presently certified and most of it is in advanced countries. In tropical countries, the proportion is closer to an insignificant half a percentage point. This figure is even lower if only tropical natural forests are considered. Having said that, it is also likely that legal validation could proceed faster than the advance of full certification.

A legal validation system would also have to deal with the need to educate consumers. Even in the case of full certification – not just legal validation -- it is reported that a representative of Home Depot, one of the leading corporations adopting certification, stated that their costumers “are not asking for certification. They don't have any idea of what it is”. Thus, demand for legal validation seems to be originating at least for now in corporate and institutional buyers rather than by the final consumers' preferences.

In some cases, there may be conflicts between national laws and certification standards (for example, when it come to ownership of land), which complicates the issue of validation of legality. Because of these reasons, some in the tropical world see legal validation, even voluntary schemes, as a trade impediment and as another case of advanced countries imposing values that are not necessarily shared by tropical countries. Some, with more extreme views on this issue, even see legality validation as a non-tariff barrier devised by industrialized countries to keep tropical countries exports out, although it is not clear why industrialized countries, with an appetite for tropical woods would do this. Others maintain that legal validation could lead to reduced income for exporter countries. Reduced value of forest resources could in turn lead to more pressure for land conversion to other uses and conceivably, to increased illegal operations for the domestic market.

## 11. Corporate codes of conduct

Private corporations are key actors in the sector. Many forest corporations and forest industry associations have issued codes of conduct to promote economic, social and environmentally sound sustainable development. Among other things, this includes following laws and regulations of the countries where they operate. These initiatives sometimes have been induced by international organizations and NGOs and in other occasions by the desire of corporations to increase the level of their responsibility for a long-term development of the sector.

The most important multinational government effort to promote the adoption of codes of conduct is the OECD Guidelines for Transnational Corporations. Adoption by corporations is voluntary but they are legally binding on the signatory governments that are obliged to promote them and making them influential among companies operation in or from their territories. Signatory governments must set up National Contact Points to promote the guidelines. These contact points are responsible for handling reports of irregularities which can be issued by any individual or entity complaining of a corporation's questionable behavior in breach of the guidelines. To date 30 OECD countries and 6 non-OECD countries have signed on the Guidelines.

The contact points have not yet received complaints involving forestry activities or a large number of complaints when all sectors are considered. This may be due to the low visibility of the Guidelines, an aspect that was discussed during the last meeting of the national contact points in 2002. Also, a possible disincentive is that complaints tend to be handled very slowly. According to RIIA/FERN, a key test of the effectiveness of these guidelines is the report of the UN *Panel of Experts on Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo* in October 2002 because this report individualizes 85 multinational companies mainly from Belgium, the UK, Canada and the USA, that have violated the Guidelines. Although most of the companies named operate in the mining sectors, there are a few that trade in natural resources and one timber company listed (UNSC, 2002).

The possibilities of making the adoption of these guidelines mandatory in member countries but this would most likely be strongly resisted by companies and governments, particularly when assessments by the own national contact points raise doubts about the effectiveness of the guidelines in making a real difference in specific instances. In fact, the implementation of the guidelines is in its initial stages and some suggest that it is simply not advisable to make its acceptance compulsory at this point.

Apart from this government-sponsored initiative, private corporations or industry associations have independently designed most codes of conduct.

For example, recently, members of the European Foundation for the Preservation of African Forest Resources, which includes various companies with concessions in Africa, made significant commitments to improve forest management in the region. The Interafrican Forest Industries Association, IFIA, has developed a code of conduct for its members operating in the Congo Basin and humid West Africa.

In November 2002, the Japanese Federation of Wood Industry Associations, the only organization representing the country's wood industries, issued a statement on illegal logging which urges its members not to use illegally sourced wood and promises to support initiatives to introduce mechanisms for verifying legal compliance (JFW, 2002).

In April 2002, the International Council of Forest and Paper Associations, ICFPA, – a forum for joint action including trade associations in 39 countries representing industries accounting for 75 percent of the world's paper and more than 50 percent of the world's wood production -- issued a statement in Rome, declaring adherence to a set of principles to combat illegal logging. One of the ICFPA principles states, “Members commit to abide by domestic and sovereign laws pertaining to logging and harvesting in any country where logging and tree removals take place”.

The Timber Trade Federation representing UK timber importers adopted a code of conduct in 2002, which includes a commitment to sourcing timber and timber products from legal and well-managed products. There is also a procedure to deal with complaints. Other industry associations, including CEPI, ATIBT and AF&PA have issued declarations on corporate responsibility, which either include references to legality or to principles, such as sustainable forest management, that are embodied in most countries' legislation. In most cases it is too early to be able to ascertain how well these programs are working.

Also, various individual companies are committed to respect local laws in their operations. IKEA aims at utilizing wood raw material originating exclusively from certified forests. The company has developed a “Staircase Model Approach” to increase the requirements to its suppliers. These requirements include the legal origin of wood but also the satisfaction of other standards. IKEA, in partnership with WWF, has developed a wood tracking system to ensure that there are no leakages along the chain of custody. The partnership has also developed producer groups, cooperatives of timber producers in countries that supply IKEA, which commit themselves to harvest timber legally and undertake other measures eventually leading to certification.

B & Q, a British chain of home and garden improvement with 320 stores in the UK and various others around the world. About 22 percent of the company's turnover is accounted for by timber products. The company has made a commitment to obtain supplies from sustainable forests only. At present about 80 percent of their wood supplies are certified by the FSC and another 15 percent by other certification

schemes. The remaining suppliers have actions plans to achieve certification in the near future.

Other non-forest companies with investments in forest activities such as Shell have also committed themselves to follow business principles that exclude illegal operations.

An important limitations of codes of conduct is that they are voluntary and that many are based on self-monitoring performance, which may not always be thorough and objective. Even companies that pledge to respect the law frequently commit violations when law enforcement is weak (Minnemeyer, 2002). Thus, many argue that independent validation, such as in the case of B & Q, is desirable, a position that is generally resisted by commercial corporations.

## **12. NGO Programs**

There are many initiatives by various international and national NGOs aimed at exposing, monitoring and helping suppress illegal activities in the forest sector. NGO activities are effective in educating the public and in carrying and publishing research that could be politically too sensitive for other organizations. There are many international and national NGOs working on issues related to illegal logging and trade. Because restrictions of space only a few will be mentioned here.

NGOs have been at the forefront of raising awareness and advocating corrective actions for forcing governments and corporations to secure better compliance with the law.

### ***Global Witness***

Global Witness is a London-based group created in 1993 focuses on working against the use of natural resources to fund conflict. Global Witness employs a pragmatic methodology using covert and conventional investigative techniques to expose illegal and corrupt ways in which resources are used in target countries. By doing this, government and officials, donor agencies and others are “shamed” into corrective action. Global Witness work in the forestry sector has concentrated on Cambodia, Liberia and Cameroon. Of all these experiences, the Cambodian case is the longest running one.

In Cambodia Global Witness was the official monitor of a project set up by the Government, FAO and the UNDP entrusted with investigating instances of illegal logging. Global Witness has been credited for creating the conditions, through investigative reporting and public awareness, for cutting off funding to the Khmer Rouge by exposing its multimillion-dollar illegal exploitation and trade of forest products.

Global Witness success in exposing illegal activities in Cambodia finally caused its downfall in that country, as a government averse to transparency and to fighting vested interests, cancelled Global Witness' role as an independent monitor. Discussions are now under way to replace Global Witness with another monitoring entity. However, any effective and objective forest crimes monitoring agency likely will induce a similar negative reaction from Government.

In Liberia, work focused on campaigning and exposing the role of illegal forest exploitation to finance conflict and enrich corrupt officials.

Cameroon and DFID asked Global Witness to assess the possibilities of organizing an independent monitoring role similar to that employed in Cambodia. With funding from the World Bank, DFID and the EU, Global Witness started working as an Independent Observer a role that was confirmed by signing a contract with the government in May 2002 and lasting until an international bidding process is out into operation. Its findings have resulted in threats by some private sector operators that would prefer to continue to use forest resources in controversial and possibly illegal ways.

The experiences in Cambodia and Cameroon have given Global Witness valuable insights on the ways in which an Independent Monitor can contribute to better governance in the forest sector and is presently engaged in an exercise to gauge interest and promote such role in other interested countries. The current idea is in the immediate future, to start operations in two other countries. Candidates are Gabon, Honduras, Mozambique, Peru and Republic of Congo.

### ***Greenpeace***

Greenpeace does investigative reporting on illegal forest operations in various countries. Greenpeace's distinctive feature is an approach to reducing illegal logging and trade that relies on highly visible activist campaigns attracting considerable public attention and thus contributing successfully to increase awareness of illegal acts in the sector. Greenpeace' forest campaigns cover a large number of countries and involve activities in exporting as well as importing countries. In one of the most recent successes, work by Greenpeace in association with Brazil's IBAMA unveiled illegal exports of mahogany from the Brazilian Amazon to the United States which led to a judge in the United States to order the confiscation of this wood into the USA and its return to Brazil. The Brazilian case is an interesting instance of a well-known activist organization with a committed government agency to fight illegal logging and associated trade, a model of action that may be replicated in other cases.

### ***Transparency International***

Transparency International, TI, hosts the Forestry Integrity Network, FIN, a multistakeholder coalition to combat corruption in the forest sector by drawing expertise from various parts of the world and providing information on best

practices, created in 2000 by a group of NGOs, donors, academic institutions and individual specialists in forestry and related disciplines.

FIN is currently implementing a project to analyze practical tools for combating corruption in the forest sector. The analysis is based on the experiences acquired by TI in other sectors and relies on a battery of surveys aimed at specialists in combating corruption. The first survey was sent to senior TI experts working at TI's national chapters, the second to specialists on corruption outside the forest sector in specific countries and the third one to a wider group of forest experts. These surveys will help identifying the most promising tools to fight corruption in the forest sector. A second phase of this activity, starting in September 2003, aims at producing a Forest Corruption Fighters' Toolkit, which would be subject to updating and adjustments as experiences are obtained. A longer-term goal of this initiative is to produce an analysis of best practices for fighting corruption and improving governance in the sector. FIN is in the earlier stages of planning further activities but potential areas include the development of Forest Corruption Perceptions Index and Bribes Payers Index, the consolidation of Integrity Pacts to increase transparency in logging concessions awarding processes, the development of business principles to be promoted among timber companies and a Forestry Sector Integrity system, to develop analytical tools to identify types of corruption, actors and sector weaknesses, and needed policy, institutional and legislative reforms.

FIN has the advantage of being able to draw and profit from Transparency International's considerable experience in dealing with corrupt environments around the world. The program of potential activities described above extends TI's programs in other sectors where the organization has been operating for many years, to the forestry sector.

### ***The Environmental Investigation Agency***

EIA is an international campaigning NGO investigating and exposing environmental crime. In partnership with Telapak an Indonesian organization, and working undercover, EIA has documented various instances of illegal logging and trade. The hard-hitting campaigns have contributed to raise awareness of illegal logging and trade and to mobilize political action. EIA, working in close collaboration with the Royal Institute of International Affairs, provided considerable inputs to the conceptualization of the EU Plan of Action and advises to donors in Indonesia.

### ***Friends of the Earth***

Friend of the Earth is a global federation of 68 independent environmental organizations that share the common objective of protecting the global environment through grass roots activism and coordination of national and international campaigns. One of these campaigns relates to forests. Friends of the Earth provides

an umbrella organization for around 5,000 local activist groups. Their forests campaign includes activities to promote forest conservation, restoration, sustainable forest management, and equitable sharing of benefits from forests. It also includes programs for securing rights and land tenure of indigenous peoples and other forest dependent peoples.

The organization has carried out factual and analytical work on illegal logging and trade in Brazil, Cameroon, Ghana and Paraguay. This work has provided the basis for activist campaigns in these countries and elsewhere (See, Glastra, 1999). In 1991 Friends of the Earth published a report estimating European imports of illegal tropical wood and arriving to the conclusion that Europe imports some 5 million cubic meters of illegal wood every year, with a value of some 1.2 billion euros and equivalent to some three fourths of a million hectares of illegal logging in tropical countries (FoE, 2001). These studies have provided ammunition for Friends of the Earth advocacy campaigns to convince European countries to establish restrictions to imports of illegal timber.

### ***World Rainforest Movement***

The World Rainforest Movement, an international network of environmentalist groups, aims at protecting the livelihoods of forest peoples around the world by combating threats from developments such as mining, the expansion of commercial logging, and transmigration projects. The Movement has dedicated considerable attention to its campaign against forest monocultures and is the host institution for the Global Forest Coalition, a coalition of NGOs and Indigenous Peoples Organizations.

The Movement publishes a Bulletin to disseminate information about various forest issues. Illegal logging and trade feature prominently among these issues. The organization examines developments around the world and publicizes results by distributing the Bulletin in electronic form to thousands of interested individuals.

### ***World Wide Fund for Nature***

The World Wide Fund for Nature is the largest conservation organization with a vast global network. Its Forests for Life Campaign seeks to promote sustainable forest management through high profile advocacy activities. An important part of the Fund's program is to raise awareness among governments, business industry and consumers of the nature and impacts of illegal logging and trade and to promote solutions. Its Global Forest and Trade Network is a group socially and environmentally responsible forest corporations committed to sustainable forest management, industrialization and trade. The Network considers certification, and by implication legal logging and trade, as a key tool in the process of forest production. The Network promotes partnerships, between non-governmental organizations and companies to improve the quality of forest management worldwide. More than 800

companies are part of the network, including forest owners, industrial corporations, trade institutions and investment groups<sup>5</sup>. The Network also promotes the creation of Producers Groups, coalitions of forest managers, industrialists and small and community forest owners with the common objective of fostering sustainable practices.

The Fund also monitors developments around the world calling the attention of public opinion and decision makers on occurrences of illegal logging and trade. Given the size of the Fund and of its Forest and Trade Network, the visibility of these activities is high.

### **13. WTO Implications of Measures Discriminating Against Trade of Illegally Sourced Wood.**

Any attempt to manage international trade to preclude illegally sourced and traded forest products from reaching markets in consumer countries opens the possibility of a challenge at the World Trade Organization (WTO). Therefore, the subject has received considerable attention in the international dialogue on illegal logging and trade.

A challenge in WTO could happen mainly in the context of two agreements, the General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (TBT). There are several articles in both agreements that could be used to defeat an initiative to prevent imports of illegally sourced wood (See Box below).

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<sup>5</sup> In a recent development, WWF expelled TESCO, the UK's biggest retailer from its prestigious 95+ Group, following an investigation by Friends of the Earth for selling garden furniture made with illegally sourced Indonesian wood.

The GATT articles rule out discrimination in trade of “like” products from members or between imports and products of domestic origin. They also prohibit import restrictions other than import duties, taxes, fees or other charges. Because restrictions such as licenses should be avoided under GATT, given that they discriminate between exporting countries, they could be challenged. However, some point out that this challenge could be neutralized in all cases where importer and exporter countries *voluntarily* enter into an agreement to restrict trade. The country that accepts the restriction is the one at disadvantage, the one discriminated against. Therefore, it could be convincingly argued that discrimination is not against third countries.

On the other hand, any restriction such as a license, that is not an import duty or other import charge, could be challenged under GATT Article XI. This would be considered as a technical regulation and therefore fall under TBT.

With regard to TBT Article 2.1, a challenge would hinge on the de definition of illegal and legal timber and on whether these two types of products are “like” products. Unfortunately, the Agreements provide no definition of what “like”

### **GATT and TBT**

**GATT Article 1:** no import discrimination against like products from third states.

**GATT Article III:4:** imported products to be accorded treatment that is not less favourable than that accorded to like products of national origin.

**GATT Article XI:1:** no establishment of quantitative import restrictions.

**GATT Article XX:** exceptions to GATT rules allowed in cases when they are needed to (a) protect public morals, (b) protect human, animal or plant life or health or (d) to secure compliance with existing laws and regulations not inconsistent with the provisions of the agreement, including those (g) relating to the conservation of exhaustible natural resources if those measures are made effective in conjunction with restrictions on domestic production and consumption/

**TBT Agreement Article 2.1:** With respect to technical regulations, no imported products should be subject to a less favourable treatment than that accorded to like products of national origin.

**TBT Agreement Article 2.2:** Technical regulations should not be prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. The Article specifies that “technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

**TBT Agreement, Article 2.9:** Imposes publication, notification and consultation requirements on a WTO member that proposes to introduce technical regulations in an area in which relevant international standards do not exist.

products are. In theory, the concept could refer to the characteristic of the *product* itself or also include the features of the production *process*. If the clause is interpreted as forbidding discrimination based on how wood is harvested and processed, then restrictive measures such as verification of legality may be challenged. The GATT/TBT agreements do not provide an objective and easy basis to pass a judgment on this theme. However, even if illegal and legal timber were considered as “like” products, GATT does not rule out process based trade

discrimination under certain circumstances (Brack, 2003). Furthermore, discrimination between like products is possible under GATT Article XX.

In connection with TBT Article 2.2, WTO also gives little guidance on how to interpret the mandate to “avoid unnecessary obstacles to international trade”. However, the Article allows for the need to fulfill a legitimate objective including animal or plant life, or health and the environment. The control of illegal logging can be argued to protect the environment and therefore be justified under the provisions of this article.

Since there is no international standard defining illegal wood, Article 2.9 would require members to comply with the notification requirements.

Overall, these articles do not seem to pose insurmountable problems for schemes restricting illegal wood from importing markets. It is interesting that some restrictive measures such as the licensing schemes similar to the one proposed in the European Plan of Action exist and have not been challenged in the WTO because all participants are involved voluntarily (Brack, 2003). This leads many to conclude that a WTO dispute involving a verification and licensing scheme as the one in the European Plan of Action, although possible, would probably not arise.

But all this being said, there is no relevant experience with the application of the TBT agreement to illegal wood and therefore no precedent that would allow a more definitive judgment on the possible success of a challenge to restrictive trade measures against illegally sourced wood. Only time and experience can provide a definitive answer to this debate.

#### **14. Conclusions and summary of main issues**

*There is a large number of international initiatives aimed at curbing illegal logging and trade in producing exporter countries.* Greater awareness of the deleterious effects of illegal acts that make the achievement of traditional objectives, such as sustainable forest management, almost impossible in some producing countries, has triggered a considerable number of initiatives involving international organizations, consumer and producer country governments, international and national NGOs, consumer groups and private commercial corporations.

*Greater coordination would be desirable but is probably difficult to achieve in practice.* There is not much coordination between the numerous action plans and schemes to control illegal activities. A global convention or action plan to combat illegal activities in the forest sector has yet to be produced. Promoters of actions against illegal logging and trade have designed schemes that rely on bilateral agreements or on actions with a regional scope. This is due to the perception that reaching a global convention or plan of action on this politically charged and sensitive issue would probably involve lengthy negotiations and could lead to uncertain results that many believe would reduce the quality of such a convention the a minimum common denominator. CITES and CBD are global frameworks including

forests but they are not geared towards controlling illegal logging. Therefore, staged approaches involving bilateral agreements and regional schemes are probably the best practical way to deal with this issue. However they have problems of their own.

*The most important international initiatives originate in the industrialized world.* International strategies have largely originated in the industrialized world and this has made some developing producing countries see them with apprehension. Some see activities aimed at controlling illegal logging and trade as a new non-tariff trade barrier hindering developing country producers' market access in the industrialized world. Others fear that the imposition of (developed country) values on what should be legal and what should not, would infringe on the sovereignty of producing countries that may not agree with those values. Most international schemes have gone around this problem by defining as illegal all that wood that has not been harvested, transported, processed and traded in accordance with the producing or importing country laws and regulations. Eventually, this may lead to problems: an importer country could sanction imports from a country that does not accept, in its legislative framework, some values held as desirable by the importing country or by most of the international community.

*Using international trade as a tool to curb illegal logging and trade is probably useful but it is a partial remedy only.* The effectiveness of the multiple international actions to curb illegal logging has yet to be demonstrated. For one thing, they are all very recent and have not had the time to fully operate and show results. Further, some of the schemes that rely mainly on managing international trade by keeping imports of illegal wood out of the market will likely have a limited *global* impact because only a fraction of wood enters international trade. In this respect, the relative potency of trade measures is likely to be higher in Africa than in Asia or Latin America.

Because of the difficulty in monitoring the movement of products, schemes concentrate on those products whose origins are relatively easier to track because their limited degree of industrial processing, such as sawnwood. But exports of these products are a small proportion of producer countries' output.

Nevertheless, some of the main producer countries do export a substantial proportion of their production and therefore in these cases, trade influence is expected to be significant. Further most, if not all, of the international tools used to control illegal logging and trade also can be used to curb these activities in the domestic markets and therefore genuinely committed countries have a greater opportunity to increase law compliance across the board. Associated programs such as those supported to streamline the policy and legal framework, the instauration of tracking systems and the many aspects of capacity building schemes are bound to increase the level of governance of the sector overall. Thus, managing international trade can be a potential entry tool to improve governance and the efficiency of forest administration in producing countries.

*Present schemes may lead to trade diversion involving countries that are less interested in curbing illegal activities.* In absence of a global program to combat illegal logging and trade, regional programs and, more so, bilateral programs must face diversion of trade through third countries where wood may be laundered or simply absorbed as imports without questions asked. Some large importers are not significant participants in some of the international trade schemes aimed at combating illegal activities in the forestry sector and therefore provide alternative and less stringent markets for some operators. If, as a result of international trade controls legal wood becomes more expensive and illegal wood -- facing reduced international demand -- less expensive, unscrupulous importing markets may have an additional incentive to buy illegal wood. Thus, it seems urgent that international agreements be expanded as quickly as possible to involve a large number of participating countries, all playing by the same rules of the game. To design appropriate and specific mechanisms, it is also urgent to investigate the economic impacts of controlling measures and how they may affect the system of commercial incentives and deterrents to illegal logging and trade.

*The credibility and effectiveness of international programs to control illegal logging and trade depend on sound product tracking systems.* Credibility and effectiveness of methods to deny market access to products that can not be demonstrated to have legal sources depend largely on effective product tracking systems in producing countries. Product tracking systems must be successful in stopping all varieties of illegally sourced and traded wood, including laundered wood. This will be difficult to achieve. All procedures are vulnerable to "leakages" as certificates are open to fraud. The practical difficulties in segregating illegally sourced wood and illegally traded forest products make it difficult for enforcing agencies to detect and stop these products before they reach the market. Future actions will have to dedicate a great deal of attention to the establishment of credible and fraud-free systems of tracking wood products.

*Further, importing countries need to put in place legislative reforms.* Currently there is no legislation in major importers such as the European Union, the USA or Japan, to exclude illegally sourced wood from their markets. Without such legislation, the effectiveness of interdiction programs may be greatly diminished.

*International schemes may face WTO tests but these are likely to be passed.* Timber licensing mechanisms that would exclude illegally sourced wood from importing country markets may encounter challenges in the WTO. However, careful analysis suggests a WTO dispute from voluntary agreements is unlikely to be successful. Nevertheless, only a concrete WTO ruling would dispel the uncertainty surrounding this issue.

*Main responsibility for combating illegal logging and trade will depend fundamentally on decisive action by producing countries.* The main causes of illegal logging derive from national conditions leading to poor governance and accordingly solutions depend on a strong national political commitment, and other national actions such as policy and institutional reform. Trade restrictions will not address

some of the underlying causes of illegal logging, such as imbalances in the supply and demand of industrial wood derived from policies that have fostered industrial over capacity, or the pervasive presence of corruption in the allocation of forest concessions. This is the reason for most international initiatives, even those relying primarily on managing trade, giving attention to supporting actions against illegal logging targeted to producer country factors that induce or facilitate illegal logging such as reforms of the legislative framework and institutional strengthening. Eventually, better governance in producing countries is what will make a difference.

## References

- Brack, D., K. Gray and G. Hayman, 2002. *Controlling the International Trade in Illegally Logged Timber and Wood Products*. [www.riia.org/research/eep/eep.html](http://www.riia.org/research/eep/eep.html)
- Brack, D. 2003. *WTO Implications of an International Timber Licensing Scheme*. Royal Institute of International Affairs. London, UK.
- Callister, D. J. 1999. *Corrupt and Illegal Activities in the Forestry Sector: Current Understandings and Implications for World Bank Forest Policy*. Washington DC.
- CGI, 2003. *Donor Statement on Forestry. January 2003*. Jakarta, Indonesia.
- Commission of the European Communities, 2003. *Communication from the Commission to the Council and the European Parliament. Forest Law Enforcement and Trade (FLEGT). Proposal for an EU Action Plan*. Brussels, Belgium.
- Del Gatto, F. 2003. *Los Impactos de la Producción Forestal No Controlada en Honduras*. ODI, UK.
- Eba's Atyi, R. and M. Simula, 2002. *Forest Certification: pending Challenges for Tropical Timber*. ITTO Technical Series No. 19. International Tropical Timber Organization, Japan.
- EIA and Telapak, 2003. *Singapore's Illegal Timber Trade*. Washington DC, USA, London, UK and Bogor, Indonesia.
- FAO, 2002. *Reforming Government Policies and the Fight Against Forest Crime*. Rome, Italy.
- FERN, 2001. *Behind the Logo. An Environmental and Social Assessment of Forest Certification Schemes*. Moretin-in-Marsh, UK.
- FoE, 2001. *European League Table of Imports of Illegal Tropical Timber*. London, UK.
- Glastra, R. 1999. *Cut and Run. Illegal Logging and Timber Trade in the Tropics*. FoEI.
- JFW, 2002. *Declaration on Illegal Logging*. Japan federation of Wood Industry Associations.
- Marijnissen, C. 2003. *Illegal Logging, How the EU Can Tackle Forest Crime*. [www.fern.org](http://www.fern.org)

MoU, 2002. *Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Great Britain and Northern Ireland on Cooperation to Improve Forest Law Enforcement and Governance and to Combat Illegal Logging and the International Trade in Illegally Logged Timber and Wood Products.*

MTC, 2002. *Definition of Illegal Logging in Malaysia.* Malaysian Timber Council.

ICFPA, 2002. *Statement on Illegal Logging.* Rome, Italy. April 25. [http://www.icfpa.org/Issues/Statement\\_illegallogging.asp](http://www.icfpa.org/Issues/Statement_illegallogging.asp)

Minnemeyer, S. 2002. *An Analysis of Access Into Central Africa's Rainforests.* Global Forest Watch, World Resources Institute, Washington DC., USA.

Ryder, S. and L. Amariei, 2003. *FSC Certification and Strengthening Legal Compliance in the Forest Products Trade.* Paper for the Seminar on Strategies for the Sound Use of Wood, Poiana Brasov, Romania, 24-27 March.

The Economist, June 21<sup>st</sup>, 2003. *The Alien Problem. Suits Against Firms.*

UNSC, 2002. *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo.* United Nations Security Council, New York, USA, 16 October.

World Bank, 2002. *Forest Law Enforcement and Governance. East Asia Ministerial Conference. Ministerial Declaration.*  
[http://lnweb18.worldbank.org/ESSD/essdext.nsf/14DocByUnid/DD2ED2D2B7D3DDA985256BF800580BF9/\\$FILE/Bali%20Declaration%20final.pdf](http://lnweb18.worldbank.org/ESSD/essdext.nsf/14DocByUnid/DD2ED2D2B7D3DDA985256BF800580BF9/$FILE/Bali%20Declaration%20final.pdf)

## **Annex**

### **LAW ENFORCEMENT AND GOVERNANCE EAST ASIA MINISTERIAL CONFERENCE, BALI, INDONESIA**

#### **Indicative List of Actions for the Implementation of the Declaration**

#### **I. Actions at National Level**

##### **Political**

- High-level expression of political will across sectors

##### **Legislative/Judicial**

- Modify and streamline laws and regulations
- Determine law enforcement priorities
- Develop swift prosecution, judgments and enforcement
- Strengthen penalties and sanctions against illegal activities
- Rewards for responsible behavior/motivation
- Recognized complaints mechanisms w/protection for claimants and due process
- Independent monitoring (e.g. single organization, cooperative model, etc.)
- Integration of customary law into formal law
- Capacity building for legislative, executive and judicial institutions at the local level,  
including the integration of customary institutions

##### **Decentralization**

- Clarify roles, responsibilities, and authorities between different levels of government,  
private sector, civil society
- Improve coherence between different laws
- Improve communication between national/local levels to prevent/detect crime
- Prosecution and enforcement should remain with competent and capable authorities
- Systems that encourage responsible behavior and deter criminal/corrupt behavior (e.g. salaries, codes of conduct, morale building)
- Analysis of /rationalization of multiple/conflicting formal and customary norms and laws

##### **Institution and capacity building**

- Education of judicial and law enforcement personnel *re* forest crimes
- Improve capacity of forest managers

- Support interagency cooperation in formulation of coherent policy and procedures
- Technology
  - Remote sensing, Geographic Information Systems (GIS)
  - Cheap log tracking
  - Complete chain of custody audit and negotiation systems
  - Resource use planning, warning, monitoring, inspection
- Knowledge, Experience, Skills
  - Awareness raising and training
  - Local innovations appropriate to circumstances
  - Novel detection and enforcement methods
  - Intelligence gathering and analysis
- Rights, Roles, Responsibilities, Rules
  - Codes of conduct
  - Due diligence *re* financing, investment
- Capacity building for legislative, executive and judicial institutions at the local level  
including the integration of customary institutions
- Research

### **Concession Policy**

#### *Concession Allocation*

- Develop/implement transparent and participatory approach to concession allocation
- Develop leasing/contractual opportunities for village/individual households to manage forest resources
- Develop mechanisms for resolving conflicting/overlapping property rights

#### *Concession Management*

- Clear recognition of property rights within approved management plans, including clear identification and agreement of boundaries and demarcation of concession areas, available to all parties
- Appropriate contractual periods, monitored against performance
- Raise awareness about community based forest management
- Institute independent auditing for compliance with terms of concession agreements
- Protect and develop forest-based livelihood opportunities within concession areas for local communities
- Build protection for forest-based livelihoods into concession contracts

### **Conservation and Protected Areas**

- Environmental education
- Involve local authorities in developing conservation programs that benefit constituents/local communities (e.g. water, tourism)

### **Public Awareness, Transparency, and Participation**

- Consistent provision of accurate, timely information to monitoring organizations
- Increase public awareness of forest crimes
- Increase public awareness of opportunities for purchasing forest products from sustainable and legal sources
- Provide alternative livelihood opportunities for communities (e.g. poachers to tourist guides/park rangers)
- Registry of business/family interests in timber industry
- Publication of government budgets, resources, staffing levels and programmes on forest law enforcement
- Publication of data on forest crimes, including success rates on detection, interdiction, prosecution and conviction

### **Bilateral Actions**

- Transboundary cooperation for protected areas
- Voluntary agreements for combating trade in illegal timber and forest products

## **II. Regional and Inter-regional Actions**

### **Information/expertise sharing**

- Exchange of in-country experts on forest crime, forest law enforcement ( law, comparative assessment on actions)
- Implementation of comparable systems of criteria and indicators
- Comparable timber tracking mechanisms and complete chain of custody audit -- Registration of origin and destination (e.g. forest stand to mill)
- Development of regional network of monitoring systems, including forest crime monitoring

### **Trade/Customs**

- Harmonized customs commodity codes
  - Protocols for sharing of export/import data
  - Complete chain of custody audit and negotiation systems
  - Initiative for improved and timely trade statistics
  - Prior notification between importing and exporting countries
- Annex to the Ministerial Declaration

### **Bilateral Actions**

- Voluntary bilateral agreements to cooperate on issues of combating illegal logging and trade (involving a full range of relevant agencies/institutions, e.g. customs, police, marine, trade)
- Regain consumer confidence in tropical timber as a commodity
- Promote the use of certification schemes that are accessible and cost-effective for smaller forest enterprises (e.g. group certification schemes)

## **Research**

- A research agenda for individual and cooperative work on illegal logging, associated illegal trade and corruption in the forest sector
- Systematic comparative analysis of patterns of regulatory systems and extra-sectoral links
- Cooperative work on trade statistics and its relation to legal and illegal patterns of movements of forest products
- Investment context for and links to illegal and corrupt actions
- Survey patterns in forest crime and related corruption
- Development of appropriate monitoring tools and their application, policy utilization
- Decentralization and patterns related to local government
- Private Sector, communities, NGOs and relation to governments