



A Poison, Not a Cure

**The Campaign to Ban Trade in
Illegally Logged Timber**



WORLD GROWTH

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Table of Contents

Executive Summary	1	V. The Cost of Restrictive Logging Regulations ..	19
I. Introduction	3	The Benefits of Logging	19
II. A Global Picture of Illegal Logging	4	The Cost of Imposing Restrictive Logging Regulations	19
The Causes of Illegal Logging	4	VI. The Use of Trade Bans to Promote Environmental Goals	21
The Global Share of Illegal Logging	4	Trade Bans Negatively Affect Welfare	21
III. Trade Policy and Illegal Logging	11	Illegal Activities Should be Tackled Directly—Trade Bans Don’t Work	21
Bans on Sale of Timber Products Not Legally Acquired	11	VII. Recommended Strategies to Tackle Illegal Logging	22
Green Protectionism—Illegal Logging Controls Another Tool	14	Conclusions	22
IV. WTO and Illegal Logging Trade Bans	16	Guiding Principles	22
Constraints in WTO Law	16	Recommended Options	23
Implications of EU, U.S. and Australian Trade Bans	17	VIII. References	24

Executive Summary

Environmental groups, such as WWF and Greenpeace, have a global goal of halting commercial forestry and forestry in native forests. One of their strategies to advance this campaign is to generate global concern that illegal logging is a major global problem. One presumption is that high volumes of illegally-sourced wood products are entering the global market. This presumption cannot be substantiated and is very likely to be untrue.

The campaign urges trade bans on imports of illegal timber. It has also been driven by industrialized countries, in particular the UK. The campaign is also supported by protectionist interests in the timber and paper industry in the U.S., the EU and Australia, with the aim of limiting imports of more competitive products from developing countries.

It is commonly alleged that commercial interests drive illegal logging and that this, in turn, causes severe deforestation. This contention is wrong. The causes of deforestation and illegal logging are complex: they include poverty, increased population growth, poor governance and weak property rights. In most cases, illegal logging represents a failure of developing economies to enforce the law.

The Extent of Illegal Logging

The extent of illegal logging is uncertain. Most studies and policies have been based on a 2004 study by Seneca Creek and Associates for the American Forest and Paper Association which finds between 8% and 10% of produced and traded timber may come from suspicious sources. Other research shows only 15% of globally produced timber is traded. Even if it were desirable to use trade controls to achieve non-trade purposes, the share traded is so small, that leveraging is negligible and prospects of success very small.

Though the report is cited frequently in the literature, it suffers from significant flaws, including a lack of comprehensive and reliable data sources. These limitations are acknowledged by the study's authors who state that there is limited information on illegal logging and that it is impossible to know the extent of illegal forest activity with any degree of certainty.

The study is now outdated with the incidence of illegal logging decreasing in key countries in recent years. The 2004 global estimate is, for the most part, based on illegal logging in Indonesia, with global wood exports principally attributed to the country. Since the report, a briefing paper by Chatham House has demonstrated that incidence of illegal logging has decreased by between 50% to 75%, with estimates of illegal logging in Indonesia as low as 40% as compared with the 70% to 80% estimated by Seneca Creek.

WTO and Illegal Logging Bans

The environmental NGOs' agenda against the forestry industry, coupled with a political campaign aimed at protecting uncompetitive logging industries in developed countries, has led to developed economies adopting restrictive trade regulation against illegally imported timber.

Countries such as the United States and the European Union — and soon Australia — have introduced 'due diligence' legislation which requires importers to take sufficient steps to demonstrate any timber imported has been legally procured.

There is nothing in the WTO rules which give countries' general rights to ban the import of products unless the legality of the product is specifically verified. In fact, it is likely that such trade interventions contravene WTO rules. Specifically, it is likely such restrictions would be in breach of WTO rules, including:

- Unallowable discrimination against the import of 'like products' (Article I of the GATT); and
- Unallowable imposition of unequal regulatory burdens on common products from exporting countries (Article I of the GATT).

The causes of deforestation and illegal logging are complex: they include poverty, increased population growth, poor governance and weak property rights.

A Poison, Not a Cure

Trade should be free, not restricted. Trade rules, like the WTO's, are designed to reduce restrictions to increase trade and expand economic growth. Any measure to restrict trade has the opposite effect. The solution to illegal logging is action by national governments to reduce the incentives to act illegally. The advocates of trade bans seek to employ trade restrictions as leverage to change activity in other sovereign states, or to limit the capacity of more competitive producers to trade in global markets. Either way, the aim is to coerce or inflict economic harm on persons in another country.

Guiding Principles and Recommended Strategies

Protection of the environment is important. However, strategies to reduce illegal logging need to consider the possible negative effect on importing and exporting economies and ensure respect for national sovereignty and the rules of international law. Successful strategies to combat illegal logging should:

- Avoid trade bans;
- Include bilateral arrangements;
- Move the burden of ensuring legality to the government of the exporting country;
- Ensure compliance through voluntary compliance with codes of practice or voluntary certification;
- Entail capacity building initiatives; and
- Comply with the proportionality principle.

I. Introduction

Improving the environmental impact of forestry should go hand in hand with securing economic benefits — not constitute a case to oppose them.

Environmental NGOs have a global agenda to generate opposition to forestry through a campaign to halt illegal logging. This campaign has resulted in governments of developed countries attaching greater importance to the incidence and impact of illegal logging in developing countries — particularly Indonesia and Brazil — than the facts of the matter warrant. This campaign is not based on fact. Evidence that illegal logging is a major problem is weak.

This is not the first occasion when environmental NGOs have lobbied governments to adopt measures which breach fair competition standards and weaken the WTO free trade rules in the name of the environment. The World Wide Fund for Nature (WWF) and Greenpeace have also pressured governments to procure only timber products certified by the Forest Stewardship Council (FSC) which was set up by WWF and of which WWF and Greenpeace are both members.

The campaign has not only come from green quarters, but is also supported by industries and organized labor in industrialized countries in an attempt to restrict imports of forest products from developing countries on the grounds they are unsustainable or illegal when the real aim is to limit cheaper products being imported from developing economies.¹

The United States government and European Parliament have adopted 'Due Diligence' legislation which makes it illegal for anyone to import timber into the country unless they have taken sufficient steps to demonstrate it is legally procured. The Australian government is also currently undertaking steps to bring a similar system into Australian law.

Such regulatory interventions have been justified under the presumption that there are high levels of illegally sourced wood products entering the international market. There is no evidence of this. For a start, the share of timber from illegal sources imported into Australia is low. The case that it is not has been

propagated by the use of unreliable data sources, including the use of biased data from environmental groups, and by a political campaign aimed to protect some uncompetitive timber industries, particularly paper producers which use cheaper product from developing economies.

This is not the first occasion when environmental NGOs have lobbied governments to adopt measures which breach fair competition standards and weaken the WTO free trade rules in the name of the environment.

This report examines the incidence of illegal logging and the international use of trade restrictions as a form of environmental protection. It argues that illegal logging trade bans are contrary to international trade laws and are not justified as their costs likely outweigh any potential benefits.

¹ See World Growth (2010b)

II. A Global Picture of Illegal Logging

The Causes of Illegal Logging

The causes of deforestation and illegal logging are complex, including underlying social, economic, technological and cultural conditions. Though varied, causes of illegal logging can include increased global demand for wood products, weak law enforcement, poor property rights, population growth and technologies which allow access and harvesting of previously remote forest areas. Poverty is also recognized as a driver of illegal logging, creating a need for wood-fuel and clearing of land for subsistence farming.

Illegal logging activities mostly represent the failure of developing economies to enforce the law, not a failure of the law itself.

A study of illegal logging in Azerbaijan found social deprivation as one of the main causes of illegal logging. Specifically, the study found high levels of unemployment, poverty, restricted access for the local population to forest resources, and weak forest protection measures were among the main causes.²

A 2005 study by Seneca Creek Associates for the American Forest and Paper Association stated that illegal logging is *'primarily a symptom of unclear and poorly enforced forest tenure, weak political institutions, corruption, inadequate natural resources planning and monitoring, and lax enforcement of sovereign laws and regulations.'*³

Much illegally produced timber is used domestically and does not enter international trade;⁴ in fact only fifteen percent of world production of timber products is internationally traded.⁵

The Global Share of Illegal Logging

Environmental NGOs have claimed that illegal logging

is rampant in the developing world. In reality, the number of studies which have attempt to measure the global extent of illegal logging is small.

Reports have included a 2005 report by Jaako Pöyry Consulting⁶ for The Australian Department of Agriculture, Fisheries and Forestry (DAFF), a 2007 report by Turner et al⁷ for the New Zealand wood products sector, a 2008 report for the European Commission by Indufor and a 2010 report by the Centre for International Economics,⁸ for DAFF. These reports have relied heavily on the findings of a 2004 report by Seneca Creek Associates for the American Forest and Paper Association.

The Seneca Creek Associates Illegal Logging Report

In 2004, Seneca Creek Associates prepared a report on the state of illegal logging and global wood markets for the American Forest and Paper Association. The study serves as the basis for almost all global assessments of illegal logging. It also serves as the underpinning assessment to justify regulating trade in illegally logged timber in countries including the US, EU and Australia.⁹

Seneca Creek estimates that illegal logging of the kind that 'warrants international concern' is in the order of 5% to 10% of global wood products production and of the value of wood products trade.¹⁰

The report estimates the extent of illegal logging in 8 key producing and importing regions by profiling existing estimates of illegal forest activity and by analyzing wood fiber flows. Non-profiled regions are estimated based on available information and regional averages. The reported estimates of illegal logging for each of the different regions can be found in Table 2.1.

Although the report is frequently referenced in the literature, it suffers from significant flaws, including a lack of comprehensive data and unreliable data sources.

2 Illegal-logging.info (2010)

3 Seneca Creek Associates and Wood Resources International (2004)

4 Seneca Creek Associates and Wood Resources International (2004), pp. 4

5 CIE (2010) pp.10

6 Jaako Pöyry Consulting (2005)

7 Turner, J., Katz, A., Buongiorno, J. (2007)

8 CIE (2010)

9 World Growth (2011)

10 Seneca Creek Associates and Wood Resources International (2004) pp.19

Fig. 2.1

Summary of Seneca Creek Findings and its Associated Data Problems

Country/Region	Reported estimate of illegal forest production/imports	Problems with data and/or methodology
Profiled Countries/Regions		
Russia	20% to 50%	Based on data from WWF and Greenpeace. Government estimates from the volume of seized timber is at 1% to 2% of harvest – significantly lower.
Indonesia	70% to 80%	Based on NGO estimates with very little supporting data. Field research conducted and analysis based on wood fibre flow analysis and allowable cut estimates.
Brazil	20% to 90%	Estimates vary widely as they depend on what is considered “illegal”.
Malaysia	35%	Higher estimates date back to the early 1990s.
W/C Africa	34% to 70% Gabon – 50% to 70% Cameroon – 50% Ghana – 34% to 60% Liberia – 80%	Based on literature and published reports which have an environmental campaign bias.
Japan	20% - 80% of imports	This is based on the source of imports for each major product group. Japanese imports are not suspect in any technical, legal sense. They are sourced from countries where, in some cases, significant illegal activities are suspected.
China	32% of imports	No official government estimates available. Figure based on WWF data.
EU-15	Up to 80% of imports	This is based on the source of imports for each major product group, not on actual import data.
Other Countries/Regions (not profiled)		
Other Latin America	Bolivia – 80% Ecuador – 70% Peru – 80% to 90% Colombia – 42%	Weighted regional average as most estimates fail to provide supporting information or persuasive evidence.
Other Asia	PNG – 70% Myanmar – 50% Cambodia – 90% Laos – 45% Thailand – 40% Vietnam – 20% to 40%	Weighted regional average as most estimates fail to provide supporting information or persuasive evidence.
Acceding EU	Latvia – 20% Estonia – 50%	Governments believe most estimates are too high.
USA	0% to 10%	Based on news accounts and anecdotal evidence. This is based on the source of imports, not on actual import data.
Canada	0% to 10%	

Many of the data sources are not impartial and are calculated under assumptions comprising the environmental agenda. The report is also outdated, with many of the data sources over a decade old. Some of the limitations of the study are discussed in the following sections. The report is candid about this, warning consistently that data is weak and most assessments are made by NGOs.

Statistics are Outdated – Illegal Logging is Decreasing in Key Countries

Much of the data used in studies on illegal logging and in environmental policy is based on the Seneca Creek report, a study which is now over seven years old.

The incidence of wood from suspicious origins in global wood exports is thought to be largely attributable to Indonesia, where a high percentage of production and export, was believed to be illegal.¹¹ Due to the date of the report, more recent figures are likely to be much lower as illegal logging has been shown to have been decreasing in key countries such as Indonesia and Brazil.

An in-depth Chatham House study of twelve producer, processing and consumer countries demonstrated that illegal logging has decreased by between 50% and 75% in the last decade in Cameroon, the Brazilian Amazon and Indonesia.¹² The report also finds that imports of illegally sourced wood are down 30% from their peak in

2004 – the year the Seneca Creek report was released.

Although significantly less than the Seneca Creek estimates, Chatham House values are also likely to be significantly overestimated, as the methodology relies on unscientific methods, such as perceptions, for calculating estimates of illegal logging.

Chatham house acknowledges the limitations of measures of illegal logging activity, stating:

‘Assessing actual levels of illegal activity is very difficult and can be imprecise. Traditionally, attempts to measure quantitatively the level of illegal logging in producer countries and the trade in illegally sourced timber through processing countries and into consumer countries have drawn on three methodologies: wood-balance modeling, trade data discrepancies and import-source analysis. All three methods have problems.’¹³

The Chatham house methodology is based on a combination of wood-balance modeling and expert perception surveys.

In expert perception surveys, NGOs, government and private companies are asked a series of questions on how they perceive the overall extent of illegal logging in their country. The resulting data are used to produce a quantitative average estimate.¹⁴ Surveys do not

Fig. 2.2

Comparison of Chatham House and Seneca Creek Findings

Country	Reported estimate of illegal logging	
	2010 Chatham House Study	2004 Seneca Creek Report
Brazil	35% to 72%	20% to 90%
Cameroon	22% to 35%	50%
Ghana	59% to 65%	34% to 60%
Indonesia	40% to 61%	70% to 80%
Malaysia	14% to 25%	35%

11 Seneca Creek Associates and Wood Resources International (2004), pp. 4

12 Lawson, S. (2010)

13 Lawson, S. and MacFaul, L (2010), pp. 84.

provide an accurate measure of the true extent of illegal logging as they are subjective and vulnerable to bias. For example, when NGOs were surveyed they were found to judge the extent of illegal logging as significantly higher than other survey respondents.¹⁵ These judgments increase the average measure of illegal logging.

Perceptions can also be significantly different from actual values. Perceptions of illegal logging were found to be significantly higher as compared with estimates by wood-balance modeling in all but one country. For example, in Brazil the average perception of the proportion of illegal logging was given as 60-80%, compared with wood-balance estimates of only 34%.

Estimates using surveys are also likely to be overestimated as they require respondents to choose between percentile ranges rather than specific values. The exact perception of the respondent is then taken as the middle of the chosen range. For example, respondents who selected 50-75% are measured to perceive illegal logging at 62.5%. The report acknowledges that in some instances, the average perception of illegal logging is likely to be lower than the calculated average. For example, as the lowest option given is *'less than 20 percent'* those who believe there is no illegal logging will have their perception recorded as 10%.

In addition to perception surveys, Chatham house also relies on wood-balance modeling. Wood-balance modeling is the most common method used to quantify illegal logging in producer countries. In its simplest form, the method compares the legal supply of timber (officially permitted logging and legal imports) with actual consumption (domestic consumption and exports). The difference between reported legal supply and consumption is considered as the measure of logging which is illegal.¹⁶

Chatham house acknowledges there are problems with this methodology. There is no standardized methodology for calculating wood-balance estimates and variation in the availability of raw data means that there can be large

variation in estimates. As such, estimates are likely to be unreliable.

One major shortcoming of the methodology is that wood-balance modeling attributes all of the difference between consumption and reported legal supply to illegal logging. Thus, the measure of illegal logging also encompasses factors such as estimation errors or omitted data. These factors are likely to be significant when measures are obtained in developing countries where limited data is available. For example, in Brazil data on the legal supply of timber is estimated from surveys of average volumes consumed by mills in major production centers.¹⁷

Estimates of Illegal Logging are Unreliable

There are several data concerns with the Seneca Creek statistics such as a lack of comprehensive data, unreliable underlying data sources, and methodology limitations.

Statistics are not Representative

There are very few comprehensive and original studies which give statistics on illegal logging — as most studies rely heavily on Seneca Creek data. The use of a single study is not suitable for making inferences on an international scale as it may not be representative of actual levels of illegal logging. It is insufficient for policy decisions to be based on the findings of a single study, particularly when there is uncertainty surrounding the reliability of its estimates.

The limitation of estimates and accuracy of data is acknowledged by Seneca Creek's authors who state *'no matter how broad or narrow illegal forest activity might be interpreted, its extent is impossible to know with any degree of certainty ... reported estimates are generally only supported through anecdotal information and supposition. Quantifying illegal logging by type of activity is even less precise.'*¹⁸

The limitations of the study have also been acknowledged by subsequent studies that utilize the

14 Lawson, S. and MacFaul, L (2010), pp 93.

15 Lawson, S. and MacFaul, L (2010), pp 84.

16 Lawson, S. and MacFaul, L (2010), pp 84.

17 Lawson, S. and MacFaul, L (2010), pp. 90.

18 Seneca Creek Associates and Wood Resources International (2004), pp. ES 3

There is no standardized methodology for calculating wood-balance estimates and variation in the availability of raw data means that there can be large variation in estimates.

data. For example, in 2005, Jaako Pöyry Consulting prepared an overview of illegal logging for the Australian Department of Agriculture, Fisheries and Forestry (DAFF). The report provided estimates of the potential impact of illegal logging on Australian imports and forest and wood products. The report relied heavily on the Seneca Creek data.

The Jaako Pöyry study acknowledges the severe limitations with the accuracy of data stating *'the actual volume and value of illegal harvesting around the world is impossible to assess accurately'¹⁹ and that 'accurate data does not exist and is unlikely to exist in the future.'*²⁰

A more recent report was prepared for DAFF by the Centre for International Economics (CIE) in 2010. The report comprised a Regulation Impact Statement for the proposed new policy on illegally logged timber. The CIE also relied heavily on the Seneca Creek estimates, stating that *there is considerable uncertainty surrounding these estimates.*²¹

Lack of Comprehensive Data and Underlying Data Sources

There is very little reliable data on illegal logging, and studies that exist are often based on questionable underlying data. Seneca Creek acknowledges the limitations of its data, stating *'hard data on trade of forest products from illegal operations is virtually impossible to consistently gather.'*²²

A lack of consistent and dependable data has significant

impacts for the reliability of estimates of illegal logging, and the policies which depend on these estimates.

In its report, estimates of illegal logging for many countries, such as West and Central Africa, are based on literature and published reports, where an environmental campaign bias is admitted. For example, a large proportion of the statistics are based primarily on underlying data from Environmental NGOs including *WWF International, Friends of the Earth, Greenpeace, Global Witness, Environmental Investigation Agency (EIA)* and *FERN*.²³ Many of these organizations are well-known as being opposed to commercial forestry and forestry in natural forests.

Environmental NGOs, such as *WWF, Friends of the Earth* and *Greenpeace*, have been shown to make claims which are exaggerated and untrue. These claims jeopardize the ability for millions of people in developing countries to escape poverty.²⁴ Seneca Creek acknowledges environmental bias and states *'our investigation and analysis suggests that many of the reported estimates are likely to be exaggerated.'*

Estimates are Based on Unreliable Regional Averages

Seneca Creek analyses less than half of the world's production of timber. The study profiles 43% of global timber production, including Russia, Indonesia, Brazil, Malaysia, West and Central Africa, Japan, China, and 15 EU countries. The remaining 57% were not specifically profiled but were based on regional averages.

Statistics for unprofaned countries were drawn from regional values obtained from estimates of illegal logging rates for other countries — which are in themselves questionable. The use of regional figures based on observations from one or two countries is insufficient as these figures are likely to differ significantly from actual levels of illegal logging. Different countries have different drivers of illegal

19 Jaako Pöyry Consulting (2005) pp.1

20 Jaako Pöyry Consulting (2005), pp. ii

21 CIE (2010), pp. 20

22 Seneca Creek Associates and Wood Resources International (2004), pp. 2

23 Seneca Creek Associates and Wood Resources International (2004), pp.13

24 For further detail see World Growth (2010)

logging such as differing governance structures, laws and regulations, levels of enforcement and socio-economic conditions.

Estimates have a Large Margin of Error

The large range in plausible values for the percentage of timber products that are suspect demonstrates the inaccuracy of the measure. The larger the range, the less faith should be held that the estimate is a true measure of the actual value. A large range indicates greater uncertainty as to a given estimate and a lower probability that the true value is equal to the estimate. The Seneca Creek report has a large range of values in their estimates. For example, estimates of illegal logging in Brazil range from as low as 20% to as high as 90%. Estimates of illegal logging should not be used as a basis for policy change when there is such large uncertainty of the true statistics.

Debate over the Definition of Illegal Logging

Programs and regulations designed to ensure the 'legality' of product sourcing use different criteria for determining what is legal and what is not.²⁵ There is no

single agreed definition for what can be considered 'legal.' The definition of 'illegal logging' in the forest sector has significant implications for illegal logging statistics and the assessment of policies aimed at reducing illegal logging. Where the definition of illegal logging is broad, it is likely that estimates will be significantly higher than those where illegal logging is defined more narrowly.

Environmental NGOs, such as Greenpeace, have definitions of illegality in forestry which go well beyond that used in the conventional setting — such as that used by the American Forest and Paper Association. In these definitions, any failure in governance in the forest policy area, as well as failure to meet certain human rights and labor standards, makes timber produced under these circumstances to be classified as 'illegal.'²⁶

In the absence of an agreed definition, commercial forestry activities are sometimes based on the definition of environmental NGOs which are much broader in scope. Tate (2011) suggests that by using such definitions, it can be concluded that commercial harvesting activities in almost all countries, including developed countries, can be said to be illegal in some sense.²⁷

Case Study – Illegal Logging in Papua New Guinea

Papua New Guinea (PNG) has an estimated 29 million hectares of forest, covering 64% of the country's land area. Of this, approximately 15 million hectares is production forest including 10 million hectares under timber permit. The total area of planted forests is 65,000 hectares.²⁸ PNG has a strong forestry policy and legal framework and has met, and exceeds, the oft cited 10% of forest land set aside for conservation.²⁹

The PNG Forestry Authority estimates that the forestry sector provides approximately K400-450 million to GDP annually³⁰ (approximately 2.3% of GDP³¹), K120-130 in taxes and K40-45 in royalties and levies to land owners. The sector also provides employment for over 8,000 workers. In 1999, the World Bank estimated that the industry contributed up to 8.6% of GDP. However, Asumadu (2006) states that this figure has declined since the financial crisis in the 1990s, and since 1999 has accounted for between 3% and 5% of GDP.³²

25 Seneca Creek Associates and Wood Resources International (2004), pp.5

26 Oxley, A. (2007)

27 Tate, B (2011)

28 Kaip, D (2011)

29 Tate, B (2011)

30 Kaip, D (2011)

31 Calculated at a GDP level of 19.78 billion Kina using an exchange rate of 1 USD to 2.5 Kina (World Bank Development Indicators, 2009) and contribution to forestry to GDP of 450 million Kina as in Kaip, D (2011).

32 Asumadu, K (2006)

There is a large range of varying estimates of illegal logging in PNG. In 2006, a World Bank report estimated that 70% of logging in PNG is illegal. This report was based on an estimate of illegal logging for Indonesia in the 2004 Seneca Creek report, which was based on regional averages due to a lack of any 'persuasive evidence or supporting information.' This figure was challenged by the PNGFA and the World Bank undertook to seek verification of the claim.

Greenpeace contends that up to 90% of all logging in PNG is illegal.³³ Conversely, the government of PNG argues that there is no illegal logging in PNG as loggers have appropriate permits and licenses.

Asumadu (2006) states there is misinformation which creates the impression that all commercial timber harvesting activity in PNG is illegal, and that nearly all the logs exported from PNG to overseas markets are smuggled. In reality the government implements an independent monitoring system such that no logs can be legally exported from PNG.

Since its implementation in 1994, the independent monitor has not uncovered large-scale log smuggling in the log export trade in PNG. Though the monitoring system does not provide guarantee that all forestry activities in PNG are legal, it does provide verifiable proof that allegations of rampant log smuggling are highly questionable.

The PNG Forest Industry Association (PNGFIA) points out that its members are not permitted to engage in illegal logging. Its members are responsible for around 85% of the timber produced in PNG.

PNG is a good example of how the environmental campaign on illegal logging works against the development interest of poor countries.³⁴ Although corruption is extensive in PNG, particularly through siphoning of government revenue, there is only limited logging in PNG outside areas authorized for logging.

Greenpeace makes claims of a high incidence of illegal logging and destruction of biodiversity in PNGs forests, despite having no technical case to substantiate its claims. In fact, there is significant evidence to the contrary with independent monitoring, halted deforestation, a national cut below the sustainable cut from commercial logging and about one third of the country having forest reserves not allocated for any non-forest purpose.³⁵

Despite this, Greenpeace has run slanderous campaigns against the logging industry in PNG, portraying the country as an archetypical example of how illegal logging must be stopped to save the "Paradise Forests."³⁶

In response, the World Bank, the European Commission and the British and Dutch Governments have worked to encourage PNG to shift from commercial forestry to eco-forestry. They have also provided no aid to support forestry's economic contribution to growth, and will only finance measures to promote improved governance in forestry or to foster eco-forestry — including strategies which hand control of governance to NGOs. European aid bodies are also financing legal challenges in PNG courts against forest licenses, the principal effect of which will be to impede the operation of the forest industry.³⁷

In PNG it is clear that the agenda of environmental NGOs has led to the international development community working actively to suppress an industry which has the potential to increase economic growth and improve living standards.

33 Illegal-logging.info (2008)

34 Oxley, A. (2007)

35 Tate, B. (2006),

36 see ITS Global, (2006)

37 Oxley, A. (2007)

III. Trade Policy and Illegal Logging

Bans on Sale of Timber Products not Legally Acquired

Environmental NGOs have campaigned for years for trade bans to restrict imports from countries engaging in forest practices of which they disapprove. As noted previously, WTO trade law is likely to rule out measures which restrict imports on such grounds. Accordingly a strategy has been developed to place restrictions on the sale of an illegal product, by requiring the party which places a product for sale in the market to be responsible for ensuring due diligence in establishing that it was legally produced. This would apply to both an imported product as well as a domestically produced product. The result is legislation which achieves a purpose like that in the EU and Australia and legislation in the US which is similar.

This is a cumbersome and costly process. In all the industrialized markets, most commercial timber products are already verified as sustainable under certification systems, a core element of which is to practice forestry fully in accordance with the laws of national administration. The due diligence requirements on domestic producers are entirely unnecessary and exist only to provide a legal defense that these are not primarily measures to restrict imports.

There is an expectation among trade lawyers that these may be ruled as measures which discriminate against imports or breach national treatment obligations or may be rules disguised as restrictions on trade.

It is significant that in the US and Australia, local producers, particularly of paper products, were vocal in support of these measures because they would restrict imports of cheaper competing products.

The Due Diligence System

Under a due diligence or due care system, a legal obligation is created for importers of wood products to

ensure that the source of timber is legal and in some cases, sustainable. It also requires producers to take reasonable steps to ensure that wood products do not comprise of illegally harvested timber.

In the United States, a system of due care for timber is being implemented under amendments to the Lacey Act. In the European Union, two systems to control illegal logging have been developed and integrated. The initial system involved the negotiation of voluntary partnership agreements with producer countries, while the most recent system is a 'due diligence' system similar to that in the United States.

United States' Trade Controls — The Lacey Act

The Lacey Act came into effect in 1900 to prevent the transportation of illegally captured wildlife across state lines. Originally, the law was designed to tackle the growing concern about interstate profiteering in illegally taken native game animals. However, the act has been amended several times to expand prohibitions to cover international trade, to ban the importation of animals shipped under inhumane conditions, to uphold federal and foreign wildlife laws, and most recently to prohibit the importation of illegally logged timber.³⁸

In 2008, the U.S. Congress extended the Lacey Act to include timber products, making it the first country in the world to legislate against the handling of timber which is illegal according to the laws of the country from which the timber originated.³⁹ Specifically, the amendments included:

- Expansion of the Lacey Act's protection to a broader range of plants and plant products including lumber and furniture.⁴⁰ This included the prohibition of trade of any wood product in the US that is logged or traded in violation of a law in the country of harvest;
- A legal requirement for imported plants and plant products to be coupled with an import declaration which obliges any U.S. purchaser to demonstrate that any wood products or products containing fiber

³⁸ U.S. Fish and Wildlife Service (2000)

³⁹ Illegal-logging.info (2011c)

⁴⁰ The original amendment included pulp and paper products. However, this was removed from the revised phase-in schedule published in 2009. The technical difficulty and high costs required to effectively identify the composites of paper make it difficult to fulfil declaration requirements. Also, there is a low likelihood that paper imports into the US have significant illegal components.

The due diligence requirements on domestic producers are entirely unnecessary and exist only to provide a legal defense that these are not primarily measures to restrict imports.

have been checked to ensure no illegal species are included; and

- Establishment of penalties for violations, including fines of up to \$USD 500,000, forfeiture of goods and vessels, and incarceration for up to five years.

European Trade Controls – I. EU Due Diligence Legislation

On July 7, 2010, the EU Parliament approved legislation obliging operators to undertake Due Diligence to establish timber products they put on the markets have been legally acquired. The law is expected to take effect late 2012 to allow time for timber operators to adapt and apply measures to meet the requirements.

Enforcement

- European wood traders are liable for prosecution if found in possession of wood sourced in violation of laws of any country (including non-EU member states); and
- Enforcement is the responsibility of individual member states.
- Penalties are to be “effective, proportionate and dissuasive” and include suspension of trade.

Due Diligence

- European operators that “first place” timber products on the EU market must record sources and suppliers and take appropriate steps to ensure that purchases have not been derived from illegal sources.

Monitoring Organizations

- Operators can establish their own due diligence procedures, or join other systems which operate a due diligence system.

Risk Mitigation

- “Risk mitigation” refers to “adequate and proportionate” procedures aimed at minimising the risk of procuring illegally sourced timber.

FLEGT

- Timber products that fall under the terms of a FLEGT VPA will not be subject to additional requirements.

Wood tracking

- Operators can be required to identify the “sub national region and concession of harvest” for products.

European Trade Controls – II. Forest Law Enforcement, Governance and Trade (FLEGT)

Before the Due Diligence model was developed, the European Commission developed another way to get around the WTO trade problem.

In 2003, the EU published its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.⁴¹ The FLEGT Action Plan’s key proposals included:⁴²

- The negotiation of bilateral FLEGT voluntary partnership agreements (VPAs) with producer countries;
- Capacity building assistance to partner countries to set up the licensing schemes, improve enforcement and, if necessary, initiate legal reforms;
- Examination of EU member states’ existing domestic legislation, and consideration of additional legislation to prohibit the import of illegal timber;
- Encouragement of the use of government procurement policy to limit purchases to legal and sustainable sources;
- Encouragement of voluntary industry initiatives to control their own supply chains, and thereby exclude illegal products; and
- Encouragement for financial institutions to scrutinize flows of finance to the forestry industry.

The European Union developed a series of Voluntary Partnership Agreements (VPAs) to help reduce trade

⁴¹ Brack (2008)

⁴² Illegal-logging.info (2011)

in illegal timber. VPAs are the mechanism used to put the FLEGT licensing system into effect. They put into place a licensing system designed to identify legal products and license them for import into the EU. The agreements also include details regarding the appropriate capacity building assistance, enforcement improvement and legal reforms.

There have currently been three agreed VPAs, in Ghana, the Republic of Congo and Cameroon. A series of VPAs are also currently under negotiation between the EU and timber producing and exporting countries including Central African Republic, Indonesia, Liberia and Malaysia. Informal talks are proceeding in many other countries.⁴³

Under FLEGT, the EU regulates trade through legally binding bilateral agreements so that the measures proposed in the FLEGT system do not breach WTO rules. By these means, the measures are legally removed from the purview of the WTO. The second party concedes to EU import authorities the right to determine if the national authorities of the exporting nation have implemented the terms of the bilateral agreement. This is a surrender of sovereign authority which cannot occur if both parties regulated their trade under WTO rules.

The EU describes the system as ‘voluntary.’ Yet the EU has made quite clear that if developing countries elect not to participate in the ‘voluntary’ program, they will be denied access to EU markets.⁴⁴ Not surprisingly the uptake of this system among developing countries has been slow.

Australia’s Illegal Logging Policy – The Illegal Logging Prohibition Bill

On March 23, 2011, a consultation draft of the illegal logging prohibition bill was tabled in the Australian Senate. The purpose of the bill is to:

‘Reduce the harmful environmental, social and economic impacts of illegal logging by prohibiting the importation and sale of illegally logged timber products in Australia. The Illegal Logging Prohibition Bill 2011 (the Bill) represents a major step by Australia to support the legal trade of timber products both nationally and internationally.’

The bill prohibits the importation and processing of certain timber products. It also:

- Prohibits the importation of illegal logged timber or ‘regulated timber products’ (yet to be defined) containing illegally logged timber;
- Prohibits the importation of a ‘regulated timber product’ without Ministerial or timber industry certifier approval;
- Prohibits the processing of raw logs by a ‘class of persons’ (yet to be defined) into other products without Ministerial or ‘timber industry certifier’ approval;⁴⁵

Yet the EU has made quite clear that if developing countries elect not to participate in the ‘voluntary’ program, they will be threatened that their access to the EU markets will be cut off.

⁴³ Illegal-logging.info (2011b)

⁴⁴ A report from the Commission to the European Council and the European Parliament in 2003 on EU strategies to a deal with illegal logging sets out an operational proposition that if developing countries don’t cooperate ‘voluntarily’ the EU would reduce import access. See EU, COM (2003) 251 Final – *Communication from the Commission to the Council and the European Parliament – Forest Law, Enforcement, Governance and Trade – Proposal for an EU Action Plan*, pp. 15 where the Commission indicates it will consider proposing legislation to ban imports of illegal timber products if no multilateral arrangements for this can be negotiated (i.e. under the FLEGT system).

⁴⁵ This prohibition does not readily come under the Federal Government’s Constitutional power, therefore it only applies when selling to or processing is done by a Commonwealth Authority; if the processor is a Corporation or selling to a Corporation; if it occurs in a Territory; or processing is done for the purpose of trade between States.

Green Protectionism — Illegal Logging Controls Another Tool

At the same time that concern about illegal logging started to rise in industrialized economies, the focus on illegal timber harvesting was turned on major plantation timber industries in tropical developing countries. Major companies in the Congo, Guyana, Indonesia, Brazil and Papua New Guinea were subject to strident criticism by NGOs claiming that they practiced illegal logging.

The Swiss owned forestry business Danzas, the largest in the Congo defiantly branded the Greenpeace campaign against the company as based on fabrications. Nevertheless, it ultimately concurred in NGO proposals that it certify its plantation as sustainable under the certification system of the Forest Stewardship Council (FSC), of which Greenpeace is a member and WWF a founder.

It is also notable that the most productive and competitive plantation and pulp and paper industries in the world are located in Indonesia and China, and that they are exerting considerable market pressure on leading producers in Europe and the United States.

WWF has made clear its intention to use the FSC system to capture the timber and paper supply chain to advance its goal to halt the clearing of forest land worldwide. WWF markets, as an advantage of membership of FSC, the opportunity for business members to join timber trade networks which it has established. The networks were established to try to build markets for FSC certified companies, but the marketing reality about certified timber is that there is little consumer willingness to pay extra for certified timber products.

Perhaps the leading advantage of membership of the networks is that it may reduce the temptation for other NGO members of FSC, such a Greenpeace, to pressure business members of FSC, as it routinely does, to agree

to progressively more onerous certification standards. This is a major risk for any business which joins the FSC system.

An interesting development in parallel has been the emergence of coalitions of environmental NGOs, organized labor and uncompetitive paper processors in developed country markets seeking to utilize Green protectionism to advance their common interests. These interests pressed for the Lacey Act to be amended in the U.S.

WWF has made clear its strategy is to capture the largest companies in the paper and timber industry to commit to its forestry sustainability objectives, namely a reduction in forest land clearance. It is also notable that the most productive and competitive plantation and pulp and paper industries in the world are located in Indonesia and China, and that they are exerting considerable market pressure on leading producers in Europe and the United States.

To ward off the competitive threat, paper producers in the U.S. and Europe have resorted to pressing for anti-dumping duties to be imposed on the imports of paper products from Asia in the U.S., the EU and Australia. While these systems frequently operate to the advantage of the plaintiff, several of the suits have failed.

One was in Australia, where two of the companies supporting an NGO inspired campaign to impose trade bans on illegal timber imports made quite clear their aim was to stop cheaper products from entering Australia. One was IKEA which has committed only to use timber which is certified by the FSC and the other was Kimberly Clark Australia, a paper producer which failed to win its claim for anti-dumping duties to be levied against paper imports from Indonesia, and subsequently closed one paper mill in Australia because it was uncompetitive.

There is little doubt that the campaign to halt illegal timber imports is part of a global strategy by WWF and its allies to use complex regulatory systems to further regulate the import and production of supposedly illegal products. WWF's aim is to utilize Green Protectionism to advance its general program to limit commercial forestry.

These forms of trade protection show little or no regard

for the welfare of the developing world — that requires land use change to feed growing populations — or for the principles of free markets and open competition—the same principles which are claimed to underpin the markets of developed countries.

These forms of trade protection show little or no regard for the welfare of the developing world

IV. WTO and Illegal Logging Trade Bans

Constraints in WTO Law

The EU's FLEGT licensing system, its Due Diligence legislation, the U.S. Lacey Act, the Australian illegal logging policy and other public procurement policies all represent efforts to exclude or reduce illegal timber from domestic markets. As these measures are designed to control international trade in timber and timber products, they conflict with the WTO's rules governing international trade.⁴⁶ Specifically, the case under which a requirement for proof of legality for imports could possibly contravene WTO rules includes:⁴⁷

- Where the requirement is a trade restriction imposed at the border other than a duty, tax or other charge;
- If the requirement is imposed for some countries and not others, or the system is designed to discriminate between illegal and legal timber, products which could potentially be considered as 'like products'; and
- If imports are treated differently from domestic timber production.

Principle of Non-Discrimination in Trade

The WTO system is based around the principle that members are not permitted to discriminate between traded products produced by different WTO members, or between domestically and internationally produced products.

Article I:1 of the GATT states that member countries must accord the same treatment (including duties, charges, rules and formalities) of any 'like product' to all countries. Article III:4 states that imported products should be accorded treatment no less favorable than 'like products' of national origin.

Some argue that it is not clear whether legal and illegal timber should be considered to be 'like products' as the

GATT does not define what is meant by a 'like product.'⁴⁸ This contention is usually advanced by those sympathetic to the idea that there should be scope in WTO rules to allow trade restrictions to be imposed to advance an environmental goal.

Mainstream trade lawyers argue instead that there is a long standing view in GATT/WTO dispute settlement about what constitutes a like product. They consider in this scenario a high probability that any effort to claim a product which was different to another product because of the way it was produced should be subject to a different form of trade control would be ruled in violation of basic GATT rules.⁴⁹ As the physical properties of both illegal timber and legal timber are identical, and production processes are similar, it is unlikely they can be viewed as different products.

The issue of "product vs. process" has previously been recognized in WTO disputes. In the early 1990s tuna-dolphin dispute, the WTO ruled against a U.S. ban on Mexican tuna, arguing that regulations cannot differentiate on the basis of production method or process. However, in the shrimp-turtle dispute in the mid-1990s, the WTO upheld a U.S. ban on Malaysian shrimp based on the process of production, and not the product itself.

GATT Article XX

If legality requirements are found to be in breach of Article I or Article III, it could be argued that they are still permitted under the general exceptions of the GATT.

Under Article XX of the GATT, there are general exemptions which permit unilateral trade restrictions, including measures '*necessary to protect human, animal or plant life or health*' and those '*relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.*' However, these measures are required to be applied by WTO members in such a manner that they do not arbitrarily or unjustifiably discriminate between countries.⁵⁰

⁴⁶ Brack (2009)

⁴⁷ Brack (2009)

⁴⁸ Brack (2009)

⁴⁹ See Mitchell, Andrew and Tran Christopher (2009)

⁵⁰ WTO (1947)

The dispute as to whether restrictions on the import of illegal logging are justified under Article XX, depend on whether enforced measures can be considered 'necessary' to the environmental objective, or whether alternative measures could be imposed such that there would be less trade distortion.⁵¹

The Proportionality Principle

The principle of proportionality states that no regulation or law should impose any obligation which is more than necessary to achieve the objective, regardless of the intent of the measure. The principle implies that any measure imposed by government must be appropriate and reasonable to achieve the intended purpose, as well as necessary in that it does not go beyond what is necessary to achieve the objective.⁵²

The principle was initially developed in the German legal system, and is a fundamental principle of European Union Law. Under EU Law, member states' procurement policies must comply with the principle of proportionality, such that *'measures implemented through provisions should be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it.'*⁵³

In addition to EU law, despite having no explicit reference in the GATT, the principle of proportionality is one of the basic underlying principles of the WTO trading system.⁵⁴

Implications of EU, U.S. and Australian Trade Bans

The scope for interpretation in WTO laws leads to uncertainty and disagreement over what the WTO rules might mean in practice, particularly in the case of import restrictions on illegally logged timber. There has not yet been a dispute case involving trade measures taken to reduce illegal logging or to keep illegal timber products out of international markets, so it is not known exactly how the WTO would rule.

On the other hand, ruling on the legality of a product or process by which it was created was never what the

GATT was established for. The GATT implicitly recognizes the national sovereign right of each member state to regulate commerce. That is its sole purpose. The determination of the legality of any product or activity in any sovereign state is for the relevant national authorities to determine and police, not an international instrument designed to regulate the terms of commerce to enable economies to secure the benefit of the comparative advantage of their national economies.

The dispute as to whether restrictions on the import of illegal logging are justified under Article XX, depend on whether enforced measures can be considered 'necessary' to the environmental objective...

Currently, by describing legality systems as voluntary, import restrictions such as those imposed by the EU claim to be WTO consistent. This can be claimed as systems such as EU procedures on FLEGT require developing countries to surrender their WTO rights.

If developing countries formally reserved their WTO rights, it is likely that such systems would be in breach of WTO rules as there is nothing in the rules which give countries general rights to ban the import of products unless the legality of the product is specifically verified.

Specifically, such systems are likely to be in breach of WTO rules due to contravening facts such as:

- **Restrictions on illegal timber.** If illegal and legal timber are considered to be *'like products'* then a system designed to discriminate between illegal and legal timber is in breach of Article I of the GATT;

51 Brack (2009), pp. 2

52 Jesuit Refugee Services

53 ClientEarth (2010) pp. 4

54 Mitchell, A. (2007)

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- **Restrictions on timber are not proportional to the environmental objective.** There may be an environmental benefit from reducing illegal logging. However, the costs associated with measures to address the problem can be significantly higher than the achievable benefits. There are likely to be other regulatory options available which are less distorting. In this case, restrictions may be in breach of the general exemption conditions in Article XX as they are greater than what is ‘necessary’ to protect plant life;
 - **Restrictions on timber are not imposed on domestic production.** If countries do not impose the same burden to prove legality of timber on both domestic and imported timber, the restrictions may be in breach of Article III of the GATT as well as the Agreement on Technical Barriers to Trade; and
 - **Restrictions are imposed for some countries.** If countries do not impose the same burden to prove legality of timber on all countries, the restrictions may be in breach of Article I of the GATT.

V. The Cost of Restrictive Logging Regulations

The Benefits of Logging

Forests cover 31% of the world's land area, with Russia, Brazil, Canada, the U.S. and China being the five most forest rich countries. 35% of the world's forests are used for the production of wood and non-wood forest products.⁵⁵

The forestry industry has significant economic importance to all countries. Timber supplies thousands of crucial products to all economies, including structural material for construction, wood pulp for paper production and raw materials for furniture making. Wood products are also used in the production of less obvious products including varnish, food goods and baked goods, deodorants and cleaning compounds.⁵⁶

The forestry industry is a significant contributor to economic growth in many countries, contributing to over 2% of the world's economic output.⁵⁷ In 2005, the total revenue collected from forests by governments in the form of taxes, fees, charges and royalties was over \$USD14.6 billion, globally (excluding taxes collected from all sectors of the economy, such as sales tax).

Export sales are also significant, with over \$USD189 billion in forestry products were traded around the world in 2009.⁵⁸ Countries such as Finland gain 60% of foreign income from forestry.⁵⁹

The industry is also an important source of employment for workers, both within the industry as well as in downstream industries. Over 1.3 million people were reported as working in public forest institutions alone in 2008. In 2005, it is estimated that approximately 11 million people were working in employment related to the primary production of forest goods.⁶⁰

The forestry industry is also a source of energy, contributing to 17% of the energy supplies of developing economies and a much higher percentage in many poorer countries.⁶¹

The Cost of Imposing Restrictive Logging Regulations

There are significant costs associated with implementing schemes to restrict the import of illegal timber — (such as legality verification schemes and import restrictions). These costs include compliance and enforcement costs as well as costs to producers and consumers. Costs of removing illegally-sourced timber include:⁶²

The industry is also an important source of employment for workers, both within the industry as well as in downstream industries.

- **Compliance and enforcement costs.** There are costs associated with public administration to enforce legality restrictions on imported timber products. These costs include transaction costs, administration costs, compliance costs and enforcement costs involved in implementing legality verification schemes. In addition to annual administration costs, there are also significant costs associated with developing legality compliance options or import restrictions and developing systems of compliance;
- **Costs to producers.** Legality verification schemes place significant costs in the form of business compliance costs on producers in source countries and on importers and other players in the supply chain. Producers will face costs associated with the administrative burden of proving the origin of their timber sources. In order to meet international trade

55 FAO (2010), pp. xiii

56 Idaho Forest Products Commission (2011)

57 FAO (1993)

58 FAO (2010b)

59 FAO (1993)

60 FAO (2010)

61 FAO (1993)

62 CIE (2010), pp. 12.

obligations of no discrimination between domestically and internationally produced goods, domestic producers would also be subject to the same requirements as imported products;

- **Costs to consumers.** Compliance costs will have a significant effect on consumers, as increased costs of supply are passed on in the form of increased prices. Consumers will face higher prices for timber, and may reduce their consumption of timber products and substitute for other products — such as plastic, aluminum, cement, etc; and
- **Costs to downstream industries.** In addition to imposing costs on producers of timber and higher prices for consumers, any legality verification scheme or import restriction will also impose increased costs on the production of any goods which incorporate timber, such as furniture, paper and construction. Consequently, the price of timber products will increase.

These costs not only affect the economy imposing the restrictions, but also have a detrimental impact on the wider global economy. Any trade restriction has distortionary effects on the global economy, resulting in a net loss to society. This is no different for import restrictions to reduce the import of illegal timber.

These costs not only affect the economy imposing the restrictions, but also have a detrimental impact on the wider global economy.

In 2010, the CIE conducted a Regulation Impact Statement on the proposed new policy on illegally logged timber in Australia. The report found there is an overall net cost from unilaterally implementing import restrictions and product disclosure elements.

It was found that the costs outweighed the potential benefits of the scheme. Specifically, it was found that any unilateral action taken by Australia is likely to be ineffective in reducing illegal logging because of the potential for illegally logged timber products to be diverted to less discerning markets, and due to the fact that Australia represents such a small part of the global market.

VI. The Use of Trade Bans to Promote Environmental Goals

Trade Bans Negatively Affect Welfare

In economic theory, international trade controls are detrimental to global welfare. Trade bans have a number of unintended consequences as they distort normal market behavior. They have a significant negative impact as they impose an overall net cost to producers and consumers.

Trade restrictions on illegal logging are no different. 'Due diligence' requirements on importers, including a burden to demonstrate wood products are 'legal,' impose compliance costs on importers of products which have a similar negative impact to that of an import tariff.

Imposing additional requirements on importers increases the cost of supplying goods and, consequently, the domestic price of wood products increases. As prices increase, consumers purchase less. Consumers are made worse off as they are now purchasing less at a higher price. Producers are also made worse off as although they may be receiving a higher price for their product, their input costs are higher and they are selling less. There is an overall net economic loss to society.

Trade controls should not be used to achieve non-trade goals; it weakens the capacity of countries to benefit from trade. Such controls have unintended effects which arise when free trade is distorted, specifically when controls which have only an indirect effect on the activity of concern are used to try and curb that activity.

Illegal Activities Should be Tackled Directly — Trade Bans Don't Work

The use of trade bans to achieve environmental objectives is poor policy as they are indirect measures, and therefore, relatively ineffective at securing environmental improvements.⁶³

Experiences with Multilateral Environmental Agreements (MEA), which creates rights to use trade sanctions, have shown that trade controls are often ineffective in achieving environmental objectives. For example, a UNCTAD case study on the Convention on International Trade in Endangered Species (CITES) in Indonesia and Thailand noted that trade sanctions have played only a limited and indirect role in inducing compliance with the Convention.⁶⁴ Other studies on CITES have found that trade bans on ivory aimed at protecting the African elephant have been highly questionable.⁶⁵

Trade controls will not work to curb illegal activity as they are simply placing another law on top of something which is already an illegal activity.

Trade controls will not work to curb illegal activity as they are simply placing another law on top of something which is already an illegal activity. Illegal loggers are already breaking the law by harvesting timber illegally. There is no logical reason to assume that further restrictions will reduce their illegal activities.

For example, the case study of CITES in Thailand found that despite trade sanctions restricting illegal wildlife trade, legislation has been inefficient in minimizing endangered wildlife trade in many species. Illegal traders have found ways to avoid the law, including a number of loopholes, and continue to trade in illegal wildlife.⁶⁶

⁶³ See ITS Global (2005)

⁶⁴ Jha, V. and Hoffmann U. (2000), pp 77

⁶⁵ Sugg, I. and Kreuter, U. (1994)

⁶⁶ Jha, V. and Hoffmann U. (2000), pp 77

VII. Recommended Strategies to Tackle Illegal Logging

Conclusions

Environmental campaigns have pushed for the introduction of regulations to restrict the import of illegal timber. However, research has shown that illegal logging is not as significant as environmental lobbyists have claimed.

Many of the statistics on illegal logging have been based on biased and unreliable figures. In most instances, figures can be attributed to a single study which has been identified by the author as having serious limitations and potential inaccuracies.

The forestry industry is a significant contributor to economic growth in many economies, particularly in developing countries.

Trade policies which restrict the importation of illegal timber are based on unreliable statistics. Such policies should be avoided as they have a significant detrimental impact on the economy of both importing and exporting countries.

The forestry industry is a significant contributor to economic growth in many economies, particularly in developing countries. The sector provides crucial products both for everyday consumption and as inputs into many other key sectors. It also provides significant employment and national income through exports.

It has been demonstrated that the costs associated with imposing trade restrictions on timber can vastly outweigh any benefits that may be obtained from the scheme. As such, proposals to reduce illegal logging should instead be focused on policies which do not threaten economic growth.

Illegal Logging and the Problem of Development

There is no disagreement among forestry and development institutions that the leading cause of illegal logging is poverty and financial insecurity. It is routine for groups like WWF and Greenpeace to brand major forestry companies as the leading drivers of illegal logging. This is just politicking. The larger companies are properly organized businesses which can practice sustainable forestry and are the natural clients for use of forest certification systems.

Illegal logging will not be stopped by trade controls; it is like smuggling. The creation of law and a system of regulation does not stop someone acting illegally. The only solution to stop illegal logging is to raise living standard and provide economic security.

Resorting to heavy handed, expensive, inefficient and heavily-regulated controls on trade will not solve the problem of illegal logging. It will be apparent from the foregoing that the global strategies that are being pursued to halt illegal logging are in fact part of broader strategies to limit commercial forestry in the developing world by imposing restrictions on clearance of forest land (regardless of how much land may have already been set aside for forest conservation). These strategies are either to advance an environmental objective or to support a strategy to inhibit the development of globally competitive industries in developing countries. Either way these are strategies designed to restrict the capacity of developing countries to raise living standards.

Guiding Principles

Protection of the environment is an important issue. However, systems for combating illegal logging must also consider the possible negative effects on importing and exporting economies, as well as issues of national sovereignty and the rules of international law. When systems for combating illegal logging are considered, the following guiding principles should apply. Principles should seek to advance strategies which support the capacity of developing countries to raise living standards. Principles should also avoid the uncivilized notion that it is acceptable to use coercion to advance any objective instead of complying with well established principles to guide cooperation among nation states to achieve common interests:

- Respect for national sovereignty. It is a basic principle in international relations that governments have the sovereign right to manage their own affairs. Legislation and law enforcement — including over a nation's natural resources — are issues of national sovereignty. Measures to restrict illegal logging should not infringe on national sovereignty and the right for countries to govern themselves. International laws that impact on countries should be developed with the consent of the states themselves. Under national laws, forest conversion and the products resulting from them may be legal;
- Respect for international law. WTO member countries have assumed obligations and duties under international trade law. WTO rules operate to reduce obstacles to trade and to assist the flow of free trade. These rules have been established with consideration of their impact on environmental policy. Measures to restrict illegal logging should not breach the principles of WTO agreements; and
- Adherence to the principle of proportionality in regulation. The principle of proportionality is a fundamental principle of law, including European Union Law. It states that no regulation or law should impose any obligation which is more than necessary to achieve the objective. Any measure taken to tackle illegal logging must not be heavy handed; it must be proportional to the relative size of the problem, in terms of both costs and benefits.

Recommended Options

Trade restrictions should be avoided as they often have a negative net effect on the economy of importing and exporting countries. Policy options should fully consider all costs imposed on importing and exporting economies. Options for combating illegal logging should include:

- **Avoiding trade bans.** Only non-regulatory policy options to combat illegal logging. The costs of imposing trade bans on illegal timber are significantly larger than the benefits. Free trade is preferable to restrictive trade policy, as restrictions on trade result in market distortions and dead-weight economic loss;

- **Bilateral arrangements.** Bilateral arrangements can be used to tackle illegal logging by directly influencing reform and enforcement of law in the country of origin.⁶⁷ Such programs can also be targeted to address problems specific to the timber producing country;
- **Burden of legality.** To ensure respect for national sovereignty, governments of exporters should be required to attest to the legality of national producers. Timber products which are considered illegal under the standards of importing countries may be legal under the national law of the exporting country;
- **Compliance through voluntary certification or mandatory regulation.** Producers should demonstrate compliance by voluntary compliance with codes or voluntary certification or compliance with mandatory national regulation;
- **Capacity building initiatives.** Instead of imposing mandatory restrictions on the import of illegal logs, capacity building programs can be implemented to tackle the problem of illegal logging at its source. These programs can be used to educate the local population as well as to change ambiguous laws and/or to improve enforcement. Such programs can establish influence without creating reasons for retaliation or non-cooperation;⁶⁸ and
- **Applying the proportionality principle.** If regulatory control of imports is considered essential, the proportionality principle should be applied before any restrictive measure is imposed.

It has been demonstrated that the costs associated with imposing trade restrictions on timber can vastly outweigh any benefits that may be obtained from the scheme.

⁶⁷ CIE (2010), pp. 101

⁶⁸ CIE (2010), pp. 101

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