

## **Why rule out illegal wood?" Why & how has legislation developed in Europe and the USA?**

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### **Why has legislation been introduced in the EU and USA?**

When introducing presentations on Lacey or the EU timber law its traditional to talk about a certain % of wood imports or global production being derived from illegal sources at a cost of so many billions of dollars.

I'm not going to repeat the numbers. Frankly, I don't have much confidence in their accuracy or think they have much relevance to the discussion in hand. The rhetoric has played an important role to move the agenda forward. But now these laws are in place it is time to put them in their true context. What is the real contribution that they can make? How can we make them work in practice?

Much of the political dialogue to date has given the impression that we understand the scale of the illegal logging problem - that we have a clear idea of where it is occurring and why. I'm not sure that we do. The numbers on levels of illegal logging are often poorly researched. In some instances they are still heavily dependent on how the term is defined. The level of illegal wood exported from Papua New Guinea, for example, has been variously estimated at 0% or 100%. Which number you accept seems to depend on different interpretations of the legal framework and different biases with respect to the legitimacy of industrial logging in tropical forests.

That's not to say that illegal logging is not a significant problem. There is plenty of evidence indicating it is widespread and very damaging in parts of the humid tropics, Eastern Europe and the CIS. However, it is also symptomatic of other deeper problems the importance of which varies from one place to another. These include:

- Weak land tenure – acting as a disincentive for long-term forest management and an incentive for timber mining for short-term profit;
- Pressure to convert forest land for more profitable uses, especially commercial agriculture;
- Lack of technical and administrative resources for forest law enforcement;
- Corruption in government and forest and other agencies;
- A democratic deficit leading to national governments imposing forest laws without proper consultation or consent, or with little understanding of the technical or economic realities of forestry practice, or without considering the needs of communities for energy, land, materials or livelihood.

What is often overlooked in this debate is that there are many areas of the world where the combination of secure land tenure, strong civil society, a wealthy and educated population, a free press and a free and **lightly regulated timber trade** have effectively delivered not only legal but also sustainable forestry practices.

What conclusions can we draw from this with respect to the Lacey Act Amendment and the EU Timber law?

First it's clear these laws must work in lockstep with national processes in producer countries to improve forest governance. They should act to maximise the leverage offered by western markets to encourage wider participation in these processes. Many countries are already engaged in concerted efforts to improve forest governance. The laws should help boost these efforts.

Second, these laws should not be seen as a mechanism to increase the level of state control over the global wood trade. Rather they should be a mechanism to create a level playing field. The laws should positively benefit those producers demonstrating minimal risk of illegal supply. These producers should be given increased market access without imposition of significant new additional costs.

Third, there is an essential need to improve quantitative data on the genuine risk of illegal wood entering European and North American supply chains. Only through collection of this data can we know where best to target resources. It's the only way can we avoid imposing new and unnecessary controls on wood from areas where the risks of illegal supply may, in fact, be very low.

We also need to view these new laws as an opportunity to develop an efficient risk-based model for environmental procurement. This model should, in time, be extended to other timber consuming countries and, indeed, to other material sectors with a larger environmental footprint.

### **Content of the EU Timber Law and Lacey**

Now, you have to understand that as someone from Yorkshire in northern England, I'm inclined to criticise anything and everything that comes out of Brussels. But with the Timber Law, as much as it pains me to say it, the EU seems to have done a reasonable job to navigate this very difficult terrain. Certainly there is much work to be done to ensure effective and fair enforcement. But this is a truly innovative piece of legislation which might actually work.

I'll only briefly describe the content of the EU Timber Law and the Lacey Act. There are differences in detail, but the mechanisms behind both laws are essentially the same. The central component is a prohibition on trading products derived from illegally harvested timber within the EU or US. Note that in neither case does the prohibition place an obligation on operators to positively demonstrate legality as a pre-requisite to dealing in timber. The European and US authorities must prove that a timber product derives from an illegal source to prosecute under the prohibition articles of both laws. Both laws also effectively oblige timber importers to exercise due care to minimise the risk of illegal wood entering their supply chains.

### **Why these laws?**

So why these laws – why focus on legality when the real prize is sustainability? And why introduce due diligence obligations for traders rather than simply demand government-endorsed legality certificates at point of delivery into the market?

The answer to these questions has much to do with national sovereignty and WTO compliance. Consumer country laws demanding production standards different from those enshrined in the laws

of producer countries are seen by producers, quite naturally, as a significant infringement of their national sovereignty.

Unless conformance to rules for “sustainable timber” can be demonstrated through internationally recognised standards and certification systems, all such measures run the risk of challenge under the WTO’s non-discrimination rules. Systems like FSC and PEFC have considerable merits. But neither can yet claim to be built on a national consensus forestry standard within all the member states of the WTO. There are still big gaps in their international networks. Less than 2% of forest in Asia, Latin America and Africa is currently FSC or PEFC certified. Even within North America and Europe, the vast majority of non-industrial private forest owners are not yet engaged in forest certification.

So it is politically more acceptable and more constructive for consuming countries to assist producer governments to enforce their own forest laws than to attempt to dictate sustainability standards.

And why not an international legality licensing system? This would require development of a global framework to regulate the entire wood production chain from extraction through to entry into the EU or US market. Such a response would be disproportionate. Consider that at most 5% of wood consumed in the EU is at risk of being derived from an illegal source. It would add unnecessary costs in supply of wood from regions where there is little risk of illegal logging. There would be significant potential for discrimination against smaller non-industrial owners given the difficulties of tracking wood where these owners predominate. Resources and capacity for such a system are lacking - with the result that it may well just lead to an explosion in the numbers of bogus legality licenses.

### **The practical option**

So the EU and US governments have taken the only practical option. This is essentially to reinforce existing codes and procurement policies developed by the private sector to reduce the risk of illegal wood entering supply chains.

There are many examples of these initiatives. Some European timber trade associations have been developing these for the better part of two decades. I was recruited by the UK TTF in 1991 to help implement their first procurement policy for members. This subsequently evolved into a comprehensive due diligence tool requiring: risk assessment of all products and suppliers; setting of targets and action plans to eliminate high risk products and suppliers; and backed by annual reporting and independent audits of the whole system.

Similar due diligence systems have been evolved by Le Commerce du Bois in France and the Netherlands Timber Trade Association. In North America, for many years the SFI Program has required participating companies to be audited against a procurement standard, including a requirement to assess the risk of any wood coming from an illegal source and a program to address any significant risks identified.

Other systems have been operating at international level for many years. Systems managed by the WWF’s Global Forest and Trade Network and The Forest Trust have played a particularly important role in supporting the procurement efforts of retailing companies.

Just to be clear, I'm not talking here about chain of custody systems for labelling of specific product lines. I'm talking about company procurement policies and management systems that require scrutiny of 100% of wood purchases to assess the risk of any being derived from illegal sources.

*Product certification systems like FSC and PEFC are an important tool for mitigating risk of illegality where identified for a specific wood product or source region. But they are not directly equivalent to the due diligence systems required by the EU timber law or implied by the Lacey Act. (The FSC's Controlled Wood Standard and the Due Diligence System defined in Appendix 2 of the PEFC Chain of Custody standard are a much closer parallel than either of their forest management certification systems).*

### **What about options for producers**

These new laws mean that companies shipping product into the EU and US will be under considerable pressure to demonstrate that there is very little risk of any wood coming from an illegal source.

Where shippers are confident of good forest governance, the simplest and cheapest option may be for them to commission independent research compiling quantitative evidence to confirm low risk. This is the approach adopted by the American Hardwood Export Council to help satisfy customer demands in Europe. Shippers could link such independent risk assessments with their own auditable due diligence systems. This would enable them to make legitimate claims that all their wood purchases derive from low risk sources.

An option for some shippers sourcing from areas where forest governance problems exist is to work through national forest law enforcement processes. For example, EU-sponsored FLEGT VPA processes are facilitating nationwide legality licensing systems in an expanding range of tropical timber supplying countries.

Where these systems are absent or slow to develop, shippers sourcing from higher risk regions will have to work through private sector third party legality verification and certification systems.

### **Perceptions of the wood industry**

Finally I want to refer to communication issues. So far the media doesn't appear to have paid much attention to these new trade laws. But the few reports I've seen have been negative.

National newspapers in Indonesia and Vietnam have simply presented the laws as another example of western protectionism. Nothing positive was said about the potential role of demand side measures to support forest law enforcement efforts in producer countries.

Meanwhile reports in national media in Europe have focused heavily on the complaints of green party officials about alleged short-comings in the legislative text. Last month the London Times ran a report on the EU Timber Law in its "Greenwash" column. This begins with the usual numbers on illegal wood imports and tropical deforestation and goes on to suggest that:

*"there are worrying signs that suppliers and retailers will find loopholes [in the new legislation], enabling them to carry on profiting from the destruction of natural tropical forests....the licensing*

*systems in many rainforest countries are weak and subject to corruption, so millions of tonnes of hardwood hacked from natural forests will be defined as legal and end up on our DIY store shelves".*

### **We need to make this work**

It seems to me the best response to this kind of coverage is to make the legislation work and then to shout about it from the roof tops. In this legislation there lies a genuine opportunity for the wood industry to turn the media coverage around. An effective response could put to bed once and for all lingering doubts about the legality of wood products – doubts which undermine the reputation of the whole industry. After all, the wood industry will be the first major materials sector able to claim that 100% of raw material is demonstrably of low risk of being derived from an illegal source.

Perhaps then, the powers that be will be encouraged to switch their attention away from timber trade regulation and start to address the destructive effects of widespread illegal bauxite and iron ore mining and the rampant corruption that pervades large swathes of the global oil industry.

Rupert Oliver 11 April 2011