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Additional options to combat illegal logging
DOCUMENT FOR PUBLIC CONSULTATION

TABLE OF CONTENTS

1. INTRODUCTION
2. EXISTING LEGISLATION OF RELEVANCE TO EXCLUDING ILLEGAL TIMBER AND TIMBER PRODUCTS FROM EU MARKETS
 - 2.1 COMMUNITY LEGISLATION
 - 2.2. NATIONAL LEGISLATION
 - 2.3. INTERNATIONAL FRAMEWORKS
3. ANALYSIS OF EXISTING LEGISLATION
 - 3.1 UNDERLYING ISSUES AFFECTING THE USE OF EXISTING LEGISLATION
 - 3.1.1. Definition of illegal timber and timber products
 - 3.1.2 Establishment of a physical link between timber and timber products with an illegal act
 - 3.1.3 Proof of Legality or Illegality
 - 3.2 CRIMINAL AND CIVIL LAW
 - 3.2.1. Criminal Law
 - 3.2.2. Civil Law
4. OPTIONS
 - 4.1. FLEGT PARTNERSHIP VOLUNTARY AGREEMENTS
 - 4.2 PRIVATE SECTOR VOLUNTARY SCHEMES
 - 4.3 IMPORT BAN
 - 4.4. LEGISLATION REQUIRING THAT ONLY LEGALLY HARVESTED TIMBER AND TIMBER PRODUCTS ARE PLACED ON THE EU MARKET
5. FINAL QUESTIONS
6. BACKGROUND INFORMATION

1. INTRODUCTION

During the past decade there has been increasing awareness of the impact of illegal logging on the environment and on the development of affected countries. A key event which brought the issue on to the international agenda was a high level meeting on Forest Law Enforcement and Governance (FLEG) held in Bali in 2001. This was the first of several regional [FLEG processes](#) organised by the World Bank.

Building on an announcement by Commissioner Nielson in 2002 at the World Summit on Sustainable Development, the Commission adopted an [EU Action Plan for Forest Law Enforcement, Governance and Trade \(FLEGT\)](#) in May 2003. The Council of the European Union supported the Commission's proposal in October 2003. The European Parliament considered the FLEGT Action Plan in January 2004.

A key element of the EU FLEGT Action Plan was the proposal to establish a voluntary system to ensure that only legally harvested timber is imported from countries agreeing to take part in this scheme by entering into FLEGT Voluntary Partnership Agreements (VPAs). The Commission submitted a Proposal for a Council Regulation in 2004 concerning the establishment of a voluntary FLEGT licensing scheme for imports of timber into the European Community. The Regulation was adopted by the Council in December 2005 as [Council Regulation 2173/2005](#). It establishes a Community set of rules for the import of certain timber products from partner countries for the purposes of implementing the FLEGT

licensing scheme. The licensing scheme shall be implemented through Voluntary Partnership Agreements with timber-producing countries. The Council also agreed a mandate for the Commission to negotiate FLEGT VPAs with interested countries on behalf of the European Community. During 2006 there have been a number of informal consultations with potential FLEGT partner countries. Two countries – Malaysia and Ghana– have formally agreed to start to negotiate such an agreement with the European Community.

It was apparent from the start that the bilateral approach proposed by the Commission could potentially be circumvented, and did not provide the EU with a means to address illegal logging and related trade from non-FLEGT partner countries. Thus, in its 2003 Communication on an EU FLEGT Action Plan, the Commission stated that it would undertake an analysis of the options for, and the impact of, further measures, including, in the absence of multilateral progress, the feasibility of legislation to control imports of illegally harvested timber into the EU and report back to the Council. Specific questions to be addressed would include the possibilities to enforce such rules, procedures for distinguishing legal from illegal timber arriving from countries which are not participating in the voluntary licensing scheme; and how to treat shipments of wood from non-partner countries which are suspected to be of illegal origin.

The Council of the EU and the European Parliament have recalled this commitment in formal Conclusions and Resolutions.

In the intervening period a number of studies have been carried out by EU Member States providing an analysis of their national legislation of relevance to excluding illegal timber from EU markets. Some of these studies also discuss the feasibility of additional legislation, either at EU or Member State level. Think-tanks and environmental NGOs have also provided substantial inputs on potential further measures. [click [here](#) for further information]

In view of the considerable existing work carried out to date, the Commission has decided to submit to the public for discussion the main additional options that have been identified to combat illegal logging and its associated trade in the EU.

The basic premise of this consultation is that the EU wishes to strengthen efforts to combat illegal logging by assuming its responsibility as a potential important market for illegally harvested timber. The EU also wants to ensure that there is a level playing field for those producer countries committed to good forest governance and trade in legally harvested products. In this context the consultation's objectives are on the one hand to examine the necessity of additional measures and on the other hand to identify the appropriateness and feasibility of such measures.

2. EXISTING LEGISLATION OF RELEVANCE TO EXCLUDING ILLEGAL TIMBER AND TIMBER PRODUCTS FROM EU MARKETS

Before considering additional measures including new legislation, it is important to consider whether existing legislation – at international, Community or national level- may already be adequate to control imports of illegally harvested timber or products derived from such timber.

2.1 COMMUNITY LEGISLATION

As indicated above, the 2005 FLEGT Regulation establishes a FLEGT licensing scheme to function which will aim to ensure only legally harvested timber is imported from countries entering into FLEGT Voluntary Partnership Agreements with the EU. There is however currently no overall Community legislation dealing with the import and marketing of timber and timber products produced in breach of the laws of the country of origin, as pointed out in section 4.2.4 of the 2003 FLEGT Action Plan.

2.2. NATIONAL LEGISLATION

In response to the call of the European Parliament to examine possibilities to address illegal logging through existing domestic legislation, studies were carried out reviewing national legislation in Estonia, Italy, Netherlands, Spain and United Kingdom while a specific report on money laundering legislation was prepared by Germany. Further work has been carried out by Chatham House, London with funding from the UK. NGOs have also provided substantive contributions in the form of studies, reports and draft legislation, as well as through direct interventions in consultations. [link to Chatham House]

The work carried out to date suggests that there is some potential to address illegal logging through existing legislation such as that concerning theft and trafficking of stolen goods, money-laundering, corruption or smuggling. However in practice it is very difficult to establish a link between an alleged illegal activity in another country and a specific piece or shipment of timber. This is discussed further in Section 3.

2.3. INTERNATIONAL FRAMEWORKS

The Convention on International Trade in Endangered Species [link] and its transposition into EC Regulation [link] is the most relevant and potentially quite effective instrument to control international trade in timber species. However, it currently applies only to a rather small number of tree species (about 21) and therefore it does not provide a broad legal basis on which illegal timber can be excluded from the EU markets.

Trade in illegally harvested timber has not been specifically addressed in the international legal frameworks or the legally binding instruments concerning the fight against crime, though it has been discussed recently in the UN Convention Against Transnational Organised Crime . Currently the emphasis in this convention is on ensuring the effectiveness of the existing provisions rather than on including new issues.

In the international forest policy arena a number of countries have been open to discussion of control of illegal logging through international collaboration. However, others have blocked discussion in multilateral bodies such as the UN Forum on Forests, arguing that forest law enforcement is a sovereign issue, or that addressing it through trade is ineffective. Though it appears unlikely at present, the possibility of a pluri-lateral or a multi-lateral agreement addressing timber trade and legality should not be ruled out in the future.

3. ANALYSIS OF EXISTING LEGISLATION

3.1 UNDERLYING ISSUES AFFECTING THE USE OF EXISTING LEGISLATION

According to the studies carried out to date, the effectiveness of existing legislation is affected mainly by the following underlying issues:

3.1.1. Definition of illegal timber and timber products

According to the FLEGT Action Plan, illegal logging takes place when timber is harvested in violation of the laws of the country of origin. There is a range of illegal practices associated with logging and timber trade that can cover a number of types of offence. Thus there is no single definition of what constitutes illegal logging. Based on the notion of 'illegal' a variety of provisions from national penal, civil or administrative codes could be relevant, including theft, receiving/handling of stolen goods, tax evasion etc. Some of these offences are likely to be covered by equivalent legislation in different countries, but other offences, such as exceeding the quota allowed for harvesting of timber in a parcel of forest, may be subject to administrative rather than criminal penalties and not have equivalent status in both jurisdictions.

The FLEGT Voluntary Partnership Agreements allow for the EU and country concerned to agree on the scope of national legislation to be taken into account to identify "legal timber". In the absence of such negotiations any potential overarching EU legislation aimed at tackling trade in illegally harvested timber would probably need to include some form of definition of illegal logging. This would need to be flexible enough to allow for variations in national legislation, yet precise enough to provide a degree of legal certainty on the scope of the legislation.

3.1.2 Establishment of a physical link between timber and timber products with an illegal act

The most important constraint to successfully act against trade in illegally harvested timber appears to be the difficulty in identifying the illegally harvested timber or timber products in the EU market. Legal action related to illegal logging in a third country will generally require demonstration of a direct link between a shipment or item of timber and the illegal act in the third country.

Physical properties: Trade is regulated for a limited number of tree species which are listed under the Convention on Trade in Endangered Species (CITES) Appendices. However, other than these species it is not possible to tell from the physical appearance whether a log or product made from timber is the result of legal or illegal logging.

Origin: The origin of timber and timber products is determined for Customs purposes following general rules in the Community Customs legislation. Under these rules the origin of timber products is the country where the product has been obtained from trees grown there or the place of last substantial transformation. For products in the latter category it is not possible to determine where the timber originally came from, i.e. whether before processing the timber was from the same country or was imported. Voluntary forest certification systems do allow the origin of timber to be traced back to a given forest, but there is no requirement for this level of traceability in statutory legislation. Thus it can be difficult to identify the country of origin of timber used in the manufacture of a product, let alone the area where it came from in the country of origin. Currently there is no obligation to submit a declaration of

origin where an importer does not wish to or is not eligible to benefit from a preferential tariff related to a country of origin.

3.1.3 Proof of Legality or Illegality

An additional issue in the establishment of a link between an illegal activity and a shipment of timber is that, in addition to the establishment of a physical link, it also requires a determination that the timber was harvested or obtained illegally. This could for example require (i) notification by the relevant authorities of the country where the trees were grown or (ii) the establishment of an offence through a court process in the country importing the timber, using evidence such as witnesses and taking into account the relevant legislation of the country where the offence was alleged to take place.

The first option is the simplest, but the poor governance conditions that contribute to illegal logging generally, as well as conflicting and inadequate laws would also affect the ability of a country to engage in international cooperation on administrative and customs related matters. The second option is possible provided that the offence –administrative or criminal- is established as such in the laws of the importing country. However, enforcement and/or judicial authorities may be reluctant to engage in a complicated and expensive process given their other priorities, such as control of drug trafficking.

Where mutual administrative assistance agreements do not exist it may difficult and time-consuming to obtain the flow of information or level of cooperation necessary to prove an illegal act.

3.2 CRIMINAL AND CIVIL LAW

3.2.1. Criminal Law

Illegal logging activities can constitute a number of criminal offences, such as receiving/handling of stolen goods, theft, bribery, fraud, corruption, smuggling and where illegal proceeds are generated, money laundering, whether being committed inside or outside the country of origin. In such a case it needs to be proven that the timber imported to the EU market is associated to a crime under the local law plus that the importer knew or should have known that the timber he bought and imported was harvested or imported in breach of the local laws.

3.2.2. Civil Law

The use of civil proceedings provides at least in theory an easier route than criminal proceedings in terms of the burden of proof and the level of knowledge/belief. The standard required –although not exclusively- is that the case is more likely to be true than not, while it is not necessary to demonstrate knowledge or belief of the importer. A hypothetical civil case of illegal logging would be harvesting and exporting timber without consent of the forest owner. The claim in that case has to be brought by the legal owner against the importer or the purchaser. However there would still be a need for evidence of the wrongful act and proof that the timber is associated to that act, while the issue of the applicable law would be raised.

4. OPTIONS

Bearing in mind the difficulties in utilising current legislation outlined above, the following options describe possible actions to address illegal logging and related trade. For each of the options a number of questions are posed to which you are invited to reply.

4.1. FLEGT VOLUNTARY PARTNERSHIP AGREEMENTS

The first option is to vigorously pursue the bilateral approach proposed under the FLEGT VPAs. With the adoption by the Council of a Regulation and authorisation to negotiate FLEGT Voluntary Partnerships at the end of 2005, the Commission is now commencing negotiation of FLEGT Voluntary Partnership Agreements with interested countries. Among the countries that have expressed interest in such VPAs are Malaysia, Indonesia, Cameroon and Ghana, while a number of other countries are considering as well. The emphasis in the FLEGT Partnerships is on a collaborative approach. FLEGT Partnerships will provide for capacity-building in addition to providing a legal framework to ensure that only legally harvested timber enters the EU from FLEGT Partner countries. Such capacity-building could include training, in particular for those involved in timber trade and converting.

While the FLEGT Partnership approach should provide considerable advantages to partner countries in terms of environmental protection, improved governance and image in the market place it must be recognised that some important forest product exporters to the EU may not wish to enter into such an Agreement, at least not immediately.

In a situation where there are countries with FLEGT Agreements with the EU and others without such agreements there is a risk of circumvention. In addition to direct exports from non FLEGT VPA countries, illegally harvested timber could be trans-shipped from FLEGT VPA partner countries through non-partner countries and avoid legality licensing.

1. Do you feel that the FLEGT Partnerships will be sufficient to ensure that illegally harvested timber does not enter the EU market?

No

2. Is it premature to consider further measures before the bilateral FLEGT approach has been fully implemented and before the full range of countries interested in concluding such partnerships becomes apparent?

No

3. Could further legislation undermine progress or interest in the collaborative FLEGT Partnership Voluntary Agreement approach as countries might put discussion on this approach on hold in anticipation of a different regulatory framework?

Yes

If Yes or No, please explain your answer:

Prospective partner countries would have less incentive to enter VPAs if they perceived: (1) that legislation covering trade from non-partner countries required a lower level of effort in demonstrating compliance than the systems required for VPAs; and (2) that EU markets did not discriminate between FLEGT-licensed products and non-licensed products that could be placed on the market under such further legislation.

4. Would additional legislation provide a positive incentive to those considering entering a FLEGT Voluntary Partnership Agreement?

Yes

If Yes or No, please explain your answer:

It depends on the nature of the legislation. If legislation were to make it more difficult to trade in non-licensed timber which was potentially illegally-produced, then competition with from non-partner countries' products could be reduced. If additional legislation were implemented at border control points then it would probably have the opposite effect, since a lower level of legality verification that that required by VPA licensing is likely to be acceptable (see question 3).

5. Would additional legislation help ensure a level playing field in the market and avoid problems of third country circumvention?

Yes

If Yes or No, please explain your answer:

This depends on the legislation. Legislation requiring market participants to demonstrate legality, regardless of origin, might have this effect; while legislation for additional border controls are unlikely to.

6. If VPA partner countries were to introduce measures to ensure the legality of timber entering or leaving their own supply chains, would this deal adequately with circumvention concerns?

Yes

If Yes or No, please explain your answer:

Requiring all timber traded in Partner Countries to undergo a process similar to FLEGT licensing regardless of destination, would clearly help address circumvention.

To ensure timber imported to Partner Countries is subject to the same checks back to source probably requires separate agreements between Partner Countries and the original supplier country. The preparedness and capacity of Partner Countries to introduce and enforce such arrangements, including possible incentives, needs to be considered in VPA negotiations.

4.2 PRIVATE SECTOR VOLUNTARY SCHEMES

Various European and national wood-based industry and trade federations involved in the forest product sector have established policies and codes of conduct to help eliminate illegally logged timber from their supply chain (e.g. in Belgium, Denmark, France, Germany, Netherland, Spain, UK). Training is generally required for these policies to be effective. Some policies have compliance mechanisms built in while others do not. Similarly reporting and third party scrutiny requirements vary. Furthermore some major companies have corporate policies based on International Standards Organisation (ISO) standards which are intended to ensure that the timber they buy is traceable and complies with company policies, including legality of supply. Such private sector systems may be recognised within the FLEGT Partnership Agreements if they provide equivalent guarantees to the more general FLEGT licensing schemes established in these agreements. Furthermore a number of banks have established policies aimed at ensuring their forest sector clients deal in legal and sustainable timber.

7. Should the European Commission encourage the strengthening of such policies for example by the use of a voluntary agreement or a Commission/Council recommendation?

Yes

If Yes, what other means might be envisaged by the Commission?

Encouraging trade associations to adopt and harmonise procurement policies in a way that specifically recognises FLEGT licences would provide a strong additional incentive for timber-producing countries to sign up. Such policies could also apply to products sourced from third processing countries as this could encourage firms in those countries supplying the EU to specify FLEGT licences as a means to demonstrate legality.

8. Would this achieve most if not all of the results that a legislative proposal could achieve?

No

9. How could it be ensured that such measures apply to all companies in a sector and not just those in federations or other bodies?

It can't. These measures will be voluntary and, as such, they can only apply where companies choose to adopt them, either individually or through commitments they make via bodies they belong to.

10. What would be the advantages of the Commission relying on private sector codes to address the problem?

No apparent advantages. Companies - and trade associations - will take action only if they perceive it to be in their interest. Some have already decided to adopt such codes of practice but, until there is broad recognition that handling illegal timber is unacceptable, some firms will remain uninterested. Furthermore, some industry codes of practice remain voluntary or carry no checks or sanctions for non-compliance.

11. What would be the disadvantages of the Commission relying on private sector codes to address the problem?

See above. The private sector will not act unless it sees clear advantages. Some, but not all companies will take action.

12. Do you agree with the argument that the private sector in countries trading in and exporting timber and timber products to the EU could be influenced positively in terms of ensuring supply of legally harvested timber?

Agree

13. What would further strengthen the impacts of these measures?

Public and private timber procurement policies that require credible evidence of legality of supply, and clear demonstration that the policies are being implemented. Ideally, policies should be consistent in specifying FLEGT licences as evidence of legality, so that clear messages are sent to both partner and non-partner countries, about requirements.

14. In what ways could the European Community encourage, complement or strengthen the take-up of private sector initiatives?

1) Showing leadership through announcement and implementation of consistent public procurement policies that clearly favour FLEGT licences.

2) Support to programmes such as the Tropical Timber Action Plan and the Global Forest and Trade Network, which encourage trade associations and companies to take action through assisting producers attain certification standards and link them with suppliers demanding these standards.

3) Ensuring private sector views are taken into account in the design of VPAs and other legislative options.

15. To what extent are private sector purchasing policies in the EU changing the market and requiring verification of legality?

To a limited extent

4.3 IMPORT BAN

There have been calls for new EU legislation to prohibit the import of illegally harvested timber. The focus on imports is based on the understanding that within the EU the incidence of illegal logging is low (though not totally absent) and that most of the illegal logging observed occurs outside the EU. In order not to unduly disrupt trade any such import ban system would probably rely on the determination of the "legality" of a shipment to be done rather quickly at the time of importation, presumably through documentation. It would be possible that this type of approach could provoke other countries to implement similar measures for EU exporters.

DFID's response to 4.3:

16. Do you think that such legislation could be implemented in a non-discriminatory manner?

No

If Yes or No, please explain your answer:

Because it would bite at import, it would always discriminate in favour of domestic production.

17. Do you think that such legislation would be proportionate to the problem?

No

18. Would border controls provide a reliable mechanism to establish the legality of shipments of timber or timber products?

No

If Yes or No, please explain your answer:

Border control would require clear, standardised documentation to distinguish legal and illegal shipments. As a trade measure, this would have to be based on evidence provided by official agencies in the exporting country. For countries which have governance problems there is a risk that, without the controls similar to those provided under VPAs, such documentation may not guarantee legal production, yet border control would have no reason to reject such shipments.

19. What would the impact of such legislation be on the economic viability of the forest sector within the EU?

If WTO rules require that all timber products produced in the EU also showed evidence of legality in order to give treatment equal to that of imports, then this is likely to increase costs in the sector.

20. What would the impact of such legislation be on the economic viability of the forest sector outside the EU, and on relations with our main trading partners?

This may increase costs of exports of countries trading with the EU, depending on the type of evidence needed to demonstrate legality. For some exporters, this may be viewed as a trade barrier.

21. What would be the requirements to be fulfilled as evidence of legality, and how could the credibility of such evidence be assured

Effective enforcement would require consistent systems and common, clear import standards that applied to all shipments. One possible approach would be for designated EU authorities (e.g. an environmental management authority in each Member State) to issue import licences on the basis of evidence provided by the authorities in each exporting country. Border control authorities would then check for presence of a licence covering each shipment.

To assure credibility, the basis on which these systems were applied may need to vary between exporting country. For exporting countries where legal compliance is not a problem, certification from a regulatory authority might provide adequate assurance of legality. For imports from countries where legal compliance is an issue, such evidence might not necessarily assure that a shipment had been legally produced. In such cases, assurance is likely to be possible only if supported by chain of custody systems similar to those required for FLEGT licensing, together with some form of independent verification. However, it would be difficult for a management authority to discriminate between exporting countries in this way.

4.4. LEGISLATION REQUIRING THAT ONLY LEGALLY HARVESTED TIMBER AND TIMBER PRODUCTS ARE PLACED ON THE EU MARKET

The final option considered would take the form of new legislation concerning the placing on the EU market of timber and timber products and would apply to products produced within the EU, as well as imported to the EU. Within this general frame two main approaches have been identified, which are outlined below. The success of such legislation would depend on cooperation with relevant law enforcement authorities of the exporting country such as police, customs, governmental agencies (e.g. forest authorities), public prosecutor, *inter alia* for information sharing on the laws and regulations of relevance to the definition of illegality.

While this option would probably involve additional costs, it would establish a level playing field for legitimate businesses and would clearly motivate importers to source legal timber from producer countries to guarantee their access to the EU market. It would also provide consumers in Europe with a high degree of confidence in forest products overall.

A. *Legislation which prohibits the trading and possession of timber and timber products harvested in breach of the laws of the country of origin (i.e. where trees harvested)*

One proposal would be to make it an offence to import, export, transport, sell, receive, acquire or purchase timber and timber products transported or sold in violation of Community, Member State or third country law. Successful enforcement of such legislation would rely on a clear definition of legality, in particular the range of activities covered, as well the designation of the foreign laws the violation of which would constitute an offence.

An EC legislative proposal on the criminalization of illegal timber trade and possession could be adopted provided it was deemed necessary to ensure that the rules the Community legislator lays down on illegal timber trade are fully effective. Such an instrument could be adopted by the EU under the environmental provisions of the EC Treaty (Article 175) supplemented by national implementing provisions setting out the appropriate measures in terms of penalties and relevant enforcement bodies to ensure effective enforcement.

DFID's response to 4.4a:

22. Do you feel such legislation would be effective?

Yes

If Yes or No, please explain your answer:

Effectiveness would depend on perceptions of the risks of handling products containing possible illegal timber being detected, the willingness of authorities to mount a prosecution, the success of prosecution and the anticipated penalty on conviction. If these risks were considered sufficiently high, then market participants would favour products from low-risk countries or FLEGT partner countries (which would have built-in guarantees of legality). The basis upon which EU enforcement authorities would determine whether timber in a product had been harvested in compliance with the laws of the country of origin is likely to be a critical factor.

Note that if such controls were intended to bite at the point of importation, there would have to be a prohibition or restriction on importation and enforcement action would be based on a breach of such a restriction. This would make such legislation effectively the same as the import ban proposed in Option 4.3.

23. Would such legislation strengthen the ability of countries with forest governance problems to deal with illegal logging?

No

If Yes, in what ways?

If No, for what reason?

By itself, it would not directly strengthen the ability of countries with forest governance problems to deal with illegal logging. However, it might encourage high-risk countries to enter VPAs to their protect market share and in this way help address forest governance, but would be unlikely to make an impact on countries which chose not to enter agreements.

24. Do you think such legislation address the problem of circumvention through third countries?

Yes

25. What would the impact of such legislation be on the economic viability of the forest sector within the EU especially on small businesses?

It could increase the costs of businesses dealing with high-risk suppliers by requiring them to seek evidence of legality from their suppliers in order to avoid risk of prosecution. Many small businesses might decide that the risk of non-compliance or detection was small and take no action. Much would depend on the severity of the penalty and the priority given by enforcement agencies to pursuing cases.

26. What would the impact of such legislation be on the economic viability of the forest sector outside the EU, especially on small businesses?

This would depend on the number of such businesses that trade with the EU, the pressures put on them by their EU customers to demonstrate legal supply, and the costs to them of being able to provide such evidence. In high-risk situations, with fragmented supply chains, such costs could be significant.

27. Would this result in an unfair advantage to temperate and European industry that are more likely to have reliable tracing systems up and running than their counterparts in developing countries?

Don't know

28. What effect would such legislation have on the market share of timber and timber products?

Don't know

29. Are sanctions at Community level necessary to ensure the efficiency of the Community legislation on illegal logging?

No

B. Legislation which requires that only legally harvested timber and timber products be placed on the market

This option would require those placing timber and timber products on the EU market to be able to provide evidence of the origin of the timber as well as evidence that it has been legally harvested. This would overcome two of the major constraints to the use of existing legislation outlined above: establishing a physical link between the timber placed on the market in the EU and its origin, and establishing whether such timber was legally harvested or not. It could be implemented with differing degrees of stringency with respect to the traceability and evidence of legality. Operators could be required to provide such evidence on a systematic basis or only if challenged. There may be a trade-off between flexibility and the level of legal certainty that operators in the sector would have, which would have to be carefully considered.

This would affect both EU and non-EU operators and would have considerable economic impact on the global market. The importers would bear the responsibility to prove the legality for the timber products, while the suppliers would be required to provide certification of legality. In the absence of an internationally agreed definition of illegal logging it could prove difficult to determine that proof of legality provided by an exporting country is robust and credible, given that a country could claim that it has the sovereign right to determine whether a product is legal or not according to its legislation.

DFID's response to 4.4b:

30. Do you feel such legislation would be effective?

Yes

If Yes or No, please explain your answer:

See Q. 22. An additional factor would be that market participants would need to have systems in place to demonstrate legality of all material they handle, in this way shifting the entire burden from enforcement authorities. Should implementation require a declaration of legality, e.g., in the form of labelling, a further disincentive would be introduced in the risk of prosecution for making false claims.

31. Do you think it would be practical to cover all timber and timber products?

No

32. How could information technology overcome the difficulties of tracing timber flows through complex supply and processing chains?

Suitable technology is already available but is likely to be expensive for complex supply chains and composite products, and adopted only if there are sufficiently strong drivers. It is unlikely to be adopted in countries where there are governance problems and which don't enter FLEGT VPAs so will probably not contribute much to addressing the problem.

33. Would such legislation strengthen the ability of countries with forest governance problems to deal with illegal logging?

No

If Yes, in what ways?

If No, for what reasons?

See Q23.

34. What would the impact of such legislation be on the economic viability of the forest sector within the EU especially on small businesses?

This would have a greater impact than Option A on the EU forest trade, especially for companies dealing with high-risk countries. To be compliant they would have to select suppliers who could trace the source of their supplies and provide evidence of legality. Smaller companies are unlikely to be able to make investments themselves in assisting their suppliers put in tracing systems.

35. What would the impact of such legislation be on the economic viability of the forest sector outside the EU, especially on small-scale businesses?

Businesses in countries that are not VPA signatories are going to favour markets that don't have these requirements. Small businesses are unlikely to invest in the necessary tracing systems.

36. Could such legislation be implemented in a non-discriminatory manner?

Yes

If Yes, in what ways?

While all market participants would be expected to show evidence of legality on demand, it is assumed that EU enforcement authorities would act only on suspicions of contravention of requirements, so that focus could be on market participants handling product from high risk suppliers or action taken in response to intelligence.

If No, please explain your answer:

37. Would such legislation be proportionate to the problem?

No

38. Would this result in an unfair advantage to temperate and European industry that are more likely to have reliable tracing systems up and running than their counterparts in developing countries?

No

39. Who should bear the costs of legal certification?

Other

If Other, please indicate:

The responsibility for compliance would fall on the commercial entity bearing the risk of prosecution. This would be expected to cascade up the supply chain. This is not seen as a responsibility of government of either importing or exporting countries. To avoid the full cost, companies in exporting countries should encourage their governments to enter VPAs, under which both importing and exporting governments would carry part of the cost.

40. What effect would such legislation have on the market share of timber and timber products?

Don't know

5. FINAL QUESTIONS

DFID's response to 5:

41. Do you consider that some critical factors or risks have been left out of the above analysis?
Consideration of all options needs to take relevant enforcement priorities, availability of funding and inter-operability into account.
- Some questions need further qualification:**
- Option 4.1:** The option implies that VPAs should be pursued more vigorously than at present, both by speeding up implementation and including more countries. This might be possible but is likely to be limited by both available financial and personnel resources on the EU side.
- Q 24:** Such legislation might help address the problem of circumvention by prompting EU market participants to request their suppliers in third countries to provide evidence of legality and specify FLEGT licences as a way to do that.
- Q 27:** While EU-based suppliers may enjoy advantages over those from some developing countries, these are not necessarily unfair. All would run the risk of prosecution if illegal. A supplier handling illegal material from an EU country could in fact be at a greater disadvantage than one importing from a developing country due to better quality of evidence of illegal activity, such as detection of harvesting without proper permits and better timber tracking.
- Q 37:** Legislation that required all (or some?) timber products to be able to demonstrate proof of legal production is not a proportionate response to the scale of the problem, when the vast bulk of the trade is legal. Consideration would have to be given to the nature of acceptable proof, which would have to be consistent and non-discriminatory.
- Q 40:** There could be some advantages to substitute materials, such as concrete, if they did not have the same requirements. Timber might be diverted to markets other than the EU. However estimating the extent to which this is likely to happen (with any of the options) is difficult without more detailed analysis.
42. Would a successful action under any of these options be contingent on a common definition of illegal logging?
No - a detailed common definition is not possible because different countries have different laws. However, it would be necessary to have a definition of the coverage of laws that must be complied with. This should be similar to coverage specified for FLEGT VPAs.
43. Are there special considerations concerning developing countries engaged in forest trade that should be highlighted?
Yes - FLEGT aims primarily at addressing governance problems in developing countries engaged in timber trade. There are many similarities but also differences between these problems that require co-operation under VPAs to be tailored to each country's needs. Additional measures should support VPAs and make it more attractive for high-risk countries (predominantly developing countries) to enter VPAs.
44. To what extent would the options mentioned above be strengthened if all shipment of timber products had to be accompanied by a declaration of origin?

A little

45. What would the practical implications be?

Origin refers only to the last point of transformation. The problems of circumvention and laundering will remain regardless of whether certificates of origin are required.

46. Are there in your view other issues and/or options that should be taken into consideration?

No