

**Reducing the role of the United Kingdom in the illegal timber trade: A critical analysis of the proposed 'Illegally Logged Timber (Prohibition of Sale and Distribution)' Bill.**

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## **Abstract**

Illegal logging and the associated trade in illegal timber and wood products has a detrimental effect on the people, governments and forest ecosystems of many timber producing countries. Countries which demand timber play a significant role in fuelling illegal logging activities and as such have a responsibility to implement measures to ensure they are not complicit in the illegal trade. This study is a critical analysis of a proposed measure by the United Kingdom in order to reduce the amount of illegal timber traded within its jurisdiction. The proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill was analysed using a literature review, a stakeholder survey and interviews with key informants. Whilst the Bill was found to have the potential to reduce the amount of illegal timber sold and distributed in the United Kingdom, it is argued that the global picture of illegal logging is not suitably addressed and recommendations have been made for UK decision makers to consider.

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## **Acronyms**

<b>CBD</b>	Convention on Biological Diversity
<b>CITES</b>	Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>COP</b>	Conference of the Parties
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>EIA</b>	Environmental Investigation Agency
<b>FAO</b>	Food and Agriculture Organization
<b>FBI</b>	Federal Bureau of Investigation (USA)
<b>FLEGT</b>	Forest Law Enforcement, Governance and Trade
<b>FSC</b>	Forest Stewardship Council
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>IRS</b>	Internal Revenue Service (USA)
<b>LMO</b>	Living Modified Organism
<b>MoU</b>	Memorandum of Understanding
<b>NGO</b>	Non Governmental Organisation
<b>NHLA</b>	National Hardwood Lumber Association
<b>NOAA</b>	National Oceanic and Atmospheric Administration (USA)
<b>PEFC</b>	Programme for the Endorsement of Forest Certification
<b>REDD</b>	Reduced Emissions from Deforestation and Degradation
<b>RIIA</b>	Royal Institute of International Affairs
<b>SFM</b>	Sustainable Forest Management

<b>TTF</b>	Timber Trade Federation (UK)
<b>UNEP</b>	United Nations Environment Programme
<b>VPA</b>	Voluntary Partnership Agreement
<b>WSSD</b>	World Summit on Sustainable Development
<b>WTO</b>	World Trade Organisation
<b>WWF</b>	World Wide Fund for Nature



## **Chapter 1**

### **Introduction**

#### **1.1 The ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill**

The ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill (Annex 1) is a proposed piece of legislation being tabled by the United Kingdom in order to curb the trade in illegal timber within the UK. Illegal logging arguably has a global impact; The World Bank estimates that the trade in illegal timber is worth 15 billion USD annually (The World Bank 2002). The Bill was introduced into the House of Commons by Mr. Barry Gardiner<sup>1</sup> MP on the 2<sup>nd</sup> of April, 2008 and would make it an offence to sell or distribute timber illegally harvested in its country of origin in the United Kingdom.

#### **1.2 Thesis Aim and Objectives**

The overall aim of this study is to perform a critical analysis of the proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill in order to answer the following research question:

**Does the proposed Bill have the potential to reduce the amount of illegal timber traded in the United Kingdom?**

In order to address the research question above, the study has the following objectives:

- i) To gauge the level of awareness of the proposed Bill amongst stakeholders in the issue of illegal logging and the trade in timber.
- ii) To ascertain the level of support the Bill has from stakeholders in the issue of illegal logging and the trade in timber.
- iii) To assess the effectiveness and implementation of similar legislation elsewhere, both in Europe and worldwide.

The research is aimed primarily at decision makers in the UK government to provide implications to them and other interested parties (such as NGOs) about the likely success of the Bill should it be implemented. It will also serve to highlight any issues that arise through the research which may be a barrier to the Bill’s aim of reducing the amount of illegal timber sold and distributed in the UK.

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<sup>1</sup> Barry Gardiner is the UK Prime Minister’s Special Envoy for Forestry.

### **1.3 Overview of thesis structure**

*Chapter 1:* Background to the issue of illegal logging and provisions currently in place to tackle the problem in timber demand countries, especially focussing on the United Kingdom.

*Chapter 2:* Description and explanation of the thesis research methodology.

*Chapter 3:* Detailed analysis of the proposed Bill and comparison to similar legislation from the United States and Germany.

*Chapter 4:* A more detailed look at the problem of illegal logging and regulating against the trade in illegal timber from the point of view of a major timber producing country: Indonesia.

*Chapter 5:* Discussion of results obtained from an online stakeholder survey conducted by the author.

*Chapter 6:* Final chapter providing the conclusions and recommendations made from this study.

### **1.4 Defining illegal logging**

Illegal logging has been defined and described slightly differently by many researchers on the topic (e.g. Bird *et al.* 2006; Fripp 2006; Tacconi *et al.* 2003) and can range from such violations as unauthorised harvesting to the manipulation of timber data and tax evasion. As there are many definitions of illegal logging it is important to state what the definition will be for the purpose of this study. In the proposed UK Bill illegal logging is taken to mean: ‘Any wood harvested, manufactured or otherwise dealt with illegally in the country from which the wood originated or through which it was passed or transhipped’ (The House of Commons 2008). This definition shall be employed as it is broad, encompassing most of the aspects of the illegal logging problem and as such should represent definitions of illegal logging at a local, regional and global level.

### **1.5 The scale and consequences of illegal logging**

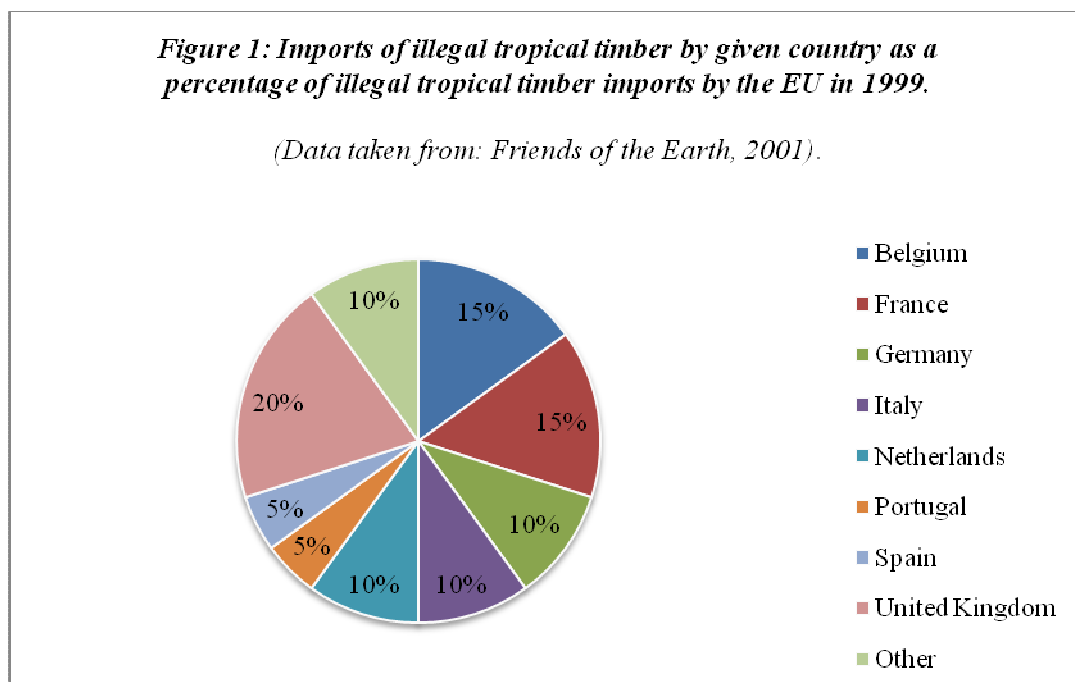
#### **1.5.1 The global problem**

Many impacts of illegal logging are felt worldwide and include: destruction of forest ecosystems, exacerbation of greenhouse gas emissions and undermining governance and legal trade (Food and Agriculture Organization 2007). Illegal logging directly disadvantages

approximately 1.6 billion of the world's poorest people who depend on forests, by depriving them of funds that could be used to greatly improve their livelihoods (Pye-Smith 2007). The problem, however, is not a simple one. In the absence of illegal logging, funds would not necessarily be transferred to those who need it most. This is due, in part, to weak governance and poor law enforcement, often features of countries where illegal logging is a particular problem (The World Bank 2004). The problem that illegal logging presents to timber producing countries is exemplified in Chapter 4 in more detail.

### 1.5.2 The role of the United Kingdom as a timber demand country

The scale of illegal timber imports into the UK is estimated to be as much as 3.2 million cubic metres each year (White *et al.* 2007). In a report based on trade flow data from 1999, Friends of the Earth<sup>2</sup> ranked the United Kingdom as the European Union's biggest importer of illegal tropical timber (*Figure 1*). The report concluded that approximately half of the tropical timber imports into the EU may have illegal origin, the equivalent of 740,000 hectares of forest (Friends of the Earth 2001).



<sup>2</sup> Friends of the Earth are a non-governmental organisation that 'campaigns for solutions to environmental problems'. See Friends of the Earth website: <http://www.foe.co.uk> [Accessed 15<sup>th</sup> July 2008].

## **1.6 European Union actions to address the problem of illegal logging**

The next section will consider what regulatory instruments are being used by the European Union as a whole to tackle this issue and what this means for the United Kingdom.

### **1.6.1 Forest Law Enforcement, Governance and Trade (FLEGT)**

Forest Law Enforcement, Governance and Trade (FLEGT) is the European Union's response to the problem of illegal logging. In May 2003, the EU adopted the FLEGT Action Plan (Commission of the European Communities 2003), the major components of which are highlighted in *Box 1*.

In order to promote the legal timber trade the EU FLEGT Action Plan proposed the establishment of voluntary bilateral agreements between the EU and timber producing countries, termed Voluntary Partnership Agreements (VPAs). VPAs lay down commitments and actions to address illegal logging on the part of the EU and the timber producing country. The overall aims of VPAs include: improving forest governance, improving trade access to EU markets for partner producing countries, increasing revenues from forests for partner country governments and paving the way for sustainable forest management (European Commission 2007). VPAs are therefore central to FLEGT's licensing system as they offer a way for timber produced legally to be positively identified upon import to the EU using licenses that the VPA partner countries have issued.

The VPA closest to conclusion is that being made with Ghana, which should reach a conclusion by the end of 2008 (Falconer 2008). Other VPAs being negotiated are at varying stages of completion. VPAs with Malaysia and Cameroon have a target conclusion of the end of 2008 while a VPA with Indonesia appears to have been set back, perhaps losing out to the Reduced Emissions from Deforestation and Degradation (REDD)<sup>3</sup> agenda, currently a high priority of the Indonesian government (Roby 2008).

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<sup>3</sup> Reduced Emissions from Deforestation and Degradation (REDD) is a strategy for avoided deforestation and a climate change mitigation mechanism.

***Box 1: The major components of the FLEGT Action Plan (2003)***

The EU's FLEGT Action Plan consists of the following major components:

- i) To provide support to timber-producing countries
- ii) To promote legal timber trade
- iii) The development of public timber procurement policies
- iv) To assist in private sector initiatives
- v) To advance investment safeguards
- vi) To utilise any existing legislative instruments as well as consider additional options for legislation to support the Action Plan
- vii) To tackle the issue of conflict timber\*

\*Conflict timber, as defined by the European Commission in the FLEGT Action Plan is, 'timber traded by armed groups, the proceeds of which are used to fund armed conflicts.' (Commission of the European Communities 2003).

### **1.7 Additional options for legislation and the European Union**

Section 4.2 of the FLEGT Action Plan addresses the trade in timber, of which subsection 4.2.4 is concerned with additional legislative options that might be implemented in addition to the FLEGT licensing scheme. Despite the benefits of VPAs to both partner countries and the EU outlined here in section 1.6, it is noted within the text of the Action Plan itself that: 'For a variety of reasons, some important wood-producing countries may choose not to enter into FLEGT partnership agreements with the EU' (Commission of the European Communities 2003). There might be a myriad of reasons why a timber producing country would choose not to enter a FLEGT VPA. It may be that the country is resistant to reform or foreign influence or perhaps that the benefits and impact of a FLEGT VPA are not explicitly clear (Roby 2008). The quote from the Action Plan above highlights the vulnerability of VPAs in that they are exactly that: voluntary. Thus, there is no legislation preventing countries who decide not to enter VPAs from exporting illegal timber and wood products, nor is there any way of preventing partner countries circumventing the agreements by transshipping illegal timber through non-partner countries (Brack 2007). Legislation is binding, hence the consideration of additional legislative measures by the European Commission. *Box 2* contains a short summary of the various merits of both voluntary agreements and binding legislation.

In light of the possible vulnerability of VPAs, there has been debate within the EU about additional legislative options that could be employed to tackle the problem of illegal timber entering the EU market. The additional legislative options under consideration by the European Commission are outlined in Annex 2. It is against the back-drop of the ‘additional options’ debate that the current study is set.

***Box 2: Legislation vs. Voluntary Agreements (Source: Abbott and Snidal 2000)***

The benefits of binding legislation are that it is ‘hard law’ which is a much stronger, binding force. It is more precise in content and there are stronger commitments within it. Having said this, commitment levels may be reduced as hard law restricts international actors’ behaviour and may infringe on their sovereignty.

Voluntary agreements are an example of ‘soft law’ which is not as strong and has more of a guidance role. Despite its lack of ‘teeth’ it can achieve higher commitment levels than binding legislation and may also facilitate compromise within it.

### **1.8 United Kingdom legislation to address the problem of illegal logging**

The EU FLEGT Action Plan (2003) encouraged Member States to assess how the trade in illegal timber is currently addressed under national laws (Section 4.2.4, p15, Commission of the European Communities, 2003). A number of investigations have found that UK national legislation is inadequate to keep illegal timber out of the UK market (e.g. Brack 2006a; Environmental Investigation Agency 2007; Gerard and Ozinga 2004) and this has been illustrated by reports such as Hewitt (2005) and White *et al.* (2007) for the World Wide Fund for Nature (WWF)<sup>4</sup> which have revealed some indication of the scale of the problem in the UK at present. Presumably, if there was adequate and effective national legislation already in place, then reports of trade in illegal timber in the UK would not have such discouraging findings. It should be kept in mind that NGO reports have a tendency to focus on the negative and evoke the shock factor in the general public, but as the UK government is seriously considering ways it can resolve the issue of trade in illegal timber, it can be surmised that they have their basis in truth, albeit a pessimistic version of it. This is where this study, and its analysis of proposed national legislation to deal with the problem of illegal timber entering

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<sup>4</sup> WWF is an international conservation organisation. Information [Online] Available from: <http://www.wwf.org.uk/core/about/aboutwwf.asp> [Accessed 29th August 2008].

the United Kingdom, fits into the overarching debate ongoing in the European Union as a whole.

### **1.9 The Lacey Act of the United States of America**

The Lacey Act of the United States of America is referred to in Annex 2 as the basis of possible legislation that the European Union could adopt as an additional legislative measure to the FLEGT Action Plan. It is this legislation that the proposed UK Bill, and the focus of this study, is based on. The Lacey Act in the USA makes it illegal to ‘... import, export, transport, sell, receive, acquire, or purchase in ...foreign commerce ... any fish or wildlife taken, possessed, transported, or sold ... in violation of any foreign law’ (Section 3372 Prohibited Acts, Lacey Act, United States of America).

In the USA, the Lacey Act has been described as ‘...our nation’s most effective tool in the fight against an illegal wildlife trade whose size, profitability and threat to global biodiversity Lacey<sup>5</sup> could probably not have imagined’ (Anderson 1995). Until 15<sup>th</sup> May 2008, the Lacey Act in the United States only included plant species indigenous to the USA and those listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or protected by USA state law. This inclusion of timber to the Lacey Act in the USA could reflect a greater awareness by the government for the issue of illegal timber. This could be due in part to climate change concern and the potential of REDD, international concern over biodiversity loss (the Convention on Biological Diversity 2010 targets<sup>6</sup> are rapidly approaching) and an increased awareness of social responsibility and local users’ rights as countries, especially G8<sup>7</sup> countries, try to make good of their commitments to the 2002 World Summit on Sustainable Development (WSSD).

Supporters of Lacey-style legislation argue it tackles the problem at the appropriate point i.e. when timber is placed on the market rather than at the border and that this minimises the amount of “red tape” involved in the trade (European Commission DG Environment 2007). It

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<sup>5</sup> John Lacey (1841-1913) was a United States Congressman, author of the Lacey Act 1900.

<sup>6</sup> Decision VI/26 made at the sixth Conference of the Parties to the Convention on Biological Diversity where the Parties committed themselves to ‘achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth’. See: [www.cbd.int/decisions/?m=COP-06&id=7200](http://www.cbd.int/decisions/?m=COP-06&id=7200) [Accessed 14<sup>th</sup> July 2008].

<sup>7</sup> The G8 ‘group of eight’ nations is made up of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States of America. The G8 aims to manage globalisation and holds annual summits. Current presidency is with Japan. Information [online] at: <http://www.g8summit.go.jp/eng/> [Accessed 15<sup>th</sup> July 2008].

would place a requirement on importers in the country of destination to be duly diligent about the legality of the source of their timber (Brack 2007). When considering the proposed Bill in the United Kingdom, this makes representatives from the timber industry in the UK a key stakeholder group to involve in the critical analysis of the Bill in this study.

### **1.10 Section Conclusion**

It is estimated that approximately 20 percent of the timber purchased by the United Kingdom is done so by the government (Howorth *et al.* 2006). In the year 2000, the government introduced its public procurement policy which was mandatory for all government departments and agencies. Unfortunately it did not cover local government policy and there was weak implementation and monitoring (Lawson 2007) which has been reflected in studies such as Howorth *et al.* (2006) who found that over half of London's local authorities had no responsible purchasing policy for timber or paper. This is a further illustration that the need for improved measures to keep illegal timber out of the United Kingdom's market has arguably never been greater. From NGO pressure to private consumers, the desire for the market to be more socially and ecologically responsible is great and there is a definite market opportunity in the United Kingdom for verifiably legal (and preferably sustainable) timber (Fripp 2006).

This MSc study investigates whether the United Kingdom's proposed 'Illegally Logged Timber (Prohibition of Sale and Distribution)' Bill would have an effect on making the UK less complicit in the illegal timber trade as a timber demand country. The next chapter will describe and justify the research methodology used in this study.

## Chapter 2

### Thesis research methodology

In order to address the research objectives outlined in Chapter 1 various methods have been used. These methods will now be described and their use justified.

#### 2.1 Questionnaire Survey

A questionnaire survey was designed by the author (Annex 3) in order to address the first two objectives of this study: *to gauge the level of awareness and ascertain the level of support of the proposed Bill amongst stakeholders in the issue of illegal logging and the trade in timber.*

It was felt that an online survey would be the most efficient method of gathering information to address these objectives given the time and resource constraints of this study. The online format also increased the likelihood of international respondents replying to the survey request. An online survey tool available from [www.questionpro.com](http://www.questionpro.com) was used in order to distribute the survey to a purposive sample of participants. Purposive rather than random sampling was more appropriate owing to the nature of the questions i.e. only those people or organisations involved with the trade of timber or with an interest in illegal logging would be in a position to answer the questions. This was required in order to ensure that respondents had the necessary knowledge to answer the questions and ultimately address the research objectives. Although purposive sampling does not allow for detailed statistical analysis, it was felt that the survey would provide valuable qualitative data and is the first survey of its kind to gather the attitudes towards the proposed UK Bill. The survey was distributed to 250 potential respondents selected initially from an illegal logging update and stakeholder consultation and further distributed using the ‘snowball’ effect from the respondents initially contacted. All survey responses were anonymous, reducing the likelihood that participants would feel the need to censor their answers.

For this MSc study, a pilot of the survey was conducted and distributed to a sample comprising academics, professionals and university students. The pilot phase provided many helpful insights and the final survey was adjusted accordingly based on the feedback received during this period. Ideally, the pilot phase would also have included respondents similar to the target group but to avoid depleting the potential number of respondents to the final

survey, it was not piloted to this target group. Respondents to the final survey included a variety of stakeholders including public and private sector representatives, NGOs and experts on the subject. Respondents were invited from timber demand, timber producing and timber processing countries.

There are limitations to this method. Firstly, it is important to realise that a respondent's perceived level of awareness is not necessarily a true reflection of their actual level of awareness of an issue. Also, awareness in itself is not enough to guarantee action on an issue, in the case of this study, illegal logging. However, in order for any successful actions to reduce illegal logging, it is necessary for stakeholders to be aware of the issue and proposed actions to stop it. A further limitation to this method is the inability to probe any answers given more deeply, however this limitation is partly overcome as the questionnaire was designed with open-ended questions. A key advantage of conducting an online survey is that researcher bias is reduced and the standardised nature of the survey means that it can be replicated and repeated.

## **2.2 Interviews**

Although the questionnaire survey was designed in order to allow for elaboration on answers given, it was anticipated that not all respondents would choose to do so. In order to gain more insight into some issues, interviews were held and direct questions were asked to some stakeholders via email. The interviews in person took the form of semi structured guided interviews. The interviewer selected interview topics prior to the meeting but the interview format allowed answers to questions to be followed up unlike the online survey method, which guaranteed anonymity to respondents. Email interviews took the form of specific questions to certain individuals and the responses given were followed up by further correspondence. This allowed some stakeholders to be interviewed who would not have been accessible otherwise due to conflicting schedules or location restraints.

## **2.3 Comparative Frameworks**

A comparative framework was used in order to compare the proposed 'Illegally Logged Timber (Prohibition of Sale and Distribution)' Bill with similar legislation from other countries, namely the Lacey Act of the United States and the draft Virgin Forests Act of Germany. The results of these comparisons are important to address the final objective of this

study, that of assessing the effectiveness and implementation of similar legislation elsewhere, both in Europe and worldwide. The comparisons were used to help uncover any implications for the UK and any potential barriers to its successful implementation should it be made law.

#### **2.4 Literature Review**

Reviewing the relevant literature has a key role in addressing the research objectives, primarily because there is no directly comparable study to this one. This is mostly due to the fact that the Bill was proposed relatively recently (April 2008). Having said this, there is a comparison to be made in the wider context of Europe, to which there is a substantial body of literature dedicated. The literature reviewed consists of peer-reviewed journal articles, published studies by international organisations such as The World Bank as well as specialist and generalist media reports.

## **Chapter 3**

### **Critique of the proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill**

#### **3.1 Introduction to chapter**

##### **3.1.1 Chapter Objectives**

The purpose of this chapter will be to critique the proposed United Kingdom ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill and to compare it with the timber provisions of the Lacey Act of the United States of America (Annex 4) and the draft Virgin Forests Act of Germany (German Ministry for the Environment, Nature Conservation and Nuclear Safety 2005) (Annex 5). Both are relevant as the proposed UK Bill is closely modelled on the Lacey Act and the draft German Act is an example of Lacey-style legislation being put forward at EU Member State level. This chapter directly fulfils the third main objective of this study: *to assess the effectiveness and implementation of similar legislation elsewhere, by drawing comparisons from inside Europe and worldwide.*

##### **3.1.2 Sources of information**

Information for this chapter was obtained from a review of the relevant literature, information from an illegal logging stakeholder and update meeting as well as personal communications from a legislator and a representative from the Environmental Investigation Agency (EIA).<sup>8</sup> The draft UK Bill was compared to the draft German Act using a comparative framework.

#### **3.2 The proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill**

The ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill was introduced as a ten minute rule bill<sup>9</sup>. The proposed penalties for those found guilty of an offence can be up to 5 years imprisonment and a fine of up to £100,000 as well as forfeiture of the illegal timber or wood products (The House of Commons 2008). The proposed Bill aims to tackle trade in illegal timber and associated wood products, over 90% of which are not covered by the EU

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<sup>8</sup> An international campaigning organisation committed to investigating and exposing environmental crime. Information available [Online] from: <http://www.eia-international.org/> [Accessed 28<sup>th</sup> August 2008].

<sup>9</sup> A ten minute rule bill is a form of Private Member’s Bill presented after Question Time in the UK Parliament. Information available [online] at [www.parliament.uk](http://www.parliament.uk) [Accessed 10<sup>th</sup> August 2008].

FLEGT Action Plan and its associated licensing scheme (WWF 2008). While this may be the case, it is also the type of legislation the European Commission has been considering as part of its deliberation on additional options for legislation. If the UK were to act alone using this kind of legislation it might not have as powerful an effect as if the European Community as a whole were to do the same (Greenpeace UK 2008). This view is supported by Rosenberg (2006) who believes that the patchwork of forestry legislation within Germany (one current Member State which has drafted, but not yet passed, such legislation) may have a detrimental effect on effective international co-operation on such matters.

Another potential strength of the proposed Bill is that it does not challenge a timber producing country's sovereignty. This is because the Bill seeks to reinforce the forestry laws in these producer countries and not interfere in the laws themselves (Gardiner 2008). This may be welcomed by countries such as Brazil, who will not negotiate their sovereign right to manage their own forests (Ritvo 2008; BBC News 1<sup>st</sup> August 2008). This could be seen as an advantage to this kind of legislation provided the laws in the country of origin are what would be considered 'good' forest laws (*Box 3*). Unfortunately, in many countries where illegal logging is a problem, poor governance is also at work (The World Bank 2004). This may lead to the presence of 'bad' laws in terms of the effects they have on local people which the proposed Bill may in turn reinforce should it be made law. Such 'bad' laws most usually act in a very anti-poor way, often contradict each other and can make subsistence and livelihood activities of the rural poor, criminal (Colchester *et al.* 2006). However, it has been argued that the proposed Bill is not the appropriate tool for seeking amendment to bad laws in timber producing countries and this responsibility should fall to organisations such as The World Bank and international NGOs (Matthews, A. Pers. Comm.).

***Box 3. Characteristics of good forestry laws (Source: The World Bank 2006)***

Constituents of a good forest law:

- Should be fit-for-purpose without being socially unacceptable
- Should include a minimum of 'red tape' to avoid the over-burdening of public and private sectors and to minimise the risk of corruption
- Should include a high level of transparency and accountability
- Should increase the local and non-governmental share of forest management
- Should have appropriate penalties and effective enforcement

### **3.2.1 Implementation of the proposed Bill**

In April 2008, the United Kingdom's Timber Trade Federation (TTF) organised a series of workshops held with Chinese wood suppliers. It was found that the Chinese suppliers who took part had little knowledge of FLEGT and could not agree who should be paying to implement such actions. Most interest was generated by additional legislative options for FLEGT (Betser 2008). This could be because legislation has more 'teeth' and is potentially easier to follow and implement than the guidelines and principles laid out in the FLEGT Action Plan (Commission of the European Communities 2003). This raises some important points regarding the potential effectiveness of the UK's proposed Bill. A lack of knowledge regarding such initiatives in timber producing countries can be partly addressed by workshops such as the UK TTF has organised. However, this will only go so far and a lack of knowledge about the UK Bill could make it extremely difficult to implement, especially if UK importers will need to ensure their supply chain from these countries is legal to avoid prosecution. As the TTF workshop found most interest was in the additional legislative options, this suggests that a strong piece of legislation could be welcomed by wood suppliers to the UK as it could be a clear and achievable target for most suppliers to ensure legality. However, legality is not the same as sustainability and there is a danger that focussing solely on ensuring legality, regardless of the forest management processes employed, would make sustainability less of a priority in many timber producing and processing countries. This could mean legality, rather than sustainability will be viewed as an end point (Donovan 2008; Cerutti 2008) which has the potential to delay efforts for sustainable forest management (SFM).

Techniques employed in the illegal timber trade include forged paperwork and false declarations as well as bribery of officials (Lawson 2006). There are significant problems in making tamper-proof documents and if there is little or no cooperation with a timber producing country's government, getting copies of originals to prove legality may be especially difficult (Keong 2008). This highlights the need for due diligence on the part of importers to ensure that the timber and wood products they buy from timber producing nations are not illegally sourced. One way to demonstrate this would be to be involved with

recognised certification schemes such as that of the Forest Stewardship Council<sup>10</sup> (FSC). Illegal activities are difficult to detect and police, especially if the relevant authorities are involved in illegal activity themselves. Having said this, it has been argued that enforcement on the side of import often proves ineffective as there is a lack of relevant laws at the import side of the trade (Lawson 2006). This is something that the proposed Bill will aim to address, the increased authority of officials to make forfeitures of timber products alleged to be of illegal origin providing a strong disincentive to those who would deal in illegal timber (Gerard and Ozinga 2004). A potential drawback is that such authorities often have other priorities above environmental crime such as the illegal narcotics trade and preventing terrorism (Brack 2006a). This means that the proposed Bill may not be enforced as strongly as other crime which has major implications for its effectiveness to reduce the illegal timber trade in the United Kingdom.

To date, no country in Europe has passed legislation to tackle illegal logging (Van Oijen and Van der Veen 2008). This may be because some Member States of the EU feel that a decision at European Community level would be the best course of action and as such have not tackled the issue within their own jurisdiction. This is also perhaps to save resources should the European Commission come to a decision on additional legislative options in the near future which may undo work done in individual Member States. Legislation prohibiting the trade in illegal timber has been introduced by the USA, as an amendment to the Lacey Act, and this is the focus of section 3.3.

### **3.3 The Lacey Act of the United States of America**

The Lacey Act of the USA, in particular the Timber Amendment of May 2008, has formed the basis for the proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill of the United Kingdom. A particularly important issue in terms of the proposed UK Bill will be the effectiveness of enforcing the Bill should it become law. Enforcement of the Lacey Act in the USA will be discussed in order to reveal implications for enforcement of the proposed UK Bill.

#### **3.3.1 Enforcing the Lacey Act**

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<sup>10</sup> The Forest Stewardship Council is ‘an independent, non governmental, not for profit organisation established to promote the responsible management of the world’s forests’. Wood that has been FSC certified is guaranteed to have originated from forests being sustainably managed, both environmentally and socially. Information [online] available from: <http://www.fsc.org/> [Accessed 17<sup>th</sup> August 2008].

The Timber Amendment to the Lacey Act is recent and as such it is too early to provide information on any cases tried under the new provisions. Unfortunate though that is for this study, as well as a potential limitation, examples of other Lacey Act convictions available in the literature have been used.

A particularly renowned Lacey Act conviction in recent times is that of David McNab, who was sentenced to eight years in prison in the year 2000 for catching Honduran lobster in contravention to Honduran regulations and selling them in the USA. In a collaborative effort between the National Oceanic and Atmospheric Administration (NOAA), the Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS), lobster with a retail value of 17 million US dollars was seized (NOAA 2004). This is a good illustration of one of the Lacey Act's primary deterrents: that of forfeiture of the goods obtained in contravention of another country's laws.

The case of McNab was a success for the US Department of Justice but it also demonstrates that interpreting other countries' laws can be a highly contentious issue. In the case of McNab, the defendant argued that the Honduran regulations were invalid as the President of Honduras had not signed the regulations, making them void (Mauro 2004). Some argue that had the Honduran authorities wished to press charges for the violation of their regulations regarding the fishing of lobster, they could have, however they chose not to (The Heritage Foundation 2003). This does not necessarily suggest that the Honduran government did not feel it necessary to press charges. The USA has more resources to bring such a case to court than Honduras and once the lobster were out of Honduran jurisdiction and in the USA, it was then that the Lacey Act took force, in order to reinforce the Honduran regulations broken by McNab. Relevant country experts can be called in to testify in court to the validity and applicability of the foreign legislation in question but this raises the issue of what constitutes an expert. Various levels of expertise could be used in different cases, with no standard or centralised way for a judge to decide whether a foreign law had indeed been broken. In the USA for example, the information that has been used by judges to decide whether the underlying violation (the breaking of a foreign law or regulation) has occurred, has been as varied as testimony from foreign judges to examination of law review articles (Brack 2007). If such controversy is to be kept to a minimum should the UK Bill become law perhaps a central point of expertise for the forestry laws of foreign countries could be established. It could be called upon to provide standardised expertise for cases brought to court. It may be

unreasonable for any body of knowledge to include every forestry law in the world, but it could be possible if it were to focus on the major timber producing countries that supply the United Kingdom.

There are, however, examples where application of the Lacey Act has not been as controversial as in the case of McNab. In 2004, a joint investigation run by authorities in South Africa and the USA, convicted three defendants of exporting Cape rock lobster (*Jasus lalandii*) illegally harvested in South African waters into the USA (United States vs. Bengis 2006). They were also convicted of bribing South African officials to cover their crime and making incorrect declarations upon import into the USA (Gosling 2004). Perhaps this application of the Lacey Act implies that, provided that effective co-operation between different countries' law enforcement agencies is present, a successful and less controversial conviction can be made. However, this may depend in part on the countries involved as those who are not fully engaged in forest governance issues may not want, or be able, to form an effective collaboration.

### **3.3.2 Enforcing the Timber Amendment to the Lacey Act**

The next steps in terms of enforcing the newly amended Lacey Act will be to create timber declaration tracking forms and to make a thorough dissemination of information to all relevant government departments and officials (Guzman 2008). This could delay implementation of the new Lacey Act provisions for timber but as the United States have had the original Lacey Act in force since 1900, one can assume it would be a smoother transition than for other nations trying to emulate the legislation, such as the United Kingdom is attempting to do.

All United States timber suppliers will be expected to produce a declaration with each shipment of timber stating the harvest origin, species, and unit of measure as well as the value of the shipment (House of Representatives 2008). This is believed by some, including the Environmental Investigation Agency and the National Hardwood Lumber Association (NHLA) to be essential to the transparency of the process (Johnson 2008; NHLA 2007). However, no such declaration is described in the proposed UK Bill. This could lead to confusion in the first instance as to what timber importers are expected to do to comply with this legislation. It remains to be seen how easily forged the proposed USA declarations would

be. Documentation alone may not be sufficient and additional customs training may need to be put in place if enforcement of the Lacey Act timber provisions is to be truly effective.

Although the Lacey Act has been in force since 1900 in the United States, it appears the reality is that relevant enforcement agencies are still considering how the new timber provisions will be best enforced. Nonetheless, the amendment to the Lacey Act is believed to already be having an effect on the timber industry in the USA as many of those with international supply chains are alert to the changes in the law and are enquiring how they can comply (Johnson, A. Pers. Comm.). A chain reaction down international supply chains appears to be a main objective of the Lacey amendment as while demand side actions are necessary and can be valuable, it stands to reason that legal compliance at the producer end of the chain will also be key to ultimately reducing levels of illegal logging.

### **3.3.3 Lacey Act legislation and less discerning markets**

A concern about Lacey Act style legislation is that the illegal trade, in the face of tough penalties, will simply move to less discerning markets such as the Middle East (Gerard and Ozinga 2004; Espley 2008; Canby 2008). This fear appears to be grounded in truth. The international organisation Forest Trends<sup>11</sup> have found that unverified timber exports from timber processing countries such as China to the Middle East are increasing (Canby *et al.* 2008). It appears that if the USA or the EU will not buy unverified timber, then a market will be found who will (Canby 2008). This could greatly undermine Lacey Act legislation and as such has important implications for the United Kingdom's proposed Bill. In light of this, it may be necessary for the United Kingdom to actively work with suppliers in major wood processing countries such as China in order to make implementation of the proposed Bill effective.

### **3.4 The draft German Virgin Forest Act: A basis for comparison**

To introduce Lacey style legislation into the EU would be more complex than doing so in the United States primarily because of the European Community's single market (Brack 2006a). Import and export can only be regulated by the European Community as a whole whilst the other actions covered by Lacey style legislation including sale and purchase can be regulated at Member State as well as Community Level. This means that the United Kingdom's

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<sup>11</sup> Forest Trends is an international, non profit organisation whose mission it is to 'promote incentives for and accelerate the evolution of economic systems that will result in the maintenance and restoration of forest ecosystems.' Information [online] at <http://www.forest-trends.org/index.php> [Accessed 15th August 2008].

proposed Bill only covers some of the scope of the Lacey Act in the United States which could weaken the overall effect the Bill has in the United Kingdom compared to the United States.

It is not clear how effective Lacey Act style legislation might be in the EU as there is no active legislation of its kind currently operating within Europe. The draft Virgin Forests Act (German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety 2005), a proposed piece of German legislation, provides this study with the only comparison within Europe. The legislation is currently a draft and progression into law has been postponed due to a new German government being established (Rosenberg 2006). Nevertheless, it can provide some important insights for this current study regarding the proposed United Kingdom Bill.

The purpose of the draft German Act is to amend the Federal Nature Conservation Act (German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety 2002) to make it an offence to possess and market timber and related wood products that were obtained illegally from virgin forests<sup>12</sup>. The German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety have admitted that a joint measure with other nations would perhaps be more effective than acting alone on this issue but justify their doing so as many attempts to make such a joint effort have failed (German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety 2005). This highlights a similarity between the draft UK and German legislation as it appears that the draft UK Bill has been developed partially as a reaction to frustration at the length of time it is taking the European Commission to make a decision about additional legislative options for FLEGT (Gardiner 2008; Matthews, A. Pers. Comm.).

### **3.4.1 Comparison between the proposed UK Bill and the draft German Act**

The draft German Virgin Forests Act and the proposed UK Bill were compared using a comparative framework (*Table 1*). In general the draft UK Bill is broader in scope than the draft German Act as it applies to all timber and associated products harvested illegally whereas the German Act focuses only on timber and wood products from virgin forests. This

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<sup>12</sup> Definition of virgin forests from draft Virgin Forest Act: ‘...cohesive forest covering an area of at least 10 ha exhibiting largely natural development of its species composition, structure and dynamics, which has been only marginally directly influenced by human activity.’ (Article 1, Amendment of the Federal Nature Conservation Act, German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety 2005)

reflects the nature of the German Act, which has a strong conservation theme rather than focussing on trade. The German Act is a proposal to extend an already existing piece of legislation, the Federal Nature Conservation Act (German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety 2002). This is also true of the Lacey Act amendments to include timber in the USA. The proposed UK Bill in contrast, is not being tabled as an amendment to an existing piece of legislation and this may mean it has less chance of being made law. In terms of coverage, there are significant differences between the two draft pieces of legislation. The product scope of the German Bill is defined in more detail than the UK Bill. Without clearly delimiting the product scope, the UK proposal could appear vague and easier to circumvent.

*Table 1: A comparison of the draft German Virgin Forests Act (German Ministry for the Environment, Nature Conservation and Nuclear Safety 2005) and the proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill of the United Kingdom (The House of Commons 2008).*

	<b>Proposed UK Bill</b>	<b>Draft Virgin Forests Act</b>
<b>PURPOSE</b>	To make it illegal to sell or distribute in the UK any wood illegally harvested in country of origin.	To make it illegal to possess and market timber and timber products illegally logged in virgin forests.
<b>CONTENT</b>		
<b>a) Product Scope</b>	a) ‘Wood’ defined as ‘any timber, bamboo or rattan and products thereof’	a) ‘Timber and timber products including charcoal, articles made from wood pulp, paper and paper board, as well as wooden furniture and wooden toys. It does not include books, newspapers and other printed matter’.
<b>b) Compliance requirements</b>	b) Applies to all commercial importers defined as: ‘any person established within the United Kingdom who is responsible for the physical	b) Requires only ‘large scale marketers, handlers and processors of timber to furnish proof’. Private and commercial users with no

<p><b>c) Documentation</b></p>	<p>introduction for commercial purposes of wood or wood products into the UK.          Person ‘includes any individual or organisation of any kind subject to any jurisdiction in the UK’.          c) None explicitly required. Proof of legality implied.</p>	<p>intent to sell as well as companies with an annual turnover of less than €100,000 are exempt.          c) Written confirmation by recognised certifying agency.</p>
<p><b>PENALTIES</b></p>	<p>For selling or offering for sale illegally harvested or transhipped wood or attempting to do these things:          imprisonment not exceeding 5 years or a fine not exceeding £100,000 or both</p> <p>For committing the above due to negligence: imprisonment not more than 1 year or a fine not exceeding £50,000 or both          Committing any of the acts in good faith: liable to fine not exceeding level 5 on Standard Scale (currently £5000)</p> <p>For falsifying labels or records in connection with the prohibited acts imprisonment not exceeding 1 year or a fine not exceeding £10,000 or both</p>	<p>Prohibited acts committed habitually or for commercial purposes: liable to term of 3 months to 5 years imprisonment or unspecified fine</p> <p>Prohibited acts committed ‘with regard to any specimen of flora or fauna of strictly protected species: up to 5 years imprisonment or an unspecified fine</p> <p>Prohibited acts committed due to negligence: imprisonment up to 6 months or fine up to 180 <i>per diems</i></p>

	Forfeiture of any wood product, tree, plant or other thing in respect to offence committed	Forfeiture of goods obtained through committing prohibited acts also possible
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The German proposal only applies to large scale operations, specifically those with an annual turnover exceeding €100, 000. All businesses or individuals below this turnover threshold are exempt. This is not the case with the proposed UK Bill as all commercial importers are included. It seems likely that only large scale operators would be targeted by UK authorities if the Bill were to be passed as this would provide the greatest deterrent effect and ultimately a bigger reduction in the illegal timber trade. Nevertheless, without the limitation of the German Bill it could prevent illegal trade being divided over several smaller businesses that, individually, would fall under an annual turnover threshold like that of the German Act.

In terms of documentation, the UK Bill does not contain any specifics about how a timber seller or distributor should ensure that the products are from legal sources, it just implies that they should be. Whilst this may allow for a range of certification and verification schemes to be employed by industry, it does not provide clear guidelines to these interest groups which could lead to confusion about what is required to comply with the Bill. As mentioned earlier, the Lacey Act amendment makes it a requirement for a declaration form to be present with each shipment of timber and associated products. This is also true of the draft German Act which states that parties should be in possession of written documentation from a recognised certification agency. ‘Recognised certification agency’ is defined in detail so that sellers can ensure they are working with a reputable agency (Article 1, paragraph 7). Another aspect of the draft German Bill that differs from the UK proposal is that it explicitly mentions the role of corruption within its text (Article 1, paragraph 10). Under the German Act it is prohibited for a seller to issue a timber confirmation should it be obtained in a corrupt way, for example by using bribery. Corruption is a significant issue in some timber producing countries (Pye-Smith 2007) but it is not recognised specifically in the proposed UK Bill which could have the potential of undermining it should it come into force.

With respect to penalties proposed by each of the draft Bills, there are some significant differences. Perhaps the most notable is that the United Kingdom proposal lacks an ‘innocent

owner defence’; that is a person can be prosecuted and punished for selling illegal timber and associated products even if they were doing so in good faith and believed the goods to be legal. This perhaps has the most potential for deterring illegal trade in the UK and making sellers and distributors more diligent when sourcing their supplies. In general, the penalties imposed in the proposed UK Bill are tougher than those of the draft German Act. Another potential deterrent to illegal trade that the UK’s proposal has is that anyone convicted under the Bill will have the timber and products seized. Forfeiture of goods is not explicit in the German Act, it merely states that goods can be seized. The penalties raised by the United Kingdom’s proposal could potentially give it enough power to see a reduction in illegal timber being sold and distributed in the United Kingdom. This, however, depends on effective enforcement, without which the deterrent effect will be lost.

### **3.5 Chapter conclusion**

Many useful observations have been made from the critique of the UK Bill as well as the comparison to the Lacey Act of the USA and the draft German Virgin Forests Act. Enforcement of the proposed Bill remains a key issue if it has the potential to be effective. Examining the Lacey Act and examples of its implementation has highlighted some key issues regarding the interpretation of other countries’ laws as well as potential risks, including the illegal trade simply moving elsewhere. The applicability of Lacey style legislation at EU Member State level could not be fully addressed owing to the German Act being a draft piece of legislation. The proposed UK Bill will require industry representatives to be duly diligent in the procurement of timber and wood products. Yet without a clear indication of how this may be achieved, as demonstrated in both the legislation from Germany and the USA, this could have an effect on the support and credibility these important stakeholders put into the UK proposal. Stakeholder support is investigated further in chapter 5. In terms of the overall objectives of this study, this chapter has addressed the third objective and the findings from this chapter will go on to form the basis of recommendations in chapter 6.

## Chapter 4

### **The proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill and timber producing countries.**

#### **4.1 Objectives of the chapter**

In order to fully address the overall aim of this study and investigate whether the proposed Bill has the potential to reduce the trade in illegal timber and associated products within the United Kingdom, it is necessary to demonstrate that illegal logging is a significant problem in timber producing countries. Indonesia was used as a case study in order to do this. Although each producer country should be considered different in terms of the specific problems illegal logging poses to them, this method was chosen to allow greater insight from focussing on one producer country rather than looking at the problem from timber producing countries in general. Indonesia was used as an example as it is a major supplier of wood products to the United Kingdom (WWF 2008) and has also been the subject of a vast amount of literature about illegal logging. The sources of information for this chapter were a review of relevant literature as well as information regarding proposed Indonesian legislation to combat illegal logging, provided by representatives from GLOBE International<sup>13</sup> and Commission IV<sup>14</sup> of the Indonesian House of Representatives.

Without investigating the need for the proposed United Kingdom Bill from a timber producing country perspective, this study would be one dimensional. The proposed Bill relies on it being clear that illegal logging has occurred in a source country and as such it is important to know if there are potential barriers to this. It is also necessary to know from a UK seller or distributor’s point of view whether there are any significant barriers to obtaining assurance of legality as this stakeholder group are required to be duly diligent under the UK proposal. The successful implementation of the Bill, should it become law, will require clear forestry regulations in a producer country as well as cooperation with the authorities in these countries.

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<sup>13</sup> GLOBE International is the Global Legislators Organisation for a Balanced Environment. GLOBE facilitates ‘high level dialogues amongst legislators on key environmental issues’ with the objective ‘to urge effective action by governments and private sector leaders’. Information [online] available from <http://www.globeinternational.org/content.php?id=1:0:0:0> [Accessed 20<sup>th</sup> August 2008].

<sup>14</sup> Commission IV of the Indonesian House of Representatives is the Commission for agriculture, food, forestry and fisheries.

## 4.2 Illegal logging in Indonesia

Arguably, illegal logging is a significant problem in Indonesia. Indeed, Indonesia's Minister for Forestry has attributed the major cause of forest degradation in Indonesia to illegal logging (Kaban 2007) and recent NGO reports have stated that approximately eighty percent of the timber and associated wood products exported from Indonesia have illegal origin (e.g. Van Oijen and Van der Veen 2008; Hewitt 2005). The following subsections will look at this problem in detail and discuss the effect it may have on the implementation of the proposed UK Bill.

### 4.2.1 The scale and consequences of illegal logging in Indonesia

Indonesia harbours an estimated 100 million hectares of some of the world's most biologically diverse tropical forest (Forest Watch Indonesia and Global Forest Watch 2002). The biodiversity in this region has been recognised by international organisations, such as Conservation International<sup>15</sup> who include it among their biodiversity 'hotspots': areas considered to be of conservation priority owing to their high levels of species endemism and habitat loss (Myers *et al.* 2000). *Box 4* highlights the amount of endemic biodiversity to be found in this region. It is not only biodiversity that is at stake when considering the forests of Indonesia. They provide valuable ecosystem services such as water purification and soil stabilisation to in excess of 16 million people that reside in Indonesia's watersheds (Forest Watch Indonesia and Global Forest Watch 2002). Illegal logging can have severely detrimental effects on these ecosystem services as demonstrated in 2003 when illegal logging in Gunung Leuser National Park, Northern Sumatra, led to serious flooding in the nearby village of Bukit Lawang where over 239 people lost their lives as a result. Illegal logging continues in the park despite the efforts of local people acting as rangers to deter illegal loggers (The People of Bukit Lawang 2007). As well as the detrimental effects illegal logging has on biodiversity and ecosystem services, it also affects the people of Indonesia themselves. The Indonesian government is deprived of the equivalent of 600 million US dollars every year in unpaid forestry taxes and royalties (The World Bank 2006) which is money that could

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<sup>15</sup> Conservation International are a non-governmental organisation with the aim to 'protect life on Earth and to demonstrate that human societies will thrive when in balance with nature'. Information [online] available from: [http://www.conservation.org/discover/about\\_us/Pages/default.aspx](http://www.conservation.org/discover/about_us/Pages/default.aspx) [Accessed 20th August 2008].

be used by the government to provide better standards of services such as health care and education to the Indonesian people.

*Box 4: Endemic biodiversity of Indonesia*

Taxa	Number of endemic species
Plants	16,500
Birds	92
Mammals	104
Amphibians	66

(Source: Conservation International [www.biodiversityhotspots.org](http://www.biodiversityhotspots.org) )

#### **4.2.2 Causes of illegal logging in Indonesia**

At the time of writing, Indonesia is ranked 143 out of 179 on Transparency International's<sup>16</sup> Corruption Perceptions Index with a score of 2.3, where 0 represents a highly corrupt country and 10 a highly non corrupt country (Transparency International 2007). This rating is supported in the literature by Rhodes *et al.* (2006) who found that the forestry laws of Indonesia are often affected by corruption and insurgencies, as well as organised crime (Rhodes *et al.* 2006). Examples can be found in West Kalimantan where it has been reported that authorities, from the police to members of local parliaments, demand and receive bribes on a regular basis from those involved in illegal logging (Pye-Smith 2007). Bribery and corruption, owing to their underhand nature, are notoriously hard crimes to detect. The dominant form of corruption in Indonesia has been reported to be collusive; it does not present the briber or the person being bribed with any incentive to report the crime or indeed to protest, especially since it decreases private sector logging costs (Smith *et al.* 2003). This has the potential to seriously undermine legislation such as the UK is proposing as it would require proof that such crimes had taken place. If law enforcement officers have been

<sup>16</sup> Transparency International is a 'global civil society organisation leading the fight against corruption'. Information [online] available from: [http://www.transparency.org/about\\_us](http://www.transparency.org/about_us) [Accessed 20th August 2008].

involved in corruption it seems unlikely any such proof would be obtained. Without a more transparent system that allows for a greater detection of such crimes, or better incentives for authorities not to accept bribes, it is likely that much illegal logging would continue unabated.

To obtain logging permits legally in Indonesia is a process that has been described as long and highly bureaucratic (McCarthy 2002). The bureaucratic system in place appears to provide no incentives whatever for abiding the law as those willing to pay bribes can receive relevant documentation from the authorities easily (Pye-Smith 2007). If there are not adequate incentives to act within the law for the majority of the forest sector in Indonesia, those poorest are likely to be unduly affected leaving the richer, more powerful players unaffected. This is an example of how the proposed UK Bill might reinforce laws and regulations in producer countries that could be considered 'bad' law, in turn seeming to legitimise such laws.

#### **4.2.3 Illegal timber trade with the European Union**

It is believed that the value of illegal timber imported into the European Union from Indonesia is such that it provides significant leverage in terms of applying measures in order to reduce illegal logging (Hewitt 2005). Negotiations have begun between the European Union and Indonesia in order to form a Voluntary Partnership Agreement (VPA). Unfortunately no significant progress has been made since the initial consultation (Falconer 2008; Roby 2008) even though it was hoped that the VPA would be concluded by the end of 2007 (*Republic of Indonesia and the European Commission 2007*). There may be several reasons why this is not the case. Firstly, the product coverage of a FLEGT VPA as they currently exist would account for approximately 20 percent of the wood imports the EU receives from Indonesia (Hewitt 2005). This would not include products such as pulp, paper, furniture, mouldings or joinery. Arguably, a FLEGT VPA would not be as effective as it could be if it had broader product coverage. Potentially, the government of Indonesia are unsure as to the impact of entering into VPA negotiations when approximately 80 percent of the exports to the EU would not be covered. Indonesia might not be ahead in the VPA process due to a resistance to foreign interference in their forestry laws (Roby 2008). However, this reasoning contradicts a public appeal made by the Indonesian Minister for Forestry to the European Union to put more effort into halting the import of illegal Indonesian timber (ANTARA News 2006). In light of this, it would appear that Indonesia may need more incentives to participate in a VPA (Roby 2008), especially at a time when the

Indonesian government is heavily involved in climate change mitigation discussions with foreign countries. The absence of a FLEGT VPA between the EU and Indonesia presents an example of where the proposed UK Bill could be used to prevent illegal timber and wood products from Indonesia entering the United Kingdom. This has the potential to be complementary to the FLEGT Action Plan and is an illustration of why such legislation has been proposed by the UK.

#### **4.2.4 Indonesia and the United Kingdom**

A recent study by WWF reported that a likely important trade channel exists between Indonesia and the United Kingdom for finished wood products of illegal origin (WWF 2008). Preceding the FLEGT Action Plan of 2003 (Commission of the European Communities 2003), Indonesia and the United Kingdom signed a bilateral agreement called a Memorandum of Understanding (MoU) in April 2002. This agreement was made in order to tackle the issue of illegal logging and the trade in illegally logged timber between the two nations. The United Kingdom entered this agreement in order to set an example to other nations who might have subsequently made similar agreements with Indonesia (Speechly 2003). After the MoU with the United Kingdom was agreed, Indonesia signed bilateral agreements with Norway, China and Japan. This could be a demonstration of the influential nature that the UK had on these subsequent agreements. It may also be the role that the current proposed UK Bill has, leading other timber demand nations to take on similar legislation of their own. Arguably, this could create a larger and more effective response to the trade in illegal timber and associated wood products (Matthews, A. Pers. Comm.).

#### **4.2.5 Indonesian efforts to tackle illegal logging**

The government of Indonesia has recognised that the problem of illegal logging is one that requires urgent attention and as such has been at the forefront of many actions aimed at eliminating it. Examples include Indonesia being one of the first countries to sign the Convention on Biological Diversity (CBD) and to implement an associated National Biodiversity Strategy and Action Plan which included the extension of the protected area system in the country (Forest Watch Indonesia and Global Forest Watch 2002). Despite considerable public commitment by the Indonesian government to put an end to illegal logging in the country, it is arguably a problem that still persists. In a two week investigation in February 2008, the Indonesian military confiscated over 32,000 logs that were believed to

have been illegally obtained from the rainforests of West Kalimantan (The Jakarta Post 2008). A log export ban has been in place in Indonesia since September 2001, and a subsequent export ban of rough sawn wood was introduced in 2004, yet these bans have no legal force outside the jurisdiction of Indonesia. Should the UK Bill come into force, it has the potential to reinforce these Indonesian bans.

It has been argued that forestry laws in Indonesia have not challenged the most powerful figures involved in illegal logging operations. These include those that fund the operations and corrupt officials who benefit from them and thus have little incentive to enforce the laws in place to prevent them (EIA/Telapak 2007). Historically, laws in Indonesia to prevent illegal logging have favoured the interests of large scale operators and as such have been overly detrimental to the local communities who have livelihood needs and claims of their own on forest management (Colchester *et al.* 2006). Recognising this, a recent proposal by Commission IV of the Indonesian House of Representatives, aims to address many of these criticisms. The proposed 'Illegal Logging Prevention and Abolishment' (IL-PA) Bill aims to be a specialist piece of legislation to correct many of the shortcomings of Indonesian forestry law of the past. The Commission argues that to date legislation to tackle this issue has been very generalist and what it feels is urgently required is specialist legislation (Pasaribu 2008). The proposed IL-PA Bill advocates a holistic management approach as well as public participation in managing forests. The proposal also emphasises the importance of international co operation in the prevention and abolishment of illegal logging. This is encouraging for the proposed United Kingdom Bill as co operation would be important to achieve successful convictions against those involved in illegal logging. Some of the punishments under the proposed IL-PA Bill are shown in *Box 5*. Importantly, the proposed Indonesian Bill includes punishments for those involved at the higher levels of illegal logging, such as state officers. Unfortunately, significant arrests of the powerful figures involved in illegal logging have not been evident in the past in Indonesia which has been argued to reflect, among other things, the ineffectiveness of the Indonesian judicial system when dealing with these matters (EIA/Telapak 2007). Lack of enforcement capacity in many areas also compounds the inability of authorities to make illegal logging arrests. This includes protected areas, where park rangers have few resources to capture those involved in illegal logging, who are often better equipped than the rangers themselves (UNEP 2007).

**Box 5: Examples of punishments included in the draft ‘Illegal logging prevention and abolishment’ Bill of Indonesia (Taken from Pasaribu 2008).**

<i>Offence</i>	<i>Fine</i>	<i>Prison Sentence</i>
<i>Felling trees in forest area illegally</i>	<i>1-15 billion* Indonesian rupiahs</i>	<i>2-15 years</i>
<i>Funding illegal logging activity</i>	<i>5-40 billion rupiahs</i>	<i>5-15 years</i>
<i>State officer aware of existence of illegal logging</i>	<i>250 million-15 billion rupiahs</i>	<i>6 months-15 years</i>

\*At the time of writing, 1 billion rupiahs is equal to approximately 56,000 GBP.

If both the proposed Bills from the UK and Indonesia were to come into force they could potentially make a formidable obstacle to those trying to deal in illegal timber and wood products, as legislation would be in force at both ends of the supply chain. However, this is highly speculative as both Bills are drafts at the present time.

#### **4.3 Chapter conclusion**

Using Indonesia as a case study, it has been argued that significant efforts are being made to tackle the problem of illegal logging in this timber producing country. However, this is greatly undermined in Indonesia by a weak judicial system and a lack of enforcement capacity. While this does not necessarily directly affect the implementation of the proposed UK Bill, it has the potential to undermine it and could make co operation with Indonesian authorities when convicting criminals more difficult.

The ability of the proposed UK Bill to make a reduction in the amount of illegal timber traded in the United Kingdom will rely in part on the forestry laws and regulations in producer countries such as Indonesia and the ease in which it can be determined a crime has been committed. This chapter has highlighted that clear legislation from timber producing countries could greatly assist the implementation of the proposed UK Bill.

## **Chapter 5**

### **Stakeholder Survey: Attitudes and opinions towards the ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill**

#### **5.1 Aims of the Survey**

An online survey was designed by the author in order to address the following objectives of this study:

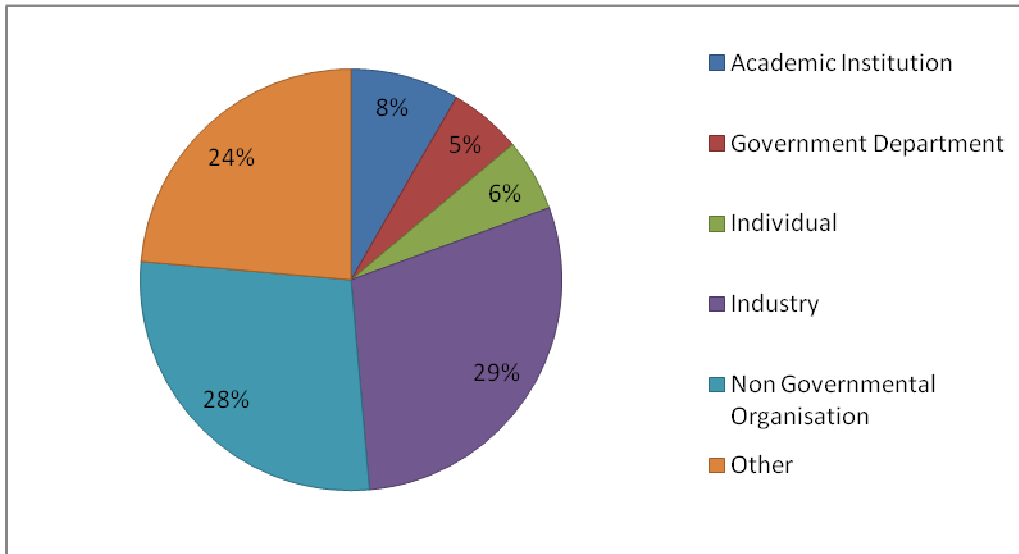
- i) To gauge the level of awareness of the proposed Bill amongst stakeholders in the issue of illegal logging and the trade in timber.
- ii) To ascertain the level of support the Bill has from stakeholders in the issue of illegal logging and the trade in timber.

Details regarding the sampling method used can be found in chapter 2. An outline of the questions asked is found in Annex 3. In order to more fully address the research objectives, the majority of questions were designed with open ended answers. This ensured respondents had the opportunity to explain the answers given. This opportunity was taken by most participants and the responses will be discussed in the following sections. In total, 65 participants completed the survey.

#### **5.2 Respondent Profile**

Despite the non-random sampling method employed for this survey, *Figure 2* shows that no interest group dominated the responses which could have led to further bias the results. Respondents from government departments were slightly underrepresented (5% of respondents) compared to respondents from industry and NGOs (29% and 28% respectively).

**Figure 2: Proportion of each stakeholder group that participated in the survey**



Respondents in the ‘other’ stakeholder group included trade consultants and parliamentarians. The majority of respondents (63%) were from the United Kingdom. Other countries represented by respondents to this survey are shown in *Table 1*. Responses were obtained from the timber producing countries Indonesia, Malaysia and Ghana as well as the large timber processing country, China. Although the sample size was not very large, respondents encompassed a variety of countries and interests which should lead to a reasonably balanced opinion of the UK proposal.

**Table 1: Number of respondents and the countries represented in the stakeholder survey**

Country	No. of Respondents	Percentage
United Kingdom	41	63.08%
USA	4	6.15%
Australia	1	1.54%
Belgium	4	6.15%
Canada	2	3.08%
China	2	3.08%
France	2	3.08%
Germany	1	1.54%
Ghana	1	1.54%
Indonesia	2	3.08%
Malaysia	1	1.54%
Singapore	2	3.08%
Switzerland	2	3.08%

### **5.3 Knowledge of the proposed Bill**

Overall, 96% of the respondents who completed the survey had heard of the UK proposal prior to taking part. This could be explained by the sampling technique used, as respondents were selected initially from an illegal logging update and stakeholder consultation. It could be, however, that the survey has not disentangled an awareness of the proposed UK Bill from an awareness of the broader ‘additional options’ debate for the EU FLEGT Action Plan, a debate that has been running for several years (Brack, D. Pers. Comm.). Of those who had not heard of the proposed Bill before completing the survey, three-quarters represented industry. This might suggest that there are industry representatives that have missed publicity for the proposal. Successful implementation of the Bill, should it become law, will place the onus on all those in the timber trade to show due diligence in sourcing timber. It is therefore important that as many industry representatives are made aware of the proposal as possible, particularly those who may not be aligned with relevant trade federations.

Although a vast majority of participants had a prior knowledge of the existence of the proposed Bill, 67% of these respondents felt well informed about it. A person’s perception of their own awareness may vary greatly from one to another and the level of awareness was not standardised by the survey. However, in order to test a respondent’s actual awareness level would have involved including very specific questions about the proposed Bill. This may have lead respondents to feel like they were being tested, making survey dropout rate larger. The respondents who stated they were well informed about the proposed Bill were from the full range of represented interests that responded and no one group appeared to be better informed than any other. Some respondents representing industry commented that there should have been more involvement of the Timber Trade Federation in the conception of the Bill. Of the participants who were not well informed about the Bill, the complaint was made that the only information they had received pertaining to it had been from NGOs, with no communication from the government itself. This could highlight a potential way forward for those responsible for publicising this Bill as it is clear that some respondents felt that there had been a lack of communication and publicity of the proposal. This is also a more general finding of this survey as even those respondents who answered that they were well informed about the Bill expressed an interest to know more.

## **5.4 Support for the proposed Bill**

Support for the proposed UK Bill was assessed directly by asking respondents if they were in support or not. Of those who took part in the survey, 69.8% were in support of the UK proposal. These included representatives from industry (29.7%), academia (8%), NGOs (24.3%) as well as parliamentarians and trade consultants. Reasons given for the support of the proposed Bill included that it would keep illegal logging on the political agenda, especially in the absence of EU legislation. Some respondents commented that the Bill would put pressure on the European Commission to introduce additional legislation to FLEGT and that it would provide a market pressure for those in producer countries to enforce forestry laws. Despite the majority of respondents stating support for the proposed UK Bill, the survey also revealed notable objections to it. The main reason given by respondents who did not support the Bill was linked to it being solely a United Kingdom proposal. These respondents felt an EU approach was likely to be more successful. The reasons why respondents to this survey may have been in support of, or objected to, the proposed Bill will be discussed further in relation to the responses given to the rest of the survey.

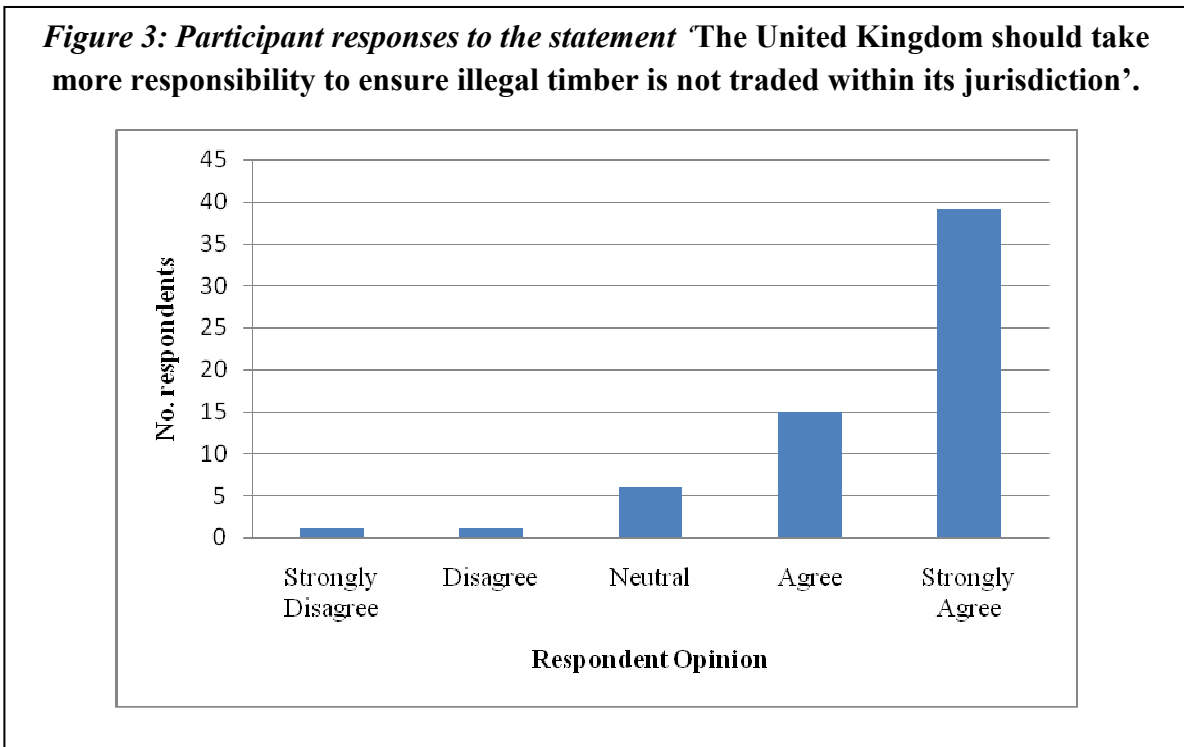
## **5.5 Attitudes towards the need for the proposed UK Bill**

In order to assess whether a need for the proposed UK Bill was felt by the respondents to the survey, questions were asked relating to the United Kingdom's involvement in tackling illegal logging, both in terms of the public and private sectors as well as the Bill's potential complementarity to the European Union's FLEGT Action Plan (Commission of the European Communities 2003).

### **5.5.1 Responsibility of the United Kingdom**

In terms of the overall responsibility of the United Kingdom to tackle the issue of illegal timber being traded in the UK, 87% of respondents agreed that the United Kingdom should take more responsibility to ensure illegal timber is not traded within its jurisdiction. *Figure 3* shows the responses given by participants. Those respondents that disagreed commented that producer and exporting countries should also take more responsibility for the legality of their

timber. Although the majority of respondents agreed that the UK should be taking more responsibility, this was a larger percentage than said they were in support of the Bill (69.8%). This could indicate that while it is largely agreed (by the respondents to this survey) more action should be taken by the UK on this issue, the proposed Bill as it stands is not considered to be the solution.



### 5.5.2 Complementarity of the Bill to the EU Action Plan

Participants were asked whether they felt the proposed UK Bill would be complementary to the EU FLEGT Action Plan. 56% of participants said the Bill would be complementary; a further 24% believed it may be complementary. Respondents who believed it would be complementary generally highlighted weaknesses in the FLEGT Action Plan as the reason why. The weaknesses mentioned included the ability to circumvent FLEGT VPAs through non-partner countries, the limited product coverage of FLEGT VPAs and the absence of proposed VPAs with major timber producing and processing nations such as Brazil and

China. In this respect the proposed Bill may be complementary to the EU FLEGT Action Plan as it has the potential to close these loopholes with regard to illegal trade in the UK.

The main reason given by respondents who believed the Bill to be un-complementary to the FLEGT Action Plan was that the Bill could be detrimental to the VPA processes currently ongoing in some timber producing nations. This is because the Bill could send a mixed message to those that supply the UK market and have already committed to governance reform under a VPA with the EU. This concern has highlighted a potential risk of the proposed Bill in that it would presumably be easier both in terms of resources and time for producer countries to comply with such legislation rather than negotiate FLEGT VPAs which would require legal as well as governance reforms. These reforms are likely to be necessary to significantly reduce levels of illegal logging in many timber producing countries (Colchester *et al.* 2006; The World Bank 2006). Therefore, if the proposed Bill were to distract from this process, it is regarded by some as un-complementary to the objectives the FLEGT Action Plan is trying to achieve.

### **5.5.3 Effectiveness of UK public procurement policy and private sector initiatives**

Participants were asked their opinion on the effectiveness of both public and private sector initiatives in keeping illegal timber out of the UK market. Overall, 53% of respondents felt that private sector initiatives have proved themselves ineffective and 52% felt similarly about public procurement policy. This highlights a potential gap that the proposed UK Bill might fill should it become law, as it could capture illegal timber currently not covered by public or private sector initiatives. In terms of the effectiveness of private sector initiatives, industry representatives that completed the survey gave a varied response. Some respondents believed that these schemes favour those companies that work on a large scale and are financially strong. Ineffectiveness of private sector schemes was attributed to a lack of meaningful sanctions for non compliance and that many of these initiatives have no substance as a thinly worded environmental statement is often enough to satisfy customers.

With regards to the impact that public procurement policy has had on the illegal timber trade in the UK, a number of respondents argued that it could be effective if strong enforcement, implementation and monitoring was in place. Some respondents blamed the uncertain verification processes in countries like China for its ineffectiveness. Many comments were received on the lack of implementation of public procurement policy by local government

bodies, something which is believed to have greatly undermined its effectiveness (Howorth *et al.* 2006). Public procurement policy may prove to be more effective, however, when a new policy being introduced in 2009 takes force. Overall, the questions relating to the need for the proposed Bill in terms of the current systems in place have indicated that many respondents are dissatisfied with the current ways of working. This may indicate a need for legislation such as the UK Bill as it is clear from this survey that the participants involved are keen to see more action being taken by the United Kingdom to tackle this problem.

### **5.6 Perceived Advantages and Disadvantages of the proposed UK Bill**

Participants were asked to list up to three advantages or benefits and three disadvantages or potential risks they perceived with the proposed UK Bill. In order to determine where support for, and objection to, the proposed Bill lies and address the overall research question of this study, all similar responses were grouped together. The main themes identified from responses to the survey are shown in *Table 2*.

**Table 2: The 10 most frequently cited advantages and disadvantages to the proposed UK Bill, as identified by participants in the survey.**

<b>Advantages and Benefits</b>	<b>Disadvantages and potential risks</b>
1. Due diligence required from sellers and distributors	1. Undermines FLEGT and the European Commission
2. Makes trading illegal timber a crime	2. Difficult to enforce
3. Encourages sustainability	3. Difficult to obtain evidence of a crime
4. Sets example to other nations and the rest of the EU	4. Bill has unclear requirements
5. Raises awareness of the issue	5. Difficult to ensure legality of timber
6. Sets level playing field for all industry	6. Emphasis on sustainability lost
7. Increases revenues to producer countries	7. Overburden on industry
8. Reduction in illegal timber	8. Opens up black market and new forms of illegality
9. Strong disincentives for would be criminals	9. Detrimental to producer countries
10. Complementary to EU FLEGT Action Plan	10. Has no impact on the ground in producer countries

Nearly a fifth of responses (18.8%) given regarding the perceived advantages of the proposed Bill related to sellers and distributors of timber being required to show due diligence when sourcing their timber supplies. Respondents emphasised that the Bill would assign clear responsibility on the part of those involved in the sale and distribution of timber and related wood products, particularly those in the furniture and flooring sectors who some respondents believe not to be adequately represented by the major trade associations. Respondents who listed this advantage represented a variety of interests, one third of which were industry representatives. This could suggest that industry representatives are not opposed to legislation which requires due diligence in their sector and is related to the sixth most cited advantage of the Bill (*Table 2*); the proposed Bill aims to achieve a level playing field for industry meaning those trading illegally will no longer benefit at a cost to honest traders.

The second major advantage to the proposed Bill as identified by participants to the survey is that the Bill would make the sale and distribution of illegal timber a crime, which it is not under current UK legislation. Some respondents argued that regulatory approaches are likely to be the only ones that will work to reduce the trade in illegal timber in the UK and ultimately give a stronger protection to the world's forests. This links to the advantage that the Bill would provide strong disincentives for would be criminals owing to its penalties and lack of 'innocent owner' defence i.e. a person can be convicted even if they are unknowingly trading illegal timber. However, a lack of innocent owner defence was also argued as a disadvantage to the Bill by some respondents who commented that industry needs more guidance and help in securing legal timber, rather than punitive legislation. However, there are verification systems and schemes available and a lack of innocent owner defence suggests that whether or not a trader knows they are trading in timber of illegal origin is almost irrelevant; the Bill makes the point that they *should* have known if they had shown a proper amount of diligence when buying from their supplier.

Another perceived benefit of the proposed Bill is that it would act to encourage sustainability. This argument is countered by the risks given by some respondents who believe the Bill will shift the focus from sustainability to legality. Legality in some timber producing countries is a very low bar to reach as many technically legal forestry practices are in fact unsustainable (Colchester *et al.* 2006). It may be that the buying power the UK has over timber producing countries is unlikely to be strong enough to initiate a large scale change to sustainable forest management, especially with the availability of less discerning markets (Canby 2008). Having said this, should the Bill come into force, it is likely that buyers in the UK will seek recognised certification labels such as FSC and PEFC<sup>17</sup> (Programme for the Endorsement of Forest Certification) which work not only towards legality but sustainability as well.

17% of respondents felt that the proposed Bill had an important benefit in that it could provide an example to other nations. This includes sending a message to the European Commission on an issue that many commented has taken too long to see any significant progress at EU level. However, roughly the same percentage of respondents felt that the Bill would undermine any action being proposed by the European Commission. Many comments

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<sup>17</sup> PEFC is 'an independent, non-profit, non-governmental organisation...which promotes sustainably managed forests through independent third party certification...' providing 'an assurance mechanism to purchasers of wood and paper products that they are promoting the sustainable management of forests.' Information [Online] Available from: [http://www.pefc.co.uk/about\\_pefc.shtml](http://www.pefc.co.uk/about_pefc.shtml) [Accessed 27th August 2008].

stressed that a fragmented approach (should other EU countries follow the proposed Bill's example) to tackling illegal logging would not be as powerful as a European wide action and that further support should be given from all Member States toward such a joint action. Despite the disparity the UK Bill might have with an EU wide approach some respondents commented that an advantage of the UK proposal is that it is consistent with the approach in the USA i.e. the Lacey Act. This is perhaps a benefit when it comes to implementing the UK Bill should it come into force. Lessons could be learnt from the USA in terms of enforcement of the Lacey Act which could provide a model for implementation of the proposed Bill in the United Kingdom. It could however, be disadvantageous to be at odds with the EU whilst being consistent with the USA, considering imports are regulated at the EU level, of which the UK is a Member State.

Two of the most cited disadvantages of the proposed UK Bill by participants in the survey relate to its implementation. Respondents commented that the Bill would be hard to enforce in practice mainly owing to the timber industry being multinational; wood can be sourced in one country yet processed and shipped through others. To coordinate all relevant enforcement agencies in different countries could prove extremely difficult. This difficulty was exemplified in the 1990s when an eco-message system developed by Interpol<sup>18</sup> proved unsuccessful due to differing definitions of legality in different countries compounded by a lack of awareness of many environmental crimes (Brack 2006b).

A disadvantage of the proposed Bill identified only by industry representatives who participated in the survey was that the Bill has unclear requirements as to what constitutes legality. As those in industry are expected to show due diligence under the proposed Bill it is unsurprising that this interest group may require clear guidelines about how they should comply. The UK proposal does not stipulate what is specifically required to prove legality. This may be an advantage as a number of certifying agencies might be acceptable, meaning those already working with recognised agencies will not be unduly burdened. However, the

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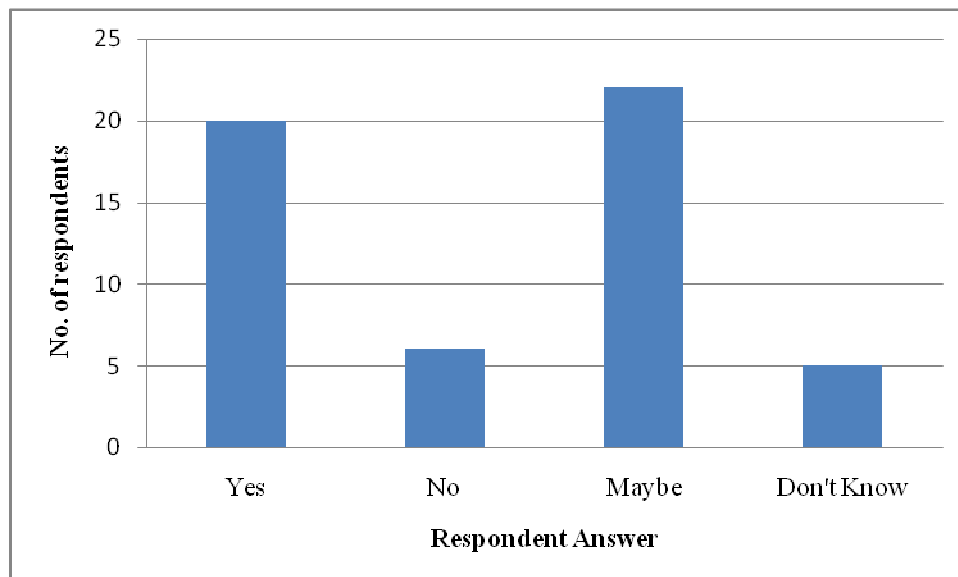
<sup>18</sup> Interpol 'is the world's largest international police organization, with 186 member countries... it facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime'. Information [Online] Available from: <http://www.interpol.int/default.asp> [Accessed 26th August].

industry respondents who cited this as a disadvantage to the proposed Bill commented that the lack of clarity could lead to confusion and loop holes and that without clear guidelines the Bill has limited credibility.

### 5.7 Perceived Impact of the proposed Bill

Participants in the survey were asked whether they believed the UK Bill could significantly reduce the amount of illegal timber traded in the United Kingdom. This question directly addresses the main research question of this study. *Figure 4* shows the responses given to this question.

**Figure 4: Answers given to the question ‘In your opinion do you believe the proposed Bill can significantly reduce the amount of illegal timber traded in the UK?’ in the stakeholder survey.**



Most participants (41.5%) answered ‘maybe’ to this question. The large ‘maybe’ response indicates that for many participants of this survey there are unanswered questions regarding the implementation of the proposed Bill. Some respondents believed that unless a more stringent tracking system is widely available for legal timber such as a DNA based system with spot checks then implementation will be extremely difficult. Of the 38% of respondents to this question that felt the proposed UK Bill could significantly reduce the amount of illegal

timber traded in the United Kingdom many included that this would rely on the monitoring, prosecution and enforcement strategies employed.

## **5.8 Chapter conclusions**

Very few points of consensus were found amongst the responses given to the online survey. In terms of the research objectives it has been established that the sample of stakeholders surveyed had a reasonable level of awareness of the proposed Bill. The exact level could not be inferred, owing to the type of questions asked. Although the majority of participants agreed that the United Kingdom should be taking more responsibility to tackle the trade in illegal timber, it is not evident that the proposed Bill satisfied the stakeholders surveyed as being an effective solution. The survey also highlighted that many respondents want a level playing field for the timber industry, something that could potentially be attained should the Bill be made law.

## **Chapter 6**

### **Conclusions and Recommendations**

This study aimed to critically analyse a draft piece of legislation proposed by the United Kingdom in order to prohibit the sale and distribution of illegally sourced timber and wood products within its jurisdiction. Timber demand countries such as the United Kingdom play a significant role in fuelling illegal logging which has detrimental effects on the people and forest ecosystems in many timber producing countries. This chapter will provide the conclusions and subsequent recommendations made from this study, as well as limitations and further research that could be carried out.

#### **6.1 Addressing the objectives of this study**

Conclusions will be discussed in direct relation to the research objectives outlined at the beginning of the study.

##### **6.1.1 The level of awareness and support of the proposed Bill amongst stakeholders in the issue of illegal logging and the trade in timber**

The vast majority of stakeholders surveyed in this study were aware of the proposed Bill which suggests that, for this group, the Bill had been well publicised. The level of awareness, however, varied and many of the respondents who claimed they were well informed about the proposal expressed a desire to know more. The findings from the survey indicate that amongst the participants it is widely acknowledged that timber demand side actions from the UK should be implemented to tackle the trade in illegal timber. However it is not widely agreed upon which approach should be used; the proposed Bill did not receive a clear majority of respondents in support of it. In fact, of those who were in support, many had reservations about the implementation of the Bill mainly in terms of enforcement and monitoring. For the industry representatives who will be required to show due diligence under the provisions of the Bill, the proposal is too vague in terms of its requirements and it has been indicated that a majority of these respondents are unsure about how they would comply with such a Bill.

##### **6.1.2 The effectiveness and implementation of similar legislation elsewhere**

The proposed UK Bill is at a relative disadvantage to the USA and German Acts it was compared to in this study since it is not an amendment to an already existing Act. The Timber Amendment to the Lacey Act in the USA was an amendment to a piece of legislation that has been operating since 1900. In Germany, the draft Virgin Forests Act is being tabled as an amendment to the Federal Nature Conservation Act. The proposed Bill therefore, has no precedent in the UK to follow or amend, which could make support for it less likely. An amendment to an existing Bill with an established enforcement regime would potentially be a more efficient process than introducing an entirely new piece of legislation. It is not believed that existing wildlife protection laws in the UK have the scope of their counterpart laws in the USA or Germany to be amended to include the trade in illegal timber.

The Timber Amendment to the Lacey Act has begun to encourage importers in the USA to show due diligence when sourcing their timber supplies and it is likely that such an effect would be witnessed in the United Kingdom should the proposed Bill be made law. This being said, making convictions in the USA based on other countries' law and regulations has not proven itself to be simple; there are cases where interpretation of foreign laws is a highly contentious issue. As the proposed Bill is modelled closely on the Lacey Act it seems likely that many of the problems faced with enforcing the Bill in the United States could apply to enforcing the proposed Bill in the UK.

## **6.2 Limitations of the study and further work**

Illegal logging and the associated illegal timber trade is a complex problem and as such this study is firstly limited by time and resources. Given a greater amount of time more respondents could have been collected for the stakeholder survey and a more generalised view of the responses drawn. Access to respondents for the survey was also a limitation of this study due to the specialised nature of the subject matter, meaning only participants with a relevant knowledge could be approached. It is also recognised that a more general limitation of this study is the focus it places on tropical timber. Illegal logging does not exclusively apply to tropical timber and as such the general conclusions, while they may apply to the illegal timber trade as a whole, cannot be said to definitely apply to all situations, since illegal logging was not considered in all countries where it is a problem.

Generalisation of the survey findings is limited by the sampling method used to select participants. Ascertaining the level of awareness was also limited by question design. In order

to get a standardised level of awareness among respondents would have required more specific questions pertaining to the proposed Bill. Another limitation of the study was that consumers of timber were not surveyed. Although the survey used may have been too specific for the average consumer it these consumers that create the large scale demand for wood products such as furniture. Implementation of the proposed Bill would mean consumers having to demonstrate a willingness to pay a higher price for such products.

A further limitation of this study is that the UK is currently unique as a Member State of the European Union proposing legislation of this kind to tackle the trade in illegal timber. Although the draft German Virgin Forests Act is an example of this kind of legislation being proposed at Member State level, it is an Act aimed primarily at conservation of virgin forests and is itself a draft. This means that assessing the effectiveness of the proposed UK Bill is difficult in the absence of current working examples within the European Union. Using the Timber Amendment of the Lacey Act as a comparison also has limitations since no cases under the new amendments are currently available to examine owing to the recent inclusion of these amendments to the Act in the USA.

In light of the limitations of this study, the following areas could be the subject of further research:

- A detailed analysis of successful Lacey Act convictions in the USA, once examples of cases tried under the new Timber Amendment are available.
- Future research could target consumers in an effort to determine whether the increased cost of timber associated with the proposed legislation would be a price consumers are prepared to pay for, especially in times of an economic recession. It could also address the likelihood of consumers choosing to buy alternative materials such as aluminium and plastics.
- An assessment could be made of the effect the proposed Bill would have in terms of revenues for timber producing countries. The proposed Bill should in theory increase revenues for these countries. This could be investigated in terms of:
  - i) Individual timber producing country regimes i.e. how likely revenues would benefit the people of that country.
  - ii) The potential effect that a shift to less discerning timber markets would have under the proposed Bill.

**6.3 Answering the research question:** *Does the proposed Bill have the potential to reduce the amount of illegal timber traded in the United Kingdom?*

In terms of the trade that the United Kingdom does in illegal timber and wood products, the proposed Bill appears to have the potential to significantly reduce its part in this illegal trade. Not only would it level the playing field for sellers and distributors of timber in the UK it would also require them all to be duly diligent when sourcing timber. It is likely that in order to do this, many in the UK industry would seek recognised certification schemes such as FSC and PEFC. Provided enforcement agencies have enough resources available to make successful prosecutions then it could be a viable solution to the problem of the illegal timber trade in the United Kingdom, especially as legislation of its kind in the USA has shown that it has a powerful deterrent effect. However, the problem of illegal logging has rarely, if ever, been described as a simple one and to ignore the global picture when implementing measures to reduce the trade in illegal timber is to ignore what many consider is the real root of the problem: that of weak governance and legislation in the timber producing countries. If the proposed Bill leads to similar action from other nations in Europe, the overall effect on the level of illegal logging is likely to be minimal. Such a fragmented approach is unlikely to have as powerful an effect as a joint European Union approach. Even if major timber processing countries such as China were to implement similar legislation, the problem remains that many timber producing countries are still poorly governed in terms of natural resource use and until governance and legislative reform in these countries is enabled, it is unlikely to really affect the level of illegal timber being sold and distributed around the world. The EU FLEGT VPA process appears to recognise this and while progress has been slow to date, to negotiate governance reform in producer countries cannot be hurried if it is to truly benefit both the producer country itself as well as the demand countries seeking to purchase legal timber and wood products.

The FLEGT VPA process is not without criticism however, and loopholes exist where countries decide not to enter VPAs. Added to that a lack of national legislation aimed at tackling the illegal trade in timber demand countries, the UK Bill appears to fill a niche left open by the EU process. The European Commission is still deliberating over legislation to plug the loopholes in FLEGT and any additional measures it decides upon are unlikely to be enacted until after the next European elections in mid 2009. There is potential for the proposed UK Bill to be in force more quickly than EU legislation should it receive the

backing of other MPs as well as the Department for Environment (Defra)<sup>19</sup>. The European Commission may decide not to bring in any additional legislative measures to the FLEGT Action Plan, illustrating another reason why the proposed UK Bill may be needed. Despite this, frustration at the length of time it is taking the EC to communicate and enact additional legislation on this issue is not necessarily a reason in itself to introduce Member State legislation. It may certainly put pressure on the EC to decide in a more timely fashion but without sufficient details about how the UK might implement the proposed Bill it may be difficult for some to see credibility in the proposal. The findings from this study indicate that the proposed Bill does not adequately address enforcement, which could have a detrimental effect on the Bill's implementation. Importantly, it is worth being reminded of the fact that currently there is no law in the United Kingdom making it a crime for companies that regularly trade in illegal timber and wood products and this is something the UK proposal would do. Responsible and legal sourcing of timber and associated wood products is something that is desired by many stakeholders, including those in industry, a point highlighted in the literature and reiterated amongst those surveyed in this study.

Illegal logging activities permeate many levels of society. In this respect, the broad coverage of the proposed UK Bill has an advantage as it does not outwardly discriminate against those poorest working for the more powerful players in industry, who arguably share more of the blame. Unfortunately, obtaining proof and securing arrests is still likely to be easier at the lower levels. Without significant arrests of individuals who fund such illegal operations or members of authorities who accept bribes, the Bill may transpire to affect those poorest worst. The Bill's broad coverage also leaves it open to loopholes. Nevertheless, the UK proposal shows a willingness to tackle an important issue, one that recently has been overshadowed in political forums by climate change concerns and the development of new market mechanisms for ecosystem services. Without substantially reducing the trade in illegal logging, these initiatives are likely to be undermined making them being much less successful than originally anticipated.

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<sup>19</sup> Defra (Department for Environment, Food and Rural Affairs) is a UK Government Department.

This research endeavoured to provide implications to decision makers in the UK government and other interested parties about the likely success of the Bill should it be implemented and to highlight any issues serving as barriers to effective implementation of the proposal. Recommendations following from this research will now be outlined.

## **6.4 Recommendations**

The research conducted for this study is aimed at decision makers in the UK government. To increase the likelihood that the proposed Bill will be made law, the proposal needs to secure the support of the UK's Department for Environment (Defra). The following recommendations are being made which the author believes would increase the likelihood of further support from relevant stakeholders for the proposed Bill in light of the research carried out. The recommendations could increase the likelihood of the Bill's ability to reduce the amount of illegal timber traded in the United Kingdom, as well as help to address the problem of illegal logging in a global setting.

### **6.4.1 Amendments to the proposal**

This study has identified areas of the Bill that could be clarified in order to increase support for the proposal as well as aid implementation should it become law. Supplementary provisions added to the draft Bill could provide the clarifications identified as needed by the study. These include:

- i) *Incorporating clear guidelines about how to comply.* A detailed description of what is required to show legality should be incorporated into the Bill. This could take the form of a confirmation or declaration including details of the whole chain of custody from supply to processing.
- ii) *Including sustainability.* To incorporate sustainability into the Bill and not solely legality such a confirmation could include the name and contact details of a relevant certifying agency. 'Relevant certifying agency' should be defined by the Bill in order to ensure standardised implementation.
- iii) *Further details of offences.* Despite the broad coverage of illegal activities covered by the proposed Bill it does not specifically mention the crimes of bribery and corruption, a notable problem in some major timber producing countries. To be

sure the Bill covers these activities, it is recommended that such a definition is included in the text of the Bill.

#### **6.4.2 Role as an example to other nations**

The author argues that it is not enough to assume that by implementing the proposed Bill, other timber processing and demand countries will follow suit. This is especially true of those nations who have an increasingly a greater proportion of the trade in timber such as China and the Middle East. The United Kingdom may have very little effect on the uptake of similar legislation in these countries owing to its relatively small proportion of the trade. It is therefore recommended that more communication and outreach be had with these countries, not only to encourage them to legislate on their own but also in order to inform major suppliers in these countries about the actions being taken so they are aware of the requirements for selling timber to the United Kingdom. It is recognised that international forums have been held in countries such as Japan and Brazil by organisations advocating the proposed Bill (e.g. GLOBE International) but the recommendation is to outreach to those countries which have so far been less forthcoming about tackling legality issues.

#### **6.4.3 Complementarity to the FLEGT Action Plan**

Those responsible for introducing the proposed Bill have claimed it is complementary to the FLEGT Action Plan. This study has found that while to a certain extent this is true, the Bill itself does not make it explicitly clear how current actions being taken under the Action Plan are complemented by the Bill. It is therefore recommended that one way in which the FLEGT Action Plan could be incorporated into the proposed Bill would be to include FLEGT licenses in the text of the Bill as an acceptable form of legality. This would help to ensure that any previous work completed in a timber producing country under a FLEGT VPA for example, would not have been a wasted effort.

#### **6.4.4 Enforcing the Bill**

Issues with how the proposed Bill would be enforced have been a concern throughout this study. Greater enforcement and prosecution resources are always in demand and when pitted against crimes such as the trade in illegal narcotics, the proposed Bill is likely to be low priority. As successful prosecutions are key to the deterrent effect the proposed Bill would

have should it become law, the following recommendations are believed to improve the likelihood of convictions being made:

- i) *Development of a body of expertise for forestry laws in other countries:* Interpretation of law and regulations in other countries has proven itself to be a contentious issue in a number of cases where similar legislation to the proposed UK Bill is in force in the USA. To keep contention at a minimum and provide standardised expertise in court cases, it is recommended that should the Bill be made law, a body of expertise is established to provide this. Initially, this body could focus on the major timber producing countries that supply to the UK as it is recognised that this recommendation may be unachievable if all forestry laws in producer countries were to be included.
- ii) *Establishment of a monitoring system:* Concerns expressed regarding the successful implementation of the proposed Bill might be relieved if an effective monitoring system was in place to assess whether the Bill has the desired effect on the trade in illegal timber. Details of such a system could be incorporated into the text of the Bill as it is currently not clear how the Bill will be enforced and monitored. Without clear enforcement details, the proposal lacks substance and could lead many to doubt its credibility.

#### **6.4.5 Long term investments**

There are increasingly more sophisticated technologies available for distinguishing legal from non legal timber yet without long term investments into these technologies, they are unlikely to be widely available for use by the timber industry for some time. Developments in the illegal trade are also developing, with criminals finding ever more complicated ways to evade the law. As such, it is recommended that anti illegal trade technologies need more investment in order to provide legal assurances with shipments of timber and wood products. It is further suggested that such investments come from a variety of interested parties including the government, the UK timber industry and NGOs so that timber producing countries, which often have less capital to invest, do not bear the cost.

#### **6.4.6 Dissemination of information**

The stakeholder survey conducted in this study revealed many respondents would like to know more about the proposed Bill, including those that said they were well informed. In light of this, it is recommended that a thorough dissemination of information relating to proposals aimed at tackling the illegal timber trade be made by those responsible for introducing such measures. It is vital that all stakeholders in the issue have an opportunity to contribute to such proposals as it will ultimately make for a more effective resolution.

Finally, legality of timber is arguably not enough. In order for the timber trade, the people whose livelihoods depend on the forests and the forests themselves to survive, sustainability should be the main focus and end point for many of the initiatives to tackle illegal logging practices. To arrive at a stage where sustainable forest management is practiced widely in timber producing countries will likely involve a process of significant governance and legislative reform. Yet while there are ways and incentives to purchase illegally obtained timber, demand countries, such as the United Kingdom should take steps to ensure there is not a viable market for illegal timber.

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**Annex 1: The proposed ‘Illegally Logged Timber (Prohibition of Sale and Distribution)’ Bill**



Session 2007 – 08  
Internet Publications

House of Commons

# **Illegally Logged Timber (Prohibition of Sale and Distribution) Bill**

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## **Illegally Logged Timber (Prohibition of Sale and Distribution) Bill**

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Bill 94

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*Illegally Logged Timber (Prohibition of Sale and Distribution) Bill*

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A

# BILL

TO

Make it an offence for any importer or distributor to sell or distribute in the United Kingdom any wood harvested, manufactured or otherwise dealt with illegally in the country from which the wood originated or through which it passed or was transhipped; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## 1 Interpretation

In this Act—

“distributor” means any person who, for professional and commercial

purposes, irrespective of the selling technique used—

- (a) manufactures and sells wood, 5
- (b) sells wood manufactured by another person, or
- (c) imports or exports wood into the United Kingdom;

“importer” means any person established within the United Kingdom

who is responsible for the physical introduction for commercial purposes of wood or wood products into the United Kingdom; 10

“person” includes any individual or organisation of any kind subject to

any jurisdiction in the United Kingdom;

“wood” means any timber, bamboo or rattan and products thereof.

## 2 Prohibited acts

A distributor or importer who— 15

- (a) sells, or offers for sale, any wood that has been—
  - (i) harvested, sold, taken or possessed illegally in the country from which the wood was originally harvested, or
  - (ii) exported illegally from a country from which it was originally harvested or imported illegally into a country through which it passed or was transhipped, 20
- (b) attempts to commit any act falling within paragraph (a),

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- (c) commits any act falling within paragraph (a) not knowingly but recklessly and where he should have known that such an act was being committed,
- (d) commits any act falling within paragraph (a) in good faith, or
- (e) falsifies labels or records in connection with the acts falling within paragraph (a), 5

is guilty of an offence.

## 3 Penalties, forfeiture, etc

- (1) A distributor or importer guilty of an offence under—
  - (a) section 2(a) or (b) shall be liable on conviction on indictment to 10 imprisonment for a term not exceeding 5 years or a fine not exceeding £100,000, or both,
  - (b) section 2(c) shall be liable on conviction on indictment to imprisonment for a term not exceeding 1 year or a fine not exceeding £50,000, or both,

- (c) section 2(d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, 15
  - (d) section 2(e) shall be liable on conviction on indictment to imprisonment  
for a term not exceeding 1 year or a fine not exceeding £10,000, or both.
- (2) Where an offence under section 2 has been committed, the maximum fine  
which may be imposed under subsection (1) shall be determined as if the 20  
person convicted had been convicted of an offence in respect of each  
consignment of wood or wood products.
- (3) The Secretary of State may, by order, increase the penalties specified in  
subsection (1).
- (4) The court by which any distributor or importer is convicted of an offence 25  
under  
section 2 shall order the forfeiture of any wood product, tree, plant or  
other  
thing in respect of which the offence was committed.

#### **4 Subordinate legislation**

- (1) The Secretary of State may by regulations make such supplementary  
provision  
as appears appropriate in consequence of, or otherwise in connection 30  
with, this  
Act.
- (2) Regulations and orders under this Act shall be made by statutory  
instrument.
- (3) No order under subsection 3(3) may be made unless a draft of the order  
has  
been laid before, and approved by a resolution of, each House of  
Parliament.
- (4) Regulations under subsection (1) are subject to annulment in pursuance 35  
of a  
resolution of either House of Parliament.

#### **5 Citation**

- (1) This Act may be cited as the Illegally Logged Timber (Prohibition of  
Sale and

Distribution) Act 2008.

- (2) This Act comes into force at the end of the period of two months<sup>40</sup> beginning with the day on which it is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.

## **Annex 2**

### **Additional legislative options for the FLEGT Action Plan under consideration by the European Commission.**

Four main options have been under consideration by the European Commission for additional legislative measures to help curb the trade the EU does in illegal timber. These options are being assessed within the Commission itself and by way of a public consultation distributed in December 2006 (European Commission 2006). It is from this public consultation that the main options under consideration by the EU have been surmised for the purpose of the current study.

The options, as taken from the European Commission's public consultation are;

- i) To expand coverage of the bilateral approach through FLEGT Voluntary Partnership Agreements between the EU and timber exporting countries.
- ii) The introduction of private sector measures such as codes of conduct as well as certification schemes with third party monitoring.
- iii) An import ban on illegally harvested timber.**
- iv) Legislation prohibiting the placing on the EU market of illegally harvested timber or products derived from such timber. (Legislation based on the Lacey Act of the United States).**

Of these four options, the literature surveyed concentrates on options iii) and iv) (highlighted) as being the most feasible and so will be the focus of the rest of this section. Indeed the EC's public consultation highlighted these two options as being those causing most debate which presumably reflects the interests of the different stakeholder groups that responded including representatives from industry, relevant experts and NGOs. Before addressing the two main options highlighted above, further discussion will be made about the European Commission's public consultation of the additional options for the legislation, which was reviewed to provide insight for the current study.

### **Public consultation on additional options for legislation by the European Commission**

Overall, a total of 93 responses were obtained during the consultation which was conducted over a period of ten weeks. The majority (63) of the respondents felt that additional legislation was required to tackle the problem of illegal timber entering the EU as the

bilateral FLEGT approach was not sufficient by itself to do the task (European Commission DG Environment, 2007). This would appear to confirm the need for additional legislation in this area. Some interesting points surrounding the two highlighted options, iii) of an import ban or iv) legislation modelled on the Lacey Act, were raised by this consultation.

Many of the respondents representing the timber industry felt it was too soon for the EU to be considering additional legislative options, perhaps as many large industry representatives have been working with initiatives such as WWF's Global Forest and Trade Network<sup>20</sup> and feel that this is not getting enough recognition. It may also be because the VPA system is not fully operational so it is not yet clear if additional measures are required. The majority of NGOs who responded to the questionnaire felt that it was not too soon to be considering additional legislative options perhaps as they anticipated a delay in the initiation of the VPA system and were concerned about those timber producing countries who do not sign up for VPAs. Two NGOs that responded felt it was premature to be discussing additional legislative options. It could be speculated that these NGOs were more development rather than environment based perhaps feeling that the VPA system should be given time to prove itself, especially given the capacity building in many major timber exporting countries that would be involved in such a process. Some respondents commented on why they objected to developing new, additional legislation alongside the negotiations for FLEGT VPAs. The main concern was the effect that additional legislation would have on the motivation for producer countries to fully engage in developing VPAs with the EU. Put another way, what would be the incentive to joining VPAs if it would be easier to accommodate the new legislation? Although this concern does seem to be valid to some extent, additional legislation would surely act as a valuable safety net should VPAs be suspended or terminated by producer countries. This could happen due to the voluntary nature of VPAs or perhaps during times of conflict in the producer country. Armed conflict has been identified as a cultivator of illegal trade in timber exporting countries (Bottrill, 2006) as demonstrated in countries such as Liberia and Vietnam (Thomson and Kanaan 2004).

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<sup>20</sup> WWF's Global Forest and Trade Network (GFTN) is 'WWF's initiative to eliminate illegal logging and improve the management of valuable and threatened forests...By facilitating trade links between companies committed to achieving and supporting responsible forestry.' Information online at: <http://gftn.panda.org/> [Accessed 15<sup>th</sup> July 2008].

The consultation administered by the European Commission was looking at the problem from the EU perspective. The proposed legislation assessed by this MSc study concerns the United Kingdom only. Nevertheless, whatever decisions the EC makes regarding the additional legislative options to tackle illegal logging will have a bearing on the United Kingdom as a Member State and should not be disregarded.

### **Legislation introducing an import ban**

One of the main options considered by the EC, as mentioned previously, is an import ban. Timber entering the EU would be required to prove its legality at the point of import. Proof of legality could perhaps take the form of import and export permits to be approved by customs officials, similar to those issued under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This option has received support from international NGOs such as WWF (World Wide Fund for Nature) and Greenpeace and would seem a clear option in order to assist in keeping illegal timber out of the EU market. This option would require legality checks for large quantities of timber entering the EU market from all timber exporting countries. However some timber exporting countries, such as the USA and Canada, have no significant issues regarding legality of timber. It has been argued that such a system would add burdens (e.g. in terms of resources and bureaucracy) with no real benefit (Brack, 2006a). This echoes the stand-point of the American Hardwood Export Council (AHEC) which believes this option to be disproportionate to the scale of the problem and an obstacle to access to EU markets. This is due in part to the discontinuous nature of ownership of American hardwood forests and difficulties in identifying the precise forest of origin of American hardwoods (Oliver, R. 2007). It is perhaps slightly discouraging that some industry representatives in the USA do not feel this would be a viable option in terms of the obstacles and difficulties mentioned, especially considering timber exporting countries with far less capacity, usually more forest and often poorer forest governance, such as Indonesia and Cameroon, would be expected to do the same. In light of these perceived difficulties with implementing a system where proof of legality is required with each export from the USA, AHEC commissioned an analysis of the risk of illegal timber entering the supply chain of hardwood exported from the USA. This work has the aim of providing assurance to nations importing American hardwoods that the products should be viewed as low risk in terms of illegality (American Hardwood Export Council, 2007).

This option has also raised concerns about possible World Trade Organisation (WTO) implications (Brack, 2006b). Requiring proof of legality could be seen as a restriction on trade, something the WTO aims to remove. Restrictions are allowed in certain instances (see *Box 1*) but still have to meet the requirement central to the WTO, that of non-discrimination. It is likely that WTO challenges would be made should legislation requiring proof of legality come into force in order to ensure EU timber imports are not protected at a cost to non-EU timber exporting countries (Brack, 2006a) and as such has the potential to greatly undermine any import ban put in place.

***Box 1: Exceptions to the General Agreement on Tariffs and Trade (GATT) of the World Trade Organisation (WTO).***

There are two exceptions to GATT rules pertinent to environmental protection. These are paragraphs b) and g) of Article XX General Exceptions:

‘nothing in this Agreement [the GATT] shall be construed to prevent the adoption or enforcement by any contracting party of measures: ...

(b) necessary to protect human, animal or plant life or health;...

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption. ...’

(GATT, Article XX General Exceptions. Text available online from:

[http://www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/gatt1994\\_07\\_e.htm#article20A](http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_07_e.htm#article20A)  
[Accessed 15<sup>th</sup> July 2008].)

Legislation based on the Lacey Act of the USA is discussed in the main body of the thesis. The European Commission was originally due to communicate its proposal for additional measures in April 2008. The communication has still not been made at the time of writing (August 2008). When the communication from the EC is released, it will then have to be considered by both the European Parliament and the European Council. This process may result in several amendments being made to the proposal or its rejection altogether.

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[http://www.usaid.gov/our\\_work/cross-cutting\\_programs/transition\\_initiatives/pubs/vol1synth.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/transition_initiatives/pubs/vol1synth.pdf) [Accessed 10<sup>th</sup> June 2008].

## **Annex 3**

### **Outline of the Questionnaire Survey**

#### **Attitudes towards the proposed 'Illegally Logged Timber (Prohibition of Sale and Distribution)' Bill**

##### **Section 1: Respondent Profile**

This information is being collected in order to relate the opinions expressed in this survey to the type of respondent answering the questions.

##### **1.1**

##### **Who do you represent?**

Academic Institution

Government Department

Individual

Industry

Non Governmental Organisation

Other (Please specify)

##### **1.2**

##### **In which country are you based the majority of the time?**

#### **Section 2: Attitudes towards the need for the proposed Bill**

##### **2.1**

**Please indicate your level of agreement with the statement below. If you don't know, please leave blank:**

**The United Kingdom should take more responsibility to ensure illegal timber is not traded within its jurisdiction.**

Strongly Disagree

Disagree

Neutral

Agree

Strongly Agree

##### **2.1b**

**Additional comments:**

## 2.2

**Do you believe the proposed Bill would be complementary to the European Union Forest Law Enforcement, Governance and Trade (FLEGT) action plan?**

Yes

No

Maybe

Don't Know

### 2.2b

**Please explain your answer:**

## 2.3

**Please indicate your level of agreement with the statement below. If you don't know, please leave blank:**

**Private initiatives using a self regulatory approach have proved themselves to be ineffective in removing illegal timber from the UK market.**

**Strongly Disagree**

**Disagree**

**Neutral**

**Agree**

**Strongly Agree**

### 2.3b

**Additional comments:**

## 2.4

**Please indicate your level of agreement with the statement below. If you don't know, please leave blank:**

**UK public procurement policy is effective at keeping illegal timber out of public timber purchases.**

**Strongly Disagree**

**Disagree**

**Neutral**

Agree  
Strongly Agree

2.4b

Additional comments:

### **Section 3: Perceived advantages and disadvantages of the proposed Bill**

3.1

Please list up to three advantages or benefits you perceive that would come from introducing the proposed Bill:

3.2

Please list up to three disadvantages or possible risks you perceive would come from introducing the proposed Bill:

### **Section 4: Knowledge of the proposed Bill**

4.1

Had you heard of the proposed UK Bill before receiving this questionnaire?

Yes  
No  
Unsure

If respondent answered yes to 4.1:

4.2

Do you feel well informed about the proposed Bill?

Yes  
No  
Maybe  
Don't know

4.2b

Additional comments

### **Section 5: Overall support for the proposed Bill**

5.1

Do you support the proposed UK Bill in principle?

Yes  
No  
Maybe  
Don't Know

**5.1b**

**Please explain why with regards to the answer above:**

**5.2**

**In your opinion do you believe the proposed Bill can significantly reduce the amount of illegal timber traded in the UK?**

Yes  
No  
Maybe  
Don't Know

**5.2b**

**Please explain why with regards to the answer above:**

**Section 6: Further Comments**

**Please make any further comments you wish to below:**

## Annex 4

### Timber Amendments to the USA Lacey Act [Online] Available from:

<http://www.govtrack.us/congress/billtext.xpd?bill=h110-2419>

#### SEC. 8204. PREVENTION OF ILLEGAL LOGGING PRACTICES.

(a) Definitions-

(1) PLANT- Subsection (f) of section 2 of the Lacey Act Amendments of 1981 ([16 U.S.C. 3371](#)) is amended to read as follows:

(f) Plant-

(1) IN GENERAL- The terms 'plant' and 'plants' mean any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands.

(2) EXCLUSIONS-

The terms 'plant' and 'plants' exclude--

(A) common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);

(B) a scientific specimen of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that is to be used only for laboratory or field research; and

(C) any plant that is to remain planted or to be planted or replanted.

(3) EXCEPTIONS TO APPLICATION OF EXCLUSIONS- The exclusions made by subparagraphs (B) and (C) of paragraph (2) do not apply if the plant is listed--

(A) in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(B) as an endangered or threatened species under the Endangered Species Act of 1973 ([16 U.S.C. 1531](#)

et seq.); or

(C) pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.'.

(2) INCLUSION OF SECRETARY OF AGRICULTURE- Section 2(h) of the Lacey Act Amendments of 1981 ([16 U.S.C. 3371](#)(h)) is amended by striking `plants the term means' and inserting `plants, the term also means'.

(3) TAKEN AND TAKING- Subsection (j) of section 2 of the Lacey Act Amendments of 1981 ([16 U.S.C. 3371](#)) is amended to read as follows:

`(j) Taken and Taking-

`(1) TAKEN- The term `taken' means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed.

`(2) TAKING- The term `taking' means the act by which fish, wildlife, or plants are taken.'.

(b) Prohibited Acts-

(1) OFFENSES OTHER THAN MARKING- Section 3(a) of the Lacey Act Amendments of 1981 ([16 U.S.C. 3372](#)

(a) is amended--

(A) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraph:

`(B) any plant--

`(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates--

`(I) the theft of plants;

`(II) the taking of plants from a park, forest reserve, or other officially protected area;

`(III) the taking of plants from an officially designated area; or

`(IV) the taking of plants without, or contrary to, required authorization;

`(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

`(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or'; and

(B) in paragraph (3), by striking subparagraph (B) and inserting the following subparagraph:

`(B) to possess any plant--

`(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates--

`(I) the theft of plants;

`(II) the taking of plants from a park, forest reserve, or other officially protected area;

`(III) the taking of plants from an officially designated area; or

`(IV) the taking of plants without, or contrary to, required authorization;

`(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

`(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or'

(2) PLANT DECLARATIONS- Section 3 of the Lacey Act Amendments of 1981 ([16 U.S.C. 3372](#)) is amended by adding at the end the following new subsection

:

`(f) Plant Declarations-

`(1) IMPORT DECLARATION- Effective 180 days from the date of enactment of this subsection, and except as provided in paragraph (3), it shall be unlawful for any person to import any plant unless the person files upon importation a declaration that contains--

`(A) the scientific name of any plant (including the genus and species of the plant) contained in the importation;

`(B) a description of--

`(i) the value of the importation; and

`(ii) the quantity, including the unit of measure, of the plant; and

`(C) the name of the country from which the plant was taken.

`(2) DECLARATION RELATING TO PLANT PRODUCTS- Until the date on which the Secretary promulgates a regulation under paragraph (6), a declaration relating to a plant product shall--

`(A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product;

`(B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, contain the name of each country from which the plant may have been taken; and

`(C) in the case in which a paper or paperboard plant product includes recycled plant product, contain the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection.

`(3) EXCLUSIONS- Paragraphs (1) and (2) shall not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

`(4) REVIEW- Not later than two years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement imposed by paragraphs (1) and (2)

and the effect of the exclusion provided by paragraph (3)

. In conducting the review, the Secretary shall provide public notice and an opportunity for comment.

`(5) REPORT- Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary shall submit to the appropriate committees of Congress a report containing--

`(A) an evaluation of--

`(i) the effectiveness of each type of information required under paragraphs (1) and (2) in assisting enforcement of this section; and

`(ii) the potential to harmonize each requirement imposed by paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report;

`(B) recommendations for such legislation as the Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of

this section; and

`(C) an analysis of the effect of subsection (a) and this subsection on--

`(i) the cost of legal plant imports; and

`(ii) the extent and methodology of illegal logging practices and trafficking.

`(6) PROMULGATION OF REGULATIONS- Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary may promulgate regulations--

`(A) to limit the applicability of any requirement imposed by paragraph (2) to specific plant products;

`(B) to make any other necessary modification to any requirement imposed by paragraph (2), as determined by the Secretary based on the review; and

`(C) to limit the scope of the exclusion provided by paragraph (3), if the limitations in scope are warranted as a result of the review.'.

(c) Cross-References to New Requirement- Section 4 of the Lacey Act Amendments of 1981 ([16 U.S.C. 3373](#)) is amended--

(1) by striking `subsections (b) and (d)' each place it appears and inserting `subsections (b), (d), and (f)';

(2) by striking `section 3(d)' each place it appears and inserting `subsection (d) or (f) of section 3'; and

(3) in subsection (a)(2), by striking `subsection 3(b)' and inserting `subsection (b) or (f) of section 3, except as provided in paragraph (1),'.

(d) Civil Forfeitures- Section 5 of the Lacey Act Amendments of 1981 ([16 U.S.C. 3374](#)) is amended by adding at the end the following new subsection:

`(d) Civil Forfeitures- Civil forfeitures under this section shall be governed by the provisions of chapter 46 of title 18, United States Code.'.

(e) Administration- Section 7 of the Lacey Act Amendments of 1981 ([16 U.S.C. 3376](#)) is amended--

(1) in subsection (a)(1), by striking `section 4 and section' and inserting `sections 3(f), 4, and'; and

(2) by adding at the end the following new subsection:

`(c) Clarification of Exclusions From Definition of Plant- The Secretary of Agriculture and the Secretary of the Interior, after consultation with the appropriate agencies, shall jointly promulgate

regulations to define the terms used in section 2(f)(2)(A) for the purposes of enforcement under this Act.!

(f) Technical Correction- Effective as of November 14, 1988, and as if included therein as enacted, section 102(c) of Public Law 100-653 (102 Stat. 3825) is amended--

(1) by inserting 'of the Lacey Act Amendments of 1981' after 'Section 4'; and

(2) by striking '(other than section 3(b))' and inserting '(other than subsection 3(b))'.

## **Annex 5**

### **Draft Virgin Forests Act of Germany**

#### **Draft of an Initial Act to Amend the Federal Nature Conservation Act\*\*<sup>21</sup>**

Dated ...

The Bundestag <Lower House of Parliament> has adopted the following Act:

#### **Article 1**

##### **Amendment of the Federal Nature Conservation Act**

The Act on Nature Conservation and Landscape Management (Federal Nature Conservation Act) of 25 March 2002 (Federal Law Gazette I, page 1193), most recently amended by ... in the version promulgated on ... (Federal Law Gazette I ... ), is hereby amended as follows:

1. In the list of contents under Section 5, after the line “Obligation to Furnish Proof, Impounding ...49”, the following new line shall be inserted:

“Protection of virgin forests from illegal logging ..... 49a”

2. After Article 49, the following Article 49a shall be inserted:

##### **“Article 49a Protection of virgin forests from illegal logging**

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\* The obligations from Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services (OJ EC No. L 104, page 37), amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ EC No. L 217, page 18), have been observed.

(1) The prohibitions on possession and marketing set out in Article 42, paragraph (2), sentence 1 shall also apply to timber or products manufactured from timber (timber products) where the timber was logged in virgin forests in violation of the statutory provisions applicable at the site of felling to regulate logging, particularly provisions on protected areas and other restrictions and prohibitions on logging, restrictions governing the volume of timber that may be felled, or other requirements relating to the performance of logging. Article 43 shall not apply, with the exception of Article 43, paragraph (7). The prohibitions on possession and marketing pursuant to sentence 1 shall not apply if a licence pursuant to Article [...] of Council Regulation No. [...] concerning the establishment of a voluntary FLEGT licensing scheme for imports of timber into the European Community [COM (2004) 515 final, status 20 July 2004] is available for the timber or timber product in question. If the timber or timber product falls directly under Article 42, paragraph (2) or (3), then sentence 1 shall not apply.

(2) Timber and timber products within the meaning of paragraph (1) shall refer to articles listed in Annex I of Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ EC L 256, 7.9.1987, page 1), amended by Commission Regulation (EC) No 1810/2004 of 7 September 2004 (OJ EC No. L 327, 30.10.2004, page 1), specifically in

1. Section IX, chapter 44 (wood and articles of wood; charcoal),
2. Section X,
  - a) Chapter 47 excluding items 4706 and 4707 (pulp of wood),
  - b) Chapter 48 (paper and paperboard; articles of paper pulp, of paper or of paper board), or
3. Section XX (miscellaneous manufactured articles), chapters 94 and 95, where reference is made in the items or sub-items of these two chapters to the fact that these articles are of wood.

(3) For the purposes of this provision, the term "virgin forest" shall refer to cohesive forest covering an area of at least 10 ha exhibiting largely natural development of its species composition, structure and dynamics, which has been only marginally directly influenced by human activity.

(4) It is prohibited,

1. to sell, to offer for sale, to keep in stock for sale purposes or

2. for the purpose of subsequent sale

- a) to gain possession of or control over, have possession of or control over, to handle or to process, or
- b) to purchase, to acquire, to transport, to display to the public or to use in some other manner

timber or timber products, unless the party concerned is in possession of a written confirmation issued by a certifying agency that the timber was not logged in virgin forests in violation of the applicable statutory provisions at the site of felling to regulate logging. For the purposes of this provision, “certifying agency” shall refer to any agency whose activities include ascertaining whether timber has been logged in virgin forests in violation of the applicable statutory provisions at the site of felling to regulate logging. If the timber or timber product was not acquired directly from the party which felled it, then this confirmation must encompass the entire supply and processing chain. As a minimum requirement, the confirmation must contain details of the party responsible for logging, the location, date and scope of logging, the applicable statutory provisions, any intermediate purchasers

and the name and address of the certifying agency. Sentence 1 shall not apply to companies whose turnover is less than 100,000 € per annum, or to private consumers. In the cases referred to in sentence 1, no. 2, sentence 1 shall also apply to public bodies, even if there is no intention of subsequent selling.

(4) Whoever purchases timber or timber products may demand a copy of the confirmation pursuant to paragraph (4) from the seller.

(5) Parties who are not allowed to possess or market timber or timber products without being in possession of a confirmation pursuant to paragraph (4) may only appeal to the competent authorities under regional law that the wood was not logged in virgin forests in violation of the applicable statutory provisions at the site of felling to regulate logging if they are able to prove that this is so.

(6) Notwithstanding further investigations, the confirmation pursuant to paragraph (4) shall be considered valid pursuant to paragraph (6) if it has been issued by a certifying agency recognised by the Federal Office for Nature Conservation. In addition to the information pursuant to paragraph (4), sentence 4, it must also include details of the official recognition of the certifying agency.

(7) During the course of the recognition procedure, compliance with the following requirements pertaining to the certifying agency shall be ensured:

1. Independence of the management and other individuals entrusted with the performance of specialist tasks from any persons involved in the logging, trading, handling and processing of timber and timber products or otherwise dependent upon the outcome of certification;
2. Availability of the required organisational structures, staff, funding and equipment to ensure adequate, independent performance of its duties
3. Adequate expertise, professional integrity, experience and professional independence of the appointed staff;
4. The existence of an indemnity insurance policy;
5. The preservation of any trade and company secrets revealed to the authorised agency in conjunction with the performance of its duties against unauthorised disclosure.

Recognition may be granted subject to certain conditions, and shall be for a limited period.

Recognition of a certifying agency shall be announced in the Federal Gazette. The Federal Office for Nature Conservation shall monitor compliance with the requirements pursuant to sentences 1 and 2. Article 50 shall apply mutatis mutandis. If the certifying agency is domiciled abroad, a contract shall be drawn up stipulating that the certifying agency is required to meet the same obligations as certifying agencies based in Germany pursuant to sentence 5. If a certifying agency that is domiciled abroad fails to meet these obligations, its recognition may be revoked.

(8) A certifying agency based in a different Member State of the European Union or another Party to the European Economic Area Agreement may be designated to the Federal Office for Nature Conservation by the competent authority. The pre-requisites are:

- a. The conclusion of an administrative agreement between the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the respective Member State of the European Union or Party to the European Economic Area Agreement, and
- b. An official recognition procedure verifying that the requirements of the administrative agreement have been met.

The administrative agreement must regulate:

1. The requirements incumbent upon the certifying agency in accordance with paragraph (8), sentence 1,
2. The involvement of the competent authority in the recognition procedure carried out in the Member State or Contracting State, and
3. Supervision of the certifying agency in accordance with paragraph (8), sentences 4 and 5.

If the requirements pursuant to sentence 2 are met, the certifying agency shall be considered to have been recognised by the Federal Office; recognition shall be announced in the Federal Gazette."

(10) It is prohibited to issue a confirmation upon request to a purchaser pursuant to Article 49a, paragraph (5) or presents the same as proof pursuant to Article 49a, paragraph (6), if the confirmation has been obtained through threat, bribery or collusion or has been obtained by fraud through incorrect or incomplete statements."

3. In Article 52, the following paragraphs 7a and 7b shall be inserted after paragraph 7:

“(7a) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is authorised, by way of statutory ordinance in consultation with the Federal Ministry for Consumer Protection, Food and Agriculture and with the consent of the Bundesrat,

1. to afford certain forests whose contribution to biological diversity is equivalent to that of virgin forests and which face the same level of threat of destruction as virgin forests, the same status as virgin forests as per the definition in Article 49a, paragraph (3),
2. to determine that Article 49a, paragraph (1) shall apply to certain timber products not covered by Article 49a, paragraph (2), where the inclusion of such products is important for the protection of virgin forests because significant quantities thereof are manufactured from timber that was illegally logged in virgin forests, and that Article 49a, paragraph (1) shall not apply to certain timber products covered by Article 49a, paragraph (2) where their inclusion is not of material importance to the protection of virgin forests,
3. to afford the same status as statutory provisions to regulate logging, as defined in Article 49a, paragraph (1), sentence 1 to
  - a. other statutory provisions in the state where logging occurs, insofar as compliance with said provisions is important for the protection of virgin forests, in particular, statutory provisions to combat corruption, regulate land use and protect the environment,
  - b. other requirements for the protection of virgin forests, particularly those arising from international law or from the law of the European Community,
4. to specify in greater detail the requirements governing the form and content of the confirmation pursuant to Article 49a, paragraph (4),
5. to determine the conditions under which other types of confirmation may be considered equivalent with regard to Article 49a, paragraphs (4), (5) and (7), particularly in cases where it is obvious that timber was not logged in violation of Article 49a, paragraph (1).

(7b) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is authorised, by way of statutory ordinance in consultation with the Federal Ministry for Consumer

Protection, Food and Agriculture and without the consent of the Bundesrat, to specify in greater detail the requirements governing the recognition of certifying agencies pursuant to Article 49a, paragraphs (8) and (9) and the administrative procedure for recognition."

4. Article 65 shall be amended as follows:

a) Paragraph (1) shall be amended as follows:

aa) In no.2 the word „or“ shall be replaced by a comma.

bb) In no.3 the period at the end shall be replaced by the word „or“.

cc) the following number 4 shall be inserted:

„4. in contravention of Article 49a, paragraph (4), sentence 1, no. 1 sells, offers for sale or keeps in stock for sale purposes timber or timber products.“

b) In paragraph (2) the following numbers 6a and 6b shall be inserted after number 6:

„6a. in contravention of Article 49a, paragraph (4), sentence 1, no. 2 for the purposes of subsequent sale gains possession of or control over, has possession of or control over, handles or processes, purchases, acquires, transports, displays or otherwise uses timber or timber products,

6b. in contravention of Article 49a, paragraph (10) issues a copy of a confirmation or presents a confirmation as proof,“.

c) In paragraph (5) the words „No. 1 letter b) and No.4“ shall be replaced by the words „No. 1 letter b), No. 4, 6a and 6b”.“

5. In Article 69, the following paragraph (8) shall be inserted: “(8) Article 49a, paragraph (1), sentence 1 shall not apply to timber and timber products if the timber or timber from which the timber product was manufactured was logged prior to 1 January 2007. Article 49a, paragraph (6) shall apply mutatis mutandis to proof that timber or timber products were logged prior to this date.”

## **Article 2**

### **Entry into force**

The Act shall enter into force on the day following its promulgation.

The constitutional rights of the *Bundesrat* are preserved.



