

Legislative measures influencing the European Union's timber market and their potential impacts on increasing additional costs

Vilém JARSKÝ, Kateřina VENTRUBOVÁ

1. Introduction

Illegal logging and related trade is undertaken when timber is harvested, transported, processed, sold or purchased in violation of national laws (Brack, 2006). The actual logging process may be illegal if corruption is used to gain access to forests or if timber is harvested without permission or in protected areas. Timber may become illegal in the course of transportation, e.g. when paying taxes and fees is evaded, when false information is given in customs declarations, etc.

It is however necessary to point out that much logging, despite the fact that is legal, causes appreciable damage, and therefore it is not enough to focus only on the origin of timber, but also on the whole chain of placing wood on the Community market.

2. Problem description

Illegally harvested timber is imported to Europe from four critical regions – from Eastern Europe and Russia, Southeast Asia and China, Latin America and Africa. The total volume of illegally imported timber is estimated to be in the range of 26.5 million m³ to 31 million m³, which represents about 16 – 19 % of total imports. Roughly half of the total volume entering the EU market comes from Eastern Europe and the Balkans, and a third comes from Southeast Asia (WWF, 2008).

The next shown table 1 indicates the origin of illegally harvested timber in Europe and the largest customers in the EU-27.

Cheap imports of illegally acquired timber and forestry products, as well as the fact that some industrial entities do not meet basic social and environmental standards, destabilize the international market. Collusion founded on generally spread illegal practices damages European companies, small and medium-sized companies in particular, that act responsibly and comply with existing legislation.

Illegal timber harvesting does not only cause environmental problems. It also takes jobs and resources away from indigenous and local populations and supports corruption and organized crime (Seneca Creek Associates and Wood Resources International. 2004).

Table 1: Significant exporter countries to Europe and percent of import

| Country | Illegally harvested timber imports (m ³) | Type | Customers in the EU-27 |
|-----------|--|--|--|
| Russia | 10.4 million | 50 % roundwood 24 % sawnwood 7 % paper 5 % plywood | 43 % Finland 10 % Germany 9 % Estonia |
| Indonesia | 4.2 million | 38 % furniture and other finished wood products 17 % pulp 16 % parquet 10 % plywood | 20 % the Netherlands 15 % Belgium 14 % Italy |
| China | 3.7 million | 52 % furniture and other finished wood products 19 % plywood 13 % paper | 30 % Great Britain 14 % Germany 8 % Spain |
| Brazil | 2.8 million | 37 % plywood 20 % sawnwood 19 % furniture and other finished wood products 11 % parquet | 19 % Great Britain 14 % France 13 % Belgium |
| Cameroon | 645,000 | 81 % sawnwood 10 % roundwood 5 % veneer | 24 % Italy 19 % Spain 16 % the Netherlands |

Source: http://assets.panda.org/downloads/illegal_wood_for_the_european_market_july_2008.pdf

3. Methodology

The main aim of the paper is to analyse basic EU legislative measures influencing the timber market and to identify potential costs for both the private and public sectors that may arise from them.

In the introduction to the analysis the situation of the illegally harvested timber market in the EU will be concisely outlined, with the goal of emphasising that trade in illegally harvested timber is truly an important problem.

Furthermore current European Union legal documents will be analysed:

- EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT)

The EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) establishes a process and a package of measures through which the European Commission shall try to accentuate the problem of illegal timber harvesting and related trade.

- Council Regulation (EC) No. 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community

The Regulation on the establishment of a FLEGT licensing scheme for imports of timber into the EU are based on the FLEGT Action Plan. Implementing a licensing scheme requires that imports of relevant timber products to the Community undergo a system of certification and checks, which should guarantee the legality of these products.

- Commission Regulation (EC) No. 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No. 2173/2005

The goal of implementing this Commission Regulation is to ensure consistent treatment of FLEGT licences by the authorities in the Member States, and therefore it is necessary to set out the information to be included in the licence. Furthermore it is necessary to provide for a standardised format of the FLEGT licences so as to facilitate their effective verification.

- A new legislative proposal for a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the Community market

The proposal for a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market is based on the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT), and should supplement existing Regulations aimed at controlling the placement of illegally harvested timber and related products on the EU market.

4. Results

In the selected documents impacts on the public, as well as the private, sector are evaluated. The private sector is looked at from two angles: from the perspective of forest owners and timber traders. In the following part costs are identified. Problem areas that may arise from the legislative measures are outlined.

4.1 EU Action Plan FLEGT

The Action Plan is the start of a process that emphasises government reforms and capacity building, supported by activities focused on developing multilateral cooperation, and supplementary measures that are aimed at the demand side and are created with the aim of restricting the consumption of illegally harvested timber in the EU.

4.1.1 Impacts on the public sector

With regard to the fact that the Action Plan is not a binding EU legal document, its contents will not have a direct impact on national subjects. The material challenges the European Commission above all to take action in the fight against illegal logging.

Certain recommendations are listed here though, that if implemented and undertaken would significantly ease the situation in the fight against illegal logging. These are voluntary activities, of both a bilateral and multilateral nature between individual Member States and third countries.

The main aim in supporting producer countries is focused on markets in developing countries and newly developed markets, which pose more risk in trade in illegally harvested timber. Here emphasis is placed on supporting management that actively involves local communities in the fight against illegal logging through cooperation with partner governments.

The support of donors is necessary especially for broad government reform, particularly of the justice system, the army and the police. Direct aid is also necessary for capacity building in order to resolve new issues that government agencies have to deal with. This primarily concerns monitoring and recording illegal environmental practices, increasing police awareness about environmental law, preventing corruption, etc.

An important element in trade in timber is a measure that would motivate other important timber consumers to become involved in the complex framework of mutual cooperation, which would eliminate the volume of illegally harvested timber entering end markets.

4.1.2 Impact on the private sector

Illegally harvested timber is concentrated primarily on newly developed and developing markets. Of course international demand for timber provides ideal conditions for a market on which unfair operators acquire and trade in illegally harvested timber. The most effective way to prevent these practices appears to be the creation of a multilateral framework joining together important importers and exporters.

Through a network of trade relations the private sector may positively influence the social responsibility of local communities for using national natural resources.

Considering the nature of the document no direct impacts on the private sector are expected, with the exception of voluntary activities related to implementing the principles of sustainable forest management.

4.2 Council Regulation No. 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community

The principle of the licensing scheme is based on voluntary partnership agreements with third countries. In a voluntary agreement the Community and partner country make an obligation to cooperate to support the FLEGT Action Plan.

4.2.1 Impact on the public sector

The Regulation directly establishes that timber products to which the Regulation applies and which are at some custom points released for free circulation in the Community, must have a license confirming that the product was produced from legally harvested domestic timber or from timber that was legally imported to the partner country pursuant to national regulations.

The process of release for free circulation and compliance with release rules are to be monitored by a third party.

The competent authorities of the Member States should verify that each shipment is covered by a valid licence prior to releasing the shipment covered by that licence for free circulation in the Community.

Member States must define the competence of competent authorities, customs authorities and third parties. Further they must ensure mutual communication between them. Competent authorities must ensure communication with the EC, which is required to provide the names and other relevant details of the licensing authorities designated by partner countries, authenticated specimens of stamps and signatures attesting that a licence has been legally issued, and any other relevant information received in respect of licences, and which shall notify of infringements of the Regulation.

Each Member State must determine the penalties applicable in the event of infringements of this Regulation.

4.2.2 Impact on the private sector

The private sector will be influenced by this Regulation mostly on the side of traders, and/or importers of timber from partner countries. Importers will have to monitor developments in closing partnership agreements, and in the eventuality that they have trade relations with a given producer country they must show that they have the determined licence.

Widespread legislative reforms could also potentially impact the private sector. These could change trade relations; when implementing checks they could impact the delivery speed, etc. However, if the importer trades with a partner party that complies with the relevant legislation, these reforms should not have an impact.

4.3 Commission Regulation No. 1024/2008 laying down detailed measures for the implementation of Council Regulation No 2173/2005

4.3.1 Impact on the public sector

Impacts on the public sector are of the same nature as for Regulation No. 2173/2005. Despite the important role of customs authorities during checks for releasing shipments for free circulation, neither Regulation No. 2173/2005, nor the

implementing Commission Regulation will have a significant impact on the customs authorities' activities. It only concerns including another licence specimen to the already implemented system of checks. The implementation of licences will not have any impact on customs authorities, not even regarding technical equipment.

4.3.2 Impact on the private sector

Impacts on the private sector are of the same nature as for Regulation No. 2173/2005.

4.4 Proposal for a Regulation laying down the obligations of operators who place timber and timber products on the market

The aim of the proposed measures are to dissuade operators from placing timber and timber products on the Community market, if an appropriate guaranty of their legality has not been provided. The proposal is founded on the principle of due diligence. Operators are required to apply a system of due diligence to maximally reduce the risks of placing illegally harvested timber and related products on the Community market.

4.4.1 Impacts on the public sector

Each Member State must designate a competent authority responsible for the application of the Regulation. The main task of competent authorities will be to monitor the monitoring organisations.

Generally, in its current form the text will impact the public sector mainly by increasing personnel costs and the costs of technical equipment related to communication between individual interested parties. Administrative burdens will also be increased if the monitoring organisations are to be recognised nationally. In the eventuality of establishing completely new organisations, i.e. not using existing institutions, the impacts will be more widespread, mainly due to operating costs such as rent and the maintenance of required space.

4.4.2 Impacts on the private sector

An operator, as defined in the Regulation proposal, is anyone who firsts places timber or timber products on the Community market. This operator must check if its due diligence system meets the requirements of the Regulation proposal and thus minimizes the placement of illegally harvested timber on the market.

If an operator complies with regulations related to forestry legislation, it also fulfils the due diligence system requirements based on the current wording of the text.

If this is not the case the operator must adopt remedial measures. One such measure is to adopt a due diligence system run by a monitoring organisation. Costs for remedial actions are not mentioned in the Regulation, but they will most certainly be paid by the operator.

A monitoring organisation is an organisation, which shall verify compliance with the due diligence system and which shall take appropriate actions in the event of discovering failure by the operator, and shall notify competent authorities about it. The costs of establishing a monitoring organisation are not mentioned in the current reading; it will certainly depend on the individual or organisation, whether they are prepared to recognise the status of the monitoring organisation and subsequent costs will be paid by that monitoring organisation. Thus potential cost increases for operators arise if due diligence systems are adopted by monitoring organisations.

The Table 2 shows the potential additional costs both for public and for private sector²² which are the main results of analysis. It seems that the biggest economic impact is caused by personnel costs for capacity building, esp. costs for human resources both for public and for private sector.

Investigation and analysis of the documents have shown it is important to classify the costs so, that all potential expenses were taken into account. It is not possible to focus only on one element as it was determined in the Impact assessment 14482/08 by European Commission. The costs were considered only from “check activities” point of view.

Table 2: Identification of potential additional costs both for public and for private sector

| SECTOR | Potential reason for increased costs | Cost items | Specifications |
|------------------------------------|--|---|--|
| EU Action Plan FLEGT ¹⁾ | | | |
| Public sector | involving local communities in the active fight against illegal timber harvesting support for government reform participation in implementing voluntary partner agreements | Personnel costs Donations | personnel costs for experts promoting the principle of sustainable forest management in the given partner country training experts training programmes direct money donations |
| Forest owner in the EU | Without impact | | |
| Trader | Without impact if trading with a “reliable” partner | Reduced earnings if trading with “unreliable” partners who do not comply with | |

| | | | |
|---|--|-------------------------------|---|
| | | relevant forest legislation | |
| Council Regulation (EC) No. 2173/2005, on the establishment of a FLEGT licensing scheme and Commission Regulation No. 1024/2008, laying down detailed measures for the implementation of Council Regulation No. 2173/2005 ²⁾ | | | |
| Public sector | Setting up competent authorities | Personnel costs | expert for monitoring current events within FLEGT activities effective communication with the European Commission, customs authorities and third parties |
| | | Costs for technical equipment | Compatible software for exchanging information between all participants |
| | Setting up independent third parties | Personnel costs | expert for monitoring current events within FLEGT activities and effective communication with the European Commission, customs authorities and third parties expert for checks on products released for the Community market |
| | | Costs for technical equipment | Compatible software for exchanging information between all participants |
| Forest owner in the EU | Without impact | | |
| Trader | Ensuring awareness about new partner countries | Personnel costs | Expert for monitoring current developments within the FLEGT initiative |
| Legislative proposal for a Regulation laying down the obligations of operators ³⁾ | | | |
| Public sector | Setting up competent authorities | Personnel costs | Expert on: intensive communication with Member States monitoring developments in individual Member States monitoring the situation at the national level administration related to recognising monitoring |

| | | | |
|---|--|-------------------------------|---|
| | | | organisations |
| | | Costs for technical equipment | unified database of recognised organisations with access from other Member States |
| Forest owner in the EU | In the eventuality of compliance with valid forest management legislation it is without impact | | |
| Trader | Without impact if trading with a “reliable” partner | | |
| ¹⁾ Considering the nature of the document only costs connected to voluntary activities are considered ²⁾ Considering the fact that the impacts on both the public and private sectors are the same these Regulations are listed in one column ³⁾ Impacts and potential costs are considered in the context of the form of the text as of 30 October 2009 | | | |

5. Discussion and recommendations

Illegal logging is a part of forest crime. Forest crime ultimately results from a failure of the rule of law. Rosenbaum (2002) classifies two types of failure in the legal system that lead to criminal behaviour: failures of law and failures of implementation. Failures of law include, *inter alia*, clashes of norms, undetectable violations, weak penalties or conflicting legislation. On the other hand, failures of implementation include, *inter alia*, poor dispute resolution, unfair application of law, and lack of capacity to enforce and administrate the law, lack of government oversight. Lindsay, Mekouar, and Christy (2002) also assert that illegal activities in forestry, especially illegal logging, result from both failure to enforce legislation and inadequacies in the legislation itself.

The right laws must exist, and they must be enforced. What are the “correct” laws, then, with respect to forests? Although some general guidance can be provided based on legal expertise¹, there is no easy and straightforward answer.

What is, however, clear is that often the laws are not correct, especially from the point of view of the poor and marginalized groups in the society, and that these groups are often not able to get their voices heard in legislative reform processes.

This is echoed in a report (Colchester, 2006) that examines the social and political economy implications of forest law. Colchester et al. argue that many existing forest laws actually harm the poor, and that current forest law enforcement and governance efforts often focus too heavily on enforcement of legislation and not enough on getting the laws correct. A similar argument is made by Savcor

Indufor Oy (2005), who distinguishes between poverty-driven and commercially driven illegal logging, and argue that the efforts to combat poverty-driven illegal logging should, instead of emphasizing law enforcement, focus on closing the huge gap between legal supply and demand, especially of fuelwood, that exists in many countries.

Furthermore, it is not sufficient to have the correct laws. Rather, transparency is critical. This includes both broad dissemination of the laws and ensuring that the language is understandable to the public (World Bank, 2006).

Estimating the extent of illegal logging and trade in illegal timber and timber products present a number of problems, and regardless of the definitions and methodology used, the exact magnitude cannot be known with certainty. Blaser et al. (2005) and Ottisch et al (2005) define difficulties in obtaining reliable estimates because of nature of the illegal operations, as well as errors and incompatibility in statistical data when indirect methods of assessment are used (comparison of production, consumption, export and import data). Speculation about illegal activity can, nevertheless, be examined in a rigorous fashion using a number of well-accepted tools and methods.

A comprehensive assessment estimates that illegal logging worldwide is probably as much as 5 to 10 % of global industrial round wood production. Since most of the illegal logging takes place in developing countries, the proportion in these countries is much higher (Seneca Creek Associates and Wood Resources International, 2004). The World Bank concludes that the global loss of assets due to illegal logging in public lands exceeds US\$10 billion per year in developing countries and that an additional US\$5 billion is lost to tax evasion on legally logged wood (World Bank, 2006).

Illegal logging produces winners and losers among many actors. Those that greatly benefit from illegal logging, at least in the short term, are those engaged in the different stages of the process from acquiring control of forest resources to traders. Illegal loggers benefit financially as do corrupt partners in government, so it is therefore realistic to expect them to resist change. Final consumers, a large group, are likely to see a less perceptible benefit from illegal logging, mainly in terms of reduced market prices. As the resource costs typically comprise, but a small proportion of the price of the end product this effect will be relatively small.

On the other side of the ledger, governments are key losers. The losses represent assets and revenues that national governments, firms or individuals could have used for urgently needed investments in health, education, infrastructure and improving the management of forest resources or to satisfy basic consumption needs.

Illegal logging remains profitable for producers, if the costs of illegal process will be lower than costs for production of legal timber. The costs of illegal logging can be increased by strengthening monitoring, improving the capacity of government institutions to effectively prosecute offenders and increasing the penalties of flouting the law. On the other hand, governments can also strive to reduce the costs of legal compliance, making legal logging more attractive. An

implication of this is that measures to improve law compliance will need to assess carefully whether they introduce additional costs to operators (Contreras-Hermosilla et al, 2007).

Measures against illegal logging should not focus only on offer side, but also on demand side. Increasing the costs of illegal logging for operators is one of the solutions; on the other hand also consumers should be motivated to buy timber and timber products only from legal sources.

Implementation of additional measures or regulations brings additional costs to governments. But in terms of total loss, which governments in developing countries suffer, the ratio of implementation costs in percentage expression is insignificant².

In terms of formulation in absolute volume, the additional implementation costs are higher and differ according to conditions in countries. The new legislative proposal, establishing due diligence system, will also have an economic impact on operators both in EU countries and in non-EU states. The impact assessment (2008), prepared by European Commission, says that the focus of compliance and enforcement is not directed at sample checking of timber consignments, but merely on verification whether effective systems have been put in place by operators for ascertaining that the products are legal. The regulatory costs in the EU are therefore estimated at 1 MEuro. The costs are predicted without any classification; therefore the volume will be exceeded due to personal costs and costs for technical equipment.

Other potential additional costs threaten to private sector in case that the current certification systems will not be recognized. The operators in the EU will be obliged to expend additional costs to prove a legality of timber or timber products.

A main principle of all legislative measures should be to not increase administrative burdens and particularly to minimize costs connected to implementing the measures.

At the public sector level costs are to be minimized above all **by using existing resources**. Establishing new institutions could result in increased bureaucracy as well as confusion in the private sector. Everything should be based on already working implemented systems.

If new institutions need to be established it is necessary to consider cohesion between individual regulations and to use the organisations multifunctionally.

6. Conclusion

Forest law enforcement and governance problems are not new and will never be entirely or permanently eliminated. However, developing countries and the global community have come in recent years to a new recognition of the nature and significance of forest crime, and there has never been such a wide strong consensus on the need for action and collaboration to control illegal logging.

Beyond more and better knowledge, it is clear that enormous investments will be required to achieve the needed control on illegal logging. No one knows how much will be needed. To a large extent, investments in better resource management, social development and industrial restructuring will spill over into improved compliance with laws and regulation. But substantial amounts of resources will be needed specifically for specialized and increasingly sophisticated forest law enforcement capacity building.

Credible penalties, effective enforcement, and fair and just legal system are, however, essential ingredients to the control of illegal logging. Forest law enforcement and governance should not displace the established focus of forest sector development strategies or assistance. More sophisticated, technically and analytically sound forest law enforcement and governance work should, however, be added to the array of interventions and approaches supported by the global community.

References

- Blaser J., Contreras A., Oksanen T., Puustjarvi E., Schmithausen F., 2005. Forest Law Enforcement and Governance (FLEG) in Europe and North Asia (ENA). Reference paper prepared for the Ministerial Conference, Nov. 22 – 25, 2005. St. Petersburg, Russia
- Brack D., 2006. Excluding Illegal Timber from EU Markets, Options for the EU and its Member States. Royal Institute of International Affairs, London, UK
- Christy L., Di Leva C., Lindsay J., Takoukam P., 2007. Forest Law and Sustainable Development, Addressing Contemporary Challenges through Legal Reform. The World Bank, Washington DC, USA
- Commission Regulation (EC) No. 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No. 2173/2005. Brussels, Belgium
- Commission Staff Working Document accompanying the proposal for a Regulation of the European Parliament and of the Council determining the obligations of operators who make timber and timber products available on the market - Impact assessment No. 14482/08 ADD 2, 2008. Brussels, Belgium
- Colchester M., 2006. Justice in the Forest: Rural Livelihoods and Forest Law Enforcement. CIFOR Forest Perspectives 3. Bogor, Indonesia.
- Council Regulation (EC) No. 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. Brussels, Belgium
- EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT). Brussels, Belgium
- FAO, 2005. Global Forest Resources Assessment, Progress towards sustainable forest management. Rome, Italy.

- Legislative proposal for a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the Community market. Brussels, Belgium
- Lindsay J., Mekouar A., Christy L., 2002. Why Law Matters: Design Principles for Strengthening the Role of Forestry Legislation in Reducing Illegal Activities and Corrupt Practices. FAO Legal Papers Online 27. Rom, Italy
- Ottisch A., Mosleyev A., Burdin N., Kazusa L., 2005. Impacts of Reduction of Illegal Logging in European Russian on the EU and European Russia Forest Sector and Trade. Technical report 19. European Forest Institute, Joensuu, Finland.
- Rosenbaum, K. 2002. „Illegal Actions and the Forest Sector: A Legal Perspective“. Discussion paper. FAO, Washington DC, USA
- Savcor Indufor Oy, 2005b. Action Plan to Combat Illegal Activities in Forest and Wood Processing Sector in Bosnia and Herzegovina. Draft. Savcor Indufor Oy, Helsinki, Finland
- Seneca Creek Associates and Wood Resources International, 2004. “Illegal” Logging and Global Wood Markets: The Competitive Impacts on the U.S. Wood products Industry. Maryland, USA
- World Bank, 2006. Strengthening forest Law Enforcement and Governance, Addressing a Systemic Constraint to Sustainable Development. Washington DC, USA.
- WWF, 2008. Illegal Wood for the European Market, An analysis of the EU import and export of illegal wood and related products. WWF European Policy Office, Brussels, Belgium.
- <http://illegal-logging.com>

Acknowledgements

The analysis, from which the results are mentioned in this paper, was supported by the grant “NAZV QH 71 296: Evaluation system of social-economic importance of forest functions including criteria and indicators of multifunctional forest management”.

Endnotes

¹ Although there is no one-size-fits-all description of a good forest law, lawmakers can design laws in ways that resist illegal activities and corruption by doing, *inter alia*, avoid legislative overreaching (do not write laws that exceed national capacity, that are more elaborate than necessary to achieve the intended policy, or that are socially unacceptable), promote transparency and accountability. These serve both to deter bad acts and to make their detection easier. (World Bank, 2006)

² To put matters in perspective, the amount of illegal logging is as much as eight times the volume of official development assistance directed to the forest sectors of developing countries (Contreras-Hermosilla et al, 2007).

Abstract

Legislative measures influencing the European Union's timber market and their potential impacts on increasing additional costs

The situation of the timber market is influenced by many factors, but one of the main factors affecting the price of timber is illegal logging and related trade. The European Union has been fighting against illegal logging for a long time and currently the fight is being intensified with the adoption of legislative measures intended to suppress illegal activities.

The paper summarizes the situation of the EU's timber market with an emphasis on illegally harvested timber, and analyzes current legislative measures that may affect the supply and demand of timber and that may influence operators in both the public and private sectors.

Key words: illegal logging, trade, legislative measures, additional costs, European Union

Vilém JARSKÝ, Kateřina VENTRUBOVÁ

Czech University of Life Science, Faculty of Forestry and Wood Sciences Prague, Kamycka 1176,
165 21 Prague – Suchbát, jarsky@fld.czu.cz, ventrubova@fld.czu.cz