



THE FRIDTJOF NANSEN INSTITUTE

**International Initiatives to Address
Tropical Timber Logging and Trade**

**A Report for the Norwegian
Ministry of the Environment**

Lars H. Gulbrandsen and David Humphreys

FNI Report 4/2006

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Lars H. Gulbrandsen
The Fridtjof Nansen Institute
Norway
lars.gulbrandsen@fni.no

David Humphreys
Open University
UK

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Lars H. Gulbrandsen and David Humphreys

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Abstract

This report examines a broad range of international initiatives to address tropical timber logging and trade. The report first looks at international and regional initiatives to control illegal logging, with a particular focus on the Forest Law Enforcement and Governance (FLEG) processes in East Asia and the Pacific, Africa, and Europe and North Asia. Second, the report reviews the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan, which includes voluntary partnership agreements between producer countries and the EU on timber licensing; the adoption by member states of procurement policies stipulating the purchase of timber from legal sources; promoting private sector initiatives, including codes of conduct; and the exercise of due diligence by export credit agencies and financial institutions when funding logging projects. Third, the report examines various forest certification schemes and international discussions about forest certification in some detail, because several governments have identified certification as a way of verifying that public procurement requirements for legal and sustainable timber are met. Finally, the report discusses how Norway could follow-up the FLEGT action plan and other initiatives to address illegal and irresponsible logging. This section includes a review of public procurement policies in the three countries with the most advanced public procurement requirements on timber legality and sustainability in Europe, namely the UK, Denmark, and the Netherlands.

Key Words

deforestation, forest certification, forest law enforcement and governance, illegal logging, international forest politics, sustainable forest management, tropical timber trade

Orders to:

Fridtjof Nansen Institute
Postboks 326
N-1326 Lysaker, Norway.

Tel: (47) 6711 1900
Fax: (47) 6711 1910
Email: post@fni.no
Internet: www.fni.no

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Executive Summary

The purpose of this report is to critically examine a broad range of international initiatives to address tropical timber logging, with a particular focus on illegal logging and associated trade. Illegal logging featured as a key element in the G8 Action Programme on Forests (1998-2002), and led to a series of Forest Law Enforcement and Governance (FLEG) conferences, including those for East Asia and the Pacific (Bali, Indonesia, September 2001), Africa (Yaoundé, Cameroon, October 2003), and Europe and North Asia (St. Petersburg, Russia, October 2005).

The creation of 'fast track' regional processes to combat illegal logging is taking place because UN institutions such as the UN Forum on Forests (UNFF) are considered too slow to deal with the complex issues involved. The US State Department did most to catalyse international cooperation on illegal logging. Without the economic power that the US brought to bear upon this issue, it is unlikely that sufficient political momentum would have developed to enable the first regional meeting in Bali to take place. As the FLEG processes have evolved the logic of halting illegal logging has suggested trade controls, such as import restrictions and licensing. But while previous US administrations have, on a selective basis, supported trade restrictions in pursuit of environmental goals, for the current administration no such measures seem to be tolerated, as seen in the unacceptability to the US of demand side measures at the G8 summit at Gleneagles in 2005.

Much as a result of the FLEG processes, institutions such as the UNFF and the International Tropical Timber Organisation (ITTO) are beginning to address illegal logging. In January 2006 states agreed the third International Tropical Timber Agreement (ITTA). While the first ITTA of 1983 did not mention illegal logging, and the second ITTA of 1994 only acknowledged the 'undocumented trade', the problem of illegal logging is now explicitly recognised in a legally binding multilateral agreement. As the first legally-binding international instrument to address illegal logging, agreement on the third ITTA was a milestone event, although Brazil and some other producer countries hold strong reservation about this part of the agreement.

The Asian and African FLEG processes are largely supply-side approaches to reduce illegal logging at source in tropical timber producing countries. To complement and support these processes the EU, as a major timber importer, committed in February 2002 to developing an action plan to combat illegal logging. The aim was to develop both supply-side measures, by providing assistance to developing and former communist countries, and demand-side measures to curtail the trade of illegally-logged timber to the EU. This focus on trade led the EU to extend the FLEG acronym when developing what became known as the Forest Law Enforcement, Governance and Trade (FLEGT) action plan. The action plan was approved in Council Conclusions in the same month that the Africa FLEG process was launched, October 2003. It includes voluntary partnership agreements between producer countries and the EU on timber licensing; the adoption by member states of procurement policies stipulating the purchase of timber from legal sources; promoting private sector

initiatives, including codes of conduct; and the exercise of due diligence by export credit agencies and financial institutions when funding logging projects.

The licensing scheme has been designed to be compatible with the principles and rules of the World Trade Organisation (WTO). Rather than insist that the scheme apply to all timber producing countries, which most likely would have encountered a challenge at the WTO, the agreed approach is to implement the scheme only through bilateral voluntary partnership arrangements. The scheme will be compulsory for any country that concludes a voluntary partnership agreement with the EU. However, illegally-logged timber can continue to enter the EU from producer countries that have not agreed a voluntary partnership agreement.

Non-state forest certification schemes complement state-based initiatives to promote forest law enforcement and sustainable forest management. Forest certification is the process by which an independent third party verifies that a forest management process or forest product conforms to agreed standards and requirements. A number of companies in Europe and the US and several European governments have identified certification as a key way to document responsible procurement of timber from legal and sustainable sources. The World Bank promotes forest certification through a 1997 alliance with the World Wide Fund for Nature (WWF), which was renewed in 2005. Most of the UN institutions with a forest-related mandate have engaged with forest certification, but they have made no significant contribution to the international debate on forest certification.

The report also examines how Norway could follow-up EU's FLEGT action plan and other initiatives to control illegal logging and associated trade. Identified options for Norway include adopting the FLEGT licensing scheme on terms agreed with the EU and concluding voluntary partnership agreements similar to those that the EU is planning with producer countries; developing procurement policies stipulating the purchase of timber from legal and sustainable sources; supporting private sector initiatives such as forest certification and verification systems for legally logged timber; promoting due diligence in the Norwegian financial sector; and enhancing collaboration with environmental, customs, and judicial agencies in other European countries. This section includes a review and comparison of public procurement requirements in the three countries with the most advanced public procurement policies on timber legality and sustainability in Europe, namely the UK, Denmark, and the Netherlands.

1. Introduction¹

By the mid-1980s, corporate logging of old-growth rainforests, deforestation, biodiversity loss, and forest degradation in the Amazon, West-Africa and the Asia-Pacific had become a prioritised issue in environmental group campaigns and a hot topic in public discourse. The United States, Canada and some European countries took several initiatives to negotiate a legally binding international forest instrument that could reverse deforestation in the tropical regions and protect the forests. There were nine attempts to propose the establishment of a global forest instrument in the shape of a convention or a forest protocol to a climate change or biodiversity convention before the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992.² All the proposals failed as a result of resistance from forest-rich, developing countries, which insisted that forests were sovereign national resources. Many industrialised countries hoped for a breakthrough in Rio, but in the preparations for the conference it soon became clear that there were no scope for agreement on a global forest convention between forest-rich developing countries and developed countries. In the absence of a binding forest convention, states agreed on the non-legally binding Forest Principles in Rio, which can be regarded as guidelines for the management and use of forests, relating to both environmental and developmental concerns. The Forest Principles is the first global agreement on the management, utilisation and development of *all types* of forests, but the agreement is legally and politically weak. It does not clarify how conservation and utilisation of forests should be balanced, and it does not address illegal logging.

Until the mid-1990s illegal logging was a ‘non-issue’ in international relations. When the problem was recognised it was considered a national level matter rather than a legitimate foreign policy issue. But within a decade of the first mention of illegal logging in an intergovernmentally negotiated textual output four linked regional processes that between them covered the important forested countries of Asia, Africa and Europe had been created to tackle illegal logging through forest governance and law enforcement reforms.

This report is made up of four main sections. The first section examines international and regional initiatives to address illegal logging, with a particular focus on the Forest Law Enforcement and Governance (FLEG) processes in East Asia and the Pacific, Africa, and Europe and North Asia. This is followed by a review of EU’s Forest Law Enforcement, Governance and Trade (FLEGT) action plan. Next, the report looks at

¹ This report has been prepared for the Norwegian Ministry of the Environment. The authors are responsible for the analysis and conclusions in the report, which are not necessarily identical to those of the Norwegian Ministry of the Environment. Parts of the report draw on the authors’ earlier and ongoing work, in particular early drafts of David Humphreys (2006, forthcoming) *Logjam: Deforestation and the Crisis of Global Governance*, London: Earthscan.

² David Humphreys (1996) *Forest Politics. The Evolution of International Cooperation*. London: Earthscan, pp. 83-85.

different forest certification schemes and international discussions about forest certification in some detail, because several governments have identified certification as a way of verifying that public procurement requirements for legal and sustainable timber are met. Finally, the report discusses how Norway could follow-up the EU's FLEGT action plan and other initiatives to address illegal and irresponsible logging and associated trade. This section includes a review of public procurement policies in the three countries with the most advanced public procurement requirements on timber legality and sustainability in Europe, namely the UK, Denmark, and the Netherlands.

2. International policies to control illegal logging

2.1 Illegal logging

Illegal logging can be defined as logging practices and activities in violation of national law. At present there is no internationally-agreed definition of illegal logging. Domestic law on illegal logging may change, so what constitutes illegal logging varies according to time and space. In the 1980s, for example, settlers in Brazil and Ecuador could claim legal title to land that they had deforested. So, in these countries at this time the law actively promoted forest clearance. Since then legal reforms in Brazil and Ecuador have outlawed these practices: tree felling practices that were once legal are now illegal.³

The World Bank has estimated that illegal logging costs the legal forest industry more US\$ 10 billion per year and deprives governments of about US\$ 5 billion in revenue.⁴ Illegal logging includes encroachment on forestlands by the rural poor clearing land for shelter, subsistence and fuelwood. However far more serious is illegal logging by unscrupulous timber companies. Illegal practices include logging outside concession boundaries, cutting more timber than stipulated in concession contracts, logging in protected areas and felling protected tree species.⁵ Furthermore, illegal logging is part of a broader problem of malpractice and crime associated with the timber trade. As Mark Taylor has argued, control of the natural capital that tropical forests represent is a form of political power. In many countries politicians use the allocation of timber concessions as a mechanism to reward supporters.⁶ Public officials may engage in corrupt practices when awarding logging concessions, such as stipulating conditions that only favoured businesses can satisfy, restricting public information on the availability of a concession to restrict competition, leaking confidential information and bribe taking.⁷ Forests are spaces that conceal other illegal activities, such as illicit drug cultivation, illegal mining and guerrilla armies. The poor transport infrastructure

³ On Ecuador see, for example, Norman Myers (1989) *Deforestation Rates in Tropical Forests and their Climatic Implications*, London: Friends of the Earth, p.17.

⁴ World Bank press release, 'Governments commit to action on forest law enforcement and governance in Europe and North Asia', 25 November 2005.

⁵ On the range of illegal logging practices see Arnoldo Contreras-Hermosilla (2002) *Law Compliance in the Forestry Sector: An Overview*, Washington DC: World Bank Institute, pp.6-8.

⁶ Mark Taylor (2005) 'The Green Peace Prize', *Adbusters: Journal of the Mental Environment*, Vol.13, No.3. (This article consists of comments made during a seminar with Wangari Maathai at the Nobel Institute in December 2004.)

⁷ J. Wesberry (2001) 'Combating Fraud in Procurement and Contracting', in D. Kaufmann, M. Gonzalez de Asis and P. Dininio (eds) *Improving Governance and Controlling Corruption: Towards a participatory and action-oriented approach grounded on empirical rigour*, Washington: World Bank Institute, cited in Arnoldo Contreras-Hermosilla (2002) 'Illegal Forest Production and Trade: An overview' (unpublished manuscript). This paper draws in part from Arnoldo Contreras-Hermosilla (2002) *Law Compliance in the Forestry Sector: An Overview*, Washington DC: World Bank Institute.

in many forested regions often makes law enforcement difficult. Similar patterns of forest destruction caused by illegal logging can be observed on a worldwide scale. The problem is not confined solely to the tropics. The most heavily afflicted regions are Asia and the Pacific, Africa, the former Soviet Union and Latin America.

In the early-1990s the political climate of mutual suspicion between tropical forest countries and developed countries blocked international cooperation on forests. Many developed governments believed that tropical forest countries were not committed to halting deforestation, while developing governments often viewed forest conservation proposals as disguised trade barriers. Meanwhile environmental activists persistently highlighted the global illegal logging problem by conducting extensive research in the afflicted forests, often at considerable personal danger.

The new spirit of international cooperation on forests that gradually emerged in the mid-1990s created the political space for illegal logging to be recognised as an international issue. When the second International Tropical Timber Agreement was negotiated between 1992 and 1994 environmental NGOs pressed for the illegal trade to be mentioned.⁸ They were partially successful. The International Tropical Timber Agreement of 1994 became the first international legal agreement to allude to illegal logging, although it did so using a euphemism: states agreed to '[k]eep under continuous review the international timber market ...including reference related to *undocumented trade*'⁹ [emphasis added]. In 1994 the illegal timber trade was still a truth that dare not speak its name. It would be a further two years before the phrase 'illegal logging' was mentioned in an intergovernmentally-negotiated textual output.

2.2 The Intergovernmental Panel and Forum on Forests

The Forest Principles agreed at UNCED in 1992 recommend that national forest policies should include increased efforts to develop and strengthen institutions and programmes for the management, conservation and sustainable development of forests and forestland. The agreement does not include an unambiguous definition of sustainable forest management, but states that:

Forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual human needs of present and future generations. These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, includ-

⁸ Bill Mankin, Global Forest Policy Project, interview, fourth session of Intergovernmental Forum on Forests, New York, 10 February 2000.

⁹ International Tropical Timber Agreement, 1994, Article 27.1(c). The previous agreement – the International Tropical Timber Agreement, 1983 – contained no such mention.

ing air-borne pollution, fires, pests and diseases in order to maintain their full multiple value.¹⁰

Policies for sustainable forest management should take into account 'relevant internationally agreed methodologies and criteria' (Principle 8d). However, the Forest Principles do not specify any criteria for sustainable forest management and, as noted above, do not address illegal logging. Because the Forest Principles needed clarification and elaboration, collaboration on international forest policy was carried forward under the auspices of the UN Commission of Sustainable Development (CSD). The global follow-up of the Forest Principles was organised under the Intergovernmental Panel on Forests (IPF) from 1995 to 1997 and its successor, the Intergovernmental Forum on Forests from 1997 to 2000.

The first time the phrase 'illegal logging' was mentioned in an inter-governmentally agreed text was during the second session of the IPF in 1996 when two NGOs, the Global Forest Policy Project and Global Witness, asked the US delegation, headed by the State Department, to support mention of illegal logging in the IPF's outputs. US negotiator Jan McAlpine raised the issue but faced some resistance, with some developing governments protesting that illegal logging was a national level issue while others argued it was an issue not for international policy but for bilateral development assistance.¹¹ Eventually two mentions of illegal logging were agreed. First, the Panel agreed that reducing illegal logging was one means by which countries could help mobilise additional financial resources.¹² Second, the Panel noted that market transparency 'would also help focus attention on adverse forest practices such as illegal logging'.¹³

These first brief references paved the way for agreement of an IPF proposal for action that invited 'countries to provide an assessment and share relevant information on the nature and extent of illegal trade in forest products, and to consider measures to counter such illegal trade'.¹⁴ In 1997 the IPF was replaced by the IFF, which like the Panel, agreed a

¹⁰ UN document A/CONF.151/26 (Vol.III), 'Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests' (1992), Principle 2(a).

¹¹ J.L. McAlpine (2003) 'Conservation diplomacy – one government's commitment and strategy to eliminate illegal logging', *International Forestry Review*, Vol.5, No.3, pp.230-235; Jan McAlpine, US State Department, interview, fourth session of the United Nations Forum on Forests, Geneva, 4 May 2004.

¹² UN document E/CN.17/1996/24, 'Review of Sectoral Clusters: Report of the Ad Hoc Intergovernmental Panel on Forests on its second session (Geneva, 11-22 March 1996)', para.49.

¹³ UN document E/CN.17/1996/24, 'Review of Sectoral Clusters: Report of the Ad Hoc Intergovernmental Panel on Forests on its second session (Geneva, 11-22 March 1996)', para.112(b).

¹⁴ UN document E/CN.17/1997/12, 'Report of the Ad Hoc Intergovernmental Panel on Forests on its fourth session (New York, 11-21 February 1997)', para.135(b). The Panel also noted the role as underlying causes of deforestation of 'illegal logging; illegal land occupation and illegal cultivation' (para.20).

proposal for action that mentioned illegal logging: countries were called upon ‘to consider appropriate national level actions and promote international cooperation to reduce the illegal trade in wood and non-wood forest products including forest related biological resources, with the aim of its elimination’.¹⁵

Despite the weak wording of these proposals the IPF and IFF established illegal logging as an international issue. However this represents virtually the sum total of action taken by UN institutions on illegal logging in the 1990s. Furthermore, after the International Tropical Timber Agreement of 1994 entered into legal effect the ITTO made no effort to tackle the ‘undocumented trade’ throughout the rest of the decade.

The most controversial issue at the IPF and IFF was whether to seek agreement on a global forest agreement. The IPF and IFF produced a number of recommendations and proposals for action, but the controversial issue of whether to start negotiations on a legally binding forest convention was deferred. Countries that advocated a forest convention included Malaysia (which was the strongest opponent to a forest convention at Rio!), South Africa, most East European countries, most Central American countries, the Russian Federation, Canada, Norway, Finland, and France. Treaty proponents stress the need for an integrated and legally binding approach to the management, utilisation, and protection of the world’s forests. The United States was one of the strongest supporters of a forest convention at Rio, but now opposes a convention, arguing instead in favour of the cost efficiency of utilising existing bodies to address the challenges in the forest sector. Brazil is another strong and consistent opponent to a forest convention. Among other opponents, we find Australia, New Zealand, Japan, the UK, China, and many developing countries. These countries prefer a non-binding arrangement that entails forest policy recommendations rather than commitments.

The IFF Proposals for Action (2000), endorsed by the UN, recommended the establishment of a United Nations Forum on Forests (UNFF) to carry forward cooperation on international forest policy. As part of its mandate, UNFF was asked within five years ‘to consider with a view to recommending the parameters of a mandate for developing a legal framework on all types of forests’.¹⁶ Collaboration on forests in the IPF and IFF took place under the auspices of the Commission on Sustainable Development. However the UNFF, which unlike the IPF and IFF has universal membership, reports directly to the UN Economic and Social Council. It thus has a higher profile in the UN system than either of its predecessors (see section 2.12 below).

¹⁵ UN document E/CN.17/2000/14, ‘Report of the Intergovernmental Forum on Forests at its Fourth Session New York, 31 January-11 February 2000’, 20 March 2000, para.41(f). Other references to the illegal trade in the IFF’s final report can be found in paras. 37 and 58. However these references are in those parts of the IFF’s report dealing with conclusions rather than proposals for action.

¹⁶ UN Economic and Social Council, *Report of the Fourth Session of the Intergovernmental Forum on Forests*, E/2000/L.32 (2000): Decision 3 (c) (i).

2.3 Regional forest policy processes

A number of regional forest policy processes have supplemented the UN forest process by developing criteria and indicators (C&I) of sustainable forest management. A criterion is an element or characteristic of sustainable forest management. For each criterion there are several indicators, which measure specific aspects of the criterion. Nine government-led processes have developed C&I for different regions, including the Pan-European forest process, the Central American Initiative, the Amazonian (Tarapoto) process in South America, the Dry-Zone Africa Initiative, and a process for the tropical region under the auspices of the International Tropical Timber Organisation (ITTO) (See Table 1).

Table 1 Nine processes for criteria and indicator for sustainable forest management

Name	Details	Date and place adopted	Adopted by
International Tropical Timber Organisation	7 criteria and 66 indicators at the national and forest management unit levels for humid tropical forests	March 1992, Yokohama, Japan	28 tropical timber producing countries. (Also endorsed by 25 tropical timber consuming countries.)
Dry-Zone Africa Process	7 criteria and 47 indicators at the national level for dry-zone forests	November 1995, Nairobi, Kenya	28 countries
Ministerial Conference on the protection on Forests in Europe (MCPFE), a.k.a. Pan-European process.	27 quantitative indicators and 101 descriptive indicators at the regional and national levels for European boreal, temperate and Mediterranean forests	June 1993 Helsinki, Finland and June 1998 in Lisbon, Portugal.	36 countries
Montreal process	7 criteria and 67 indicators at the national level for non-European temperate and boreal forests	February 1995, Santiago, Chile	12 countries
Tarapoto process (a.k.a. Amazonian process)	1 criterion and 7 indicators at the global level, 7 criteria and 47 indicators at the national level, and 4 criteria and 22 indicators at the forest management unit level, for Amazonian tropical forests	February 1995, Tarapoto, Peru.	8 countries
Near East Process (sponsored by FAO and UNEP)	7 criteria and 65 indicators at the regional and national levels for dry forests in Asia, Arabian peninsula and northern Africa.	October 1996, Cairo, Egypt	30 countries
Lepaterique Process (a.k.a. Central American process)	4 criteria and 40 indicators at the regional level, 8 criteria and 42 indicators at the national level, with additional criteria and indicators at the forest management unit level, for tropical forests in Central America	January 1997, Tegucigalpa, Honduras	7 countries
African Timber Organisation	5 principles, two sub-principles, 26 criteria and 60 indicators at the national and regional levels for tropical forests in Africa	January 1993, Libreville, Gabon	13 countries
Dry Forests in Asia	8 criteria and 49 indicators at the national level for dry forests in Asia	December 1999, Bhopal, India.	9 countries

The criteria of ITTO (introduced in 1992 and revised in 1998) were developed in an intergovernmental process involving the 55 largest tropical timber producing and importing countries. These criteria are intended to be further elaborated and specified at the national level in the producing countries. The Centre for International Forestry Research (CIFOR) has also introduced criteria to form the basis of and support the development of national-level standards for sustainable forest management. About 150 countries have participated in one or more of the regional processes. Through the work in the regional groups, as well as in the IPF and IFF, a consensus has emerged on C&I of sustainable forest management adapted to different forestry types and regions of the world, primarily developed for the purpose of information sharing and reporting. Comparisons indicate agreement upon seven overall criteria of sustainable forest management:¹⁷

- Extent of forest resources
- Forest health and vitality
- Productive functions of forests
- Biological diversity
- Protective functions of forests
- Socioeconomic benefits and needs
- Legal, policy and institutional framework

These overall criteria may form a basis for comparisons of progress towards sustainable forest management in different countries. Although agreement on C&I is important, it must be remembered that those sets contain no targets, timetables or performance requirements.¹⁸ A set of C&I is basically a tool for information sharing and measuring changes in forest conditions and cover over time. C&I do not contain normative benchmarks, and cannot therefore be used to produce prescriptive standards for well-managed forests.

2.4 The G8 Action Programme on Forests

The first mention of forests in a G7/G8 communiqué was at the 1987 Venice summit, which noted the need to halt tropical deforestation. In 1989 the Paris summit gave its support for the Tropical Forestry Action Plan.¹⁹ The communiqué issued at the 1990 Houston summit stated that G7 leaders 'are ready to begin negotiations in the appropriate fora as expeditiously as possible on a global forest convention or agreement'.²⁰

¹⁷ Ewald Rametsteiner and Markku Simula (2003) 'Forest Certification – An Instrument to Promote Sustainable Forest Management?', *Journal of Environmental Management* 67 (1): 87–98.

¹⁸ Ibid.

¹⁹ Matti Palo (2001) 'World Forests and the G8 Economic Powers: From Imperialism to the Action Programme on Forests', in Matti Palo, Jussi Uusivuori and Gerardo Mery (eds), *World Forests, Markets and Policies*, Volume III, Dordrecht: Kluwer, p.184.

²⁰ G7 Houston summit communique, cited in Humphreys, *op.cit.*, p.84.

(This is the only occasion when the US government has formally supported a forests convention. The US has since consistently opposed a convention.) After Houston the G7/G8 was quiet on forests until 1997 when the G8 summit in Denver called upon countries to implement the IPF proposals.

The following year the G8 summit in Birmingham formally adopted an 'Action Programme on Forests' to run for four years.²¹ The US State Department, with support from the UK, had pushed strongly for the action programme, which had five themes: monitoring and assessment, national forest programmes, privatisation, protected areas and illegal logging.²² The word programme was a misnomer, as the G8 is not an implementation or project management body, and the commitments made at Birmingham merely required G8 governments to report on three types of action carried out in support of the five themes: domestic actions, bilateral assistance programmes and support for intergovernmental processes. The final reports²³ presented at the G8 summit of 2002 in Kananaskis, Canada provided no evidence that G8 countries had taken part in a collective programme of work. To Alexander Horst the action programme 'had nothing new to offer, either contentwise or financially, especially for developing countries'. It was 'mere rhetoric'.²⁴ Why then did the G8 adopt the action programme?

First, it provided a useful stocktaking of G8 government policies to address illegal logging following pressure from the G8's domestic timber industries, which had expressed concerns at how the illegal trade damages consumer confidence in wood products and destabilises the timber market. Second, the action programme can be seen as a public relations exercise to demonstrate resolve on forest issues following the huge multi-dimensional crisis in Indonesia of severe forest fires, economic collapse, capital flight and political upheaval. Third, the launch of the action programme in 1998 can be interpreted as a signal that G8 governments did not consider the IFF or the World Commission on Forests and Sustainable Development to be effective mechanisms for promoting global forest policy. The action programme stressed that sustainable forest manage-

²¹ G8 Communique, Denver, 22 June 1997, para.19. Available online at: www.g8.utoronto.ca/summit/1997denver/g8final.htm (accessed 19 April 2004). The adoption of action programmes by the G8 is relatively recent but is becoming increasingly common. For example, at the 2002 summit in Kananaskis, Canada the G8 adopted the G8 Africa Action Plan, the G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, and the Cooperative G8 Action on Transport Security.

²² J.L. McAlpine, 'Conservation diplomacy – one government's commitment and strategy to eliminate illegal logging', *International Forestry Review*, Vol.5, No.3, p.231; 'G8 Action Programme on Forests'. Available online at: <http://birmingham.g8summit.gov.uk/forfin/forests.shtml> (accessed 22 April 2004).

²³ 'G8 Action Programme on Forests, Backgrounders 2002', and 'G8 Action Programme on Forests, Final Report 2002'. Both documents are available online at: www.g8.gc.ca/menu-en.asp (accessed 22 April 2004).

²⁴ Alexander Horst (2001) 'G8 Action Programme on Forests: Mere Rhetoric?', in Matti Palo, Jussi Uusivuori and Gerardo Mery (eds), *World Forests, Markets and Policies*, Volume III, Dordrecht: Kluwer, p.204.

ment 'is not possible without the positive involvement and commitment of the private sector ...It is the responsibility of each government to involve all private sector stakeholders in achieving sustainable forest management...'. Emphasis is placed on 'voluntary codes of conduct' and 'private voluntary market-based mechanisms'.²⁵ Outside the G8 most forests are under state ownership while many of the forest corporations that are most likely to benefit from increased private sector involvement in tropical forests are from G8 countries.

In short, the action programme enabled the G8 to respond to demands from key domestic economic interests; to demonstrate that the G8 was acting to support environmental objectives; and to signal that the G8 considered that innovative arrangements were necessary to tackle illegal logging. The action programme ended in 2002. It had served as a notice of intent that some G8 countries were serious about addressing illegal logging. Foremost amongst them was the US. At the G8's Okinawa summit of 2000 the US announced that it was planning a more ambitious initiative to address illegal logging in Asia.²⁶ This was the forest law enforcement and governance (FLEG) ministerial conference held in Bali in 2001.

2.5 The launch of the Forest Law Enforcement and Governance process

The cheapness of illegally-logged timber undermines legitimate businesses which, as a result of pressure from consumer groups and certifying companies, have to meet stricter sustainability standards than was the case a decade ago. The American Forest and Paper Association (AFPA) has long been concerned at how the illegal trade depresses prices and reduces the demand for exports of US roundwood, sawnwood and wood panels.²⁷ The AFPA and environmental NGOs thus share an opposition to illegal logging, though for different reasons. Faced with increasing concern from industry and NGOs the US State Department regarded the G8 action programme as a first step to tackling illegal logging, and became committed to pursuing the issue further.

State Department official Jan McAlpine who, it will be recalled, first raised illegal logging at the IPF and who helped develop the G8 action programme, did not believe it would be productive to pursue illegal logging further at the UN: international negotiating institutions such as the IFF and UNFF are time consuming, tend to have a culture of defen-

²⁵ 'G8 Action Programme on Forests – 9 May 1998', paras, 8-9. Available online at: <http://birmingham.g8summit.gov.uk/forfin/forests.shtml> (accessed 19 November 2002).

²⁶ 'Report on the Implementation of The G8 Action programme on Forests, Okinawa, July 21, 2000, III. Implementation Highlights'. Available online at: www.g7.utoronto.ca/g7summit/2000okinawa/forest1.htm (accessed 19 November 2002).

²⁷ The long standing concern of the American Forest and Paper Association about the effects of illegal logging on AFPA member organisations is noted in, 'Illegal Logging and Global Wood Markets: The Competitive Impacts on the U.S. Wood products Industry', prepared for the AFPA by Seneca Creek Associates and Wood Resources International, November 2004.

siveness and are poorly equipped for dealing with problems on the ground. McAlpine thought it best to concentrate on regions. There would need to be several regional initiatives, each focusing on the dimensions of the problem peculiar to that region.²⁸ She decided to work through an international organisation with convening power and influence, and approached the World Bank, which agreed to work with the US on the issue.²⁹ The State Department was thus able to harness the Bank's resources behind what had now become a US foreign policy issue. However it was not simply a case of the State Department using the World Bank as a proxy (although the location of the Bank in Washington DC clearly serves the interests of the US government, the Bank's major shareholder, more than any other). The Bank had already developed considerable expertise on illegal logging, sponsoring workshops on the dimensions of the problem in the Mekong Basin (Phnom Penh, June 1999) and in east Asia (Jakarta, August 2000).

McAlpine worked with John Hudson of the UK's Department for International Development in proposing to the World Bank a ministerial conference on illegal logging that the Bank would co-host. Whereas the Bank's previous involvements in illegal logging had been at the technical level, McAlpine and Hudson insisted that an intergovernmental meeting was necessary at which governments would commit politically. McAlpine and Hudson settled on east Asia as the region in which to launch the first regional forest law enforcement and governance process. The Bank's prior involvement on illegal logging made this region a natural choice. The Indonesian government agreed to host a ministerial conference on illegal logging in Bali.³⁰

This would have been unthinkable during Suharto's rule. With influential timber traders having colonised the inner recesses of the Indonesian state there was no possibility of the Suharto regime moving against illegal activities in the forest sector, many of which involved Hasan's companies. However the government of President Megawati Sukarnoputri initiated an abrupt change of Indonesian forest policy that included seeking international support to address illegal logging. In 2000 Indonesia reported to the ITTO that 'illegal logging was a serious threat to Indonesian forests'.³¹ Indonesia invited an ITTO technical mission to visit the country to report on the country's forest sector. The mission reported in September 2001. It identified several factors that were prominent in the spread of 'rampant illegal logging',³² in particular a breakdown in law enforcement,

²⁸ Jan McAlpine, US State Department, interview, fourth session of the UNFF, Geneva, 4 May 2004.

²⁹ David Cassells, World Bank, interview, Washington, 16 March 2004.

³⁰ Jan McAlpine, US State Department, interview, fourth session of the UNFF, Geneva, 4 May 2004; Jan McAlpine, US State Department, email, 20 December 2005.

³¹ ITTO press release, 'Indonesia wants ITTO to address illegal logging', 30 October 2000.

³² ITTO document ITTC(XXXI)/10, 'Achieving Sustainable Forest Management in Indonesia: Report submitted to the International Tropical Timber Council by the Mission established pursuant to Decision 12 (XXIX) "Strengthening sustainable forest management in Indonesia"', 26 September 2001, p.xix.

timber production management deficiencies, the unregulated expansion of unsustainable wood processing industries, and the neglect of the rights of local communities.³³ The mission concluded that illegal logging ‘has to be tackled on a war footing’.³⁴ The crimes the mission documented include the underdeclaration of harvesting volume, transfer pricing and tax avoidance. Fire was used to clear forests illegally to free land for other uses, in particular oil palm plantations.³⁵

Following a preparatory meeting in Jakarta in April 2001 the Forest Law Enforcement and Governance (FLEG) ministerial conference, co-hosted by the Indonesian government and the World Bank, opened in Bali on 11 September 2001. The conference was a success, despite being overshadowed by the terrorist attacks in New York and Washington. Twenty countries were represented, eleven of them at ministerial level.³⁶ Indonesian NGOs represented included Telapak and WALHI, while international NGOs included Greenpeace and the Environmental Investigation Agency.³⁷ Global Witness, which two years earlier had been appointed as an independent forest monitor in Cambodia, also attended. There were two days of technical discussions followed by a ministerial segment.

The main output was the ministerial declaration, which has historical significance as the first intergovernmental statement to announce political measures to address illegal logging (Box 1). The declaration recognises that ‘illegal logging and associated illegal trade directly threaten ecosystem and biodiversity in forests throughout Asia and the rest of the world’ resulting in ‘serious economic and social damage upon our nations, particularly on local communities, the poor and the disadvantaged’.³⁸ Attached to the declaration was an ‘indicative list of actions’ to which states are not formally committed, but which they can consider when promoting forest governance reforms. The declaration came just five years

³³ ITTO document ITTC(XXXI)/10, ‘Achieving Sustainable Forest Management in Indonesia: Report submitted to the International Tropical Timber Council by the Mission established pursuant to Decision 12 (XXIX) “Strengthening sustainable forest management in Indonesia”’, 26 September 2001, pp.xxiv-xxv.

³⁴ ITTO document ITTC(XXXI)/10, ‘Achieving Sustainable Forest Management in Indonesia: Report submitted to the International Tropical Timber Council by the Mission established pursuant to Decision 12 (XXIX) “Strengthening sustainable forest management in Indonesia”’, 26 September 2001, p.xxv.

³⁵ Freezailah B. Che Yeom and Cherukat Chandrasekharan (2002), ‘Achieving sustainable forest management in Indonesia’, *ITTO Tropical Forest Update*, Vol.12, No.1, p.10. This article provides a condensed and amended version of the abstract to the mission’s report.

³⁶ Seven were from the Asia-Pacific region: Cambodia, China, Indonesia, Laos, Philippines, Thailand and Vietnam. In addition there were two from Africa, namely Congo-Brazzaville and Ghana. *Sustainable Developments*, Vol.60, No.1, p.1. Japan, the UK and the US also attended.

³⁷ The EIA and its Indonesian partner Telapak released the following report for the FLEG meeting: EIA and Telapak (2001) *Timber Trafficking: Illegal Logging in Indonesia, South East Asia and International Consumption of Illegally-sourced Timber*, London/Washington/Bogor: EIA/Telapak.

³⁸ Forest Law Enforcement and Governance, East Asia Ministerial Conference, Bali, Indonesia, 11-13 September 2001, Ministerial Declaration, preamble.

after the first mention of illegal logging was agreed in intergovernmental negotiations at the IPF.

Box 1 Forest Law Enforcement and Governance, Ministerial Declaration, Bali, Indonesia, 13 September 2001 – Main Commitments (Summarised)

- Intensify national efforts, and strengthen bilateral, regional and multi-lateral collaboration to address violations of forest law and forest crime, in particular illegal logging and the associated illegal trade.
- Develop mechanisms for effective exchange of experience and information.
- Undertake actions, including among law enforcement authorities within and among countries, to prevent the movement of illegal timber.
- Explore ways in which the export and import of illegally harvested timber can be eliminated, including the possibility of a prior notification system for commercially traded timber.
- Improve forest-related governance within countries in order to enforce forest law, better enforce property rights and promote the independence of the judiciary.
- Involve stakeholders and local communities in forest decision making.
- Improve economic opportunities for those relying on forest resources to reduce the incentives for illegal logging and indiscriminate forest conversion.
- Review domestic forest policy frameworks, and institute appropriate policy reforms relating to the granting and monitoring of concessions, subsidies and excess processing capacity.
- Give priority to the most vulnerable transboundary areas.
- Develop and expand work on monitoring and assessment of forest resources.
- Strengthen government and civil society capacity to prevent, detect and suppress forest crime.

Source: Forest Law Enforcement and Governance, East Asia Ministerial Conference, Bali, Indonesia, 11-13 September 2001, Ministerial Declaration, paras.11-23.

Ministers agreed to create a regional task force to advance the objectives of the declaration. Other stakeholders, including industry and civil society, were invited to form an advisory group to the task force.³⁹ The Washington office of the Environmental Investigation Agency now organises and chairs the advisory group. NGOs were satisfied with the outcome of the meeting. Nigel Sizer of The Nature Conservancy said that the declaration surpassed what NGOs had expected, while Dave Currey of the Environmental Investigation Agency was ‘encouraged’ by the declaration.⁴⁰

The FLEG process, while not named, found endorsement in the World Summit on Sustainable Development’s plan of implementation, which in

³⁹ ‘Forest Law Enforcement and Governance, East Asia Ministerial Conference, Bali, Indonesia, 11-13 September 2001, Ministerial Declaration’.

⁴⁰ *Sustainable Developments*, Vol.60, No.1, p.10.

2002, and in line with the recommendations of the second session of the UNFF, committed states to '[t]ake immediate action on domestic forest law enforcement and illegal international trade in forest products'.⁴¹ Three months after the summit a new arrangement, the Asia Forest Partnership (AFP), held its inaugural meeting in Japan.⁴² The AFP aims to provide a framework for cooperation in five areas, namely 'good governance and forest law enforcement, developing capacity for effective forest management, control of illegal logging, control of forest fires and rehabilitation of degraded lands'.⁴³ However, given the recent launch of the Asian FLEG process, the need for another regional partnership has yet to be demonstrated. The AFP can be seen as an attempt by Japan to reclaim control over Asian forest dialogue at the expense of FLEG, which can be seen as an Anglo-American-driven initiative. It remains to be seen whether a working relationship between FLEG and the AFP will emerge (see section 2.9 below).

2.6 The Africa FLEG process

The Asian FLEG conference of 2001 provided the momentum and the model for a similar process in Africa. Like its Asian predecessor, the Africa FLEG process involved a preparatory meeting (Brazzaville, Congo in April 2002). This was followed by a ministerial conference attended by timber exporting countries and key donors in Yaoundé, Cameroon (October 2003). During the pre-ministerial negotiations some delegates stressed the need to remain within World Trade Organisation (WTO) rules, a theme that had also informed the Asian FLEG negotiations. The InterAfrican Forest Industries Association called for an international response to tackle the forests conflicts in Liberia. Representatives from Cameroon and Global Witness announced that they had signed an independent forest monitoring agreement.⁴⁴ As at the Bali meeting, the Yaoundé meeting produced a ministerial declaration with an appended list of indicative actions. The ministerial declaration stresses the need to strengthen political commitment and capacity, mobilise financial resources and promote cooperation between law enforcement agencies (Box 2).

The Africa FLEG process aims to work through and strengthen existing mechanisms, of which three are likely to prove central. First, the Congo Basin Forest Partnership was launched at the World Summit on Sustainable Development in 2002 and is intended to encourage donors to engage in the forests of the region. It has no independent implementation role.⁴⁵ The six founding members of the partnership are Cameroon, Central

⁴¹ 'Plan of Implementation of the World Summit on Sustainable Development', Johannesburg, September 2002.

⁴² Governments that were founding members of the Asia Forest Partnership are Australia, Cambodia, China, Finland, France, Indonesia, Japan, South Korea, Malaysia, Philippines, Switzerland, Thailand, UK, US and Vietnam.

⁴³ 'About Asia Forest Partnership'. Available online at: www.asiaforests.org/home/home.htm (accessed 22 April 2004).

⁴⁴ *Sustainable Developments*, Vol.60, No.7, p.3.

⁴⁵ 'About the Congo Basin Forest Partnership'. Available online at: www.cbfp.org/en/about.aspx (accessed 26 April 2004).

African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gabon and the Republic of the Congo.

Box 2 Africa Forest Law Enforcement and Governance, Ministerial Declaration, Yaoundé, Cameroon, 16 October 2003 – Main Commitments (Summarised)

- Strengthen institutional reforms in the forest sector
- Facilitate the mobilisation and provision of financial resources
- Review the effect of structural adjustment and other economic reform programmes on forest law enforcement and governance
- Promote and finance better economic opportunities for communities dependent on forests
- Invite cooperation between law enforcement agencies within countries and internationally
- Strengthen the capacity of all relevant institutions and groups
- Involve stakeholders, including local communities and rural populations, in forestry sector decision-making
- Address illegality in the forest sector and the re-establishment of good governance in post-conflict situations
- Ensure that property and usufruct rights, including traditional forest-related knowledge, are fully respected.
- Strengthen laws and regulations for hunting and the bushmeat trade
- Integrate law enforcement and governance into national forest programmes
- Invite representatives from the private sector and NGOs to form advisory groups for sub-regional task forces.

Source: Africa Forest Law Enforcement and Governance, Ministerial Conference, Yaoundé, Cameroon, 13-16 October 2003, Ministerial Declaration, paras.1-30.

Second, in February 2005 at a forest summit in Brazzaville ten central African countries recognised the Conference of Ministers in Charge of Forests in Central Africa (COMIFAC) as the sole decision-making body on forests for the region. The ten countries were the six founding members of the Congo Basin Forest Partnership, plus Burundi, Chad, Rwanda, and São Tomé and Príncipe. This meeting also agreed a trilateral accord permitting free movement of park staff between Cameroon, the Central African Republic and the Republic of Congo in the Sangha Tri-National Conservation Area, thus allowing staff to work across national borders to counter illegal logging and poaching.⁴⁶

Third, in September 2005 the first Intergovernmental Meeting on Great Apes agreed the Kinshasha Declaration. Signed by 16 great ape range states and 6 donor countries, this commits states to protecting habitat that supports great apes. It applies principally to the gorilla and chimpanzee range states of the Congo Basin, as well as to orang-utan range states in southeast Asia, notably Indonesia. The declaration is an interesting exam-

⁴⁶ 'Congo Basin Summit Produces Africa's First Ever Region-Wide Conservation Treaty'. Available online at: http://certificationwatch.org/print.php3?id_article=2913 (accessed 16 February 2005).

ple of how an initiative by UN agencies eventually resulted in intergovernmental initiative. In 2002 UNEP and UNESCO launched the Great Apes Survival Project (GRASP), a multisectoral partnership involving public and private actors. The Kinshasha Declaration endorsed GRASP.⁴⁷ The meeting made several references to the role of illegal logging in destroying the habitat of the great apes.⁴⁸

2.7 Renewed action at the International Tropical Timber Organisation

Two months after the Bali FLEG ministerial the ITTO passed its first decisions on illegal logging and forest law enforcement. Two decisions were made, both with weak wording. The first applied only to Indonesia, which was encouraged 'to submit project proposals implementing the recommendations of the Technical Mission'.⁴⁹ The second decision on forest law enforcement authorised the ITTO's executive director to improve the accuracy of the ITTO's market and economic intelligence and encouraged producer countries in need of assistance to submit project proposals to address 'unsustainable timber harvesting, forest law enforcement and illegal trade in tropical timber'.⁵⁰ Significantly, the preamble to this decision recognises 'the need to promote sustainable production of timber'.⁵¹ This emphasis on sustainable *timber production* rather than sustainable *forest management* reveals the dominance of the ITTO by trade interests. It is also significant that before the Bali FLEG conference the ITTO passed no decision on illegally logging, whereas immediately after the Bali conference it passed two decisions. The ITTO exercises no leadership beyond promoting the interests of the timber industry. It reacts to rather than initiates broader developments in international forest politics, and its role as an autonomous international organisation needs to be questioned.

That said, the ITTO has taken an increasingly active interest in illegal logging since the Bali FLEG conference.⁵² There are two areas in which the organisation can contribute to tackling illegal logging in the future. The first is improved market intelligence and statistical analysis of trade

⁴⁷ 'Kinshasha Declaration on Great Apes'. Available online at www.unep.org/ (accessed 13 December 2005).

⁴⁸ 'Report of the First Intergovernmental Meeting on Great Apes and the Great Apes Survival Project (GRASP) and the First Meeting of the GRASP Council, Kinshasha, Democratic Republic of Congo, 5-9 September 2005', pp.49, 54, 56, 76. Available online at: www.unep.org/grasp/Meetings/IGM-kinshasha/Outcomes/docs/Report.pdf (accessed 13 December 2005).

⁴⁹ ITTO document ITTC(XXXI)/20, 'Decision 5(XXXI), "Strengthening sustainable forest management and controlling illegal logging in Indonesia"', 3 November 2001.

⁵⁰ ITTO document ITTC(XXXI)/21, 'Decision 6(XXXI), "Forest Law Enforcement in the context of sustainable timber production and trade"', 3 November 2001, paras.1-2.

⁵¹ ITTO document ITTC(XXXI)/21, 'Decision 6(XXXI), "Forest Law Enforcement in the context of sustainable timber production and trade"', 3 November 2001, preamble.

⁵² Lauren Flejzor (2005) 'How the ITTO Addresses Illegal Logging: Current political issues and programme activities', London: Chatham House.

data. Improved national reporting on imports and exports can help in the identification of the illegal trade through discrepancies in figures, of the sort identified by TRAFFIC with respect to the trade between the Philippines and Japan (see section 2.9 below).

Second, the ITTO has promoted some important protected areas. The ITTO is providing support, along with the governments of Japan and Switzerland, for the 850,000 hectare Betung Kerihun National Park in northern Kalimantan, Borneo bordering the Malaysian state of Sarawak.⁵³ This is one of two national parks that Indonesia has declared on the Malaysia-Indonesia border in Borneo, with the Keyan Mentarang National Park on the border with Sabah being the other. If properly managed transnational parks can plan an important role in combating the cross-border trade in illegally logged tropical timber.

2.8 ITTO technical missions

In the period 1985-2000 only three ITTO technical missions were established (Sarawak, Bolivia, Indonesia). In large part this was due to the international political climate during much of this period, in particular the view in many tropical countries that a mission of technical experts from other countries would constitute some kind of an infringement of national sovereignty. However after the mission to Indonesia eight ITTO missions were established in the period 2002-03, namely for Congo, Central African Republic, Brazil, Trinidad and Tobago, Guyana, Suriname, Peru and the Philippines. Illegal logging was mentioned as a factor that has constrained sustainable forest management in the reports of all but two of the eight missions. The two exceptions were the Philippines and the Central African Republic.

However the Philippines has a major illegal logging problem that dates back at least to the 1970s. In the early 1990s TRAFFIC International revealed that from 1978 the official figures for Filipino timber exports to Japan was consistently less than the Japanese figures for imports of Filipino timber, the difference being attributable to illegal exports that had circumvented Filipino officialdom but been recorded by the Japanese authorities.⁵⁴ As in Indonesia, the fall of a corrupt regime (Ferdinand Marcos in 1986) followed by democratic elections eventually resulted in action from the authorities to eliminate illegal logging. In 1992 the Philippines banned tree felling in virgin forests. In 2001 the volume of illegal logs confiscated was increasing and 14 staff from the Department of Environment and Natural Resources were suspended for failing to properly implement rules and regulations and for possibly conniving with illegal loggers.⁵⁵

⁵³ ITTO press release, 'Illegal logging: Reinforce existing reserves first', 14 December 2000.

⁵⁴ Debra J. Callister (1992), *Illegal Tropical Timber Trade: Asia Pacific, A TRAFFIC Network Report*, Cambridge UK: TRAFFIC International, p.65. The figures in question cover the years 1978-1987.

⁵⁵ Asia Pulse (2001), 'Philippines Steps Up Campaign Against Illegal Logging', 4 December. Available online at <http://forests.org/archive/asia/phstupca.htm> (accessed 16 April 2004).

Although the mission report for the Central African Republic does not specifically mention illegal activities, it does recommend that the ministry with responsibility for forest resources ensures the 'equitable enforcement of legal provisions for all industries operating in the forest sector. This mainly relates to the penalties provided for in the legal texts which should be enforced without complacency and in consistency with the policy implemented at sub-regional level'.⁵⁶ It is clear that a significant forest law enforcement problem exists in the Central African Republic.

For the Congo the mission reported only that a problem could exist in principle: the country's 'variable and non-progressive taxation system ...discourages good practice and can lead to illegal logging, supplying and marketing'.⁵⁷ In Guyana the role of broader economic factors in promoting illegal logging was noted: the closure of bauxite mines resulted 'in the absence of alternative employment to a huge explosion of chainsaw logging, much of it uncontrolled and illegal'.⁵⁸ In Suriname the mission report stated that that timber production from concessions has to compete with timber from illegal sources, as well as timber from less regulated sources, such as communal wood cutting licences.⁵⁹ In Trinidad and Tobago illegal logging is one law enforcement problem in the forest, along with marijuana cultivation and land squatting from unemployed landless people deforesting land for short-term crop growing.⁶⁰

The reports on Peru and Brazil makes the strongest references to illegal logging of any ITTO mission with the exception of Indonesia. Between 70-90% of all timber logged in Peru is illegally harvested, with the species most affected being cedar and mahogany. A particularly acute problem is illegal mahogany extraction from national parks.⁶¹

The report on Brazil notes that in the early 1990s up to 75% of the total timber supply was illegally logged. Although current estimates are 'significantly lower', many analysts suggest that the figure remains at

⁵⁶ ITTO document ITTC(XXXIII)/18, 'ITTO Mission in support of the Government of the Central African republic towards the ITTO 2000 Objective and Sustainable Forest Management: Executive Summary, Report of the Diagnostic Mission in the Central African Republic, 7-20 April 2000', 11 September 2002, p.5.

⁵⁷ ITTO document ITTC(XXXII)/18, 'Mission in Support of the Government of the Congo for the Realization of ITTO Objective 2000 and Sustainable Forest Management, Diagnostic Mission Report in the Congo from 12 to 26 October 2001', 26 March 2002, section 2.1, para.(e).

⁵⁸ ITTO document ITTC (XXXIV)/8, 'Achieving the ITTO Objective 2000 and Sustainable Forest Management in Guyana – Report of the Diagnostic Mission', 15 April 2003, p.7.

⁵⁹ ITTO document ITTC(XXXV)/17, 'Achieving the ITTO Objective 2000 and Sustainable Forest Management in Suriname, Executive Summary', 29 September 2003, p.9.

⁶⁰ ITTO document ITTC(XXXIV)/9, 'Achieving the ITTO Objective 2000 and Sustainable Forest Management in Trinidad and Tobago, Report (Executive Summary)', 4 April 2003, p.13.

⁶¹ ITTO document ITTC(XXXV)/15, 'Achieving the ITTO Objective 2000 and Sustainable Forest management in Peru – Report of the Diagnostic Mission', 2 October 2003, pp.3, 6.

more than 50%. As in Peru, illegal mahogany logging was a 'special concern'. The negative publicity that the illegal mahogany trade has had 'in undermining the reputation of the whole sector and influencing the image of all Brazilian native timbers in export markets' was noted, and the mission team went to pains to stress that the criminal structures involved in the mahogany trade were 'certainly not representative for the Amazon forest and timber industry as a whole'.⁶² In fact species other than mahogany have not been targeted by criminals because mahogany is worth more than other species. The 'rational' illegal logger has no incentive to log species other than mahogany, and every incentive to use their available capacity on mahogany felling and transport. In 1996 Brazil instituted a moratorium against new management plans for mahogany logging, and the authorities are increasingly taking action against illegal loggers. In 2001 the Brazilian Institute of Environmental and Renewable Natural Resources (IBAMA) seized 26,000 cubic metres of illegally felled mahogany.⁶³ Largely due to the severe problems of illegal logging in Brazil and Peru big leaf mahogany (*Swietenia macrophylla*) was listed on CITES Appendix II in 2003.

2.9 Asia Forest Partnership

The Asia Forest Partnership overlaps considerably with FLEG in terms of membership and issue coverage. Eight countries – Cambodia, China, Indonesia, Japan, Thailand, Vietnam, the UK and the US – have participated both in the Asia Forest Partnership⁶⁴ and the FLEG Task Force established after the Bali ministerial. Malaysia is the most prominent east Asian forest country not to have participated in FLEG, but to have taken part in the AFP. The most prominent country to have participated in FLEG but not the AFP is Papua New Guinea.

The creation of the AFP can be seen as part of a 'turf war' in which Malaysia, with qualified support from Japan, is seeking to wrest control over Asian forest industry dialogue away from FLEG, which is essentially a developed country initiative, thus leaving east Asian states in sole political control.⁶⁵ However Malaysia is no longer the dominant force in south east Asian forest politics it once was. While Suharto was in power Malaysia and Indonesia were close partners in international forest politics, with both Mahathir and Suharto resisting what they perceived as western interference in national forest policy. Since the fall of Suharto the axis between the two countries is no longer so strong. Indeed areas of conflict have surfaced, with Indonesia accusing Malaysia of laundering illegally-logged timber from Kalimantan and Sumatra.

⁶² ITTO document ITTC(VVVII)/17, 'Achieving the ITTO Objective 2000 and Sustainable Forest management in Brazil', 25 September 2002, p.xi.

⁶³ ITTO document ITTC(VVVII)/17, 'Achieving the ITTO Objective 2000 and Sustainable Forest management in Brazil', 25 September 2002, p.34.

⁶⁴ Governments that were founding members of the Asia Forest Partnership are Australia, Cambodia, China, Finland, France, Indonesia, Japan, South Korea, Malaysia, Philippines, Switzerland, Thailand, UK, US and Vietnam.

⁶⁵ This hypothesis was suggested to one of the authors (Humphreys) by Sam Marshall of the Environmental Investigation Agency, interview, London, 14 November 2003.

Japan has also supported the AFP more enthusiastically than FLEG.⁶⁶ The Japanese have aspirations to regional leadership in Asia and wish to limit the role of other developed countries in the region. One indication of these aspirations was the failed Japanese bid during the 1997 Asian financial crisis to establish an Asian Monetary Fund in which Japan would have been the dominant country.⁶⁷

At present the AFP is a soft process: FLEG has harder political support than the AFP in the form of the 2001 ministerial declaration and commitment from developed governments. However the AFP has stronger support from the timber industry. In terms of participation from Asian states the two initiatives have similar support (with 10 Asian governments participating in the AFP by the end of 2003, compared with 9 for FLEG). The strength of FLEG is its concentrated focus on legality and law enforcement, while the AFP has taken on additional issues.

2.10 The G8 summit at Gleneagles, 2005

In 2005 the UK government used the G8 presidency to press for agreement on international climate policy and poverty alleviation in Africa. A secondary objective was strengthened demand side measures on illegal logging.

An internal State Department memorandum outlined the US strategy on illegal logging for the G8 negotiations. It stated that '[d]emand side actions involving new import or procurement regulations/restrictions are unacceptable'. The US would 'work with Canada to hold back procurement and other unacceptable demand side actions, and with Russia and Japan, to dissuade them from supporting UK'.⁶⁸ The US, it was noted, should seek commitments consistent with the President's Initiative Against Illegal Logging. Announced in 2003, this initiative contains no demand side measures and outlines only supply-side responses such as country capacity building, community-based actions and technology transfer for monitoring systems.⁶⁹

⁶⁶ At the fourth session of the UNFF in May 2004 the Japanese delegation stated that the AFP aims 'to create a framework for customs cooperation in the Asia-Pacific region'. There was no mention of the FLEG initiative in the Japanese statement.

⁶⁷ The Japanese government wanted an Asian Monetary Fund (AMF) in part because it considered that the US-dominated IMF sought to restructure Asian economies to suit the interests of the international financial system. Japan eventually climbed down from its efforts to establish an AMF, which had Malaysian support, after fierce opposition from the Clinton administration. For an account of the AMF proposal and how the US defeated it see Paul Blustein (2001), *The Chastening: Inside the Crisis that Rocked the Global Financial System and Humbled the IMF*, Oxford: Public Affairs, pp.162-170.

⁶⁸ 'Input to Strategy Paper for G-8 Environment and Development Ministerial, March 2005, Guidance for G-8 Experts Meeting on Illegal Logging, February 10-11, 2003 (sic), Draft January 31'. This document is marked 'confidential'.

⁶⁹ 'USAID: President's Initiative Against Illegal Logging'. Available online at: www.usaid.gov/about_usaid/presidential_initiative/logging.html (accessed 13 April 2004).

The memorandum attracted press coverage in the UK after it was leaked to the BBC's *Newsnight* programme.⁷⁰ A spokesperson for the Competitive Enterprise Institute in Washington commented to *Newsnight* that 'green trade' is not necessarily a step in the right direction: 'We think that trade should be as free as possible and these other issues as to involving (sic) environment and so on should be secondary to free trade, secondary to the major considerations of the WTO'.⁷¹ Shortly after the memorandum was leaked the first G8 Environment and Development Ministerial conference took place in England. Ministers agreed to 'take steps to halt the import and marketing of illegally-logged timber, for example by giving appropriate powers to our border control authorities through voluntary bilateral trade agreements or other arrangements, consistent with WTO rules'.⁷² However the word 'appropriate' deprived this phrase of all substantive content. In another paragraph that lacked hard commitment ministers agreed to 'encourage, adopt or extend public timber procurement policies that favour legal timber'.⁷³

The G8 summit of heads of state and government at Gleneagles in July 2005 failed to agree a programme of demand side measures on the illegal timber trade, agreeing only that countries would act alone: 'We endorse the outcome of the G8 Environment and Development Ministerial conference on illegal logging. To help further our objectives in this area we will take forward the conclusions endorsed at that meeting, with each country acting where it can to contribute most effectively'.⁷⁴

2.11 The Europe and North Asia (ENA) FLEG process

Four months after the Gleneagles summit the third FLEG ministerial meeting was held in St Petersburg.⁷⁵ This covered the countries of Europe and north Asia, and aimed in part to set in motion a cooperative process that would eventually address the trade of illegal timber between Russia and China. China occupies an important intermediary position in the international timber trade, with an estimated two-thirds of China's timber imports being re-exported.⁷⁶ Eighteen EU member states attended, a significant increase on EU representation at the Asian and African FLEG ministerials and a reflection of the impact of the FLEGT action plan (see

⁷⁰ Paul Brown and Roger Harrabin (2005) 'US tries to sink forests plan', *The Guardian*, 16 March. Available online at: www.guardian.co.uk/international/story/0,3604,1438394,00.html (accessed 21 March 2005).

⁷¹ RJ Smith, cited in Roger Harrabin, 'US blocks forest protection plan', 15 March 2005. Available online at: <http://news.bbc.co.uk/1/hi/programmes/newsnight/4351863.stm> (accessed 21 March 2005), and at: <http://forests.org/articles/reader.asp?linkid=40065> (accessed 2 June 2005).

⁷² 'G8 Environment and Development Ministerial', 18 March 2005, para.10.

⁷³ *Ibid.*, para.12.

⁷⁴ 'G8: Gleneagles Plan of Action: Climate Change, Clean Energy and Sustainable Development', para.38. Available online at: www.noticias.info/asp/printingVersionNot.asp?NOT=81992 (16 December 2005).

⁷⁵ The preparatory conference had been held in June 2005 in Moscow.

⁷⁶ Reported at a FLEG/FLEGT seminar conducted under Chatham House rules, London 27 July 2005.

section 3 below and Appendix to this report). As with the Asian and African meetings, the St Petersburg conference agreed a ministerial declaration supported by an indicative list of actions.

The business view at St Petersburg was somewhat divided. The Finnish corporation Stora Enso sought to protect itself from cost increases by arguing that law enforcement costs should fall on government rather than legal operators, a point reiterated by the International Council of Forest and Paper Associations.⁷⁷ Stora Enso also challenged commitments made in the FLEGT action plan: timber licensing and procurement policies should be avoided as the 'main measures'.⁷⁸ However the Ilim Pulp Enterprise of Russia saw certification, labelling and licensing as 'key instruments to combat illegal logging'. The Swedish firm IKEA also stressed the importance of certification.⁷⁹

The importance of transboundary cooperation, particularly along the porous Russian-Chinese border, was emphasised during discussions, with Friends of the Siberian Forests stating that illegal logging in Russia would persist unless China took action.⁸⁰ The Chinese authorities are taking a stronger line against illegal loggers operating within China, although the willingness of the authorities to deal with the illegal trade that transits through China has yet to be demonstrated. However China did agree to mention in the St. Petersburg declaration of the need to 'give priority to and strengthen transboundary cooperation between countries with border areas which require coordinated actions and effective control in order to combat illegal logging and associated trade'.⁸¹ Civil society groups supported by The Forest Dialogue pressed for national targets and a timebound follow up process.⁸² But, and as at the fifth session of the UNFF that had taken place earlier that year, there was no agreement with a timebound element.⁸³

Forty-three countries endorsed the declaration (Box 3). This brought the number of countries involved in a FLEG process to 90 (see Appendix to this report).

At the time of writing there is no FLEG process in Latin America, but it should not be ruled out. The countries of the region suffer from illegal logging and may welcome working with donor countries to improve forest law enforcement and governance. However a potential barrier is the

⁷⁷ *Europe and North Asia FLEG Bulletin*, Vol.110, No.2, p.2.

⁷⁸ *Europe and North Asia FLEG Bulletin*, Vol.110, No.5, p.3.

⁷⁹ *Europe and North Asia FLEG Bulletin*, Vol.110, No.5, p.3. The Ilim Pulp Enterprise spoke at the preparatory meeting in Moscow, June 2005: *Europe and North Asia FLEG Bulletin*, Vol.110, No.1, p.4.

⁸⁰ *Europe and North Asia FLEG Bulletin*, Vol.110, No.3, p.2.

⁸¹ 'St. Petersburg Declaration', 25 November 2005, para.17.

⁸² *Europe and North Asia FLEG Bulletin*, Vol.110, No.3, p.2; 'The Forests Dialogue, ENA FLEG Joint Civil Society and Forest Industry Preparatory Event, 2-3 November 2005, St Petersburg, Russia', p.4.

⁸³ For the agreed language see 'St Petersburg Declaration', 25 November 2005, para.5.

long history of the Amazonian Pact countries in resisting infringements upon their sovereign resource use policy, as seen at UNFF 6 in February 2006 (see section 2.12 below). A Latin American FLEG process is more likely in Central America, where there is a stronger tradition of trans-boundary cooperation on forests.

Box 3 Europe and North Asia Forest Law Enforcement and Governance, Ministerial Declaration, St. Petersburg, Russia, 16 October 2005 – Main Commitments (Summarised)

- Strengthen interagency cooperation, particularly among law enforcement and judicial authorities
- Formulate concrete actions under clearly defined targets, including monitoring of implementation
- Recognise the rights of forest dependent communities, taking into consideration traditional laws and practices and respect for traditional knowledge
- Engage stakeholders in the formulation of forest laws and policies
- Develop and implement anti-corruption tools, including codes of conduct
- Promote the establishment of third party audited traceability systems
- Strengthen international cooperation using, as much as possible, existing structures
- Strengthen transboundary cooperation between countries with border areas which require coordinated actions and effective control
- Facilitate technology transfer and information sharing.

Source: Europe and North Asia Forest Law Enforcement and Governance, Ministerial Conference, St. Petersburg, Russia, 16 October 2005, St. Petersburg Declaration, paras.1-29.

2.12 Spillover effects: CBD, ITTA, and UNFF

The issue of illegal logging has spilled over into other international institutions. The expanded programme of work on forest biological diversity, agreed by parties to the Convention on Biological Diversity (CBD) in 2002, promotes forest law enforcement, including legislation to address illegal activities and capacity building for effective law enforcement.⁸⁴ However, willing states have not been able to exercise leadership within the framework of the CBD on the issue of illegal logging or other forest policy issues.

Since the turn of the millennium the ITTO – which at first refused even to recognise problems of illegality in the forest sector – has paid increasing attention to illegal logging. Much of this is a spin off from the G8 and FLEG initiatives, although an important factor is the example of the Indo-

⁸⁴ Secretariat of the Convention on Biological Diversity (2004) *Expanded Programme of Work on Forest Biological Diversity*, Montreal: Secretariat of the Convention on Biological Diversity, programme element 2, goal 1, objective 4, p.17.

nesian government in opening its forest economy to external scrutiny. The Indonesian government included illegal logging in the terms of reference of the ITTO technical mission, fully aware that the results would be highly critical. With Indonesia prepared to reveal the ‘skeletons in its cupboard’, other countries have followed suit with the result that the visibility of the illegal logging issue at the ITTO is now greater than it has ever been.

In January 2006 states agreed the third International Tropical Timber Agreement (ITTA). While the first ITTA of 1983 did not mention illegal logging, and the second ITTA of 1994 only acknowledged the ‘undocumented trade’, illegal logging is now explicitly mentioned in a legally binding multilateral agreement. The third ITTA includes a new objective for the ITTO, namely ‘[s]trengthening the capacity of members to improve forest law enforcement and governance, and address illegal logging and related trade in tropical timber’.⁸⁵ States have also agreed to review information supplied by signatories ‘regarding illegal harvesting and illegal trade in tropical timber and non-timber forest products’.⁸⁶ As the first legally-binding international instrument to explicitly address illegal logging, agreement on the third ITTA was a milestone event, although Brazil and some other producer countries hold strong reservation about this part of the agreement.

Much as a result of the FLEG processes, the UN Forum on Forests (UNFF) has also addressed illegal logging. At its second session the ministerial segment of the UNFF urged the World Summit on Sustainable Development to

Call for immediate action on domestic forest law enforcement and illegal international trade in forest products, including in forest biological resources, with the support of the international community, to provide human and institutional capacity-building related to the enforcement of national legislation in these areas.⁸⁷

The fifth session of the UNFF in May 2005 was much anticipated and expected to be a ‘milestone event’,⁸⁸ because the meeting was tasked with evaluating the Forum’s achievements and agreeing a strengthened arrangement on forests, possibly recommending a global forest convention. However, states did not agree on the need for negotiations on a forest convention, and the session did not even produce a political statement. Apart from agreement on continuing the international forest policy talks, the meeting did not produce any new policy recommendations pertaining to forest law enforcement, governance, and illegal logging and was widely regarded as a failure.

⁸⁵ UN document TD/TIMBER.3/L.9 (27 January 2006), Article 1(n), p.5.

⁸⁶ *Ibid.*, Article 28.3(e), p.21.

⁸⁷ UN document E/2002/42-E/CN.18/2002/14, ‘United Nations Forum on Forests, Report on the second session (2 June 2001 and 4 to 15 March 2002)’, p.6. Similar wording appears in UNFF resolution 2/2, which was also agreed at the UNFF’s second session. See p.8 of the same document.

⁸⁸ *Earth Negotiations Bulletin*, UNFF-5 Final, Vol. 13, No. 133 (30 May 2005), International Institute for Sustainable Development.

At the sixth session of the UNFF in February 2006, only one month after the agreement on the third ITTA, the EU and the US pressed for including a reference to ‘illegal logging’ in a sub-paragraph on forest products. China, India and the Amazonian Pact countries led by Brazil opposed any such reference. As a compromise solution ‘illegal logging’ was deleted from the paragraph on forest products and a reference to ‘illegal practices’ was included in a paragraph on corrupt practices.⁸⁹ In the final text, states agreed to

[s]trengthening the capacity of countries to address illegal practices according to national legislation and illegal international trade in forest products in the forest sector, through the promotion of forest law enforcement and governance at the national level, sub-national level, regional and sub-regional levels, as appropriate.⁹⁰

Brazil and other Amazonian Pact countries resisted the inclusion of any reference to the text on illegal logging in the third ITTA throughout UNFF 6.⁹¹ The main outputs from UNFF 6 were final agreement on ‘global objectives on forests’, although the commitment to the 2015 timeline was weakened during the final round of negotiations, and a commitment to agree at UNFF’s seventh session (2007) a ‘non-legally binding instrument on forests’ to strengthen political commitment to global forest policy.⁹² Despite these agreements, UNFF 6 showed that illegal logging is still a controversial issue in intergovernmental negotiations.

⁸⁹ *Earth Negotiations Bulletin* (2006) ‘UNFF-6 Final’ Vol.13. No 144: p.7 and p.12.

⁹⁰ Advance copy of the ECOSOC resolution agreed by UNFF-6 at 11 pm 24 February 2006, para.6(h).

⁹¹ *Earth Negotiations Bulletin*, *op. cit.*: p.12.

⁹² Advance copy of the ECOSOC resolution, *op. cit.* para.22.

3. The EU's Forest Law Enforcement, Governance and Trade Action Plan

The FLEG processes are largely supply-side approaches to reduce illegal logging at source in tropical timber producing countries. To complement and support these processes the EU, as a major timber importer, committed in February 2002 to developing an action plan to combat illegal logging.⁹³ The aim was to develop both supply-side measures, by providing assistance to developing and former communist countries, and demand-side measures to curtail the trade of illegally-logged timber to the EU. This focus on trade led the EU to extend the FLEG acronym when developing what became known as the Forest Law Enforcement, Governance and Trade (FLEGT) action plan.⁹⁴ The action plan was approved in Council Conclusions in the same month that the Africa FLEG process was launched, October 2003.⁹⁵ The Council Regulation on the licensing scheme was adopted in December 2005.⁹⁶

The development of the action plan provides an interesting illustration of how actors from outside the European Commission can make a decisive impact upon EU policy. During the preparation of the EU action plan the UK government engaged the Royal Institute of International Affairs, now known as Chatham House, to prepare possible measures that the action plan could endorse. Chatham House consulted widely with a broad range of stakeholders and produced a number of reports. One report produced in collaboration with the NGO network FERN – *Controlling Imports of Illegal Timber: Options for Europe* – contained several recommendations that have become key elements in the FLEGT action plan. They include voluntary partnership agreements between producer countries and the EU on timber licensing;⁹⁷ the adoption by member states of procurement policies stipulating the purchase of timber from legal sources;⁹⁸ promoting private sector initiatives, including codes of conduct;⁹⁹ and the exercise of

⁹³ European Commission (2002) 'Communication on a Global Partnership for Sustainable Development', as noted at: http://europa.eu.int/comm/external_relations/flegt/workshop/issue.htm (accessed 21 November 2002).

⁹⁴ EU document COM (2003) 251 final, 'Communication from the Commission to the Council and the European Parliament: Forest Law Enforcement, Governance and Trade (FLEGT), Proposal for an EU Action Plan', Brussels, 21 May 2005.

⁹⁵ *Official Journal of the European Union*, 'Council Conclusions: Forest Law Enforcement, Governance and Trade (FLEGT) (2003/C 268/01)'.

⁹⁶ *Official Journal of the European Union*, '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'.

⁹⁷ Recommended in Duncan Brack, Chantal Marijnissen and Saskia Ozinga (2002) *Controlling Imports of Illegal Timber: Options for Europe*, London/Brussels: RIIA/FERN, pp.50-1. The recommendation appears in EU document COM (2003) 251 final, pp.11-12, 23.

⁹⁸ Brack, Marijnissen and Ozinga, p.33; EU document COM (2003) 251 final, pp.16.

⁹⁹ Brack, Marijnissen and Ozinga, p.34; EU document COM (2003) 251 final, pp.18.

due diligence by export credit agencies and financial institutions when funding logging projects.¹⁰⁰ We now examine these four elements in turn.

3.1 Timber licensing and voluntary partnership agreements

The EU may conclude voluntary partnership agreements (VPAs) with producer countries that agree to export to the EU only legally-logged timber. In the absence of an internationally agreed definition of illegal logging each VPA will contain an agreed definition. Definitions will vary according to national and local conditions in the producer country. Timber shipped between the EU and producer countries with which the EU has concluded a VPA must be accompanied by a licence. Licences should be forgery resistant, tamper-proof and verifiable.¹⁰¹ African countries are likely to be most affected by the licensing scheme, as the supply of legal timber in Africa is low in relation to demand from the EU. Asian and Latin American countries will be affected to lesser degrees.¹⁰²

The licensing scheme deals with international trade, which is an area of Community competence. For trade issues and other issues of Community competence, the Commission will lead on negotiations and the legal base of any agreed provisions will rest on Council decisions, which will be binding on all EU states. In addition to trade, however, there are likely to be elements in VPAs that are of member state competence, such as development assistance, which will result in a dual legal base in the ratification process. Member states will not be bound on issues falling outside of Community competence unless they individually ratify. The legal adoption of VPAs within the EU will thus be complex and time-consuming. At the time of writing, the legal base of VPAs within the EU had not been finally agreed, with ongoing discussions between member states and within the Commission.

The licensing scheme has been designed to be compatible with WTO. Rather than insist that the scheme apply to all timber producing countries, which most likely would have encountered a challenge at the WTO, the agreed approach is to implement the scheme only through bilateral voluntary partnership arrangements. The scheme will be compulsory for any country that concludes a VPA with the EU. However, illegally-logged timber can continue to enter the EU from producer countries that have not agreed a VPA. Current legal opinion is that the scheme is compatible with the General Agreement on Tariffs and Trade, and that it does not constitute a prohibition of, or a barrier to, trade under the WTO's

¹⁰⁰ Brack, Marijnissen and Ozinga, pp.35-6; EU document COM (2003) 251 final, pp.18.

¹⁰¹ Council Regulation (EC) No 2173/2005 *op cit*, Article 2(5).

¹⁰² EU document COM(2004) 515 final, 'Proposal for a Council regulation concerning the establishment of a voluntary FLEGT licensing scheme for imports of timber into the European Community', Brussels, 20 July 2004, pp.2-3; and EU document SEC(2004)977, 'Proposal for a Council Regulation concerning the establishment of a voluntary FLEGT licensing scheme for imports of timber into the European Community', 20 July 2004, p.3.

Technical Barriers to Trade Agreement.¹⁰³ However this has not yet been tested through a WTO challenge.

By respecting WTO law the licensing scheme has an inbuilt weakness. As no country is obliged to adopt the scheme, illegal loggers that successfully evade the authorities in the producer country can then circumvent the licensing scheme by exporting timber to a country with no VPA for onward shipment to the EU. To close this loophole FERN, Greenpeace and WWF urged that producer countries entering into a VPA should agree to mandatory licensing of timber exports to all countries, and not just to the EU.¹⁰⁴ However, to impose a licensing arrangement on a third country that had not endorsed it would certainly violate WTO agreements.

Under the FLEGT action plan importing to the EU timber without a licence from a VPA country is prohibited. Several NGOs have urged the Commission to present legislation designating it a crime to import into the EU any illegally-sourced timber or timber products from any country.¹⁰⁵ However an amendment to EU law to prohibit the import of all illegally-sourced forest products would almost certainly violate WTO law unless the EU agreed a prohibition multilaterally with other states.¹⁰⁶ Such a prohibition would have to be agreed either at the WTO or in a multilaterally environmental agreement with trade restriction measures that do not fall foul of the WTO. There are precedents for this in multilateral environmental agreements that prohibit or restrict the international trade of ozone-depleting chemicals, hazardous wastes and endangered species.¹⁰⁷ However, the negotiation of a multilateral prohibition would

¹⁰³ The European Parliament has noted that 'it seems probable that even if an initial GATT violation was found, the licensing scheme would be found to be GATT-compatible under Article XX(d) or XX(g)': letter from Luis Bergener Fuster, Chairman, Committee on Industry, External Trade, Research and Energy of the European Parliament to Patrick Cox, president of the European Parliament, 3 March 2004. A legal opinion provided to three environmental NGOs from a member of Matrix Chambers doubts whether the scheme would be GATT/WTO illegal: FERN/Greenpeace/WWF (2004) *Facing Reality: How to halt the import of illegal timber in the EU*, Brussels: FERN/Greenpeace/WWF, Annex II, p.33.

¹⁰⁴ FERN/Greenpeace/WWF 'Principles for FLEGT partnership Agreements', January 2005, p.2

¹⁰⁵ These NGOs include FERN, Friends of the Earth, Greenpeace and WWF: www.fern.org/pubs/articles/flegt.htm (accessed 19 April 2004); www.wwf.dk/4772774 (accessed 19 April 2004); Greenpeace, 'Illegal timber trade and the EU: The stakes and the showdown', June 2004.

¹⁰⁶ Duncan Brack argues that an 'outright ban' would be 'likely to run into WTO problems, depending on the degree of proof of legality required from importers'. See Duncan Brack (2005) 'Controlling Illegal Logging and the Trade in Illegally Harvested Timber: The EU's Forest Law Enforcement, Governance and Trade Initiative', *Review of European Community and International Environmental Law*, Vol.14, No.1, p.35.

¹⁰⁷ On how trade restriction measures in existing multilateral environmental agreements may apply in the case of the trade in illegally-sourced forest products see Duncan Brack (2003) 'Lessons from international agreements', *International Forestry Review*, Vol.5, No.3, pp.240-246.

require political will, and at present key states are opposed, notably the US (see section 2.10).

Although there are problems of illegal logging within the EU, the licensing scheme focuses on non-EU countries.¹⁰⁸ So far no VPAs have been concluded with producer countries. Different EU states are conversing with individual producer states on possible VPAs. Germany has entered into a dialogue with Cameroon, France with Gabon, the UK with Ghana, and the Netherlands with Malaysia.¹⁰⁹ The licensing scheme works on the principle that over time VPA countries can expect to gain increased access to EU markets and to capture additional revenues. While initially illegal loggers may seek to divert timber through other countries, this option will gradually be closed off as more VPAs are concluded. Countries that do not conclude VPAs can continue to trade with the EU as before. However, as more VPAs are concluded there is likely to be reduced demand from the EU for timber from non-VPA countries.¹¹⁰ The licensing scheme thus relies in part on demand for the scheme from producer countries that wish to protect and increase their market share.

The FLEGT action plan also encourages the designation of trading in illegally-logged timber as a crime in the EU, and committed the Commission to investigating whether the proceeds from illegal logging could be subject to EU money laundering legislation.¹¹¹

3.2 Public procurement

At the 2000 G8 Okinawa summit Greenpeace lobbied for G8 governments to adopt green procurement policies, including buying FSC certified timber products.¹¹² In 2001 the EU and Japan agreed to examine 'ways to combat illegal logging, including export and procurement practices'.¹¹³ In 2002 WWF, noting the significant imports of illegally-logged timber to G8 countries and China, recommending that the governments of these countries commit to purchasing timber only from legal and well-managed sources.¹¹⁴ Because of the enormous purchasing power of these

¹⁰⁸ This drew criticism from the WWF which noted widespread logging in Slovakia and the accession states of Bulgaria and Romania, where illegal logging accounts for 45% of the timber harvest, and Romania. www.certificationwatch.org/print.php3?id_article=3093 (accessed 2 April 2005).

¹⁰⁹ Reported at a FLEG/FLEGT seminar conducted under Chatham House rules, London 27 July 2005.

¹¹⁰ *FLEGT Briefing Notes*, No.7, 'Voluntary Partnership Agreements', p.2.

¹¹¹ EU document COM (2003) 251 final, p.19. This provision was recommended by the RIIA/FERN report: Brack, Marijnissen and Ozinga, p.18.

¹¹² Greenpeace (undated) Press Briefing, 'Greenpeace Comments on the G8 Foreign Ministers' Conclusions'.

¹¹³ 'Shaping Our Common Future: An Action Plan for EU-Japan Cooperation', European Union-Japan Summit, Brussels, 2001, p.16. Available online at: <http://jpn.cec.eu.int/frame.asp?frame=/english/eu-relations/actionplan.pdf> (accessed 27 April 2004).

¹¹⁴ Paul Toyne, Cliona O'Brien and Rod Nelson (2002) *The timber footprint of the G8 and China: making the case for green procurement by government*, Gland, Switzerland: WWF International.

countries such a policy could help shift timber production patterns to a more sustainable and legal basis.

In the EU procurement, unlike trade, is a member state competency. The FLEGT action plan recommends that states make use of their competency with respect to procurement,¹¹⁵ although the final decision is one for individual governments. If all EU governments were to agree to purchase only legally-sourced timber a strong market signal would be sent to producing countries. At present only five EU governments – Denmark, France, Germany, Netherlands and the UK – have developed, or are in the process of developing, timber procurement policies that require evidence of legal sourcing (see section 5.3 below).¹¹⁶

3.3 Private sector initiatives

The action plan provides for the Commission to ‘promote private sector initiatives, including support for ...the adoption of high standards in codes of conduct, transparency in private sector activities, and independent monitoring’.¹¹⁷ In two of the countries that are in the process of adopting government procurement policies – Denmark and the UK – the private sector has responded by working towards codes of conduct.¹¹⁸ The UK Timber Trade Federation (TTF) is developing a Responsible Purchasing Policy that will ‘act as a “fast track” for TTF members wanting access to central governments’.¹¹⁹ This illustrates that a shift in government procurement policy can help prompt new private sector initiatives as business responds to new market conditions.

At the pan-European level the Confederation of European Paper Industries (CEPI) announced in 2005 a code of conduct that committed member organisations to purchasing only legally-logged timber, to respecting national laws and to ensuring that the legality of wood purchased was documented.¹²⁰ So far CEPI has not announced any procedures for implementing and verifying the code of conduct.

¹¹⁵ EU document COM (2003) 251 final, ‘Forest Law Enforcement, Governance and Trade (FLEGT), Proposal for an EU Action Plan’, Brussels, 21.5.2003, p.15.

¹¹⁶ Duncan Brack (2005) *Public Procurement of Timber: EU Member State Initiatives for Sourcing Legal and Sustainable Timber*, London: Chatham House.

¹¹⁷ EU document COM (2003) 251 final, p.19, This provision was recommended by the RIIA/FERN report: Brack, Marijnissen and Ozinga, p.34.

¹¹⁸ Duncan Brack (2005) ‘Controlling Illegal Logging and the Trade in Illegally Harvested Timber: The EU’s Forest Law Enforcement, Governance and Trade Initiative’, *Review of European Community and International Environmental Law*, Vol.14, No.1, p.37.

¹¹⁹ ‘TTF’s Responsible Purchasing Policy’. Available online at: www.illegal-logging.info/papers/TTF_Responsible_Purchasing_Policy.doc (accessed 12 December 2005).

¹²⁰ Confederation of European Paper Industries (2005) ‘Legal Logging Code of Conduct for the paper Industry. Available online at: www.cepi.org/files/illegal%20logging-152955A.pdf (accessed 13 December 2005). CEPI launched this code of conduct at the Europe and North Asia FLEG meeting held in St Petersburg, 22-25 November 2005.

3.4 Due diligence

Export credit agencies provide government-guaranteed loans to corporations engaged in financially risky investments. They are major public financial actors and the value of their financial transactions collectively exceeds that of the World Bank.¹²¹ Due diligence is the exercise of caution to ensure that legitimate finance is not used for illegal activities.¹²² During the preparation of the EU action plan Chatham House and FERN recommended that EU governments adopt 'binding environmental and social rules' to ensure that export credit agencies that finance timber logging fund only legal operations.¹²³ Instead the action plan adopted a softer emphasis; the Commission should 'foster the development of specific procedures for environmental and social due diligence for Export Credit Agencies'.¹²⁴

One option for promoting the exercise of due diligence is the Equator Principles adopted by the International Finance Corporation and major investment banks in 2003. The export credit agency of Denmark has adopted the Equator Principles. Duncan Brack argues that a major difficulty in promoting due diligence is tracking how finance is used in the forestry industry. The FLEGT action plan has not so far addressed this difficulty.¹²⁵

The action plan also includes supply side measures by providing for improved development assistance to promote governance reforms in timber producing countries, including independent monitoring, auditing and strengthening civil society.¹²⁶ Much of this assistance will be directed at countries with which the EU has concluded a VPA. There is likely to be considerable political bargaining between the EU and producer countries over development assistance packages. The EU will seek to link development assistance with VPAs in order to make the licensing scheme viable, while individual producer countries will seek to extract the best terms from the EU on financial and technical assistance in exchange for agreeing to a VPA.

¹²¹ Brack, Marijnissen and Ozinga, p.35; and http://europa.eu.int/comm/external_relations/flegt/workshop/synthesis1.htm (accessed 25 November 2002).

¹²² Jade Saunders (2005) *Improving Due Diligence in Forestry Investments: Restricting legitimate finance for illegal activities*, London: Chatham House.

¹²³ Brack, Marijnissen and Ozinga, p.35.

¹²⁴ EU document COM (2003) 251 final, p.18.

¹²⁵ Duncan Brack (2005) 'Controlling Illegal Logging and the Trade in Illegally Harvested Timber: The EU's Forest Law Enforcement, Governance and Trade Initiative', *Review of European Community and International Environmental Law*, Vol.14, No.1, p.36.

¹²⁶ EU document COM (2003)251 final, pp.6-9.

4. Forest certification

Forest certification is the process by which an independent third party verifies that a forest management process or forest product conforms to agreed standards and requirements. A forest certification scheme typically involves the development of principles and criteria of sustainable forest management; accreditation of independent third parties (certification bodies); forest management auditing (verification of compliance with or progress towards rules for sustainable forest management); and product labelling (tracing forest products through the supply chain). Most forest certification schemes offer a *forest management certificate* (verifying that forestry practices at the forest management unit have been inspected and approved by third-party auditors) and a separate *chain-of-custody certificate* (allowing forest products to carry an eco-label if a certain percentage of the wood, chip or fibre contained in those products originate from certified forests).

The ITTO, in the late 1980s, rejected NGO initiatives to set up an eco-labelling scheme to certify sustainable tropical forestry. In 1988 WWF stated that if ‘the ITTO fails to actively promote tropical forest conservation...then conservation organisations will have to seek other mechanisms to achieve this’.¹²⁷ Three years later, the failure of the ITTO to deal effectively with eco-labelling had convinced WWF that a forest stewardship and labelling scheme had to be developed by private initiative. The abandonment, during the preparatory process for the 1992 UNCED conference, of plans to negotiate a forest convention fuelled an initiative for developing a private sector certification scheme. From advocating government-sponsored labelling schemes, WWF assumed a leading role in the set up of a non-state forest certification and labelling scheme.¹²⁸

4.1 The Forest Stewardship Council

In 1993, primarily at the initiative of WWF, the Forest Stewardship Council (FSC) was officially founded in Toronto, Canada, by environmental organisations, timber traders, indigenous peoples’ groups, forest worker organizations and other stakeholders, as the first global forest certification scheme. Two years later, the FSC was legally registered as a non-profit organisation in Oaxaca, Mexico (in 2003, the FSC Secretariat was re-located from Oaxaca, Mexico to the FSC International Center in Bonn, Germany). The idea of the FSC is to audit and verify sustainable forest practices and encourage consumers to support such practices by buying labelled forest products. To promote ‘environmentally appropriate, socially beneficial and economically viable’ forest management, the FSC developed 10 global principles and 56 criteria for its definition of ‘well-managed forests’, including tenure and use rights and responsibilities; indigenous peoples’ and workers’ rights; use of forest products and services to maximise economic viability and environmental and social benefits; maintenance of forests with high conservation value; environmental impact; monitoring and assessment; and planning and manage-

¹²⁷ Humphreys (1996), *op. cit.*, p.74.

¹²⁸ *Ibid.*

ment of plantations (the principle on plantations was added in 1996). These principles and criteria are tailored to meet conditions in different countries through a process in which ecological, economic, and social stakeholders have, in principle, equal decision-making powers. Because the FSC arose in opposition to intergovernmental cooperation on forests, its principles and criteria are not linked to any internationally agreed criteria and indicators (C&I) of sustainable forest management (see section 2.3). Table 2 sets out the main differences between intergovernmental criteria and indicators and forest certification schemes.

Table 2 Differences between the criteria and indicators processes and forest certification schemes

Criteria and indicators for sustainable forest management	FSC forest certification
Regional level processes To be applied mainly at the national level Descriptive approach: aims to measure and depict trends in forest management over time. Used mainly by governments and forest policy makers	Global level process To be applied mainly at the forest management (sub-national) level. Prescriptive: aims to stipulate normative standards and requirements, and to enable assessment on whether these standards have been met. Used mainly by market players: forest owners, retailers and NGOs.

Source: Adapted from Ewald Rametsteiner and Markku Simula (2002) 'Forest certification- an instrument to promote sustainable forest management?', *Journal of Environmental Management*, Vol.67, pp.87-98.

Unlike most standard development processes in which governments are heavily involved, public sector bodies are not allowed to participate in the elaboration of standards nor in the scheme's governing bodies. FSC's international board approves national, regional, or landowner-specific standards consistent with the scheme's principles, criteria, and rules. The board members are elected from the environmental, social, and economic chambers that make up FSC's General Assembly. Each chamber has equal voting rights and voting parity between developed country and developing country stakeholders to ensure that specific interests do not dominate decision-making. Another essential ingredient is the opportunity the scheme gives to track the origin of products through every stage of the supply chain, usually referred to as the 'chain of custody'. Such chain-of-custody tracking ensures purchasers and consumers that labelled forest products actually originate from certified and well-managed forests.

4.2 Industry-dominated certification schemes

Several countries' national forestry interest groups responded to the FSC by setting up competing schemes. FSC and its supporters succeeded in creating demand for certification and labelling, but many forest companies and forest owners distrusted the scheme because it was initiated and promoted by WWF and other environmental organisations. Perhaps more important, many forest companies and forest owners disliked its stringent

environmental and social rules and the apparent inflexibility in applying them. The stringency of the FSC motivated forest industries and forest owners to set up schemes that arguably pay less attention to environmental and social criteria for sustainable forestry, and more to *economic* criteria.¹²⁹

With the launch of the International Organization for Standardization's (ISO) environmental management system (EMS) standard ISO 14001 in 1996, forest organizations could opt for a credible and widely recognized alternative to the FSC for third party certification of forest management and operations. ISO is a worldwide federation of national standardization bodies founded in 1947 to promote international standards and facilitate trade. With a mix of private and public involvement in standard development, the ISO 14000 standards may be characterized as a hybrid private-public regime dominated by private industry.¹³⁰ ISO has been criticized for lack of transparency and inadequate involvement of both environmental organizations and developing countries in the drafting of its environmental management standards.¹³¹ The generic nature of ISO 14001 means that there is no linkage to internationally agreed C&I for sustainable forest management.

In response to demands for internationally recognized certification systems and eco-labels attesting *specifically* to sustainable forestry practices, the Pan-European Forest Certification (PEFC) scheme was set up at the initiative of national forestry interest groups of several European countries in 1998–99. PEFC is based on the criteria, indicators and operational guidelines of the pan-European forest process (Ministerial Conference on the Protection of Forests in Europe, 1993 and 1998). This scheme operates somewhat differently than the FSC, in that it is an umbrella certification scheme that facilitates the mutual recognition of national certification schemes and provides an 'internationally credible framework' and a common eco-label for such schemes.¹³² Thus, the PEFC Council, made up of national governing bodies nominated primarily by forestry associations in each country, may approve nationally developed schemes if they conform to the criteria, indicators and operational guidelines of the scheme. A similar development has taken place in North America with the establishment by the American Forest and Paper Association of voluntary certification under the Sustainable Forestry Initiative (SFI) as a response to FSC, and the lead taken by the Canadian Pulp and Paper Association in introducing the Canadian Standards Association's (CSA) forest certification scheme.

National certification schemes initiated by the forest industry or governments have also been set up in several forest-rich developing countries,

¹²⁹ Lars H. Gulbrandsen (2004) 'Overlapping Public and Private Governance: Can Forest Certification Fill the Gaps in the Global Forest Regime?', *Global Environmental Politics* 4 (2): 75–99.

¹³⁰ Jennifer Clapp (1998) 'The Privatization of Global Environmental Governance: ISO 14000 and the Developing World', *Global Governance* 4 (3): 295–316.

¹³¹ *Ibid.*

¹³² See www.pefc.org

including Brazil, Chile, Indonesia, Malaysia, and Gabon. Among the most important certification schemes in tropical countries we find the Malaysian Timber Certification Council (MTTC) scheme, the Indonesian Ecolabeling Institute LEI (Lembaga Ekolabel Indonesia) programme, and the Brazilian CERFLOR and Chilean Certfor schemes.¹³³

Although most of the PEFC-endorsed certification schemes thus far are European, it has endorsed schemes and established national governing in several developing countries. In 2003, it changed its official name to the Programme for the Endorsement of Forest Certification schemes (keeping PEFC as its acronym) to signal its global scope and aspirations. PEFC has already endorsed the Chilean scheme, and the Brazilian, Malaysian, and Gabonese programmes are seeking PEFC endorsement in a bid to increase their credibility. In 2005 the PEFC endorsed the CSA scheme¹³⁴ and, subject to certain conditions, the United States SFI scheme.¹³⁵ But not all schemes have elected to work with the PEFC. The Indonesian scheme, for example, is cooperating with but not accredited by the FSC.

4.3 The stringency of environmental and social certification standards

A salient difference between various certification schemes is whether they are management system based (focusing on process) or performance based (focusing on outcome). ISO 14000 are EMS standards, meaning that they do not prescribe the required output of an operation but the desired quality of the process to be applied. Because ISO 14001 is a management system-based standard intended for use in any industry, sector or service, there are no specific performance objectives outlined in the standard. Essentially, this means that forest owners certified to this standard can set their own performance objectives and targets. ISO 14001 certification has been criticized for providing little incentive for firms to go beyond the minimum requirement of meeting domestic laws and regulations.¹³⁶ Clapp argues that WTO's recognition of the ISO 14000 series as legitimate public standards and guidelines in effect might make these 'a ceiling for international EMS standards rather than a floor'.¹³⁷ This is because public EMS standards that are more intrusive and demanding than ISO could be challenged as unfair barriers to trade under the WTO.

¹³³ For an NGO review of these and other schemes see Saskia Ozinga with Leontien Krul (2004) *Footprints in the Forests: Current Practice and Future Challenges in Forest Certification*, FERN: Moreton in Marsh, UK. Available online at www.fern.org

¹³⁴ www.pefc.org/internet/html/members_schemes/4_1120_59/5_1246_308/5_1123_959.htm (accessed 1 February 2006).

¹³⁵ www.pefc.org/internet/html/members_schemes/4_1120_59/5_1246_326/5_1123_1190.htm (accessed 1 February 2006).

¹³⁶ See for example, Clapp (1998) *op.cit.*; Riva Krut and Harris Gleckman (1998) *ISO 14001: A Missed Opportunity for Sustainable Global Industrial Development*. London: Earthscan.

¹³⁷ Jennifer Clapp (2001) 'ISO Environmental Standards: Industry's Gift to a Polluted Globe or the Developed World's Competition-Killing Strategy?', In *Yearbook of International Co-operation on Environment and Development*, edited by Olav Schram Stokke and Øystein B. Thommessen, 27-33. London: Earthscan., p.30.

Many forest companies are certified only to ISO 14001, meaning that the certification exclusively is management system based. However, ISO certification of an organization's management system is increasingly used in combination with regional and national sustainable forest management standards, leaving individual forest organizations with little or no possibility to determine their own performance objectives. Through being based on a system standard such as ISO or the EU's Eco-Management and Audit Scheme (EMAS) as well as sustainable forest management standards, PEFC, SFI (North America) and CSA (Canada) combine the system and performance based approach. Although this, presumably, should guarantee management and performance improvements, the industry-dominated schemes are generally regarded as less stringent and rigorous than the FSC.¹³⁸ With regard to, *inter alia*, protection of old-growth forest, restricting clearcuts, maintaining forest biodiversity, restricting the use of chemicals, banning the use of genetically modified organisms (GMOs), securing worker's rights, enhancing the well-being of local communities, sharing the benefits arising from the use of forest resources and respecting indigenous peoples' rights, the FSC scheme appears more demanding than the industry-dominated programs in most regions.

In general, while FSC certification rests on prescriptive performance criteria, the industry-based schemes place greater weight on standards of procedure, organizational and management measures and flexibility in applying sustainable forestry standards.¹³⁹ The latter group of schemes has repeatedly been criticized by environmental organizations for failing to promote workers' rights, the interests of indigenous peoples and local communities and protection of forest biodiversity.¹⁴⁰ However, there are clearly differences between these programs as well as *within* various schemes. For example, while many certification systems stress an ecosystem-based approach to harvesting, the US-based SFI program emphasizes improving forest productivity and maximizing yield.¹⁴¹ The PEFC Council has endorsed a number of national forest certification schemes around the world, which vary considerably in environmental and social rigor. Some discrepancies are of course due to national and regional variations introduced to meet particular biophysical and socioeconomic conditions, but there are also inconsistencies that only can be explained as differences in the ecological and social ambition of the adopted standards. Similarly, much as a result of the multi-layered governance ap-

¹³⁸ Benjamin Cashore, Graeme Auld, and Deanna Newsom (2004) *Governing Through Markets: Forest Certification and the Emergence of Non-State Authority*. New Haven, CT: Yale University Press.

¹³⁹ *Ibid.*

¹⁴⁰ See, for example, Ozinga with Krul (2004) *op.cit.*; and Nancy Vallejo and Pierre Hauselmann (2001) *PEFC – An Analysis*. WWF Discussion Paper, January, 2001.

¹⁴¹ Peter Wood (2000) *A Comparative Analysis of Selected International Forestry Certification Schemes*. British Columbia, Canada: Ministry of Employment and Investment.

proach for standards development, there is also significant variation in the strength of regionally developed FSC standards.¹⁴²

Notwithstanding variations in the strength of standards, it must be remembered that rule making in the programs is a dynamic and iterative process, and any detailed comparison of standards may rapidly become outdated. Different certification programs have converged and cross-fertilized quite intensively. While many industry-dominated schemes have responded to FSC competition and criticism from environmental groups by changing upward, FSC regulations have become more flexible to accommodate the needs of business.¹⁴³ Nonetheless, some basic differences between the schemes are likely to persist. The overall conclusion remains that the FSC in a number of regions appears to have more stringent environmental and social standards than the competing schemes.

4.4 Supply-side participation and demand-side penetration

Participation by target groups is vital for a voluntary, market-driven, rule-making project to succeed. The wider the participation in a certification scheme, the greater the likelihood of influencing forestry practices. The certified forestland in the world is extremely unevenly distributed between developed and developing countries. The FSC exists in several developing countries, including Brazil, Indonesia, Malaysia and Thailand, and national certification schemes have been created in forest-rich developing countries, such as the Indonesian and Malaysian schemes. Nonetheless, the fact remains that the share of certified forestland in developing countries in the world's total certified area is less than 10 percent.¹⁴⁴ Explanations have indicated the costs of certification and lack of knowledge of certification programs and control of forestland in developing countries.¹⁴⁵

Almost half of the total area certified by the FSC in developing countries is made up of plantations,¹⁴⁶ typically uniform monocultures of fast-growing softwood with little genetic variability. This is a paradox given that when the certification issue first surfaced in the ITTO in the 1980s, the idea was to certify tropical, mega-diversity forests and not temperate and boreal forests – and certainly not plantations. Timber sourced from plantations is marked with the same eco-label as natural grown forests; customers have no means to distinguish timber products from natural grown forests. Although plantations may take the pressure off commercial utilization of natural grown forests, the problem is that natural

¹⁴² See, for example, Fred Gale (2004) 'The Consultation Dilemma in Private Regulatory Regimes: Negotiating FSC Regional Standards in the United States and Canada', *Journal of Environmental Policy and Planning* 6 (1): 57-84.

¹⁴³ Cashore, Auld, and Newsom (2004) *op.cit.*

¹⁴⁴ Rametsteiner and Simula (2003) *op.cit.*, p.92.

¹⁴⁵ OECD (Organization for Economic Co-operation and Development) (2003) *Developing-Country Access to Developed-Country Markets under Selected Eco-Labeling Programmes*. COM/ENV/TD(2003)30. Paris: OECD 2003.

¹⁴⁶ Based on figures in FSC (2006) *FSC Certified Forests* (January 9, 2006), Bonn: FSC International Center. Available online at www.fsc.org/en/whats_new/fsc_certificates (accessed 14 February 2006).

forests are often replaced with plantations to facilitate faster growth. With so little certified natural grown forests in the tropics, we should not yet expect forest certification in itself to seriously halt the rate of deforestation, forest degradation and loss of biodiversity in the tropics. In addition, forest certification and new principles of forest management may do little to improve the overall protection of forest biodiversity and forest resources in countries where governmental institutions and law enforcement mechanisms are weak.¹⁴⁷

An examination of participation in competing schemes shows clearly that the FSC has not become the one and only global standard-setting body for market-driven certification that environmental organizations had hoped for. Measured in terms of certified forestland, PEFC – as an umbrella for national initiatives dominated by forest owners or the forest industry – has become the world's largest forest certification scheme. To the disappointment of many environmentalists, the widespread support of forest companies and forest owners for industry-dominated programs has marginalized the FSC in several regions of the world.

Looking at the demand side, WWF has formed a powerful alliance with customers, producers and forest owners through the Global Forest and Trade Network (GFTN) to promote FSC certified timber and wood products. With 18 local Forest and Trade Networks, buyers groups and activities in nearly 30 countries, WWF is well suited to promote the FSC scheme. In a number of countries, including Sweden, the United Kingdom, Germany, the United States and Canada, influential customers have participated in working groups to develop national or regional FSC standards. There is little doubt that NGO support has boosted FSC's credibility and that the powerful alliance of WWF and major purchasers has contributed to its wider proliferation.

Despite their success in promoting the FSC in some markets, the environmentalists have not been able to prevent the market penetration of competing schemes. Much as a result of a limited supply of FSC-labelled forest products, many 'environmentally concerned' professional purchasers only require certified suppliers, not a particular label. This is evidence that the effectiveness of a specific scheme is dependent upon widespread participation in a scheme. Without adequate supplies, it is almost impossible for large buyers to enforce a specific eco-label policy. This is exactly what several purchasers in the UK (WWF 95+ group) found out when they tried to enforce a self-imposed policy requiring a specific share of FSC-labelled products from their suppliers. Due to limited supplies, it was impossible to comply with the policy, and in 2003 news broke that the major retailer Tesco and other members were retailing items made of illegally logged timber and that the group had no rules prohibiting illegal timber. WWF was also criticised for not publishing any meaningful information on the group's progress. To regain lost ground, WWF in 2004 restructured the network, renamed it the UK Forest and Trade Network (WWF-UK FTN), and tightened membership

¹⁴⁷ See, for example, Peter Dauvergne (2001) *Loggers and Degradation in the Asia-Pacific: Corporations and Environmental Management*. Cambridge: Cambridge University Press.

policies.¹⁴⁸ Members are disbarred from dealing in illegally logged wood, and must demonstrate progress by reducing volumes of wood from unknown sources and increasing volumes of FSC certified wood. The group's policy is that certification to the FSC is the only evidence of credibly certified forest products. In its first public report on the performance of member companies, published by WWF in 2005, the group reported that 56 percent of member's wood supplies are FSC certified, accounting for 16 percent of total UK wood consumption.¹⁴⁹

Although there is a market for certified timber products in Europe and North America, the overwhelming share of timber traded worldwide is still not certified. Explanations, as shown above, have generally pointed to limited supply of certified products rather than a lack of demand. However, certification processes have clearly not been driven by ordinary customer demand. Forest certification is rather a result of professional purchasers' requirements regarding paper and other forest products, in response to the activism and pressures exerted by environmental organizations, and may be seen as a precautionary strategy to avoid conflicts with NGOs, bad publicity and consumer boycotts. But forest holdings in tropical countries have thus far had little trouble selling uncertified and illegally-sourced timber on the world market. Added to these obstacles standing in the way of acceptance of certification programs in tropical forestry is the fact that only a small share of the industrial roundwood legally harvested in tropical forests enters European and North American markets. In the Asia-Pacific, for example, most of the tropical timber traded internationally enters the Chinese market, where there is little or no demand for eco-labelling but great demand for both legally and illegally logged timber.

4.5 Mutual recognition discussions

As we have seen, the PEFC is a mutual recognition framework through which national schemes recognise each other as having equivalent standards. There has also been considerable discussion of mutual recognition between international schemes. The proposal for mutual recognition came from the International Forest Industry Roundtable (IFIR), a group created with the help of the World Business Council for Sustainable Development (WBCSD). The IFIR was a forest industry group with members that included the Finnish Forest Industries Federation, the Brazilian Pulp and Paper Association and the Confederation of European Paper Industries. No certification schemes participated in the IFIR discussions, although the bodies that had created the North American schemes – the American Forest and Paper Association and the Canadian Pulp and Paper Association – took part. The IFIR proposed a mutual recognition framework that would embrace all 'credible' certification schemes, which would be considered 'equivalent'. Criteria and indicators would define the elements of a credible scheme. The use of the terms 'criteria and indicators' was

¹⁴⁸ ENDS (Environmental Data Services) (2003) 'WWF to cut out "dead wood" from sustainable timber group', *ENDS Report 342*, April: 32.

¹⁴⁹ WWF-UK (2005) *WWF-UK FTN Annual Report 2004/2005*. Surrey, UK: WWF-UK Forest and Trade Network. Available online at www.wwf.org.uk/ftn (accessed 11 January 2006).

surprising, given that the proposal was intended to eliminate confusion. The IFIR's proposed criteria and indicators for certification schemes should not, of course, be confused with the regional C+I schemes for sustainable forest management. It was proposed that the criteria would include conformity of a certification scheme with sustainable forest management, participation and a commitment to continual improvement. All schemes passing an agreed threshold would be considered equivalent and credible.¹⁵⁰ The SFI, CSA and PEFC promptly supported mutual recognition.¹⁵¹ The proposal was not an attempt to create a unified global scheme, although it was suggested that a mutual recognition system could have a single global trademark.

There are two ways of viewing the IFIR's proposal. The first is as an honest endeavour to reduce customer confusion, and to provide a more stable policy environment by eliminating the uncertainties caused by different competing schemes. The second view is that as mutual recognition would only be as strong as its weakest scheme, the proposal was a forest industry attempt to outmanoeuvre the FSC. Under mutual recognition a cynical retailer could claim that its policy was to sell timber consistent with the highest scheme, then stock only timber certified by the weakest scheme that qualified as 'credible' under the mutual recognition framework. Our cynical retailer could then claim the lowest scheme was 'equivalent' to the highest. In short, under mutual recognition there would be no incentive for retailers to sell timber produced according to the higher standards.

The FSC's response to the IFIR's proposal was summed up by Timothy Synott, the former head of the FSC, in 2000. Synott noted the IFIR's definition of a mutual framework as 'reciprocal arrangements under which one standards body or system recognises and accepts other standards and certification systems as being substantively equivalent in intent, outcomes and process in identified critical elements'. Noting the IFIR's suggestion that a single global trademark would be desirable, Synott responded 'Absolutely! These elements all provide a full description of the FSC system'.¹⁵² The FSC opposed the IFIR's proposal, but declared its willingness to work with any certification scheme that met FSC standards. The response of the PEFC was that PEFC 'has a function-

¹⁵⁰ International Forest Industry Roundtable (2001) 'Proposing an International Mutual Recognition Framework: Report of the working group on mutual recognition between credible sustainable forest management systems and standards', February 2001.

¹⁵¹ AFPA website. www.afandpa.org/Content/NavigationMenu/Environment_and_Recycling/SFI/Mutual_Recognition/Mutual_Recognition.htm (accessed 11 January 2005).

¹⁵² Timothy Synott (2000) 'Forest Stewardship Council – Position on Mutual Recognition', paper presented to the Second International Seminar on the Mutual Recognition of Credible Forest Certification Systems', Brussels, 28-29 November 2000, p.3,

ing mutual recognition program in place' and 'is now the dominant forest certification recognition scheme in the world'.¹⁵³

The FSC's opposition to mutual recognition was supported by the NGO community. WWF stated that 'only certification under the FSC system can be considered to reach satisfactory performance levels and thus provide an adequate incentive for improving forest management worldwide'.¹⁵⁴ Other NGOs, including FERN, Friends of the Earth, the German group Robin Wood and the Forest Peoples Programme, argued that the weakest scheme in a mutual recognition framework would constitute a liability that would extend to all other schemes, and that no certification scheme 'is likely to intentionally sacrifice its credibility by accepting, as its own, the serious weaknesses of other programs'.¹⁵⁵ Greenpeace argued that 'Mutual recognition must not become a process for weakening standards. We reject the IFIR ...proposal as fundamentally flawed and a significant step backwards for forests, forest certification and consumers'.¹⁵⁶

Many forest and timber businesses supported mutual recognition, which would allow international companies to choose different schemes in different countries. Stora Enso, for example, uses FSC timber in Sweden, FFCS in Finland, CSA in Canada and SFI in the United States. However, a further reason for business support was undoubtedly a wish to further weaken the normative pull of FSC standards. While the IFIR sought to frame mutual recognition as a technical process to be agreed using criteria and indicators, NGOs saw it as a thinly disguised political move to rout the FSC. The idea retains support amongst the competitor schemes, although it foundered when it became clear that the FSC would not support it. Without FSC involvement a mutual recognition framework would not eliminate customer confusion, indeed it could sharpen the differences between the FSC and other schemes. The PEFC was relaunched as an international scheme shortly after the FSC declared that it would not enter a mutual recognition framework.

4.6 Legitimacy thresholds

With the certification wars deepening the World Business Council on Sustainable Development (WBCSD) generated a new idea to reconcile the various schemes. Called the legitimacy thresholds model, the idea is at present largely at the conceptual stage. It has been promoted since 2002 through a voluntary global partnership, The Forest Dialogue (Box 4).

¹⁵³ Canadian Sustainable Forestry Certification Coalition (2004) 'Many Standards Mean Widespread Application and a Need for Mutual Recognition'. Available online at: www.sfms.com/recognition.htm (accessed 11 January 2005).

¹⁵⁴ WWF (2001) *Certification: Mutual Recognition of Schemes: Position Paper*, Gland: Switzerland: WWF International.

¹⁵⁵ http://sfcw.org/mutualrecognition/forest_certification_and_mutual_.htm (accessed 28 May 2004).

¹⁵⁶ http://sfcw.org/mutualrecognition/environment_ngos_call_for_cred.htm (accessed 28 May 2004).

Box 4 The Forests Dialogue

Organisations involved in the creation of The Forests Dialogue (TFD) in 1999 included the World Bank, World Resources Institute (Washington), the International Institute for Environment and Development (London), the WWF and the World Business Council for Sustainable Development (WBCSD), which in 1996 established a sub-group, the Sustainable Forest Products Industry working group.

The Forest Dialogue aims to admit only member organisations with international convening power and the authority and resources to initiate and implement new processes. It is intended as a non-confrontational process to address the constraints to sustainable forest management, build trust, share learning and promote collaborative action. It is structured around five global forest issues:

- Forest certification
- Illegal logging
- Forests and biodiversity conservation
- Intensive forest management
- Forests for the alleviation of poverty

The legitimacy thresholds model acknowledges that different users of forest certification schemes have different notions as to what constitutes legitimacy. Some users do not simply consider a particular scheme to be either legitimate or illegitimate. Given the many different users of certification schemes, and given further the different criteria of sustainable forest management, a particular user may consider certain elements of, say, scheme A, to be legitimate, with other, different, elements of scheme B also being legitimate. So for some users no scheme may be accepted in its entirety. Different schemes may have different merits for different users. For example, government procurement bodies need schemes that pass a high threshold with respect to timber from legal sources, while indigenous peoples' groups require schemes that pass a high threshold on the rights of forest peoples.

So the legitimacy threshold model holds that for any given attribute of sustainable forest management there may be different thresholds of legitimacy; for example, low, medium and high. The intention is for these different thresholds to correspond to the needs of different user groups. The model aims to agree criteria for these thresholds to enable users to assess which schemes pass which thresholds for particular attributes of sustainable forest management. The model, it is intended, will allow users to differentiate according to their needs. It will also allow users from developing countries to adopt a phased approach to certification, starting at low thresholds and moving to stronger thresholds over time.¹⁵⁷

¹⁵⁷ World Business Council for Sustainable Development (2003) 'Discussion paper: Forest certification systems and the 'Legitimacy' thresholds model (LTM)' (unpublished).

The legitimacy thresholds model aims to move beyond mutual recognition which, the WBCSD has acknowledged, ‘is perceived by NGOs to equate to ‘lowest common denominator’ standards’.¹⁵⁸ It differs from mutual recognition in some important respects. The idea behind mutual recognition is for criteria to be used to judge individual schemes. There would be just one threshold with all schemes that surpass the threshold being considered ‘equivalent’, even though above the threshold there could be significant differences between schemes. The legitimacy threshold model is more complicated, and allows for broader differentiation (Table 3).

Table 3 Differences between mutual recognition and the legitimacy thresholds model

	Mutual recognition	Legitimacy thresholds model
What is being assessed?	Forest certification schemes in their entirety	The different attributes of sustainable forest management within different schemes
Thresholds	One threshold, above which a scheme is considered credible	Several thresholds, corresponding to the needs of different user groups
Objectives	To provide a global ‘umbrella’ framework encompassing all credible schemes	To allow differentiation between schemes according to the attributes of sustainable forest management and user needs, and to enable a phased approach to certification.

Like mutual recognition, the legitimacy thresholds model has shifted the focus of policy makers away from certification schemes towards the frameworks that assess the schemes.¹⁵⁹ For the model to be implemented it needs to define legitimacy and its different thresholds. The model is at the design stage, and it is far from clear that it will be successful. The large number of variables in the model could prove its undoing, as each variable is a potential source of disagreement. And the more disagreements there are, the greater will be the uncertainty over the model as a whole. Even if a model is agreed that has the confidence of the proponents of the main certification schemes, it would then need to affect the decisions of timber buyers and suppliers if it was to be more than a paper exercise.

The debate on legitimacy thresholds raises the question of how legitimacy should be defined in the context of forest certification. Fred Gale has approached the question of legitimacy by formulating five criteria of legitimacy: scientificity (in other words the extent to which a scheme considers broader ecological values); representativity (the range of inter-

¹⁵⁸ World Business Council for Sustainable Development (2003) ‘Discussion paper: Forest certification systems and the ‘Legitimacy’ thresholds model (LTM)’ (unpublished), p.1.

¹⁵⁹ Ruth Nussbaum and Markku Simula (2004) *Forest Certification: A Review of Impacts and Assessment Frameworks*, A TFD Publication, No. 1, Yale: The Forests Dialogue/Yale University, p.1.

ests that participate in a certification scheme); accountability (the interests to which a scheme is accountable, including indigenous and local communities); transparency (the public availability of information); and equality (the extent to which timber producers are treated equally within and between countries). He then applied these criteria to the SFI, CSA and FSC, rating each criterion on a scale of low-medium-high. He concluded that overall the FSC has a 'high' legitimacy ranking, while the CSA and SFI each rank 'low to medium'.¹⁶⁰

At a meeting of The Forests Dialogue in October 2004 the WWF and WBCSD issued a joint statement in which they noted they had 'divergent views' on mutual recognition but were committed to developing the legitimacy thresholds model.¹⁶¹ There are two possible reasons why the WWF has chosen to align itself with the WBCSD in support of the model. First, the forest industry considered WWF and other NGOs 'uncooperative' during the mutual recognition debate. By aligning itself with the WBCSD to support the legitimacy thresholds model, the WWF demonstrates a commitment to working with other actors to resolve forest certification conflicts. Second, WWF may confidently expect that any agreed model will show that the FSC passes the highest legitimacy threshold (however defined) on most, if not all, attributes of sustainable management.

4.7 The World Bank and forest certification

In 1997, the World Bank and WWF announced an alliance to promote forest certification and forest protection. The alliance on forests focused on three targets to be met by the end of 2005:

- 50 million hectares of new forests in protected areas
- 50 million hectares of existing but highly threatened forest protected areas secured under effective management
- 200 million hectares of production forests under independently certified sustainable forest management (100 million each for developed and developing countries).¹⁶²

The World Bank has contributed to the spread of FSC certification in developing countries. The Bank's commitment to certification demanded that it take a clear position on the standards that it would accept. These standards were formulated as part of the Bank's review of its 1991 policy and are set out in its operational procedures on forests (OP 4.36). The Bank will support only certification schemes that adhere to OP 4.36 standards. Although the World Bank says that it does not favour any particu-

¹⁶⁰ Fred Gale (2002) '*Caveat Certificatum: The Case of Forest certification*', in Thomas Princen, Michael Maniates and Ken Conca (eds) *Confronting Consumption*, Cambridge MA: MIT Press.

¹⁶¹ WWF International and WBCSD Sustainable Forest Products Industry Working Group (2004) 'Joint Statement on Forest Certification for The Forests Dialogue', October 2004.

¹⁶² World Bank/WWF Alliance (1999) Annual Report 1999, Washington DC: World Bank/WWF International.

lar certification scheme, the forest certification requirements set out in its operational policies on forests are remarkably similar to the FSC principles. Paragraphs 10 and 11 of OP 4.36 provide the Bank's policy on certification. Paragraph 10 bears a distinct resemblance to the FSC principles for well-managed forests although there are some differences.¹⁶³

In 2003 the World Bank-WWF Alliance approached PEFC and asked it to participate in a survey to assess forest certification schemes.¹⁶⁴ The PEFC Council secretary eventually wrote to the co-chairs of the Alliance and declined to take part in the survey 'which has and continues to have a very strong bias towards the FSC' in its structure, terminology and definitions. According to the Council secretary, 'the outcome of any field-testing or assessment of schemes using the [survey] is therefore predetermined'. The PEFC made several criticisms of the survey and called for an 'open and multi-stakeholder process with the World Bank and WWF in the future that will make a meaningful contribution to certifying sustainable forest management worldwide'.¹⁶⁵

Officially OP 4.36 is purely an internal reference guide for World Bank managers, although in practice World Bank policy can have a profound impact on other actors. The Bank can transmit its policy to countries to which it lends, and in so doing promote the FSC. As noted earlier, most of the certified forestland around the world is found in developed countries, but is it fair to conclude that the FSC would have had even less success in the tropics were it not for OP 4.36.

In May 2005 at the fifth session of the UNFF in New York, the World Bank and WWF announced that they renewed the forest alliance for another five years. The alliance seeks to reduce global deforestation rates by 10 percent by 2010 and to curb illegal logging.¹⁶⁶

4.8 United Nations institutions and forest certification

Most of the UN institutions with a forest-related mandate have engaged with forest certification, although not to any significant degree. At the Intergovernmental Panel on Forests (IPF, 1995-97), where certification was subsumed under 'trade and environment', a secretariat background paper suggested the possibility of 'the formulation of an internationally accepted basis for product certification and labelling schemes and initia-

¹⁶³ The World Bank's operational policy on forests (OP 4.36) is available online at: <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/tocall/C972D5438F4D1FB78525672C007D077A?OpenDocument> (accessed 1 February 2006).

¹⁶⁴ This is the Questionnaire for Assessing the Comprehensiveness of Certification Schemes/Systems (QACC).

¹⁶⁵ Letter from Ben Gunneberg, PEFC Council Secretary to David Cassells and Bruce Cabarle, co-chairs of WWF-World Bank Alliance, dated 7 October 2004. See also PEFC press release 'World Bank-WWF questionnaire hopelessly flawed – new approach offered by PEFC', 7 October 2004, Luxembourg.

¹⁶⁶ WWF News Release (25 May 2005) 'WWF/World Bank Forest Alliance launches ambitious program to reduce deforestation and curb illegal logging'.

tives'.¹⁶⁷ Several delegations spoke against this and questioned whether the Panel should be handling this issue. The G77 emphasised that certification should be voluntary. The US delegation stated that the proliferation of schemes and competition between them would help rather than hinder certification. The EU disagreed with the US, responding that 'proliferation of different schemes with different criteria could damage the credibility and effectiveness of certification and labelling'.¹⁶⁸ The EU statement can be read as an endorsement of FSC, which has the most to lose from the spread of a number of different schemes.

Much of the IPF's discussions centred on what role, if any, governments should play in forest certification schemes. There was no consensus on this issue. The IPF devoted just one paragraph of its proposals for action to certification and labelling, in part of which the Panel

Urged countries, within their respective legal frameworks, and international organizations to consider the potentially mutually supportive relationship between sustainable forest management, trade, and voluntary certification and labelling schemes operating in accordance with relevant national legislations, and to endeavour to ensure, as necessary, that such schemes are not used as a form of disguised protectionism, and to help to ensure, as necessary, that they do not conflict with international obligations.¹⁶⁹

This paragraph is typical of many of the IPF outputs, with the words 'as necessary' being used to gloss over substantive differences between delegates.

At the Intergovernmental Forum on Forests (IFF, 1997-2000), as with the IPF, certification was not an issue to which much time was devoted, being one of several issues considered under the cluster of matters left pending from the IPF. A secretariat background paper set the tone for the IFF's discussions by noting that 'the possible role of voluntary and non-discriminatory timber certification in promoting sustainable forest management on a significant scale globally is, at best, still not clear'.¹⁷⁰ The IFF subsequently negotiated a loosely worded paragraph on certification that

Urged countries, international organizations, including WTO, and other interested parties to undertake, as appropriate, further cooperative work on voluntary certification and/or labelling schemes, in line with the recommendations of IPF, while seeking to enhance the international comparability and considering their equivalence, taking into account the diversity of national and regional situations, and to ensure adequate transparency and non-discrimination

¹⁶⁷ UN document E/CN.17/IPF/1995/2, 'Programme of work of the Intergovernmental Panel on Forests', 16 August 1995 para.13(i), p.11.

¹⁶⁸ *Earth Negotiations Bulletin*, Vol.13, No.25.

¹⁶⁹ UN document E/CN.17/1997/12, 'Report of the Ad Hoc Intergovernmental Panel on Forests on its fourth session', (New York, 11-21 February 1997), para.133(a).

¹⁷⁰ UN document E/CN.17/IFF/1998/3, 'Programme element II.b, Matters left pending and other issues arising from the programme elements of the IPF process, Trade and environment, Report of the Secretary-General', 19 June 1998, para.25.

in the design and operation of such schemes, and are consistent with international obligations so as to promote sustainable forest management and not to lead to unjustifiable obstacles to market access.¹⁷¹

The subject of mutual recognition was raised at both the IPF and IFF. Malaysia and New Zealand spoke in favour of mutual recognition,¹⁷² which was one of several issues on which the IPF invited international organisations to carry out further studies.¹⁷³ Canada deleted mention of mutual recognition at the IFF, stating it preferred ‘equivalency’.¹⁷⁴ Against the wishes of the US delegation the IFF’s final report stated that

The proliferation of certification and/or labelling schemes calls for further cooperative work, in line with IPF recommendations, towards achieving their international comparability and considering their equivalency while taking into account the diversity of national and regional situations.¹⁷⁵

Certification did not feature on the agenda of the United Nations Forum on Forests (UNFF), indicating a feeling that there was little point discussing a subject on which the IPF and IFF had made no substantive progress. However, the absence of the subject from the UNFF agenda did not indicate opposition to certification. Occasionally the subject was raised during negotiations on other issues, and it featured in a resolution on the economic aspects of forests negotiated at the UNFF in 2003. Interestingly the part of resolution on certification was not addressed to governments, but to member organisations of the Collaborative Partnership on Forests, which were invited

to work on operationalizing the IPF/IFF proposals for action on voluntary certification of forest management and related voluntary labelling, with a view to promoting sustainable forest management in a way that does not create unnecessary barriers to international trade, is non-discriminatory, transparent and in accordance with commitments and obligations under relevant multilateral agreements.¹⁷⁶

Before the UNFF passed this resolution, two member organisations of the Collaborative Partnership on Forests, the UN Food and Agriculture Organization (FAO) and ITTO, had become engaged in the area. FAO and ITTO have acted as facilitators by co-hosting discussions, an example being the 2001 seminar on ‘Building Confidence Among Forest Certification Schemes and their Supporters’ in Rome, which devoted considerable

¹⁷¹ UN document E/CN.17/2000/14, ‘Report of the Intergovernmental Forum on Forests on its Fourth Session’ (New York, 31 January – 11 February 2000), para.41.(b).

¹⁷² *Earth Negotiations Bulletin*, Vol.13, No.8, p.2.

¹⁷³ UN document E/CN.17/1997/12, para.133(d)(iii).

¹⁷⁴ *Earth Negotiations Bulletin*, Vol.13, No.45, p.5.

¹⁷⁵ UN document E/CN.17/2000/14, para.34.

¹⁷⁶ UNFF Resolution 3/1, Economic aspects of forests, para.8, in UN document E/CN.18/2003/13, ‘United Nations Forum on Forests: Report of the third session’ (15 March 2002 and 26 May to 6 June 2003), *Economic and Social Council, Official Records, 2003*, Supplement No. 22, p.14.

time to discussing mutual recognition and which saw a predictable division between the FSC and the competitors schemes.¹⁷⁷

The FAO and ITTO have also pursued separate roles. The FAO works with the United Nations Economic Commission for Europe (UNECE) in the UNECE Timber Committee, which produces market intelligence on timber. As part of its mandate, the Timber Committee now produces annual data on forest certification in Europe.¹⁷⁸ The ITTO, which since 1994 has taken a steadily increasing interest in forest certification,¹⁷⁹ has, like the FAO, tended to treat the issue as technical and non-political. In 2002 the ITTO passed its first decision on certification, commissioning a study and establishing three regional workshops on the potential role of phased approaches to certification.¹⁸⁰ The idea of phased approaches is consistent with the legitimacy thresholds model.

Overall the FAO and the ITTO have steered a neutral course through the politically stormy waters of forest certification, neither endorsing nor criticising any particular scheme. They have hosted dialogue and produced reports while avoiding becoming embroiled in contentious issues. Neither organisation has become involved in standard setting, although the ITTO has produced a set of criteria and indicators for the sustainable management of tropical moist forests.

The contribution of the three UN forest institutions is even less significant. The IPF, IFF and UNFF have made no significant contribution to the international debate on certification, although by negotiating text in proposals for action and a resolution all have endorsed certification as an idea. The collective position of the three institutions can be summarised as 'We would like to see the complexities and uncertainties in forest certification reduced, although this is not a subject in which we wish to become too involved'.

4.9 International trade law and forest certification

The FSC was, as noted earlier, created out of the unwillingness of the ITTO to approve a timber labelling scheme. However it is doubtful that an ITTO scheme would have been permissible under international trade rules. There is no provision in the international trade system that allows states to discriminate in favour of timber harvested from sustainable sources and against that produced from unsustainable sources. Discrimination between like products according to the production and processing methods (PPMs) used in their manufacture was, in principle, prohibited under the General Agreement on Tariffs and Trade of 1947 and remains so since the creation of the World Trade Organisation (WTO) in 1995,

¹⁷⁷ This meeting was sponsored by the GTZ in addition to the FAO and ITTO.

¹⁷⁸ See for example UNECE document ECE/TIM/DP/20, 'Geneva Timber and Forest Discussion papers, Forest Certification Update for the ECE Region, Summer 2000', by Eric Hansen, Keith Forsyth and Heikki Juslin.

¹⁷⁹ Elliott (2000), *op.cit.* pp.46-8.

¹⁸⁰ ITTO document ITTC (XXXII)/25, 'Decision 11(XXXII), The Potential Role of Phased Approaches to certification in Tropical Yimber Producer Countries as a Tool to Promote Sustainable Forest Management', 18 May 2002.

although there are some exceptions to this principle.¹⁸¹ It is also possible that a labelling scheme for tropical timber that excluded non-tropical timber would have violated WTO rules.

Forest certification schemes can be seen as voluntary PPM schemes. It is sometimes claimed that because forest certification schemes involve the private sector, exclude governmental membership and are voluntary they are not covered by the WTO's Technical Barriers to Trade (TBT) Agreement. In fact Annex 2 to the TBT agreement includes voluntary standards¹⁸² although the status of forest certification schemes within this agreement has yet to be put to the test at the WTO. Forest certification schemes have thus so far escaped WTO jurisdiction.

The status of certification schemes at the WTO was raised at the Intergovernmental Panel on Forests (IPF), which considered whether certification should be considered a non-tariff barrier. The EU stated it should not,¹⁸³ but the unclear application of the TBT Agreement prevented delegates from agreeing to include in the Panel's final report the phrase 'Voluntary certification and eco-labelling are not considered to be non-tariff barriers'.¹⁸⁴ At the Intergovernmental Forum on Forests (IFF) Brazil stressed that certification schemes should confirm with the TBT Agreement. The EU adhered to its IPF position that certification was not a technical barrier to trade and argued for references to the TBT Agreement to be deleted.¹⁸⁵ The final IFF text merely notes that the 'IFF took note of the work of the World Trade Organization (WTO) with regard to voluntary eco-labelling schemes'.¹⁸⁶

A 2003 status report from the WTO's Committee on Trade and Environment neither endorsed nor condemned labelling schemes, noting that 'voluntary, participatory, market-based and transparent environmental labelling schemes are potentially efficient economic instruments in order to inform consumers about environmentally friendly products'.¹⁸⁷ The Canadian government has pressed for certification schemes to be included within the TBT Agreement. This could prohibit FSC labelling on the grounds that it is not in line with ISO standards, was not developed by

¹⁸¹ See, for example, Arthur E. Appleton (1997) *Environmental Labelling Programmes. International Trade Law Implications*. The Hague: Kluwer Law International.

¹⁸² As noted in UN document TD/B/WG.6/5, 'Trade, environment and development aspects of establishing and operating eco-labelling programmes: Report by the UNCTAD secretary', 28 March 1995, p.7.

¹⁸³ *Earth Negotiations Bulletin*, Vol.13, No.25.

¹⁸⁴ This formulation appears in the third report of the Panel: UN document E/CN.17/IPF/1997/2, 'Report of the Ad Hoc Intergovernmental Panel on Forests on its third session (Geneva, 9-20 September 1996)' para.159bis. However it did not survive the final round of textual changes made during the IPF negotiations.

¹⁸⁵ *Earth Negotiations Bulletin*, Vol.13, No.45,p.5.

¹⁸⁶ UN document E/CN.17/2000/14, para.34.

¹⁸⁷ WTO document WT/CTE/8, 11 July 2003 cited in Saskia Ozinga with Leon-tien Krul (2004) *Footprints in the forest: Current practices and future challenges in forest certification*, Moreton in Marsh UK: FERN, p.17.

national standards setting bodies and is a technical barrier to trade.¹⁸⁸ It is difficult to predict whether or not a WTO panel would rule a specific certification scheme illegal, if a challenge were to be brought. Even if no case is brought, a WTO ruling on another matter could have ramifications for the legality of forest certification schemes. In 1991, the GATT arbitration panel ruled that US import restrictions on tuna caught in ways that killed dolphins were in contravention of the GATT rules, but the panel accepted the legal constraints that the 1990 US Dolphin Protection Consumer Information Act imposed on access to a 'dolphin-safe' eco-label. Because the labelling provisions of the act do not restrict access to the US market, the GATT panel found that tuna without the label could be freely sold and that any competitive advantage conferred by the dolphin-safe label would depend on consumer preferences. Although the panel report was never adopted, the ruling remains largely unchallenged and shows that GATT/WTO in principle accepts voluntary and non-discriminatory eco-labelling.¹⁸⁹ However, a question mark will continue to hang over the status of certification schemes in international trade law until a WTO ruling is made.

¹⁸⁸ Fred Gale (2002) 'Caveat Certificatum: The Case of Forest certification', in Thomas Princen, Michael Maniates and Ken Conca (eds) *Confronting Consumption*, Cambridge MA: MIT Press, p.298.

¹⁸⁹ Lars H. Gulbrandsen (2005) 'Mark of Sustainability? Challenges for Fishery and Forestry Eco-labeling', *Environment* 47 (5): 8-23.

5. Options for Norway

This section provides a brief overview of how Norway can follow up EU's FLEGT action plan and other initiatives to address illegal logging and associated trade, with a particular focus on voluntary partnership agreements and public procurement policies.

5.1 FLEGT and partnership agreements

The FLEG meeting in Bali in 2001 catalysed four bilateral agreements on cooperation to combat illegal logging between Indonesia and other countries in 2002 and 2003. The agreements were between the United Kingdom (April 2002), Norway (August 2002), China (December 2002) and Japan (June 2003). Norway did not attend the Asian FLEG conference, but the Norwegian agreement with Indonesia clearly drew its inspiration from FLEG, as well as from an earlier memorandum of understanding on the environment agreed between Indonesia and Norway in May 1990. The bilateral agreement commit the parties to the collection and exchange of data and information between the two countries, the development of effective collaboration between enforcement agencies, and the involvement of civil society to increase public awareness on the consequences of trade in rainforest timber.

One way that Norway could contribute in the future would be to join the FLEGT licensing scheme and conclude voluntary partnership agreements (VPAs) with producer countries similar to those that the EU is planning on concluding with producer countries. The FLEGT regulation is not binding for Norway, so if one should choose to pursue this option it is up to the EU whether and on what terms Norway could join the system.

Norway can negotiate partnership agreements on its own initiative, or it might like to informally follow the EU's lead, negotiating agreements with those countries that have concluded, or are in the process of concluding, agreements with the EU. Such agreements would contain a definition of illegal logging that both Norway and the producer country would agree to observe. The legal feasibility of VPAs between Norway and producer countries may need to be investigated. In some countries timber can only be considered as illegally logged if the crime in the producer country would also be considered a crime in the importing country. The Netherlands is such an example. Should such a situation apply in Norway then amendments may need to be made to domestic Norwegian law if VPAs with producer countries are to be effective.

5.2 Tropical timber import restrictions

A second option could be tropical timber import restrictions or labelling requirements for all tropical timber imports. The Norwegian government signalled in its 2005 coalition agreement (the Soria Moria-declaration) that it would consider a tropical timber import ban.¹⁹⁰ However, as experienced by Austria, import restrictions may be brought before the World

¹⁹⁰ See Soria-Moria erklæringen. Available online at: http://odin.dep.no/smk/norsk/regjeringen/om_regjeringen/001001-990342/hov001-bn.html (accessed 10 March 2006).

Trade Organisation (WTO) by tropical timber exporters and challenged as incompatible with the rules of the General Agreement on Tariffs and Trade (GATT) and the Technical Barriers to Trade (TBT) Agreement. In 1992, shortly after the Rio summit, Austria introduced a tariff of 70 percent on all tropical timber imports and mandatory labels. The new law soon came under attack from certain tropical timber exporting countries, most ardently by Malaysia, which brought the issue to the attention of GATT and ITTO. The Association of South East Asian Nations (ASEAN) also threatened to boycott Austrian products. Faced with these pressures, and with little support from other European countries, the Austrian government revoked the tariff and the mandatory labelling requirement.¹⁹¹

The European Parliament has also passed resolutions (in 1988, for example) to restrict tropical timber imports to EU countries, but they were never implemented. The Netherlands opted in 1993 for a voluntary approach to encourage sustainable forest management in tropical countries and negotiated bilateral agreements with its main tropical timber suppliers. The Dutch government's objective was to, by 1995, import tropical timber only from regions where sustainable forest management was practiced and documented. As a result of limited supplies of tropical wood from verified sustainable sources, however, the Dutch government quickly abandoned the policy.¹⁹² Voluntary labelling programmes like the FSC, private sector initiatives to enhance market take-up of certified wood (e.g. buyer groups), and public procurement requirements have largely replaced those early attempts at establishing requirements for all tropical timber imports.

5.3 Public procurement

A third option could be to adopt public procurement requirements stipulating the purchase of timber from legal and sustainable sources. In Norway, former Minister of the Environment Mrs. Siri Bjerke initiated in 2000 a dialogue with importers of tropical timber to encourage them to buy tropical timber certified by the FSC to support legal and sustainable logging.¹⁹³ Former Minister of the Environment Mr. Børge Brende carried forward the dialogue. He also initiated a public procurement policy which involved giving preference to tropical timber certified by the FSC 'or similar third party certification schemes in forestry'. Public agencies are required to obtain assurance from the importer that the timber is not sourced from 'threatened rainforests'.¹⁹⁴ Unlike several other European governments, however, the Norwegian Government has not specified any

¹⁹¹ Jean-Pierre Kiekens (1996) 'Europe and Tropical Timber: A Case Study in Trade and the Environment', *Environmental News Network*. Available online at http://forests.org/archived_site/today/recent/1996/eurttim.htm (accessed 9 January 2006).

¹⁹² Ibid.

¹⁹³ Siri Bjerke, 'Import av tropisk trevirke', letter from the Minister of the Environment, 14 August 2000.

¹⁹⁴ Børge Brende, 'Statlig innkjøp av miljøvennlige produkter', letter from the Minister of the Environment, 14 November 2002.

detailed public procurement requirements to prevent the buying of illegally logged timber, and the Government has not assessed different forest certification schemes. In the EU, five countries are in the process of developing and implementing specific public procurement policies on legality and sustainability: Denmark, the UK, the Netherlands, Germany and France. Japan is also in the process of preparing a government procurement policy for timber from legal sources. The Norwegian Government could follow the lead of these countries in addressing illegal logging. Below we provide a brief overview of public procurement policies in the three countries with the most advanced public procurement requirements on timber legality and sustainability in Europe, namely the UK, Denmark, and the Netherlands.

5.3.1 Public procurement in the UK

The UK adopted a voluntary approach to public timber procurement in 1997, when a guidance advising government departments to purchase timber from legal and sustainable sources was issued.¹⁹⁵ The voluntary approach was replaced with a *binding* commitment in July 2000, when the UK Minister of the Environment announced that all Government departments and their agencies would ‘actively seek’ to buy timber and paper products from legal and sustainable sources. An inter-departmental buyers’ group was established to advise on and monitor implementation of the public procurement policies, but progress on delivering on the Government’s promise was slow. Following a series of embarrassing incidents in which Greenpeace revealed that the Home Office and other Departments were using illegally logged timber, the Government came under pressure to tighten its policies and provide additional implementation support and guidance.¹⁹⁶

In 2003, the Department for Environment, Food and Rural Affairs (DEFRA) appointed consultants (ProForest) to run a Central Point of Expertise on Timber (CPET) to advise the Department on timber procurement. The consultants first developed assessment criteria for forest certification schemes in order to evaluate (a) assurance of legality and (b) assurance of sustainability. They identified 26 criteria, divided between the certification standard itself (13 criteria), the certification process (6 criteria), accreditation requirements (1 criterion), and chain of custody and claims (6 criteria). The consultants then assessed the following five certification schemes against the criteria: FSC, PEFC, the Canadian Standards Association’s (CSA) forest certification scheme, the American Forest and Paper Association’s Sustainable Forestry Initiative (SFI), and the Malaysian Timber Certification Council (MTCC). The consultants’ report, published in 2004, concluded that timber certified by FSC and CSA should be accepted as both legal *and* sustainable timber. Certificates

¹⁹⁵ Duncan Brack (2005) *Public Procurement of Timber. EU Member State Initiatives for Sourcing Legal and Sustainable Timber*, London: Chatham House. Available online at www.illegal-logging.info/papers/EAC_procurement_EU.pdf (accessed 13 February 2006).

¹⁹⁶ Environmental Data Services (ENDS) (2003), ‘Home Office admits to “illegal” timber procurement’, *ENDS Report 342*, July: 39.

from PEFC, SFI and MTCC should be accepted as assurance of *legal* timber, but not sustainable forest management. The PEFC and MTCC did not meet government policy on timber procurement because of inadequate stakeholder involvement in the standard-setting process and, in the case of PEFC, lack of public disclosure of certification processes and audit reports. The SFI was not approved because the chain-of-custody certificate does not specify the amount of uncertified material used in the product. The Environment Department decided to allow the schemes that did not pass the test six months to adapt their standards and rules to public procurement requirements before it implemented preferential treatment.¹⁹⁷

Following a new assessment, in August 2005 DEFRA announced that PEFC and SFI had improved their standards sufficiently to pass public procurement criteria of timber, i.e. these schemes meet the requirements for both legality and sustainability (see Table 4).¹⁹⁸ The Malaysian scheme (MTCC) did not pass the test on sustainability. All schemes are reassessed on an annual basis.

Table 4 Results of the UK Government's assessment of certification schemes

	Legal (100% from legal sources)	Sustainable (>70% from sustainable sources)
Canadian Standards Association	All certified products	Yes
Forest Stewardship Council	All certified products	Certified Products containing >70% certified or recycled raw material
Malaysian Timber Certification Council	Products containing 100% certified raw material	No
Programme for the Endorsement of Forest Certification (PEFC)	All certified products	Certified Products containing >70% certified raw material
Sustainable Forestry Initiative	All certified products	Certified Products containing >70% certified raw material

Source: UK Government Timber Procurement Policy. Timber Procurement Advice Note (November 2005).

All forest types and all product types are covered by the British procurement policies. Central government departments and their executive agencies are required to buy timber from legal sources. Legality means that 'the organisation or body that felled the trees and provided the timber from which the wood is supplied or derived must have had legal rights to use the forest, must have complied with all relevant local and national laws and codes of practice including environmental, labour and health

¹⁹⁷ Environmental Data Services (ENDS) (2004) 'PEFC Timber Scheme "Inadequate" Says DEFRA', *ENDS Report 358*, July: p. 32.

¹⁹⁸ Environmental Data Services (ENDS) (2005) 'DEFRA's Approval of Industry-Certified Timber Blasted by Green Groups', *ENDS Report 368*, September: pp. 22–23.

and safety laws and must have paid all relevant royalties and taxes'.¹⁹⁹ Sustainability verification is optional, but in all contracts public authorities should choose sustainably produced timber if the price premium (on certified wood) is affordable and represents an efficient use of resources.²⁰⁰

The Central Point of Expertise on Timber (CPET) is primarily a service to public sector buyers of timber in the UK and their suppliers. CPET, which is funded by DEFRA, provides information about timber procurement at a website operated by an independent consultant (ProForest).²⁰¹ The website provides detailed information on how public sector buyers and their suppliers can meet the UK Government's timber procurement policy requirements. It also offers background material on the types of evidence that demonstrate legality and sustainability and the criteria for evaluating such evidence. The website is supported by a telephone Helpline (launched in August 2005), which is open for use by all public procurers and their suppliers. The Government reports on progress made by Departments in implementing public procurement policies in the annual Sustainable Development in Government report.²⁰²

5.3.2 Public procurement in Denmark

In 2000 the Danish Parliament decided that *tropical* timber purchased by public and semi public institutions should be produced in a legal and sustainable manner.²⁰³ The Government decided to implement this through developing *voluntary* guidelines for purchasing tropical timber. In 2003 the Danish Ministry of the Environment published the environmental guidelines for purchasing tropical timber and a report on background material for the guidelines.²⁰⁴ The purpose of the guidelines is to assist public purchasers in implementing the parliamentary decision on tropical timber procurement. The guidelines apply to all product types from tropical forests, except paper products. They are voluntary for central and local government, but it is a general obligation for local authorities to pursue green procurement, which is stated in environmental law. The Danish guidelines for *legally* produced timber are similar to those in the UK, and stipulate the following requirements, as a minimum:

- the producer has the necessary rights and permits to carry out logging of the given tree species, grades and dimensions, within the given timeframe and region;

¹⁹⁹ See www.proforest.net/cpet/uk-government-timber-procurement-policy/defining-legality-and-sustainability/

²⁰⁰ UK Government Timber Procurement Policy. Timber Procurement Advice Note (November 2005). Available online at www.proforest.net/cpet/documents

²⁰¹ See www.proforest.net/cpet

²⁰² See www.sustainable-development.gov.uk/publications/report2004/partf.htm

²⁰³ See, for example, <http://www.folketinget.dk> (Decision B197/2001).

²⁰⁴ Danish Ministry of the Environment (2003) *Purchasing Tropical Timber. Environmental Guidelines*, and *Purchasing Tropical Timber. Environmental Guidelines – Background Material*. Available online at: www.skovognatur.dk/Udgivelser/Tidligere/2003/Tropical_timber.htm (accessed 8 February 2006).

- the producer has fulfilled all relevant national legislation regarding forest management and the effects of forest management on people and the environment in the country in question;
- any due taxes and duties have been paid;
- all statutory declarations and permits from the authorities have been obtained, including CITES permits if the tree species is covered by CITES.²⁰⁵

A key requirement of the Danish guidelines for *sustainability* is that specific forest certification standards must have been developed in a consultative process, open to all interested stakeholders, including economic, environmental, and social interests. This is similar to the requirement in the FSC, although the Danish guidelines do not require that economic, environmental, and social stakeholders have voting parity in the standard development process. The Danish definition of sustainable forest management is based of the Forest Principles agreed at Rio (see section 2.2) and seven specified criteria for sustainable forest management. These criteria should be embedded within the certification standard and should include legislative and institutional frameworks; the size of the forest resource; the health and vitality of forests; the production function of forests; the protection function of forests; biodiversity; socio-economic, cultural, and spiritual benefits and needs (see section 2.3). Unlike the UK, Denmark has included social criteria relating to issues such as land tenure rights of indigenous peoples, workers' rights, and community relations in its definition of sustainable forest management. However, the inclusion in public procurement policies of social requirements over and above those legislated for in the producer country itself is controversial.²⁰⁶ In the UK, for example, public timber purchasers are not allowed to specify criteria that are not directly related to the subject matter of the contract, meaning that social or ethical issues above those legislated for in the producer country normally cannot be included in public procurement contracts.²⁰⁷

The FSC was the only certification scheme covering a large number of tropical countries at the time of the Danish assessment. In addition, the Danish Ministry looked at the Malaysian scheme (MTCC), the Indonesian scheme (LEI), and the Dutch *Keurhout* system of approval (see below on Dutch procurement). The Ministry concluded by grouping schemes in three categories:

- *Legal and sustainable*: FSC is regarded as the only certification scheme that provides adequate assurance of both legally and sustainably produced tropical wood.
- *Legal and progressing towards sustainable*: MTCC (the Malaysian scheme) is regarded as providing adequate assurance of legal forest management, and in the process of working towards sustainability.

²⁰⁵ Danish Ministry of the Environment (2003) *Purchasing Tropical Timber. Environmental Guidelines*, p.7.

²⁰⁶ Duncan Brack (2005), *op.cit.*

²⁰⁷ *Ibid.*

- *Legal*: LEI (the Indonesian scheme) and Keurhout are not in themselves regarded as adequate assurance of legal or sustainable forest management in the tropics, but could in combination with other documentation provide adequate assurance of legality.

Forest certification rules and schemes are developing rapidly. Since the Danish assessment, PEFC and several national schemes have become operational in tropical countries. In 2005 the Danish Government decided to carry out an evaluation of the environmental guidelines on purchasing tropical timber. The Ministry of the Environment coordinated the evaluation and convened an advisory Steering Committee to oversee the process. As part of the evaluation, the Ministry tasked independent consultants with comparing the Danish procurement policy with policies and guidelines in the UK, Netherlands, France and Germany and analysing the need for updating the Danish policies.

The consultants' report on public procurement policies was published in February 2006.²⁰⁸ It does not make any recommendations or draw any conclusions, but when the report was published the Danish Environment Minister announced a new 9-point plan for purchase of legal and sustainable timber. The minister decided to improve the guidance on public purchase of timber, and expand it to cover *all types* of timber, not only tropical timber.²⁰⁹ Planned steps in the near future will be a review and update of the Danish requirements for legal and sustainable timber as well as a review of the criteria for and assessments of certification and alternative means of documentation.²¹⁰

5.3.3 *Public procurement in the Netherlands*

In June 2004 the Dutch Government issued a Government Mandate, requiring that

all public institutions at national level are obliged to procure verifiably sustainable timber where possible and in time should purchase all timber from a verifiably sustainable source. In addition public buyers should at least ensure themselves that timber comes from a verifiably legal source.²¹¹

Minimum requirements for sustainable forest management were set out in a white paper for the Dutch Parliament in 1997 and applied in the so-

²⁰⁸ ProForest (2006) *Evaluation of the Danish Guidelines on Public Purchase of Tropical Timber. Comparison with Policies in UK, Netherlands, France and Germany Together with Updates on Certification Schemes*. Available online at www.skovognatur.dk/Udgivelser/2006/3BH_UK.htm (accessed 8 February 2006).

²⁰⁹ Press release, 9-point-plan from Environment Minister Connie Hedegaard. Available online at www.skovognatur.dk/Emne/Skov/Miljoe/Indkoeb/Expanded_summary.htm (accessed 8 February 2006)

²¹⁰ Christian Lundmark Jensen, email to one of the authors (Gulbrandsen), 8 February 2006.

²¹¹ Translation in 'Dutch Public Procurement Policy for Timber: Background and Current State of Play', Ministry of Housing, Spatial Planning and the Environment, 2005 (unpublished).

called *Keurhout* system of approval. These requirements have recently been replaced with the National Assessment Guideline (BRL – *Nationale Beoordelingsrichtlijn duurzaam geproduceerd hout*), which is both a forest certification scheme in itself and a system for approving other forest certification schemes. The National Assessment Guideline includes requirements for sustainable forest management, chain-of-custody systems, and certification bodies (third-party certifiers). It took four years to develop the National Assessment Guideline through a multi-stakeholder process, but the system is still not fully implemented. Like the Danish guidelines (but unlike the British), the Dutch guidelines include social criteria as an integral element of sustainable forest management.

The definition of legality is under development, but will be based on the UK Government's specifications for assurance of legality (see section on the UK), and the definition provided in the ninth FLEGT briefing note by the EU. According to the FLEGT briefing note, a credible definition of legality would include the following elements, as a minimum:

- logging only where there are legal harvest rights, by the holder of those rights;
- complying with regulations on permitted harvest levels, and with environmental and labour legislation;
- payment of timber royalties and other directly relevant fees;
- respect for other parties' legal tenure rights that may be affected by timber harvest rights.²¹²

The Dutch Government initially adopted a target of 100% sustainable timber on the Dutch market (not only public procurement) by the year 2000, but the target was impossible to meet and was replaced by a more realistic goal of 25% sustainable timber on the Dutch market by the end of 2005. While the latter target was met for all timber on the Dutch market, it was not met for tropical timber procurement. The Dutch Parliament has recently required that central government organizations take sustainability criteria into account in all public tenders by the end of 2010. This means that the burden of proof for procurement of legal and sustainable wood will rest with public agencies. The Dutch Ministry of Housing, Spatial Planning, and the Environment (VROM) is currently taking steps to provide guidance and support to assist purchasing officers in buying sustainable and legal timber. The Ministry seeks to provide regular reports on progress in the implementation of public procurement policies to the Dutch Parliament. Finally, the Ministry encourages local authorities, water boards, housing associations and financial institutions to set targets for procurement of sustainable and legal wood.²¹³

²¹² FLEGT Briefing Note Number 9 (September 2005) 'A Timber Legality Assurance System', p2. Available online at: <http://europa.eu.int/comm/development/body/theme/forest/initiative/docs/FLEGT%20briefs%20EN9.pdf> (accessed 10 January 2006).

²¹³ 'Dutch Public Procurement Policy for Timber: Background and Current State of Play', Ministry of Housing, Spatial Planning and the Environment, 2005 (unpublished), made available to one of the authors (Gulbrandsen) by Mrs. Janneke de Jong.

5.3.4 Comparisons and options for Norway

Policy makers need to consider whether public procurement policies should cover all forest types or tropical timber only. Public procurement requirements for all forest types would reduce the likelihood of a WTO challenge from tropical timber producer countries. The UK, Denmark, and Netherlands do not have a significant domestic timber industry and are in the process of implementing procurement policies for timber from all regions. By contrast, Norway has a significant forestry sector, and it might therefore be easier at home to implement public procurement policies for timber from the tropical regions rather than from all types of forest. That said, the Norwegian forestry sector is certified through the PEFC-endorsed *Living Forests* scheme and is probably well-positioned to meet public procurement policies for timber from all regions.

Another issue to consider is whether public procurement policies should be voluntary or mandatory for government buyers. Procurement policies for legality and sustainability could be implemented through developing voluntary guidelines, as in Denmark. Alternatively, legality could be stipulated as a condition of public contracts and therefore in principle be obligatory for all timber supplied, as in the UK and Netherlands. Mandatory requirements for legality and sustainability would obviously be a stronger responsible procurement commitment than voluntary guidelines, but they need to be compatible with the Government Procurement Agreement (GPA) and other WTO regulations. As experienced by the Netherlands, it may also be difficult to meet political commitments to procure legal and sustainable timber because of limited supply of timber from verified legal and sustainable tropical sources.

Public procurement policies may vary along a number of other specific dimensions. A robust and strong public procurement policy should ideally cover all types of forest products from all regions; apply to all levels of government (central and local); be mandatory rather than voluntary (as far as possible and in compliance with national law and international trade law); define criteria for legality and sustainability; and require timber to be sourced from legal *and* sustainable sources. Table 5 (next page) compares public procurement policies in the UK, Denmark, and the Netherlands along those specific policy features.

5.4 Support for private sector initiatives

A fourth option could be to provide financial support for private sector initiatives. In the tropical regions codes of conduct could be promoted amongst forest concessions and the timber industry for timber sourcing, certification and eco-labelling schemes for sustainable forest management, and verification systems for legally logged timber. Such assistance could be tied to countries that agree voluntary partnership agreements with Norway. However this is no necessary linkage between voluntary partnership agreements and such financial support in the tropics. Norway may elect to support private sector initiatives in the tropics in the absence of a voluntary partnership agreement.

Table 5 Comparisons of public procurement policies

	UK	Denmark	Netherlands
What types of product are covered?	All forest types All product types including solid timber and paper products	Since 2006 all forest types (initially tropical forests only) All product types, except paper products	All forest types All product types including solid timber and paper products
What is the scope of the policy?	Compulsory for central government departments and their executive agencies	Voluntary for central and local government	Compulsory for all national government institutions
Is the policy mandatory or voluntary?	Legality must be a condition of contract and therefore obligatory for all timber supplied.	Voluntary, but each central government institution is required to develop its own green procurement policy under the Danish Environmental Protection Act	Legality is the minimum mandatory requirement.
Does the policy define legal timber?	Yes	Yes	Yes (the definition is under development)
Does the policy include sustainability requirements?	Government departments are required to seek to buy timber from sustainable sources, but sustainability verification is optional in contracts.	Yes, but it is implemented through voluntary guidelines.	Procurers are required to buy from verifiable sustainable sources, if possible, with the view to progress to 100% sustainable sources in time.

Source: Adapted from ProForest (2006) Evaluation of the Danish Guidelines on Public Purchase of Tropical Timber. Comparison with Policies in UK, Netherlands, France and Germany Together with Updates on Certification Schemes.

Norway may also decide to promote codes of conduct within Norway. This could take the form of an agreement by the Norwegian industry (e.g. Byggenæringens landsforening) to import only timber from verifiably legal sources. Furthermore, there are a variety of economic incentives that the Norwegian government could use to promote private sector support. As noted above, a strong public sector procurement policy on behalf of the Norwegian government will act as a strong market signal in favour of legally-sourced timber. The Norwegian government can make it clear that timber companies and businesses that do not make it policy to purchase only legally sourced timber will not be favoured with public sector contracts. The Norwegian government can investigate whether it can introduce any financial or non-financial incentives to support businesses that declare a company policy to import only legally-sourced timber, and to discriminate against those that do not adopt such a policy.

Norway could promote the CEPI code of conduct against illegal logging (see section 3.3), and work with CEPI to harden the principles agreed in 2005. Norway could also enter into discussions with The Forest Dialogue. Finally, the Norwegian government could promote a broadening of the Living Forest Initiative to encompass timber imports only from legal and sustainable sources.

5.5 Promote due diligence in the Norwegian financial sector

Norway can promote the principle of due diligence in any export credit agencies in which the government, or any other financial organisation using public funds, is a shareholder. The principle of due diligence in this case means that a financial agency will take all reasonable measures to ensure that it does not lend money to companies that are, or have been engaged in, illegal logging, the trade in illegally sourced timber, or the use of illegally sourced timber in manufacturing, for example for furniture, construction, paper, and so on.

Norway could also work closely with the private financial sector – both Norwegian financial companies, as well as with transnational financial corporations that operate in Norway – to promote due diligence so that private finance shall not be used in a way that is supportive of illegal logging or the illegal timber trade.

5.6 Closer collaboration with agencies in other European countries

EU countries and the European Commission are developing considerable expertise in policies against illegal logging. Norway may like to investigate closer collaboration with European police forces, customs agencies and judicial bodies that are tackling the illegal trade. Norwegian NGOs that have good links with European NGOs that are tackling illegal logging, such as FERN and Global Witness, may also be able to help in the development of Norwegian policy in this rapidly developing issue area.

6. Conclusions

The creation of 'fast track' regional processes to combat illegal logging is taking place because UN institutions such as the UNFF are, with justification, considered too slow to deal with the complex issues involved. The US State Department did most to catalyse international cooperation on illegal logging. Without the economic power that the US brought to bear upon this issue, it is unlikely that sufficient political momentum would have developed to enable the first regional meeting in Bali to take place. As the FLEG processes have evolved the logic of halting illegal logging has suggested trade controls, such as import restrictions and licensing. But while previous US administrations have, on a selective basis, supported trade restrictions in pursuit of environmental goals, for the Bush administration no such measures seem to be tolerated. As the US administration exercised its power to promote the FLEG processes, it was also pursuing other policy objectives in parallel negotiations on trade liberalisation with Latin American countries on the Central American Free Trade Agreement (CAFTA) and the Free Trade Area of the Americas (FTAA). These proposed agreements contain no measures to address illegal logging. Environmental NGOs have warned that due to the poor environmental governance of many Latin American countries further trade liberalisation will exacerbate the problem and result in increased US imports of cheap illegally-logged timber.²¹⁴ But the economic benefits that can be realised from expanding international trade vastly exceed those from tackling illegal logging.²¹⁵ This could explain the 'unacceptability' to the US of demand side measures at the G8 summit in 2005.

To complement and support the FLEG processes, the EU developed the FLEGT action plan and licensing scheme. The aim was to develop both supply-side measures, by providing assistance to developing and former communist countries, and demand-side measures to curtail the trade of illegally-logged timber to the EU. The principles and rules of the WTO has formed the limits to the FLEGT action plan and licensing scheme. The WTO does not rule out demand side measures such as import controls; it rules out only those measures that are unilaterally imposed. Import controls are permitted if they are either multilaterally agreed or voluntary. With no multilateral support for a trade ban on illegally-logged

²¹⁴ 'CAFTA will flood Florida and U.S. markets with illegal timber products', 6 June 2005. Available online at: www.eia-international.org/cgi/news/news.cgi?t=template&a=246&source= (accessed 23 July 2005); Friends of the Earth, 'Free Trade Area of the Americas, Trading Away Our Environment: Market 'Liberalization' without Responsibility'. Available online at: www.foe.org/camps/intl/greentrade/ftaa.html (accessed 22 December 2005); 'Trading away our forests: About the FTAA'. Available online at: www.fanweb.org/archives/ftaa/Files/about.html (accessed 22 December 2005).

²¹⁵ Even the American Forest and Paper Association, which supports the FLEG processes because illegal logging undercuts the US forest products industry, has declared its support for CAFTA, as '[o]ur ability to sell our products in these markets will be improved as a result of this agreement': Letter (undated, probably 2004) by Maureen Smith, a consultant for the AFPA, to Christopher Padilla, Assistant US Trade Representative. Available online at: www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/CAFTA_Reports/asset_upload_file113_5958.pdf (accessed 18 December 2005).

timber the EU has thus opted for a voluntary scheme. In distinction, it is emphasised, the opposition of the US to demand side measures goes beyond respect for the WTO agreements and appears to be a profound scepticism of the current US government to interfering in international trade on environmental grounds.

As we have seen, a range of policy options are available to Norway. The exact details of any policy option chosen will depend on the overall strategy of Norway with respect to the WTO, the EU, and tropical timber producer countries. One option is to develop a policy that is best suited to tackling the problem of illegal and irresponsible logging. Such a policy, which would aim to take all measures necessary and possible to address the problem at hand, is likely to 'test the limits of the WTO'. This policy could include a tropical timber import ban, as the Government in the Soria Moria-declaration signalled that it would consider. Norway may elect to defend any WTO challenge, should such a challenge be made, on the basis that it is strongly committed to addressing the problem of illegal and irresponsible logging.

Another strategic option is for Norway to ensure that its policy is entirely compatible with international trade law. This is in essence the option that the EU has chosen. The EU has adopted an essentially self-censorious approach, filtering out possible stronger policy options that legal opinion suggests may be WTO-incompatible. There are reasons why Norway may wish to ensure that any policies adopted to tackle illegal logging are WTO compliant: breaching international trade law may involve Norway in a time-consuming legal challenge at the WTO and, in a worst case scenario, lead to other countries imposing retaliatory tariffs on Norwegian exports. Norway may elect to respect the WTO agreements because to violate them could generate economic and reputational costs for the Norwegian government. For example, insisting that all timber imports to Norway are accompanied by a licence attesting to legality could lead to a WTO challenge, whereas legal opinion suggests that where such agreements are voluntary they will be WTO compatible. In addition, it would probably be easier to implement licensing schemes through collaboration with producer countries than through requirements imposed from timber importing countries due to the complexities involved in controlling illegal logging.

In conclusion, there are several alternatives to a tropical timber import ban that Norway could pursue to avoid a potential challenge at the WTO. These options include adopting the FLEGT licensing scheme on terms agreed with the EU and concluding bilateral partnership agreements similar to those that the EU is planning with producer countries; developing public procurement policies for forest products from legal and sustainable sources; and seeking closer collaboration with the private sector to strengthen commitment to buy tropical timber products only from verified legal and sustainable sources. In addition, Norway could provide bilateral development assistance to promote forest law enforcement and good governance in key producer countries in Asia, Africa, or Latin America. Finally, Norway should continue its strong commitment to international collaboration to address illegal and irresponsible logging and promote forest protection.

Appendix 1

Countries involved in the four regional FLEG processes as of November 2005

Country	East Asia and Pacific FLEG (launched Bali, September 2001) ¹	Africa FLEG (launched Yaoundé, October 2003) ²	European Union FLEGT Action Plan (adopted October 2003) ³	Europe and North Asia FLEG (launched St. Petersburg, November 2005) ⁴
Albania				X
Angola		X		
Armenia				X
Austria			X	X
Azerbaijan				X
Belarus				X
Belgium		X	X	
Benin		X		
Bosnia-Herzegovina				X
Botswana		X		
Burkina Faso		X		
Bulgaria			X	X
Burundi		X		
Cambodia	X			
Cameroon		X		
Canada	X	X		X
Central African Republic		X		
China	X			X
Croatia			X	X
Cyprus			X	
Cote D'Ivoire		X		
Czech Republic			X	
Dem. Republic of Congo		X		
Denmark			X	X
Estonia			X	X
Ethiopia		X		
Finland			X	X
France		X	X	
Gabon		X		
Gambia		X		
Georgia				X
Germany		X	X	X

Country	East Asia and Pacific FLEG (launched Bali, September 2001) ¹	Africa FLEG (launched Yaoundé, October 2003) ²	European Union FLEGT Action Plan (adopted October 2003) ³	Europe and North Asia FLEG (launched St. Petersburg, November 2005) ⁴
Ghana	X	X		
Greece			X	X
Guinea		X		
Guinea-Bissau		X		
Hungary			X	
Indonesia	X			
Ireland			X	
Italy		X	X	X
Japan	X			X
Kazakhstan				X
Kenya		X		
Kyrgyzstan				X
Laos	X			
Latvia			X	X
Lesotho		X		
Lithuania			X	X
Luxembourg			X	
FYR Macedonia				X
Madagascar		X		
Malta			X	
Mauritius		X		
Moldova				X
Mongolia				X
Mozambique		X		
Namibia		X		
Netherlands			X	X
New Zealand	X			
Niger		X		
Nigeria		X		
Norway				X
Papua New Guinea	X			
Philippines	X			
Poland			X	X
Portugal			X	X
Republic of Congo	X	X		

Country	East Asia and Pacific FLEG (launched Bali, September 2001) ¹	Africa FLEG (launched Yaoundé, October 2003) ²	European Union FLEGT Action Plan (adopted October 2003) ³	Europe and North Asia FLEG (launched St. Petersburg, November 2005) ⁴
Romania			X	X
Russia				X
Senegal		X		
Serbia and Montenegro				X
Seychelles		X		
Slovakia			X	X
Slovenia			X	X
South Africa		X		
Spain			X	X
Sweden			X	X
Switzerland		X		X
Tajikistan				X
Thailand	X			
Togo		X		
Turkey			X	X
Uganda		X		
Ukraine				X
United Kingdom	X	X	X	X
United States	X	X		X
Uzbekistan				X
Vietnam	X			
Zambia		X		
Zimbabwe		X		
Total in at least one FLEG/FLEGT process 90	Total EAP-FLEG 15	Total AFLEG 39	Total FLEGT 29	Total ENA-FLEG 43

Notes:

1 With the exception of Canada, New Zealand and Papua New Guinea, all countries in this column sent delegates to the inaugural FLEG ministerial meeting in Bali, September 2001. Canada, New Zealand and Papua New Guinea did not attend the 2001 ministerial but have since sent representation to the EAP-FLEG regional task force.

2 Sent delegates to the Africa FLEG ministerial meeting in Yaoundé, October 2003.

3 The EU FLEGT Action Plan is legally-binding on its 25 member states. Also associated with the Action Plan, although not formally bound by it at the time it was adopted, were Bulgaria and Romania as accession states due to join the EU in January 2007, and Turkey and Croatia as candidate states.

4 Countries in this column adopted the St. Petersburg declaration of November 2005.