

Authors:



Dr. Federico Lopez-Casero
Policy Researcher
Forest Conservation Project
IGES Natural Resources
Management Group
lopezcasero@iges.or.jp



Dr. Henry Scheyvens
Director
Forest Conservation Project
IGES Natural Resources
Management Group
scheyvens@iges.or.jp

Copyright © 2010 Institute for Global Environmental Strategies. All rights reserved.

Although every effort is made to ensure objectivity and balance, the publication of research results or their translation does not imply IGES endorsement or acquiescence with their conclusions or the endorsement of IGES financiers. IGES maintains a position of neutrality at all times on issues concerning public policy. Hence conclusions that are reached in IGES publications should be understood to be those of the authors and not attributed to staff-members, officers, directors, trustees, funders, or to IGES itself.

**Institute for Global
Environmental Strategies**
財団法人
地球環境戦略研究機関

Customs collaboration to combat the international trade in illegal timber

Federico LOPEZ-CASERO and Henry SCHEYVENS

While it is widely understood that forests fulfil economic, social and environmental functions that are critical to human survival and wellbeing, their destruction continues at an alarming rate; the area of primary forest in Asia decreased at an average rate of 1.5 million hectares per annum from 1990-2005 (FAO 2006, 135). Not all of this deforestation is planned. In developing tropical countries, illegal logging is a significant cause of forest degradation that often leads to permanent land use conversion. Because timber markets mostly do not distinguish between legal and illegal timber, international trade can inadvertently act as a driver of illegal logging.

Various initiatives are underway to reform the international timber trade to support legal and sustainable forest operations. This policy brief presents the findings of a study conducted by IGES and The Nature Conservancy (TNC) from June 2008 to January 2010 under the Responsible Asia Forestry and Trade (RAFT) programme for customs agencies to be involved in this endeavour. We mostly associate customs with collecting revenues and combating the trade in narcotics, weapons, etc. but the IGES-TNC study found that customs could also play an important role in reducing the cross-border movement of illegal timber.

The recommendations of the IGES-TNC study include:

- Use existing bilateral agreements on illegal logging to build the capacity of customs and collaboration within and between countries for more effective enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
- Use export declarations as a check on legality at the point of import.
- Target regional processes and platforms for regular meetings between customs and forestry officials.
- Make more effective use of existing World Customs Organisation (WCO) networks and tools.

Assumption, objectives and methodology

Customs administrations often have to deal with goods arriving in their territory with little or no external support or background information to assist them with their controls. The basic assumption of the IGES-TNC study was that enhanced collaboration between customs agencies would enable them to be more effective in combating the cross-border trade in illegal timber. The objectives of the IGES-TNC study were to identify useful types of collaborative action between customs authorities to combat the illegal timber trade, and to explore types of arrangements under which this collaboration could be organised. The methodology of the study is summarised in Box 1.



Box 1: Study methodology

The study was based on a review of customs and illegal logging literature; international legal instruments; bilateral arrangements; model and actual agreements for customs mutual administrative assistance; and customs tools and networks. The review was augmented through consultations with customs, forestry and other officials, experts and key stakeholders in Japan, the Netherlands, Belgium and Indonesia. Feedback on the initial results of the study was provided by forestry and customs officials and other experts at the peer review workshop “Customs Collaboration to Combat the Trade in Illegal Timber” held on 28-29 October 2009 in Bangkok (http://www.iges.or.jp/en/fc/activity_20091028.html).

Illegal logging: Scale and implications

Illegal logging can be broadly defined as the harvesting, transportation, buying or selling of timber in violation of national laws (Brack and Hayman 2002). The true scale of illegal logging is unknown due to its illicit and often clandestine nature and the absence of comprehensive surveys and research; much illegal logging activity in the Asia-Pacific region takes place in remote areas and is thus difficult to monitor and quantify, and records of the domestic consumption of forest products in producer countries are poor (Obidzinski 2010).

Although knowledge on illegal logging is not precise, studies that employ a variety of methodologies agree that its scale is significant. For example, based primarily on wood-balance analysis, a recent study estimates that illegal harvesting represents 40–61% of the total harvest in Indonesia, and 14–25% in Malaysia (Lawson and MacFaul 2010). The same study estimated that the global production of illegal timber has declined by 22% since 2002, though the precise reasons for this decline are not clear and, for the reasons mentioned above, this finding must be treated cautiously.

Illegal logging is a serious issue not only because of its scale but also because of its wide-ranging environmental, social and economic consequences. In its Action Program on Forests, dated 9 May 1998, the G8 acknowledged that “illegal logging robs national and sub-national governments, forest owners and local communities of significant revenues and benefits, damages forest ecosystems, distorts timber trade markets and forest resource assessments and acts as a disincentive to sustainable forest management.”

Engaging customs to combat the trade in illegal forest products

Producer and consumer countries have launched various initiatives to combat illegal logging and the resultant trade. These include increasing resources and capacity building for law enforcement activities, laws to combat corruption and money laundering, regulatory instruments that prohibit the trade in illegal timber and timber products, timber legality licensing schemes and public procurement policies for legal and sustainable timber. Collaboration between customs administrations, which represent the first and last line of defence against smuggling, fraud, and detection of various illegalities, has also been identified as necessary to stop the trade in illegal timber (FAO 2005), but few concrete steps have been taken to realising this collaboration.

Traditionally, the role of customs has been that of a “gatekeeper” that controls trade and collects revenue. A number of strategic drivers (Fig. 1) are reshaping the functions of customs agencies away from control towards trade facilitation and security, which means a shift towards automation, risk management and intelligence to focus resources on perceived high-risk areas, without delaying the processing of legitimate trade. The new roles of trade facilitation and security, the proliferation of regional free trade agreements, international instruments such as CITES, and a dramatic increase in international trade have increased the volume,

“Illegal logging is a serious issue not only because of its scale but also because of its wide-ranging environmental, social and economic consequences.”

“Traditionally, the role of customs has been that of a “gatekeeper” that controls trade and collects revenue.”



Source: Authors; based on material from Gordhan (2007).

Figure 1: The changing roles of customs agencies

“Like many other parts of government, customs are being asked to do more without necessarily more resources.”

scope and complexity of custom’s work.

Like many other parts of government, customs are being asked to do more without necessarily more resources. Any initiative to involve customs in combating the trade in illegal timber should thus consider the additional burden it is likely to create and whether additional resources will be necessary.

With respect to the trade in illegal timber, currently the most relevant legal mandate for customs in most importer countries to take action derives from national legislation to enforce CITES. The Convention, which entered into force in 1975 and currently has 173 parties, aims to regulate the international trade of species of wild animals and plants that are endangered or that may become endangered if their exploitation is not controlled. CITES only empowers customs to act on the timber species that are listed in its three appendices, which represent only a small subset of the large number of species that are traded internationally.

Useful types of customs collaboration to combat the illegal timber trade

Many cases of breaches of customs law that have taken place during the trade of timber have been reported. These can be divided into (i) illegalities in dealing with customs procedures and (ii) smuggling (i.e. total circumvention of customs procedures).

Box 2: Types of illegalities in the timber trade that fall within the jurisdiction of customs

- Export and import of wood species banned under international law: Illegal export and import of CITES-listed tree species (i.e. trade without the requisite CITES export and import permits) has been widely reported.
- Export and import of timber in contravention of national bans: A number of countries have banned the export of roundwood, yet their roundwood continues to register in the import statistics of their trading partners.
- Bribing customs officials
- Export without a licence or other necessary documents or using fraudulent documents
- Undervaluing export prices and volumes and misclassification of wood products and species
- Re-routing, trans-shipment fraud (i.e. transferring cargo between ships after export and before reaching the country of import) and tampering with cargo on the high seas
- Import without the necessary documents or using faked documents

Source: Authors

All of the illegal acts listed in Box 2 could be detected by inspection at the point of export or import. They suggest the following useful types of collaboration

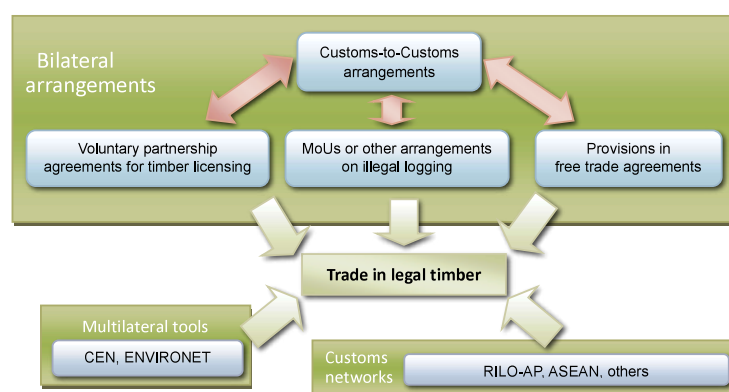
between the customs administrations of exporting and importing countries to combat the illegal timber trade.

- Protocols for spontaneous intelligence sharing and to make and accept requests for assistance when illegalities are suspected or detected;
- Reciprocal recognition of timber trade restrictions, such as Malaysia's recognition of Indonesia's ban on the export of roundwood and squared logs;
- The identification of high risk timber and the development of their risk profiles to aid intelligence targeting – co-ordination between customs and forestry agencies would be needed to develop timber risk profiles;
- Agreement for the use of customs export declarations, or an additional attestation of legality, in the country of import as a check on legality;
- Prior notification of exported timber shipments by the exporter country to the importer country, supported by protocols for information sharing and actions to be taken if shipments without prior notification arrive at the point of import.

Options and tools for organising collaboration between customs agencies to combat the illegal timber trade

“The IGES-TNC study reviewed a number of different options and tools that could be used to enhance customs collaboration to combat the illegal timber trade.”

The IGES-TNC study reviewed a number of different options and tools that could be used to enhance customs collaboration to combat the illegal timber trade. Figure 2 categorises these as bilateral arrangements, customs networks and multilateral tools. The bilateral arrangements consist of higher level arrangements between countries and mutual assistance arrangements directly between customs agencies. The study found that combining the two types of arrangements could be particularly effective. The customs networks are regional arrangements that focus mostly on facilitating legitimate trade. Amongst these, RILO A/P offers the greatest potential for organising customs collaboration on the illegal logging issue. The multilateral tools consist of existing web-based platforms for information sharing, and here too there is scope for more effective collaboration between customs to combat the illegal timber trade. These findings are discussed further below.



Source: Authors. Note: Two-way arrows = mutually reinforcing; one-way arrow = contributes to.

Figure 2: Options and tools for organising customs collaboration to combat the illegal timber trade

Provisions in free trade agreements on illegal logging and the resultant trade

A free trade agreement (FTA) reduces customs duties and non-fiscal trade barriers aiming to enhance economic opportunities through trade growth as a result of specialisation, division of labour, and comparative advantage. The United States - Peru Trade Promotion Agreement, which entered into force on 1 February 2009, is currently the only FTA that includes comprehensive provisions to combat the trade

in illegal timber and wildlife. The Agreement contains an Annex on Forest Sector Governance which focuses on the issues of illegal logging and the resultant trade. The provisions in the Annex give the US the right to have suspect shipments investigated and to participate in investigations by collecting data in Peru. Moreover, the US has the right to deny entry to suspect shipments if Peru denies any cooperation.

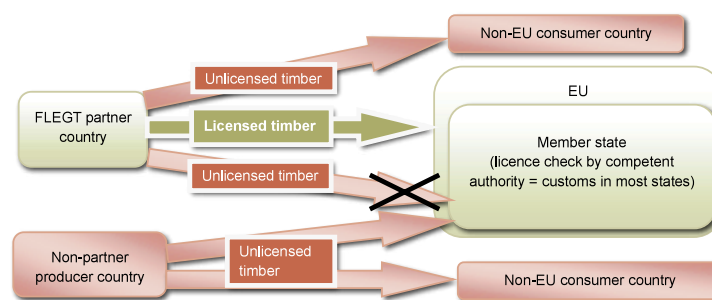
The main text of the Trade Promotion Agreement contains a series of generic provisions that promote enhanced cooperation between customs authorities that facilitate the implementation of the Annex on Forest Sector Governance. For example, both countries are required to cooperate in implementing provisions on claims of origin, origin procedures and restrictions or prohibitions on imports or exports. If either the US or Peru suspects unlawful activity related to its import regulations, it may request the other government to provide information collected in regard to the goods in question. These provisions can be applied to the trade in illegal timber.

“The US-Peru Trade Promotion Agreement illustrates that free trade agreements can provide an opportunity for countries to engage customs to combat the trade in illegal timber.”

The US-Peru Trade Promotion Agreement illustrates that free trade agreements can provide an opportunity for countries to engage customs to combat the trade in illegal timber. However, this will always depend on either both governments sharing similar interests or the willingness of one party to accept conditions, i.e. timber exporting countries may accept them as long as they can achieve other objectives such as privileged market access for their products.

Voluntary partnership agreements for timber licensing

A bilateral agreement under which a producer country agrees only to export wood products licensed as legal to a consumer country is another option under which customs collaboration to tackle the illegal timber trade can be organised. The European Union is in the process of concluding such agreements, known as Voluntary Partnership Agreements (VPAs), with selected producer countries. The basic approach is that the EU will provide assistance to the “partner” countries to develop legality licensing schemes and, once these are implemented, will not allow unlicensed timber to enter its markets from the partner countries (Fig. 3). As licensed timber is considered “legal” by EU member states, it has a competitive advantage compared to unlicensed timber from non-partner countries, for which evidence of legality will be required under the proposed EU “Timber Regulation” which aims to stop the entry of illegal timber into the EU market.



Source: Authors

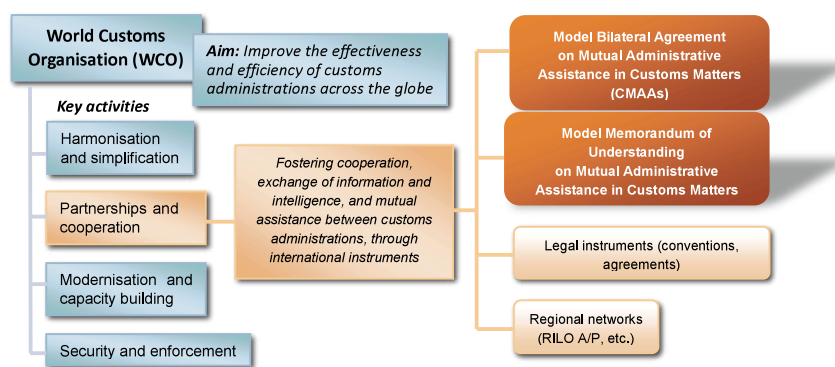
Figure 3: FLEGT licensing scheme

The negotiation of VPAs is part of the EU’s Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan adopted in October 2003. The Action Plan sets out a series of measures to increase the capacity of producer countries to control illegal logging. As of July 2010, the EU has concluded VPAs with Ghana, Cameroon and Democratic Republic of Congo, and is negotiating VPAs with Indonesia, Malaysia, Central African Republic and Liberia.

Bilateral agreements/arrangements between customs administrations

One important instrument available to customs administrations is mutual administrative assistance. This can be organised through legally binding Customs

Cooperation and Mutual (administrative) Assistance Agreements (CMAAs) as well as less formal administrative agreements, memorandums and letters of understanding, etc. While CMAAs are legal frameworks between states often represented by high-level government officials, the less formal arrangements can be concluded directly between the customs administrations of two countries. Both the formal and less formal arrangements are often based on two models developed by the World Customs Organisation (WCO) – the Model Bilateral Agreement and the Model Memorandum on Mutual Administrative Assistance in Customs Matter (Fig. 4). These models are designed to allow comprehensive exchange in the field of customs competence to ensure proper application of the customs law and to prevent and combat offences. They contain generic protocols for information exchange for the application and enforcement of customs law, spontaneous assistance, notification, communication on request, investigations, surveillance and joint action.



Source: Authors

Figure 4: Key WCO activities

All the customs-to-customs agreements based on the WCO models reviewed by IGES were found to be generic; i.e. they are not product-specific. CMAAs, MoUs between customs, etc. are thus unlikely to be used as stand-alone agreements to tackle the trade in illegal timber. However, they could be employed by customs to combat this trade when used together with higher level agreements on illegal logging.

MoUs or other arrangements on illegal logging

A number of bilateral MoUs and other arrangements to tackle the trade in illegal timber have been signed between exporter and importer countries. A range of activities have been organised under a few of the MoUs, including various forms of collaboration between customs agencies, while others lie fairly dormant. As Box 3 shows, Indonesia has been particularly proactive in organising MoUs on illegal logging with its trading partners.

Box 3: Bilateral agreements and statements on illegal logging in the Asia-Pacific region

- UK-Indonesia Memorandum of Understanding on Cooperation to Improve Forest Law Enforcement and Governance and to Combat Illegal Logging and the International Trade in Illegally Logged Timber and Wood Products (April 2002)
- Letter of Intent signed by Indonesia and Norway on illegal logging (August 2002)
- China-Indonesia MoU Concerning Cooperation in Combating Illegal Trade of Forest Products (Dec. 2002)
- Japan and Indonesia Joint Announcement on the Cooperation in Combating Illegal Logging and the Trade in Illegally Logged Timber and Wood Products (June 2003)
- Indonesia and Republic of Korea Joint Statement on “The Call for Combating International Trade in Illegally Harvested Forest Products” (July 2003)
- US-Indonesia MoU on Combating Illegal Logging and Associated Trade (Nov. 2006)
- China-US MoU on Illegal Logging and Associated Trade (May 2008)

“CMAAs, MoUs between customs, etc. are thus unlikely to be used as stand-alone agreements to tackle the trade in illegal timber.”

The US-Indonesia Illegal Logging MoU, which aims to enhance joint efforts between the two countries to combat illegal logging and associated trade while helping to ensure that Indonesia's legally produced forest products have continued access to the US, is unique in that it contains specific provisions for customs collaboration. For example, on the request of the US, Indonesia's Directorate General of Customs and Excise is required to inform US Customs and Border Protection whether timber and wood products originating in Indonesia have been lawfully exported to the US.

Combining a MoU on illegal logging with a generic mutual administrative assistance agreement between customs

A CMAA or softer instrument for customs mutual administrative assistance could provide useful support for implementing the customs provisions of a bilateral agreement on illegal logging. The US-Indonesia MoUs are particularly instructive. The MoU on Illegal Logging provides for requests for information and the voluntary provision of information between customs administrations, but does not provide protocols that describe the medium for requests, the medium of the delivery of the response, advanced exchange of information, etc. Indonesia and the US concluded a MoU on customs mutual assistance that provides these protocols.

Customs networks and other platforms for collaboration

The WCO Regional Intelligence Liaison Office for Asia and the Pacific (RILO A/P) serves as the WCO focal point for intelligence analysis and liaison of enforcement cooperation with member administrations in the region. It provides a platform for member administrations to identify critical areas that require attention and works collaboratively to modernise customs procedures. If the illegal timber trade was specified as a priority item for RILO A/P work, these roles allow RILO to make an important contribution through, for example, promoting mutual administrative assistance and improving the quality and availability of intelligence.

The ASEAN Senior Officials on Forestry programme on Forest Law Enforcement and Governance and the ASEAN Customs Procedures and Trade Facilitation Working Group are other potential platforms for promoting customs co-operation.

WCO tools for customs collaboration

A variety of tools exist in the customs field that could be used to combat the trade in illegal timber, including the WCO Customs Enforcement Network (CEN) and ENVIRONET.

The CEN manages a seizures and offences database which stores intelligence submitted voluntarily by member customs administrations. It provides "alerts" that contain intelligence, including photos and routes, on seizure, concealment, transport and indicators that led to detection. Seizure information is reported under 13 categories; as of September 2009, there were 12,254 cases of seizures reported under the CITES category.

ENVIRONET, a new WCO initiative, is an Internet based service for real-time information exchange and cooperation in the area of environmental border protection among customs administrations and other authorities. ENVIRONET could provide a useful platform to facilitate rapid decision making on the ground when timber shipments and documentation are thought to be suspect, as it supports the exchange of information on seizures and possible on-going trafficking.

Ways forward

There is a need to target regional processes and platforms for regular meetings between customs, with the participation of forestry and other authorities. Linkages to existing regional processes and building on a shared agenda are the only ways that cooperation tends to emerge. The IGES-TNC study recommended:

"There is a need to target regional processes and platforms for regular meetings between customs, with the participation of forestry and other authorities."

requesting ASEAN to organise a workshop on collaboration between forestry, police and customs; encouraging ASEAN to establish a joint customs-forestry working group on illegal logging and trade; requesting the International Tropical Timber Organisation to support an Asian Customs-Forestry working group on illegal logging and trade.

With respect to WCO networks and tools, the study recommended that: WCO member countries officially request RILO A/P to incorporate the control of illegal trade in timber and other forest products as a priority element of its work programme; member countries submit information on the illegal timber trade (seizures and infractions) to RILO A/P, and/or to use ENVIRONET to request and exchange information on suspect timber shipments and documentation; trade in illegal wood is included as a separate category of the CEN seizures database.

A relatively “low hanging fruit” would be to use existing bilateral agreements for better enforcement of CITES. Training of customs officials on the identification of CITES-listed timber species and the sharing of information on consignments and their accompanying documentation could be organised. A coordinated response is required involving customs, forestry/agriculture, trade, environment, foreign affairs, and other border control authorities. MoUs between the relevant agencies would facilitate the necessary co-operation.

Some of the options for bilateral co-operation presented in this policy brief could also be taken forward through piloting, e.g. one exporter and one importer country could agree to test the use of export declarations as a check on legality at the point of import. The higher the political support that can be secured, the greater the prospects of these recommendations.

References

- Brack, D. and G. Hayman. 2002. *Controlling the international trade in illegally logged timber and wood products*. London: Royal Institute of International Affairs.
- European Parliament Press Service. 2008. Free-trade agreement with ASEAN: Conditional backing from Trade Committee. Press release. 8 April.
- FAO. 2005. *Best practices for improving law compliance in the forestry sector*. FAO Forestry Paper 145. Rome: FAO.
- . *Global forests resources assessment 2005*. Rome: FAO.
- Gordhan, P. 2007. Customs in the 21st Century. *World Customs Journal*, 1:1, 49-54.
- Lawson, S. and L. MacFaul. 2010. *Illegal logging and related trade. Indicators of the global response*. London: Chatham House.
- Obidzinski, Krystof. 2010. *Control of illegal logging in Indonesia: Progress and challenges for effective implementation of REDD+*. Presentation at Asia Forest Partnership Dialogue “Forest Governance: Challenges Beyond Copenhagen”, Bali, 5-6 August.

Acknowledgements

The names of organisations and individuals who contributed to the full report (<http://enviroscope.iges.or.jp/modules/envirolib/view.php?docid=2784>) can be found in the acknowledgements of the report. In addition, the authors would like to express their appreciation to Mr. Hideyuki Mori, Prof. Hironori Hamanaka and Dr. Enrique Ibarra Gené for reviewing this policy brief and providing thought-provoking comments.

Disclaimer

The study this brief is based on was made possible by the generous support of the American People through USAID. The contents of the study and this brief are the responsibility of IGES and do not necessarily reflect the views of USAID, or the US Government.