

Research Paper

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Trade in Illegal Timber The Response in the United States

A Chatham House Assessment

Contents

Summary	2
Introduction	3
Background	4
Media attention	5
Government Response	6
Progress by the Private Sector	12
Estimated Levels of Illegal Imports	14
Conclusions and Recommendations	16
Annex 1: Policy Assessment Scores for 2008 and 2013	17
Annex 2: Methodology	18
Glossary	20
About the Author	21
Acknowledgments	22

Summary

Efforts to tackle the problem of illegal logging and related trade have continued in the United States; the Lacey Act amendments in 2008 have influenced behaviour within the industry and high-profile enforcement cases have increased awareness of the issue.

The impact of the Lacey Act on levels of illegal imports into the US is uncertain. The proportion of imports of high-risk timber-sector products is estimated to have declined since 2010, while that of paper-sector products has stayed at about the same level: in 2013, high-risk imports were estimated to comprise five per cent and two per cent of the totals respectively. However, there has been a significant shift in the types and sources of high-risk products coming into the country, reflecting changes in the global timber industry: a growing proportion is coming from China and comprises more highly processed products such as furniture.

Though the Lacey Act is an important piece of legislation for tackling the trade in illegal timber, several implementation and enforcement challenges have arisen since the amendments were enacted, in particular the interpretation of 'due care'. Improvements to the procedure for processing import declaration forms are also required to ensure effective enforcement of the act. In order to effectively tackle illegal logging and the related trade, the US government should also continue to encourage its trading partners to strengthen their forest governance.

Introduction

Illegal logging is a global problem that is both a result of and a contributing factor to poor forest governance. It undermines efforts to manage forests sustainably and equitably, resulting in deforestation, social conflict and the loss of government revenues. This is not just an issue for forest-rich countries; countries that import and consume wood-based products¹ from countries with high levels of illegal logging contribute to the problem if they import products without ensuring that they are legally sourced.

Chatham House has been engaged in research since 2006 to assess illegality in the forest sector and the response by governments and the private sector to the problem. The aim of its work has been to monitor levels of illegal logging and the related trade and so enable an assessment of the effectiveness of efforts to tackle the problem in producer, consumer and processing countries.

A methodology has been developed for this assessment based on a number of indicators. For consumer countries, those indicators are derived from an examination of the national policy and legal framework and its implementation; analysis of enforcement data; reviews of international and domestic media coverage; analysis of data on trade between exporter and importer countries; and analysis of data on voluntary verification and certification by timber companies. This approach, drawing on a variety of data sources, provides the most rigorous means of assessing illicit practices, any estimate of which is inevitably challenging. Further details can be found in Annex 2 of this assessment.

Twelve countries were assessed in 2008–09 (the findings published in 2010²) and another six in 2013–14³ (published in 2014⁴). In addition, Chatham House undertook a reassessment of the original 12 countries in 2013–14.

This assessment presents the latest findings for the US, which are compared with the situation as reported in 2010. The analysis, undertaken in April 2014, is based on data collected in 2012 and 2013. Trade statistics and media data were compiled up to the end of 2013 and 2012, respectively, and the policy assessment was made on the basis of the situation as of December 2013 but some more recent developments have been noted as well.

¹ The following terminology has been used in this report: wood-based products – encompasses all timber-sector and paper-sector products; timber-sector products – includes logs, sawnwood, plywood, veneer, mouldings, joinery and furniture; paper-sector products – includes wood chips, pulp and paper.

² Lawson, S. and MacFaul, L. (2010), *Illegal Logging and Related Trade: Indicators of the Global Response*. London: Chatham House.

³ The countries assessed in 2008–09 were: Brazil, Cameroon, Ghana, Indonesia and Malaysia (producers); China and Vietnam (processing countries); and France, Japan, the Netherlands, the UK and the US (consumers). Those assessed in 2013 were: the Democratic Republic of Congo, the Republic of Congo, Lao PDR and Papua New Guinea (producers); India and Korea (consumers); and Thailand (processing country).

⁴ Lawson, S. (2014), *Illegal Logging in Papua New Guinea*; Lawson, S. (2014), *Illegal Logging in the Republic of Congo*; Lawson, S. (2014), *Illegal Logging in the Democratic Republic of Congo*; Lawson, S. (2014), *Illegal Wood Import and Re-export: The Scale of the Problem and the Response in Thailand, South Korea and India*. London: Chatham House.

Background

The United States is one of the world's largest importers of wood-based products. In 2012 it imported 150 million m³ roundwood equivalent (RWE) of such products. At the same time, it has a significant domestic forestry industry – both production and processing – which is estimated to contribute 0.3 per cent to the country's economy and employ around 880,000 people.⁵

Earlier research has revealed the economic impact of illegal logging on the US forestry industry: it was estimated that if illegal logging were eliminated, the value of US timber-sector products would increase by around \$500–700 million annually.⁶ More recently, the decline in employment in the US wood furniture industry has been linked with illegal hardwood imports – the economic recession being another factor.⁷ It was in this context that, with strong support from a coalition of environmental NGOs and forest industry firms and associations, the US became the first country in the world to introduce legislation banning illegal wood-based products:⁸ in 2008 the 100-year-old Lacey Act, which regulates trade in illegal wildlife products, was amended to include plants and plant-based products.

Initial expectations for the ability of the Lacey Act to deter and control trade in illegal timber were high. Chatham House's 2010 study estimated that US imports of wood-based products likely to be illegal increased between 2001 and 2006, while in the following two years they decreased. The report suggested that while the economic recession was the main factor in that decrease, the amended Lacey Act might have had an impact by shifting buyers towards lower-risk sources of supply.⁹ It also expressed the hope that the Lacey Act would act as a strong deterrent to illegal trade and predicted that imports of illegal products would fall 'further and faster' in response to the new legislation.¹⁰ Six years have now passed since the introduction of that legislation. This assessment provides an update on the situation in the US.

⁵ Bureau of Economic Analysis of the US Department of Commerce – see http://www.bea.gov/industry/gdpbyind_data.htm.

⁶ Seneca Creek Associates and Wood Resources International (2004), 'Illegal' Logging and Global Wood Markets: The Competitive Impacts on the U.S. Wood Products Industry', report prepared for the American Forest and Paper Association – see http://www.illegal-logging.info/sites/default/files/uploads/1_AF_and_PA_summary.pdf.

⁷ The US Forest Service determined that competition from inexpensive imports has negatively affected the hardwood industry over the past few years – see Howard, J and McKeever, D, (2011), *U.S. Forest Products: Annual Market Review and Prospects, 2007–2011* (Washington, DC: US Forest Service). In the household furniture industry, employment has declined approximately 60 per cent since the late 1970s – see Elias, P.(2012), *Logging and the Law: How the U.S. Lacey Act Helps Reduce Illegal Logging in the Tropics*, Union of Concerned Scientists, p. 7, at http://www.ucsusa.org/assets/documents/global_warming/illegal-logging-and-lacey-act.pdf.

⁸ The EU and Australia have since enacted similar legislation: the EU Timber Regulation came into force in 2013 and Australia's Illegal Logging Prohibition Act will do so in November 2014.

⁹ Lawson, S and MacFaul, L, (2010), *Illegal Logging and Related Trade. Indicators of the Global Response*. London: Chatham House p. 108.

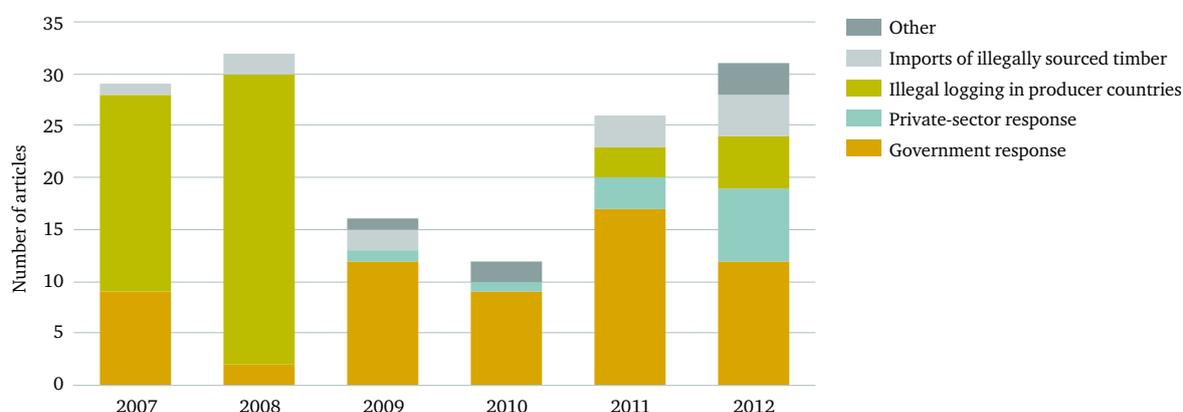
¹⁰ Lawson and MacFaul (2010), p. 58.

Media attention

Media coverage provides an insight into levels of public awareness of illegal logging and related trade. While such awareness may not always lead to action, it is important for bringing about change and is therefore useful to monitor. An assessment of the media can also give an indication of the approaches being taken within a country to address the issue. The media database LexisNexis was used to search 10 national domestic newspapers for articles that referred to ‘illegal logging’ or related terms during the period 2009–12.¹¹

Overall, coverage of the issue of illegal logging has been low in the media outlets included in this analysis. One reason for the low coverage may be a lack of awareness of the relevant issues – given that illegal logging is not a major problem in the US. Another factor could be that even though it constituted the world’s first legislation to prohibit the import or sale of illegal wood-based products, the 2008 Lacey Act amendments were passed as part of a large bill on agriculture that contained several thousand provisions. At the same time, it is important to note that many reports on the enforcement of the act were for television and non-print outlets, including the internet, which were not covered by this study. Therefore, the sample results should not be taken as a definitive indicator of the level of interest in and/or awareness of the issue of illegal logging.

Figure 1: National media coverage of illegal logging*



*Figures are for the year from 1 October to 30 September; data for 2007 and 2008 are taken from the 2010 assessment.

In 2007–08 most of the media coverage in the US related to the amendments to the Lacey Act – which at that time were either about to be or had just been passed – and the private sector’s response to the legislation, while in the subsequent period, coverage focused more on the extent and impacts of illegal logging in producer countries (see Figure 1). The Lacey Act amendments received renewed attention in 2011–12 following a media campaign launched by the Gibson guitar company in response to the second enforcement action taken against it under the Lacey Act, in 2011. This resulted in increased media interest in the issue of illegal logging, reflected in the numbers in this assessment. It also served to generate a considerable amount of political interest in this legislation (see section on government response).

¹¹ The 10 newspapers were: *USA Today*, *Wall Street Journal*, *New York Times*, *Los Angeles Times*, *Washington Post*, *Chicago Tribune*, *New York Daily News*, *Philadelphia Inquirer*, *Rocky Mountain News/Denver Post* and *Houston Chronicle*.

Government Response

A coherent and transparent policy framework that is effectively and consistently enforced is a prerequisite for tackling illegal logging and the trade in illegal timber. This section assesses the design and effectiveness of the US government's policies and regulations. The data are derived from an assessment of the policy framework that is based on a standard set of questions and scoring for the existence of policies, their design and the level of implementation. Data on enforcement are also included.

Table 1 shows the results of the assessments of the situation at the end of 2008 and at the end of 2013:¹² the score given in each policy area is a percentage of the maximum score. These results are discussed in more detail in the following sub-sections, while the detailed policy scores on which this table is based are included in Annex 1.

Table 1: Summary of policy scores for 2008 and 2013 (as % of maximum score)*

	High-level policy	Legislative framework	Law enforcement	International engagement	Public procurement policy
2008	Yellow	Orange	Green	Yellow	Red
2013	Yellow	Green	Green	Green	Red

*To establish the percentage figures, existence, design and implementation have been weighted equally, as has each sub-question under each major heading. Those policy areas for which only a few questions were formulated (institutional and operational factors; international engagement) are more likely to show change than are the other areas. Shading has been allocated according to the total score under each major heading as a percentage of the possible maximum – scores below 25% are red, those between 25% and 50% orange, those between 51% and 75% yellow and those above 75% green.

High-level policy

In order to help build the case for action and inform the response, it is important for consumer-country governments to understand the probable scale, nature and sources of imports of illegal wood-based products and their possible effect on driving illegal logging in producer countries. The US has not yet carried out a comprehensive review of the scale, nature and sources of imports of illegal wood-based products; the most recent study, commissioned by a US forest industry body, was conducted in 2004.¹³ Nor does the US have an action plan on illegal logging; the closest to such a plan was the President's Initiative Against Illegal Logging (PIAIL), which was launched by President George W. Bush in 2003 and ran until 2009.¹⁴ However, the Lacey Act amendments provided the basis for a set of clear implementation plans as well as for the establishment of an inter-agency working group. That group has regular, well-attended meetings involving appropriately senior representatives from

¹² The policy scores for the situation at the end of 2008 are to be found in the 2010 report and those for the situation at the end of 2013 in the current assessment.

¹³ Seneca Creek Associates and Wood Resources International (2004).

¹⁴ PIAIL focused on assisting developing countries fight against illegal logging. It concentrated on four areas: good governance, community-based actions, technology transfer and harnessing market forces. More details are available at <http://2001-2009.state.gov/r/pa/prs/ps/2003/22843.htm>.

all relevant agencies to discuss implementation.¹⁵ In addition, those agencies collaborate in certain areas; for example, the Animal and Plant Health Inspection Service (APHIS) of the US Department of Agriculture (USDA) and US Customs and Border Protection (CBP) have worked together to streamline the process for data submission by importers.

The *Federal Register*, the official daily journal of the US government, provides a widely used platform for multi-stakeholder engagement. It is used to notify the public of legislative developments, on which comments and views can be formally submitted.¹⁶ These submissions are influential: for example, comments submitted to APHIS resulted in adjustments being made to the requirement for import declarations.¹⁷ In addition, the relevant agencies proactively solicit public input through formal consultation processes, participating in industry events and meetings. Through both the State Department and USAID and working together with NGOs, the US has supported an extensive process of outreach and consultations on the Lacey Act, including consultations in key producer and processing countries such as China, Indonesia and Vietnam.¹⁸

Legislative framework

When the US passed the Lacey Act amendments in 2008, it became the first country in the world to prohibit trade in illegal wood-based products. Under these amendments it is unlawful to ‘import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce’ any plant that was ‘taken, possessed, transported, or sold in violation of any law or regulation of any State’.¹⁹ The applicable legislation encompasses that relating to the harvest of plants, payment of taxes and fees, and their export. An import declaration requirement was also introduced, under which the scientific name, value, quantity and country of origin of the timber imported must be stated,²⁰ although there are some exceptions.²¹ This information is submitted to APHIS – the agency that coordinates implementation of the Act.

The Lacey Act does not include a requirement for due diligence (unlike the EU Timber Regulation (EUTR), for example); however, this is explicitly encouraged since the exercise of ‘due care’ can be used as part of the defence in cases of infringement of this law. But no specific guidance is provided by the act on what constitutes ‘due care’. Although this offers flexibility, which is important given the wide range of sizes and types of company, it has caused a degree of concern and uncertainty among some members of industry; this was especially the case when the amendments were first introduced.

¹⁵ The relevant agencies are: APHIS of the US Department of Agriculture, the US Forest Service, CBP of the US Department of Homeland Security, the USTR, the US Department of Justice, the US Department of State, the US Fish and Wildlife Service, the Council on Environmental Quality and the US Department of Commerce.

¹⁶ See www.federalregister.gov.

¹⁷ APHIS (2013), *Report to Congress (Senate Committee on Agriculture, Nutrition, and Forestry, Senate Committee on Environment and Public Works, House Committee on Agriculture, and House Committee on Natural Resources) With Respect To Implementation of the 2008 Amendments to the Lacey Act*, p. 9.

¹⁸ See, for example, Elias (2012), p. 13.

¹⁹ The Lacey Act (Chapter 53 of Title 16, United States Code), section 3372 (a)(1)–(4). <http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>.

²⁰ Under the amended Lacey Act, it is unlawful to falsify or submit falsified documents and to import plant products covered by the act without an import declaration – see Sections 3372(d) and (f).

²¹ Section 3371(f)(2). Common cultivars other than trees and common crops are exempted. Other exemptions include scientific specimens used for research and packaging materials that are not imports themselves. Products imported prior to the enactment of the Act are subject to the declaration obligation too. Furthermore, while pulp and paper come under the Act’s prohibition on the import of illegal products, they are not covered by the declaration requirement.

In recent years, some attempts have been made to weaken the Lacey Act. Following the enforcement actions against Gibson, which are described in the following sub-section, several attempts were made in 2011²² and 2012²³ to narrow the scope of the declaration requirements (e.g., to exempt pulp and paper) and applicable foreign laws, as well as to include ‘innocent owner’ defence by amending forfeiture provisions. Nevertheless, none of them were successful after being met with strong opposition from NGOs and some sectors of the industry.²⁴

Various challenges have been identified in the implementation and enforcement of the Lacey Act, and efforts are under way to address them. The implementation challenge relates to the administration of import declarations: many importers are required to file a declaration form, which is handled by APHIS and CBP.²⁵ This requirement has been introduced in phases, starting with wood-based products that can be more easily identified and gradually adding more complex, highly processed products.²⁶ In its recent report to the Congress on the implementation of the Lacey Act, APHIS highlighted the administrative challenge of processing import declarations:²⁷ declarations filed electronically are done so through CBP;²⁸ however, paper-based declarations have to be filed manually with APHIS. The latter process, in particular, is costly and time-consuming; moreover, funding allocated for implementation of the Lacey Act was not made available until 2012.²⁹ But since then additional funding has been granted, and APHIS is about to begin implementing a web-based system of submitting import declarations.

According to APHIS, a significant proportion of the declaration forms has contained inaccuracies (e.g., misspellings, misplaced fields, etc.), while around 15 percent has left out critical information such as the genus, species or country of harvest.³⁰ False declaration is an offence under the Lacey Act.³¹ Moreover, declarations are typically received between five and 10 days after the product has entered the US.³² The government has been seeking solutions to these issues, piloting a blanket declaration approach (although this proved not to be useful³³) and employing Special Use Codes for certain products for which the species or country of harvest is difficult to identify.³⁴

However, it should be noted that according to a survey by the Forest Legality Alliance, the industry appears to be accepting the ‘new norm’ of the Lacey Act, including the import declaration requirement.³⁵

²² For example, H.R. 3210 – Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act.

²³ The proposed ‘FOCUS Act’ and its companion bill were not enacted. H.R. 4171 (112th): Freedom from Over-Criminalization and Unjust Seizures Act was introduced in March 2012. Its companion bill, S. 2062, was introduced in February 2012. The progress of proposed bills can be tracked on the US government website www.govtrack.us.

²⁴ For example, the letter from 350.org et al. to the US House of Representatives (6 June 2012) – see <http://switchboard.nrdc.org/blogs/jschmidt/Don%27t%20Weaken%20Lacey%20June%202012.pdf>.

²⁵ APHIS issues notifications to the *Federal Register* with information on the implementation of the Lacey Act, and stakeholders are given the chance to comment via the *Federal Register*. Following comments submitted to the *Federal Register* in October 2008, composite, recycled or reused materials were removed from the phase-in schedule. The US government still intends to add them at a later date.

²⁶ For the first year of implementation, declarations were voluntary. Phase II, which introduced mandatory declarations for minimally processed products (e.g. sawn wood and joinery), began in April 2009. Phase III (October 2009) introduced this requirement for more processed products, including plywood, veneer panels and wooden frames. In Phase IV (April 2010), more complex products – such as musical instruments, toys and furniture – were covered by this requirement. Full details are to be found in ‘Phase-in Schedule of Enforcement of the Declaration Requirement for Goods of, or Containing, Plants or Plant Products’, *Federal Register*, Vol. 74, No. 169 (September 2009) – see http://www.aphis.usda.gov/plant_health/lacey_act/downloads/2008-0119.pdf.

²⁷ According to APHIS, approximately 40,000 declarations are now being filed monthly, four times more than during the initial phase – see APHIS (2013).

²⁸ The Automated Broker Interface is used for this purpose.

²⁹ \$775,000 in FY2012 and \$716,000 in FY2013. More resources have been requested – see APHIS (2013), p. 13.

³⁰ APHIS (2013), p. 10.

³¹ Section 3372(f) – see also note 20 above.

³² APHIS (2013), p. 14.

³³ *Ibid.*, p. 11.

³⁴ Such products include composite materials, recycled products and products manufactured prior to the amendment.

³⁵ Meyer D. and Brendler T. (2013), *Stakeholder Opinion Update – Final*, report published by the Forest Legality Alliance – see http://www.forestlegality.org/sites/default/files/WRI-FLA%20Winter%202012-13%20Findings%20-%20Final_2.pdf.

The survey showed that industry is more concerned about how to implement due care than about the import declaration.³⁶ Issues related to due care are discussed in the following sub-section.

Law enforcement

This sub-section examines enforcement under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Lacey Act.³⁷ Most publicly disclosed seizures of wood-based products imported into the US involve CITES-listed species. There were more than 200 seizures of products of CITES-listed species between 2008 and 2012 (see Table 2). The big increase in the number of seizures in 2011–12 was due largely to shipments of *Aquilaria* products being confiscated. A significant number of those shipments were from Saudi Arabia, indicating the growing importance of the Middle East as a transshipment point for certain high-value plant products. During the same period, there were two cases that resulted in prosecution and criminal penalties.³⁸

Table 2: Seizures of CITES-listed timber and wood products in the US

Year	No. of shipments seized	Species
2008	7	<i>Dipteryx panamensis</i> , <i>Gonystylus</i> spp., <i>Pericopsis elata</i> , <i>Prunus africana</i> , <i>Swietenia macrophylla</i>
2009	5	<i>Aquilaria</i> spp., <i>Dalbergia nigra</i> , <i>Pericopsis elata</i> , <i>Prunus africana</i> , <i>Pterocarpus santalinus</i>
2010	10	<i>Aquilaria agallocha</i> , <i>Caesalpinia echinata</i> , <i>Dalbergia nigra</i> , <i>Gonystylus</i> spp., <i>Pericopsis elata</i> , <i>Swietenia macrophylla</i>
2011	59	<i>Aquilaria</i> spp., <i>Dalbergia nigra</i> , <i>Pterocarpus santalinus</i> , <i>Swietenia macrophylla</i>
2012	142	<i>Aquilaria</i> spp., <i>Cedrela odorata</i> , <i>Pericopsis elata</i> , <i>Pterocarpus santalinus</i> , <i>Swietenia macrophylla</i>

Source: US Fish and Wildlife Service biennial reports to CITES (2007–08, 2009–10 and 2011–12) – see <https://www.fws.gov/international/cites/>.

So far, there have been a total of three seizures under the Lacey Act, and other investigations have been completed or are under way.³⁹ The first case, which involved Peruvian hardwoods, resulted in the forfeiture of the goods.⁴⁰ The other two cases were those involving the Gibson guitar company:⁴¹ a shipment of ebony from Madagascar was seized in 2009 and a shipment of Indian rosewood in 2011. Gibson was found guilty of knowingly importing illegal wood. Following a series of litigations and

³⁶ Environmental Investigation Agency, 'Comments regarding the Lacey Act amendments (section 8204 of the Food, Conservation and Energy Act 2008)', *Federal Register* Docket APHIS-2010-0093.

³⁷ Customs officers at all major ports receive training on CITES implementation for tree species. APHIS plant inspection officers cooperate with customs officials, periodically receive additional training on wood identification and are authorized to send samples to USDA's Forest Service Forest Products Laboratory. Further training relevant to both CITES and Lacey Act implementation is provided to customs officers by the Department of Justice and the Department of Homeland Security – see Lawson and MacFaul (2010), p. 59.

³⁸ *United States v. Danny Chien et al.*, No.1:08-CR-00279 (D. N. J.): the case concerned the use of ramin (*Gonystylus*) in furniture imported into the US and resulted in a fine of \$40,000 and three years' probation. *United States v. Alfred Raubitschek et al.*, No. 2:09-CR-20664 (S.D. Fla.), AUSA Tom Watts-FitzGerald: in 2010 Alfred Raubitschek and William Harvey pleaded guilty to trafficking in counterfeit goods, having been involved in the illegal import of more than 260 sets of custom-made pistol grips, made from Brazilian rosewood (*Dalbergia nigra*).

³⁹ Testimony of Stephen Guertin, Deputy Director of the US Fish and Wildlife Service of the US Department of the Interior, before the US House of Representatives, Committee on Natural Resources, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, regarding the 2008 Lacey Act Amendments (16 May 2013). Source: US Fish and Wildlife Service, Congressional and Legislative Affairs.

⁴⁰ These hardwoods were worth more than \$7,000. The shipment was confiscated on the grounds of misclassification: it contained raw wood, but the declaration form stated that finished products were being shipped; the court deemed the misclassification was intentional and the shipment was forfeited by the importer.

⁴¹ 'Gibson guitar corp. agrees to resolve investigation into Lacey Act violations', press release by the US Department of Justice in the Middle District of Tennessee (6 August 2012) – see <http://www.justice.gov/opa/pr/2012/August/12-enrd-976.html>.

negotiations,⁴² both enforcement actions resulted in a criminal enforcement agreement (CEA) in August 2012.⁴³ Previously, the company had not acknowledged its failure to exercise due care and had criticized the enforcement actions; its stance had led to the attempts to amend the Lacey Act, as discussed earlier. However, in the above-mentioned CEA, Gibson stated that it ‘accepts and acknowledges responsibility’ for its conduct related to the Madagascar wood. The company was fined \$300,000 in criminal penalties and ordered to pay \$50,000 to be used for conservation purposes and forfeit the Madagascar ebony; however, the Indian rosewood was returned following a petition filed by Gibson.⁴⁴

By showing that the Lacey Act has ‘teeth’ and can result in substantial penalties, these enforcement cases are likely to have contributed to deterring potential offenders. In addition, the Gibson cases shed light on what constitutes ‘due care’. As part of the CEA, the company was ordered to implement a compliance programme designed to strengthen its exercise of due care.⁴⁵ The agreement spelled out seven steps for the company to follow, which, though very broad, could serve as a model for other importers.⁴⁶ Furthermore, the case raised awareness of the fact that chain-of-custody (CoC) certification does not guarantee that a company has exercised due care. For the shipment of Madagascar ebony, Gibson ‘relied on the fact’⁴⁷ that its supplier was Forest Stewardship Council (FSC) CoC-certified and failed to verify the legality of the wood.⁴⁸ It is often pointed out that CoC certification, or even certified products, should not be interpreted as meeting due care or due diligence requirements; however, many companies misunderstand this point.

These cases also highlight some of the challenges in both compliance and enforcement.⁴⁹ These include the general scarcity of resources – the Lacey Act does not authorize funds for either implementation or enforcement.⁵⁰ One consequence of the Gibson cases is that opinions about the Lacey Act have become more divergent.⁵¹ While it is important to note that much of the debate in the media and even in Congress appears to be based on inadequate understanding of the scope of the act, the negative reaction to the case among some members of the public may create an atmosphere of caution regarding future enforcement action.

International trade cooperation

The US signed a free trade agreement (FTA) with Peru in 2006, which, officially known as the US–Peru Trade Promotion Agreement, entered into force in 2009. Like other such agreements, the US–Peru FTA contains some provisions on the environment; but, unlike other FTAs, it makes references to

⁴² For details, see ‘Gibson Guitar, Forfeiture, and the Lacey Act Strike a Dissonant Chord’, Bloomberg BNA’s *Daily Environment Report* (9 April 2012), at http://www.arnoldporter.com/resources/documents/Arnold&PorterLLP.BloombergBNA%27sDailyEnvironmentReport_090412.pdf.

⁴³ The Madagascar shipment was regarded as in violation of the Lacey Act and other laws, including the law on conspiracy (Conspiracy, Title 18, USC §371). See the CEA on the US FWS website at <http://www.fws.gov/home/feature/2012/USvGibsonGuitarAgreement.pdf>.

⁴⁴ Gibson later made guitars out of the wood, calling them the ‘government series’.

⁴⁵ See the appendices to the CEA on the US FWS website at <http://www.fws.gov/home/feature/2012/USvGibsonGuitarAgreement.pdf>.

⁴⁶ Companies such as Integration Point, Tradestone Software, OnPoint and Solutions Group provide Lacey Act compliance and CoC services – see Elias (2012), p. 13.

⁴⁷ See the CEA on the US FWS website at <http://www.fws.gov/home/feature/2012/USvGibsonGuitarAgreement.pdf>.

⁴⁸ The FSC introduced a rule obliging FSC CoC certificate holders to ‘have procedures in place to ensure that the commercialization of FSC certified products comply with all applicable trade and custom laws’. See ‘USA Forest Products Legality Legislation and FSC’ (28 February 2013), at <https://ic.fsc.org/national-news.328.306.htm>.

⁴⁹ For discussions on this point, see Sheikh, P. A. (2012), ‘The Lacey Act: Compliance issues related to importing plants and plant products’ (Washington DC: Congressional Research Service), p. 8, at <http://www.fas.org/sgp/crs/misc/R42119.pdf>.

⁵⁰ Activities authorized under the law can be funded by appropriations without an authorization – see Sheikh (2012), p. 8. Money from fines imposed for Lacey Act violations can be deposited into the Lacey Act Reward Fund, which can be used to provide rewards for information that help enforcement.

⁵¹ See, for example, Stephens Baker, D., ‘Gibson Case Sets Precedent for Lacey Act Enforcement’, Pallet Enterprise website, 1 October 2012, at <http://www.palletenterprise.com/articledatabase/view.asp?articleID=3755>; ‘Gibson axed up by Lacey Act’ (editorial), *The Washington Times*, 14 August 2012, at <http://www.washingtontimes.com/news/2012/aug/14/gibson-axed-up-by-lacey-act/>; and ‘Gibson Guitar, Forfeiture, and the Lacey Act Strike a Dissonant Chord’, in Bloomberg BNA, *Daily Environment Report*.

illegal logging. Specifically, it has an ‘Annex on Forest Sector Governance’, which seeks to prevent free trade from facilitating illegal trade by strengthening enforcement and stakeholder participation, including audit and verification mechanisms for timber exports to the US.⁵² In addition, Peru agreed to comply with all international environmental laws, including CITES, amid serious concerns about Peruvian exports of mahogany under that regime.⁵³

Following the signing of the US–Peru FTA, a Ministry of the Environment and a monitoring body were established. These work closely with the US Forest Service to improve their enforcement activities.⁵⁴ In 2011 Peru enacted a new Forestry and Wildlife Law, parts of which were influenced by the Peruvian government’s commitment to implement the provisions of the ‘Annex on Forest Sector Governance’ to the FTA.⁵⁵

In addition, the US has proposed that the recent Trans-Pacific Partnership include specific obligations to tackle illegal trade in wood-based products, including an enhanced information exchange between forestry and trade officials at the government level and improved law enforcement cooperation.⁵⁶ The partnership agreement includes several countries that have significant wood-product exports to the US, notably Vietnam and Malaysia, and therefore could be influential. However, it is unlikely that Lacey-like provisions will survive the negotiation process, given the general aversion among negotiators of trade agreements to including restrictive measures.

Public procurement policy

The US has no federal procurement policy for wood-based products; instead, it introduced a broader prohibition on illegal products through the Lacey Act amendments. However, a number of US federal states (e.g., Michigan, Vermont and Massachusetts) do have such policies.⁵⁷ Most of those policies focus on building construction and, rather than including a requirement for legality verification or sustainability certification, are based on a preference for certified wood; and in some cases, the avoidance of tropical wood.⁵⁸ Such policies are implemented in part through reference to green building standards.

⁵² The text of the agreement, including that of the ‘Annex on Forest Sector Governance’ (Annex 18.3.4), is available at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf. See also the Environmental Investigation Agency (EIA) (2012), *The Laundering Machine: How Fraud and Corruption in Peru’s Concession System are Destroying the Future of Its Forests*, at <http://www.eia-international.org/wp-content/uploads/The-Laundering-Machine.pdf>.

⁵³ Owing to concerns about failures to control illegal logging and trade in mahogany, the CITES Standing Committee recommended suspending trade in Peruvian mahogany. The suspension was withdrawn once the committee ruled that Peru had stepped up its effort to control export quotas and had improved legality and sustainability verification. See, for example, WWF, ‘Peru mahogany decision highlights overlooked timber proposals at CITES’ (14 March 2010), at http://peru.panda.org/en/keep_updated/news/?190662/Peru-mahogany-decision-highlights-overlooked-timber-proposals-at-CITES; and International Institute for Sustainable Development (IISD), ‘CITES Standing Committee Lifts Trade Suspensions Against Nigeria, India, Recognizes Peru’s Efforts’ (26 August 2011), at <http://biodiversity-l.iisd.org/news/cites-standing-committee-lifts-trade-suspensions-against-nigeria-india-recognizes-perus-efforts/>.

⁵⁴ The US Trade Representative (USTR) has provided institutional support to the Peruvian authorities too – see ‘US and EU Policy Options for Trade in Agricultural Commodities: Building on the Expertise of the Forest Sector’, Chatham House Energy, Environment and Resources Meeting Summary (September 2013), at <http://www.illegal-logging.info/content/us-and-eu-policy-options-trade-agricultural-commodities-building-expertise-forest-sector>.

⁵⁵ The Forestry and Wildlife Law No. 29763. For more details, see EIA (2012), pp. 10–11.

⁵⁶ USTR (2011), *Green Paper on Conservation and the Trans-Pacific Partnership*, <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/ustr-green-paper-conservation-and-trans-pacific-partnership>.

⁵⁷ Goetzl, A. and Ekström, H. C. (2007), *Report on the Review of the US Market for Tropical Timber Products* – see http://www.itto.int/news_releases/id=34980000.

⁵⁸ Procurement policies restrict the use of tropical wood in public construction in at least two states – Arizona and New York – and several municipalities, including San Francisco, Santa Monica and Santa Cruz, California; Baltimore, Maryland; and Bellingham, Washington.

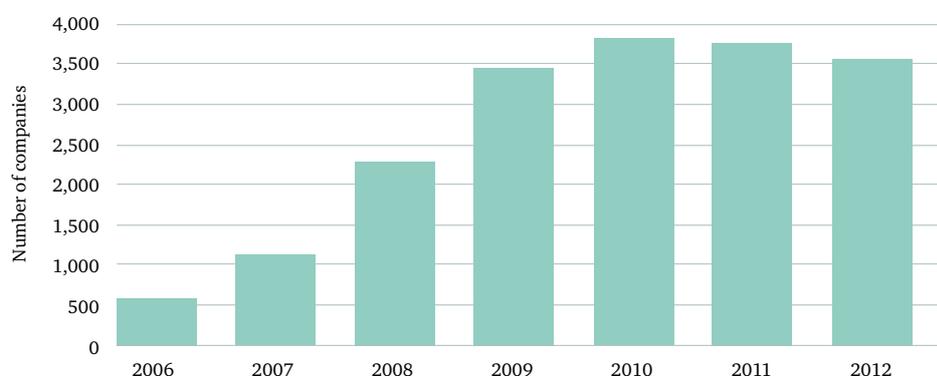
Progress by the Private Sector

In addition to assessing government measures to tackle the problem of illegal logging, this study evaluates the degree and effectiveness of the response by the private sector. For consumer countries, an important indicator is the extent of private-sector uptake of voluntary legality verification and sustainability certification standards. As in 2010, the study assesses the uptake of FSC CoC certification.⁵⁹ It should be noted, however, that the number of companies with such certification is an imprecise indicator because those companies do not necessarily handle FSC-certified products. To provide an additional metric, data on the volume of certified products on the US market were sought; but insufficient data were found.

The number of companies that acquired FSC CoC certification doubled in 2008, when the Lacey Act amendments were introduced. Thereafter the number continued to grow but more recently started to decrease: around 80 companies left the scheme in 2011 and almost 200 in 2012 (see Figure 2). Of the five consumer countries examined in this assessment, the US ranks fourth (after France, the UK and the Netherlands) in terms of the number of companies with FSC CoC certification per million people (see Figure 3).

A number of factors may be contributing to the decrease in FSC CoC certification. First, there are competing schemes in the US, notably the Sustainable Forestry Initiative, under which CoC certification has increased in recent years – more than 700 such certificates have been issued to date.⁶⁰ Second, companies are applying for group certification, which is an option for small firms under the FSC system. Third, some companies may have pursued CoC certification at the time of the introduction of the Lacey Act amendments without fully understanding its scope: such certification may have been seen as automatically fulfilling ‘due care’ obligations, since companies may not have understood that the FSC system applies only to those products that come with FSC-certified or controlled wood claims.⁶¹ The Gibson enforcement cases may have confused people even further, as the company had FSC CoC certification.

Figure 2: Number of companies with FSC CoC certification



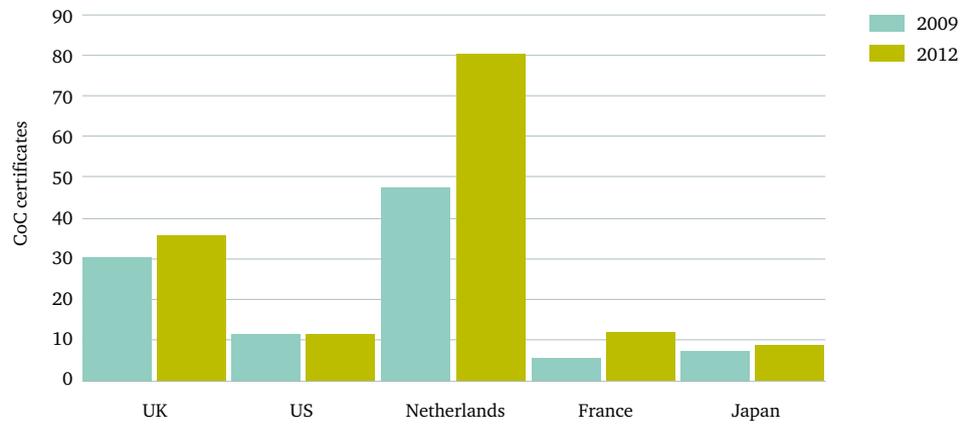
*As of October each year.
Source: FSC.

⁵⁹ Although the PEFC is used extensively in consumer countries, to date only a relatively small area of tropical forest has been certified under the scheme (with the exception of Malaysia). This means that the FSC is a better indicator across the range of producer, processing and consumer countries.

⁶⁰ The Sustainable Forestry Initiative database at <http://64.34.105.23/PublicSearch/SearchCertificate.aspx>.

⁶¹ Furthermore, until recently FSC controls did not include all the elements of the Lacey Act definition of legality. As of 1 March 2013, amended rules have been in force under which this is no longer the case – see <https://ic.fsc.org/national-news.328.306.htm>.

Figure 3: Number of companies with FSC CoC certification, per million people*



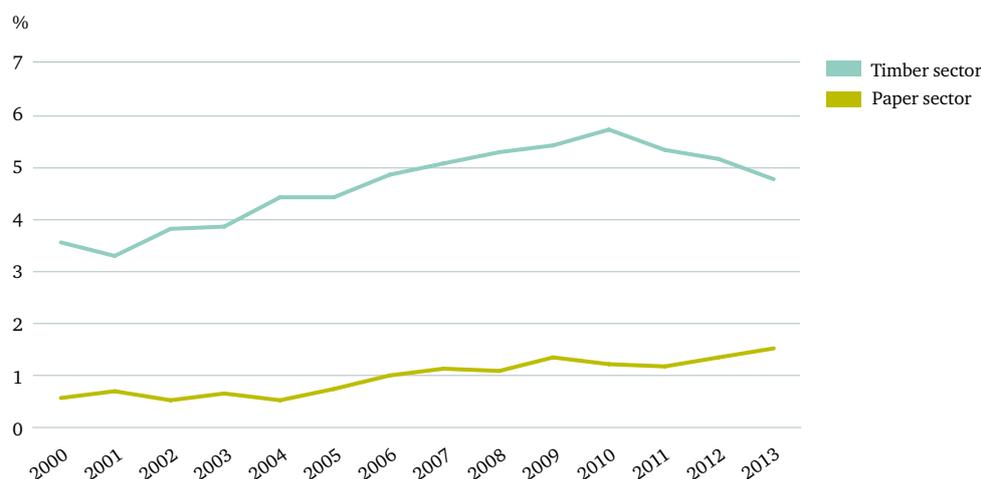
*Source: FSC.

Sources for population data: World Bank (figure for 2006–11) and the Population Reference Bureau (2012).

Estimated Levels of Illegal Imports

To estimate the level of imports of wood-based products that are likely to be illegal ('high-risk'), Chatham House undertook an evaluation of product flows (see Annex 2 for further details). The volume of US imports of wood-based products considered at high risk of illegality is estimated to have increased between 2000 and 2006, declined during the period 2007–11 and risen slightly up to 2013. Those trends partly mirror changes in the US economy: overall, timber imports increased up to 2006, then declined until 2009 and increased slowly in the following years. During the period 2000–10, the estimated RWE volume of high-risk timber-sector products as a proportion of overall timber-sector imports grew gradually from four per cent to six per cent, while the share of the value of such products rose from eight per cent to 12 per cent (the equivalent figures for high-risk paper-sector products have remained unchanged at about one per cent for RWE volume, although they have increased slightly from one to two per cent for value). Subsequently, however, there has been a decline: the respective figures for timber-sector products stood at five per cent and ten per cent in 2013 (see Figure 4). It would be encouraging if this decline could be attributed to the Lacey Act amendments; and it may indeed be the case that they have played a role. However, another important factor is the action taken in many producer countries to tackle illegal logging. Disaggregating the various factors is a hugely challenging task.

Figure 4: Estimated percentage of imports of timber- and paper-sector products at high risk of illegality (by RWE volume)



Source: Based on official trade statistics (USITC Trade DataWeb) and analysis by Chatham House.

China has become the leading source of high-risk wood-based products for the US: it is estimated that in 2013 it accounted for about 60 per cent of such products, both by import value and RWE volume (see Figure 5).⁶² This reflects the significant growth of the wood-product trade from China to the US;

⁶² This assessment takes into account the volume of exports that are likely to be based on imported raw materials and those based on domestic sources, but it should be noted that there are discrepancies in national statistics. See, for example, ITTO, APFNet and FAO, '(2013), *Proceedings of the Workshop on Forest Product Statistics in China*, at <http://www.fao.org/docrep/018/ar058e/ar058e.pdf>.

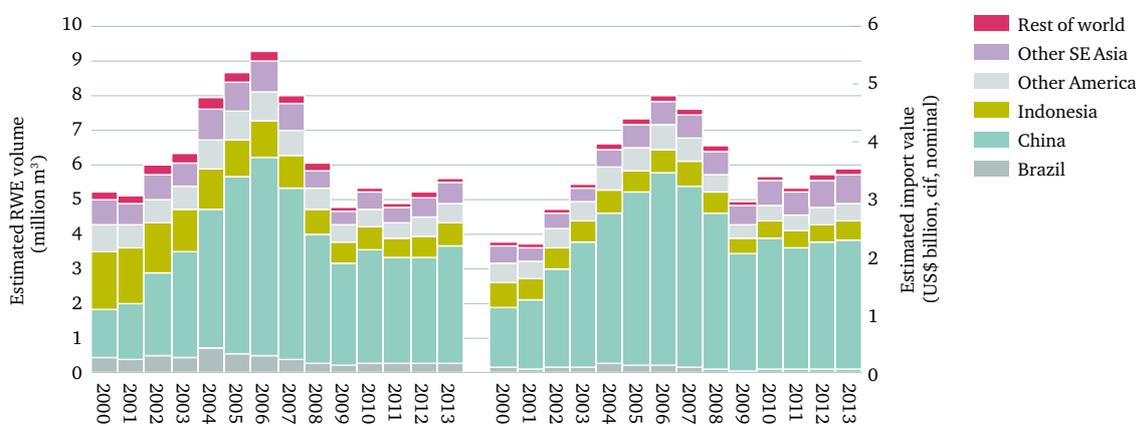
such trade accounted for more than a quarter of all imports (by import value) in 2013 – of which more than half was furniture – compared with just eight per cent at the start of the millennium.

Vietnam is another increasingly significant source of potentially illegal wood-based products, accounting for an estimated seven per cent of all such products (by RWE volume) in 2013, compared with two per cent in 2006. As in the case of China, this is a reflection of the country’s growing importance as an exporter to the US. Vietnamese exports of wooden furniture to the US have increased rapidly in recent years, more than doubling between 2006 and 2013.

One country that has become much less important as a source of high-risk products is Brazil. Brazilian exports of such products to the US are estimated to have declined significantly since the mid-2000s and from 2009 onwards have been very low. This is a result not only of the significant forest enforcement efforts in Brazil in recent years but also of the decline in overall trade from that country.

There has also been a decline in high-risk imports from Indonesia, which were estimated at 12 per cent of the total (by RWE volume) in 2013, compared with more than a third in 2000. This reflects both improved enforcement in Indonesia (particularly in the first half of the last decade) and the decline in US direct imports from this country.

Figure 5: Estimated volume and value of imports of wood-based products at high risk of illegality, by supplying country or region



Source: Based on official trade statistics (USITC Trade DataWeb) and analysis by Chatham House.

Conclusions and Recommendations

The Lacey Act amendments have been an important piece of legislation for the forest industry – both in the US and around the world. There are indications that it is influencing behaviour within the industry and helping to make supply chains more transparent.⁶³ The proportion of high-risk timber-sector products of total imports into the US is estimated to have decreased since 2010, although it is not possible to determine the extent of the influence of the Lacey Act compared with that of other factors, including actions in producer countries.

Six years after the enactment of the Lacey Act amendments, the challenges for their effective implementation and enforcement have become clearer. Although the ‘new norm’ of the amended act seems to have been generally accepted within the industry, how to implement ‘due care’ remains a concern. With respect to enforcement, the recent additional funding for APHIS is to be welcomed and should improve the effectiveness and efficiency of enforcement. Sufficient levels of funding need to be maintained, however, to ensure that such efforts can be sustained.

The Gibson cases resulted in divergent public opinions about the legislation, and it remains to be seen whether the ‘politicization’ of the debate will have an impact on the future of the legislation. However, given that none of the efforts to weaken the amended act was successful, it seems that support for the legislation remains strong – within the government and among NGOs, members of industry and the broader public.

Since the Lacey Act was amended, there have been significant policy changes around the world, notably the entry into force of the EUTR in 2013 and the approval of the Australian Illegal Logging Prohibition Act, which will enter into force in late 2014. It is to be hoped that these three pieces of legislation will reinforce one another. Currently, though, it is unclear whether they will be able to bring about significant change in the global forest industry or if there will simply be a shift in trade between countries, depending on their level of scrutiny of legality. For this reason, the impact of the Lacey Act on forest management should continue to be monitored.

This assessment recommends the following:

- That the procedure for processing import declaration forms be improved and that data collected through such declarations be fed into proactive enforcement actions, for which more financial support should be provided;
- That the US government continue to encourage its trading partners to strengthen their forest governance, whereby further cooperation with China must be a priority – for both the government and the private sector – as that country is the main source of imports of wood-based products into the US.
- That companies in the US continue to exercise their purchasing power to encourage suppliers to make their supply chains more transparent to help ensure the sourcing of legal and sustainable products.

⁶³ See, for example, a recent survey by the Forest Legality Alliance on the perceived impacts of the Lacey Act, cited in Meyer and Brendler (2013).

Annex 1: Policy Assessment Scores for 2008 and 2013

	Existence (0–2)		Design (0–5)		Implementation (0–5)	
	2008	2013	2008	2013	2008	2013
<i>High-level policy</i>						
Official review of imports and consumption of illegal wood-based products	1	1	2	2	2	2
National action plan	2	2	2	2	4	4
Coordination process for relevant government departments	2	2	4	4	4	4
Multi-stakeholder consultation processes	2	2	3	3	3	4
<i>Legislative framework</i>						
Analysis of existing legislation and regulations	2	2	2	3		
Enactment of additional legislation	2	2	4	4	n/a	4
Range of products covered by any additional legislation	*		*	5	*	
Applicability to importers or companies along the supply chain	*		*	5	*	
Inclusion of a requirement on businesses to implement due diligence	*		*	3	*	
Systematic monitoring and assessment of implementation and impact	*		*	3	*	
<i>Law enforcement</i>						
Training for customs and other relevant officials on existing timber import controls for wood-based products	2	2				
<i>International engagement</i>						
Formalized trade or customs arrangements with major trading partners	1	2	3	3	3	3
Formalized system for sending and receiving enforcement alerts	1	2	4	4	n/a	3
<i>Public procurement policy</i>						
Existence and implementation of public procurement policy	0	0			n/a	n/a

*The policy scores included in the 2010 report were based on an assessment of the situation at the end of 2008; and those for the current assessment on the situation at the end of 2013. A grey cell indicates that the answer to the question posed was not scored; an asterisk indicates that the question was not asked in 2010. Policies were assessed according to the following factors: existence (scoring between 0 and 2, whereby 1 indicates partial coverage or a policy under development); design (scoring between 1 and 5, whereby 5 indicates very well designed); and implementation (scoring between 1 and 5, whereby 5 indicates consistent and comprehensive implementation).

Annex 2: Methodology

The methodology employed to undertake the assessments of the 13 countries included in the 2014 Indicators of Illegal Logging and Associated Trade study is based on that developed by Chatham House for its 2010 assessment. Below is a brief overview of the data collection and analysis process. Further explanation of how the indicators were developed can be found in earlier reports.⁶⁴

The countries included in the study were selected on the basis of the significance of their role in the production and consumption of illegal wood-based products. Four years after the first assessment, the 12 original focus countries continue to account collectively for the majority of exports and imports of such products. Lao PDR is included in the 2014 assessment owing to its increasing importance in the global trade in wood-based products.

Indicators of progress

Chatham House has developed a set of standardized indicators to allow a comparative evaluation to be undertaken. The indicators cover four areas:

- a) Media attention – entailing quantitative and qualitative analysis of media coverage of the issue of illegal logging and associated trade;
- b) Government response – entailing an assessment of the policy framework and analysis of enforcement data;
- c) Progress by the private sector – entailing an assessment of the level of chain-of-custody certification; and
- d) Estimated level of illegal trade – entailing an analysis of trade data to estimate the level of illegal imports.

An outline of how these data were collected is provided below.

Media attention

The level of attention afforded to illegal logging and related trade in the domestic and international media was assessed using both quantitative and qualitative methods. The volume of articles in the international media was measured through a search of online media archives (Factiva, Newsbank and LexisNexis) using the term ‘illegal logging’ and the country name. A similar approach was adopted with domestic media: the search term ‘illegal logging’ was used in English and/or the local language. Online archives were used where possible and physical archives where no such digital records were available. Country partners were asked to identify those newspapers, journals and media outlets that can be considered to qualify as ‘major circulation’.

⁶⁴ Lawson, S. (2007), *Illegal Logging and Related Trade*; and Lawson, S. and MacFaul, L. (2010), *Illegal Logging and Related Trade. Indicators of the Global Response*. London: Chatham House.

The articles were then categorized according to their main focus: enforcement, private-sector response, government response, impacts or 'other'. The search period for domestic media coverage was the year from October to September, while that for international media was the calendar year.

Policy assessment

For each of the countries included in the study, an in-country partner was selected by Chatham House to assess the national policy and legal framework for dealing with the issue of illegal logging and related trade. For consumer countries, the questions were grouped into five broad categories: high-level policy, legislative framework, law enforcement, international engagement and public procurement policy. In addition, enforcement data were collected and incorporated into the policy assessment.

In-country partners were provided with an advisory framework on scoring and the scores from the first-round assessment, in order to maintain a degree of consistency across countries and between the two assessments. The scores were then reviewed by Chatham House researchers and peer reviewers and amended where necessary.

Level of CoC certification

To assess the private-sector response, Chatham House collected data on the number of companies in each consumer country that have achieved FSC CoC certification. In theory, FSC CoC-certified companies are those that deal in FSC-certified products. In practice, a considerable number of CoC-certified companies handle few or no FSC-certified products. For this reason, data on CoC-certified companies must be interpreted with some caution. Data on CoC certification in each consumer country were provided by the FSC and analysed by Chatham House.

Analysis of trade data

The level of imports of wood-based products at high risk of illegality was estimated through a detailed evaluation of product flows (for which the term 'import-source analysis' was coined). The evaluation involved estimating the RWE volume and value of imports (in US dollars) from official import data for each year as well as the bilateral flow of each category of wood-based product. Those values were then multiplied by estimates of the proportion that was likely to be illegal. That proportion was based on an estimate of the level of illegality likely to be associated with the export of each product category for a given country and year as well as the extent to which importing countries demonstrate a preference for legal (e.g., FSC-certified) products. Further details of how the estimates were made are provided in a methodology paper.⁶⁵

⁶⁵ Hoare, A. (2014), *Methodology for estimating levels of illegal timber- and paper-sector imports*. London: Chatham House.

Glossary

APHIS	Animal and Plant Health Inspection Service
CBP	Customs and Border Protection
CEA	criminal enforcement agreement
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain-of-custody
EIA	Environmental Investigation Agency
EU	European Union
EUTR	EU Timber Regulation
FSC	Forest Stewardship Council
FTA	free trade agreement
NGO	Non-governmental organization
PIAIL	President's Initiative Against Illegal Logging
RWE	Roundwood equivalent
USDA	US Department of Agriculture
USTR	US Trade Representative
WRI	World Resources Institute

About the Author

Dr Mari Momii is an independent environmental policy analyst and a part-time lecturer at Atomi University in Japan. From 2008, as a representative of Deepgreen Consulting, she has done research for and given policy advice to many international environmental groups and institutions including the Environmental Investigation Agency (EIA). She was a campaigner at EIA between 2003 and 2004, and a treaty adviser for the International Fund for Animal Welfare between 2006 and 2009. She was also a CSR consultant for Yamaha Corporation between 2008 and 2010 and has given advice to corporations in and outside Japan. Her areas of expertise include biodiversity conservation policy, illegal logging and related trade issues, as well as sustainable supply chain management and other issues relating to corporate social responsibility.

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