



Submission No 17

## **Inquiry into Illegal Logging Prohibition Bill 2011**

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**Justice and International Mission Unit  
Synod of Victoria and Tasmania, Uniting Church in Australia**

**Submission on  
Illegal Logging Prohibition Bill 2011  
May 2012**

The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia (the Unit) welcomes this opportunity to make a submission on the international implications of the *Illegal Logging Prohibition Bill 2011*.

While the Unit would have preferred to see some minor amendments to strengthen the legislation, it does not wish to be party to 'making the perfect the enemy of the good'. It is concerned by those in the Parliament that would now seek to delay all the provisions of the *Illegal Logging Prohibition Bill 2011* for a period of at least two years, if not longer. Further, at least one Member of Parliament has publicly questioned the need for the legislation at all.

Illegal logging is primarily serious organised crime, facilitated by bribery, money laundering and other forms of corruption. The Unit believes the current legislation should be passed without further delay. It notes there will be a period of two years for the implementation of the regulations regarding the due diligence requirements in the Bill (Sections 12 to 14 and 17 and 18), which set the risk assessment timber and wood product importers and domestic wood processors will need to take to reduce the risk the product they are sourcing has been illegally logged.

The Unit does not support further delays in taking pro-active action to deal with this serious organised crime. The Commonwealth Government should not continue to allow Australian markets to be a safe haven for the proceeds of crime in terms of timber and wood products derived from illegal logging. This legislation moves Australia, in line with the US and the EU, towards consumer countries becoming pro-active in assisting in ending, for what is for the most part, an organised criminal activity.

The Unit notes that the US *Lacey Act* was amended in 2008 to cover importation of illegally logging timber and wood products into the US, in a similar way to that proposed for the *Illegal Logging Prohibition Bill*. The Unit notes that no state exporting timber to the US has yet attempted a WTO case against the US as a result of the amendments to the *Lacey Act*. This fact should provide some comfort against speculation that passage of the *Illegal Logging Prohibition Bill* might lead to a WTO case.

The *Illegal Logging Prohibition Bill* has an important role to play in global efforts to combat illegal logging. It can be seen to have a similar intent to the US *Lacey Act*, which in the words of the US Department of Justice:

*To those profiting from illegal logging, successful prosecutions under the Lacey Act will send a message that the United States will no longer tolerate a “business as usual” mentality that looks the other way as illegally harvested timber and wood products made from such timber flow through the supply chain and enter the United States. By prosecuting Lacey Act cases, federal prosecutors will play an important role in the efforts to combat illegal logging and deforestation and to address the myriad environmental and social harms that result from such environmental crimes.<sup>1</sup>*

### **The Uniting Church’s position on Illegal Logging and Corruption**

The Unit welcomed the commitment of the Coalition, the Labor Party and the Australian Greens in the lead up to the last Federal election to banning the importation and sale of illegally logged timber into Australia. The Synod of Victoria and Tasmania also supports such a policy outcome from three perspectives:

- That the policy will strengthen global efforts to stop local impoverished communities from having their forest resources taken illegally from them, and thus losing the resource without any compensation;
- That the policy will contribute to more sustainable management of global forest resources, noting that deforestation currently contributes in the order of 20% of greenhouse gas emissions globally; and
- That the policy is consistent with Australia’s obligations under international treaties to assist in the global efforts to eliminate corruption and serious organised crime.

In 2004, as part of a broad resolution on forestry, the annual meeting of representatives of the Synod of Victoria and Tasmania resolved:

(v) *To call on the Australian Government to:*

- *Work with other governments in the Asia-Pacific region (especially those of Indonesia, Papua New Guinea and Malaysia) to end illegal logging activities;*
- *only allow the importation of certified timber and wood products, certified under internationally recognised schemes such as that of the Forest Stewardship Council or the Pan-European Forestry Council;*

The Justice and International Mission Unit believes there is a need to combat corruption, which is a factor in efforts to eradicate poverty globally. The Uniting Church in Australia at its Inaugural Assembly in 1977 stated that in response to the Christian gospel:

*We pledge ourselves to seek the corrections of injustices wherever they occur. We will work for the eradication of poverty and racism in our society and beyond.*

The 2007 annual meeting of representatives of the Synod of Victoria and Tasmania passed a resolution acknowledging “*there is a need to address corruption within developing countries to work towards the eradication of poverty*” and “*some wealthy countries continue to maintain laws and practices that foster, reward and allow them to benefit from corruption in developing countries*”. The resolution commended the Australian Government for the steps it had taken to combat corruption globally and urged that a number of further measures be taken. It also lamented that church members had been the beneficiaries of corruption in developing countries largely through the purchase of goods at lower prices due to corruption being involved in their production.

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<sup>1</sup> Elinor Colbourn and Thomas Swegle, “The Lacey Act Amendments of 2008: Curbing International Trafficking in Illegal Timber”, United States Attorneys’ Bulletin, July 2011, p. 105.

In March 2008, the Justice and International Mission Unit published a report on global corruption, *From Corruption to Good Governance*, which outlined Australia's performance in tackling corruption and what further actions could be taken. The report was endorsed by TEAR Australia, the Christian World Service of the National Council of Churches in Australia and Transparency International Australia.

### **Illegal Logging as Serious Organised Crime and the role of Corruption**

Illegal logging is primarily a serious organised crime activity. The crimes associated with illegal logging identified by the World Bank are:<sup>2</sup>

- Offences relating to actual timber harvesting operations
  - Environment offences and unauthorised harvesting
    - Harvesting protected species
    - Harvesting over- and under-sized trees
    - Logging in protected areas
    - Logging outside of concession boundaries
    - Logging in prohibited areas
    - Logging without authorisation
  - General criminal property offences
    - Theft
    - Embezzlement
- Offences that criminalise the facilitation of, access to and profiting from illegal logging
  - Corruption – giving and receiving bribes and gratuities
  - Theft and embezzlement of public property
  - Intangible right of citizens to honest services of employees
  - Laws against criminal organisations
  - Conspiracy
  - Violent crimes
    - Kidnappings
    - Death threats
    - Murders
- Offences by which the offender benefits from the possession of illegal timber
  - Smuggling
  - Trafficking in stolen goods
  - Receiving or concealing stolen goods
  - Money laundering

Both the finances and products derived from illegal logging are proceeds of crime. The Unit is deeply concerned by arguments that global trade rules, under the World Trade Organisation (WTO), may provide legal impediments to Australia being able to address proceeds of crime entering its markets if those proceeds of crime enter the market in the form of tradeable goods. This would indeed be a perverse outcome, where the WTO rules are interpreted as offering a shield to the profits and laundering activities of organised crime operations.

In considering a ban on the sale and importation of products made with illegally logged timber, the Unit believes there is a moral and values dimension. Simply, Australia should be seeking to combat corruption and not be accepting products that are the proceeds of crime. This is different to the amoral approach that argues that Australia should not act to stem corruption in logging globally (and therefore embrace the proceeds of crime entering the Australian market) until it can be sure that the actions it takes will have a practical impact. The argument the Unit supports is that Australia should not participate in corruption and organised crime, even if other countries fail to live up the same standard.

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<sup>2</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, "Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging", The World Bank, 2012, p. 19.

Both Article 2 of UN Convention against Transnational Organised Crime (UNTOC) and Article 2 of UN Convention Against Corruption (UNCAC) defines “Proceeds of Crime” as “any property derived from or obtained, directly or indirectly, through the commission of an offence”. By this definition, timber and wood products produced through illegal logging and any revenue generated from the sale of such goods are proceeds of crime.

Article 23 of UNCAC addresses the laundering of the proceeds of crime:

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

Article 6 of UNTOC is very similar to Article 23 of UNCAC.

Thus, under Article 6 of UNTOC and Article 23 of UNCAC it can reasonably be argued that at a minimum it should be an offence for an Australian company to accept or sell any good where they know the good has been illegal produced.

Article 31 of UNCAC requires that States Parties take legal steps to confiscate the proceeds of crime and to identify and trace the proceeds of crime, stating:

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

- (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
- (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.
4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.
9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.
10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 12 of UNTOC is very similar to Article 31 of UNCAC.

Thus Article 12 of UNTOC and Article 31 of UNCAC can be seen to justify the Australian Government requiring companies to undertake due diligence measures to ensure the legality of timber or wood products entering the Australian market, either as imports or through domestic production. Further Article 12(7) of UNTOC and Article 31(8) of UNCAC would justify the Australian Government requiring importers and processors of timber and wood products to demonstrate the goods they are importing and selling in Australia are from legal sources.

Article 18 of UNTOC requires States Parties to co-operate on matters of transnational organised crimes including “Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes.”

Article 27 of UNTOC and Article 48 of UNCAC requires States Parties to cooperate across borders in conducting inquiries with respect to offences covered by the Convention

concerning “The movement of proceeds of crime or property derived from the commission of such offences.”

These treaty obligations to address proceeds of crime should be considered in balance with Australia’s obligations under WTO rules.

The Unit notes Australia’s anti-corruption treaty obligations with regards to taking steps to ending corruption in the logging industry and ensuring that the Australian market for timber and wood products does not foster or reward corruption. These obligations includes taking steps to ensure that there is not bribery of foreign public officials and that Australia is not a haven for the proceeds of crime. Such obligations are contained within the following treaties that Australia has committed itself to uphold:

- UN *Convention Against Corruption*;
- OECD *Convention on Combating Bribery of Foreign Public Officials in International Business*; and
- UN *Convention against Transnational Organised Crime*.

Bribery plays a significant role in illegal logging. For example, an analysis of corruption related to logging in Papua by the internationally renowned U4 Anti-Corruption Resource Centre pointed out all the levels at which bribes can be paid to facilitate illegal logging with a resulting loss of legitimate revenue to the Indonesian Government.<sup>3</sup>

#### *District Level*

*Under the current payment system, local governments – through the district forestry service unit (DFSU) – have the primary responsibility for collecting forest revenues. They have information on the planned and actual logging conducted by each forestry company within their jurisdiction. They also have the power to issue payment documents and to control this payment. Finally they have the authority to examine the consistency of wood produced by a forestry company and the amount paid in fees.*

*These cash payments must go directly to bank accounts owned by the MoFOR [Ministry of Forestry]. There are three main opportunities for bribery here, however. First, the DFSU can allow certain amounts of logs to go unreported so that forestry companies do not have to pay fees. This corrupt practice is very costly to the forestry company, however, since it must then also bribe all government and law enforcement officers involved in the wood’s movement from forest to market. Second, the DFSU may take bribes for allowing companies to plan more logging than their concessions allow. This practice allows forestry companies to incorporate illegal logs they collect or buy in their wood production reports. Third, the DFSU can work with bank officials to endorse false payment documents as if the forestry company had made payments. A key weakness here is that the current payment system does not provide solid sanctions for improper payment, while it is also difficult to track payments for each individual forestry company.*

#### *Provincial Level*

*A second level of corruption takes place in the Provincial Forestry Services Unit (PFSU). PFSU officers control annual wood production plans by forestry companies with valid logging licences. They can approve annual plans, however, only once the forestry companies pay their fees. With this power, they can examine all fee payment records, including evidence of transfers to accounts held by the MoFOR. Ideally, the PFSU should receive documents related to actual wood production and the payment of fees by all forestry companies from its DFSU colleagues. Unfortunately, however, under the current autonomous local government system, the DFSU is not subordinate*

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<sup>3</sup> U4 Anti-Corruption Resource Centre, “Corruption and forest revenues in Papua”, June 2008, pp. 2-3.

to the PFSU. As a result, the former can potentially ignore the latter's requests without sanction, including where there are an obligation to provide documents related to forestry companies.

*Bribes worth more than a billion Rupiah (or about US\$100,00) per year, can lead the PFSU to approve a company's annual plans without proper control of its fee payments or the amount of logs to be cut. An annual plan approved in this way will typically indicate much higher annual wood production than that under a sustainable forest logging operation. This is used by forestry companies to include illegal logs in wood production reports as if they were from legal logging concessions. This form of 'wood-laundering' has been practised by forestry companies in other parts of Indonesia for many years.*

The OECD has assessed the negative impacts of allowing corruption to flourish in markets:<sup>4</sup>  
*Bribing public officials to obtain advantages in international businesses raises serious moral and political concerns, undermines good governance and sustainable economic development, and distorts international competition.*  
and:<sup>5</sup>

*Foreign bribery distorts international competitive conditions and denies companies the ideal "level playing field" on which to do business.*

Failing to address bribery fosters a culture of impunity and repeat corruption, undermines the functioning of public institutions and fuels a public perception that governments and bureaucracies are up for sale to the highest bidder.<sup>6</sup>

As noted by Cliff Rees, Partner at PricewaterhouseCoopers in Indonesia:<sup>7</sup>

*The most important issue in any business decision is not ethics. For businesses, it is risks. If a transaction is considered to be low-risk with high returns, then from a business perspective, it is an ideal transaction. Now if we want to change decisions made by businesses, then we have to change our approach, and not focus purely on ethics.*

*This means that we need to increase the legal risks associated with corruption. Through the passage of strong laws prohibiting corruption, enforcing the law is actually publishing the identities of wrongdoers. Second, we need to ensure that businesses start considering the legal and reputation risks associated with corruption and consider these risks in making decisions.*

The World Bank estimates illegal logging as a criminal activity generates approximately US\$10 – 15 billion annually worldwide – funds that are unregulated, untaxed and often remain in the hands of organised criminal gangs.<sup>8</sup> In addition the World Bank estimates tax evasion through underpayment of royalties and taxes on legally sanctioned logging amounts to an additional US\$5 billion profits for those engaged in criminal behaviour.<sup>9</sup> Indonesia alone loses all the tax revenue on an estimated US\$5 billion worth of illegal logging.<sup>10</sup> In the view of

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<sup>4</sup> OECD Policy Brief, "Fighting Bribery in International Business Deals", October 2009, p. 1.

<sup>5</sup> Ibid., p. 2.

<sup>6</sup> Transparency International, 'Global Corruption Report 2009: Corruption and the Private Sector', p. xxv.

<sup>7</sup> ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, "Fighting Bribery in Public Procurement in the Asia and the Pacific", 2008, p. 191.

<sup>8</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, "Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging", The World Bank, 2012, p. vii.

<sup>9</sup> Ibid. p. 1.

<sup>10</sup> Ibid. p. 17.



the World Bank, large-scale illegal operations are carried out by sophisticated criminal networks, protected by high-level corrupt officials.<sup>11</sup> Whether in the form of bribes of local forest officials or securing the protection from high-ranked political figures, large-scale illegal logging operations cannot occur without the explicit or implicit consent of those government officials in charge of protecting forests. Indeed, research has shown that forest crime is, in most countries, accompanied by corruption among regulatory and forest law enforcement officials, making it even more difficult to detect and prevent these crimes.<sup>12</sup> The World Bank gives as an example the case of illegal logging in the Virachey National Park in Cambodia, in which, amongst the government officials prosecuted and convicted in the case, was the governor of one of the largest provinces in Cambodia.<sup>13</sup>

As illegal logging tightens the profit margins for legal producers, standards slip and legal operators log less sustainably. The World Bank has concluded that as a result of illegal logging “Legitimate forest enterprises are subjected to unfair competition through price undercutting and discouraged from making socially and environmentally responsible investments in the sector.”<sup>14</sup> Further, “the extensive corruption associated with illegal logging weakens broader structures of governance and the rule of law.”<sup>15</sup> The World bank has stated companies that pay bribes to corrupt officials in producer countries may be based in consumer countries.<sup>16</sup>

Global Witness and the World Bank have pointed out that in their experience the same organised criminals that are involved in illegal logging are involved in or linked to other forms of crime such as human trafficking, money laundering, wildlife crime, and drugs all of which have negative impacts on the economy at large.<sup>17</sup>

Global Witness reported in Cambodia threats of violence against community foresters looking for illegal logging, including death threats and gunshots, and the apparent kidnapping of the managing director of a logging company.<sup>18</sup> After the report was released in 2007, journalists reporting on the allegations linking senior politicians to illegal logging cartels received death threats and violent intimidation, including arson attacks.<sup>19</sup> The Unit notes, as a very recent example of the extremely serious crime that is associated with illegal logging, Chhut Vuthy, president of the Natural Resource Conservation Group, was gunned down by at least one military police officer on 26 April 2012 while documenting illegal logging in Ko Kong province with two female journalists from *The Cambodian Daily*. The military police had tried to confiscate the memory card in Chhut Vuthy’s camera.<sup>20</sup> The police version of the killing is that the officer who shot Chhut Vuthy then killed himself. The journalists present at the killing are reported as giving a version of the killing in which Chhut Vuthy and the military police officer may have been gunned down by a second police officer, as the first police

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<sup>11</sup> Ibid. p. vii.

<sup>12</sup> Ibid. p. 6.

<sup>13</sup> Ibid. p. 31.

<sup>14</sup> World Bank, “Forest Source Book”, 2008, p. 151.

<sup>15</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, “Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging”, The World Bank, 2012, p. 2.

<sup>16</sup> Ibid. p. 7.

<sup>17</sup> Patrick Alley, Global Witness, e-mail 12 November 2009; World Bank, “Forest Source Book”, 2008, p. 155 and Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, “Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging”, The World Bank, 2012, p. 7.

<sup>18</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, “Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging”, The World Bank, 2012, p. 17.

<sup>19</sup> David Boyle and Bridget Di Certo, “Chut Wutty slain: Another chapter in bloody history”, <http://www.phnompenhpost.com/>, 27 April 2012.

<sup>20</sup> “Death of Chhut Vutty: an Open and Shut Case?”, <http://penhpal.com/2012/04/death-of-chhut-vutty-an-open-and-shut-case/>, 28 April 2012.

officer was trying to stop Chhut Vuthy from driving away. Police are reported as declaring the case closed, despite the contradictory versions of events by the witnesses.<sup>21</sup> *The New York Times* even reported a military police spokesperson as initially alleging Chhut Vuthy had shot the military police officer.<sup>22</sup>

In December 2011, Chhut Vuthy had helped *The Phnom Penh Post* expose large-scale illegal logging and corruption in the southwestern Central Cardamom Protected Forest that was being conducted by military and forestry officials with the complicity of a conservation group. It was estimated the activity was worth tens of millions of dollars.<sup>23</sup>

Chhut Vuthy was not the first anti-corruption campaigner working against illegal logging to be murdered in Cambodia. In October 2009 an anti-corruption campaigner was murdered with an axe in Kratie's Sambo district after his work had led to a large-scale crackdown on illegal logging in the months prior to his murder.<sup>24</sup>

In October 2010, a forestry administration official was hacked to death with axes in a revenge murder for his work in cracking down on illegal logging.<sup>25</sup>

In January 2010, Royal Cambodian Armed Forces soldiers had detained 10 journalists at gunpoint because they were investigating illegal logging. The journalists were released after their cameras were confiscated.<sup>26</sup>

Criminal activity associated with illegal logging can involve third party countries being caught up in the laundering of these proceeds of crime. For example, the UN Office on Drugs and Crime 2010 report on *The Globalisation of Crime, A Transnational Organized Crime Threat Assessment* noted that merbau logs from neighbouring Papua are laundered through PNG.<sup>27</sup> This laundering includes organised criminal syndicates using origin certificates from PNG for illegally harvested merbau from Papua.<sup>28</sup> In such a case, if a consumer country were simply to accept the legal documentation of PNG as proof of legality of the timber, it is not PNG that is disadvantaged. In this case it would be Indonesia that would be cheated of legitimate revenue.

### **Inadequacy of the Traditional Law Enforcement to Deal with Illegal Logging**

'Traditional' law enforcement in dealing with proceeds of crime would involve Australian law enforcement officials investigating timber and wood product imports suspected of being illegally sourced and investigating their origins. It would involve working with law enforcement officials in the country of origin. Such an investigation might be initiated by suspicious activity detected in Australia or as the result of a mutual assistance request from the source country. It might also involve detection of the laundering of the financial proceeds of crime from illegal

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<sup>21</sup> Ibid and "Cambodia: Officer killed activist, then himself", <http://www.hurriyetdailynews.com/>, 26 April 2012.

<sup>22</sup> Associated Press, "Cambodia: Environmental Activist is Killed at Checkpoint Near Forest", <http://www.nytimes.com/2012/04/27/world/asia>, 27 April 2012.

<sup>23</sup> David Boyle and Bridget Di Certo, "Chut Wutty slain: Another chapter in bloody history", <http://www.phnompenhpost.com/>, 27 April 2012.

<sup>24</sup> David Boyle and Bridget Di Certo, "Chut Wutty slain: Another chapter in bloody history", <http://www.phnompenhpost.com/>, 27 April 2012.

<sup>25</sup> David Boyle and Bridget Di Certo, "Chut Wutty slain: Another chapter in bloody history", <http://www.phnompenhpost.com/>, 27 April 2012.

<sup>26</sup> David Boyle and Bridget Di Certo, "Chut Wutty slain: Another chapter in bloody history", <http://www.phnompenhpost.com/>, 27 April 2012.

<sup>27</sup> UN Office on Drugs and Crime, 'The Globalization of Crime. A Transnational Organized Crime Threat Assessment', 2010, p. 165.

<sup>28</sup> UN Office on Drugs and Crime, 'The Globalization of Crime. A Transnational Organized Crime Threat Assessment', 2010, p. 166.

logging operations through suspicious transaction reports from financial institutions to Australia's financial intelligence unit, AUSTRAC.

Such an approach would be highly resource intensive, particularly given the complex nature of the investigations that would be involved.

In order to establish the level to which the government is already able to undertake these activities, the Unit made the following Freedom of Information requests to government agencies and departments in preparing this submission:

- The number of cases the Australian Federal Police (AFP) have been involved with around the issue of illegal logging as proceeds of crime in the last five years.
- The number of AFP officers currently assigned to investigating proceeds of crime in the form of products produced through illegal logging.
- The number of mutual assistance requests from foreign governments in relation to illegal logging in the last five years.
- The number of suspicious transaction reports from financial institutions to AUSTRAC related to funds being laundered from illegal logging operations.
- The number of Department of Agricultural, Fisheries and Forestry staff currently assigned to investigating cases related to the importation of products derived from illegally logged timber.

Both the AFP and AUSTRAC have indicated the Unit will need to be able to identify specific documents in which the information may be contained in order to assist the Unit with its request. The Department of Agriculture, Fisheries and Forestry has indicated that initial investigation within the Department has not identified any staff currently assigned to investigate cases related to the importation of products derived from illegally logged timber. The Unit will forward the Committee any additional information obtained.

The Unit notes the assessment of the US Department of Justice who, prior to the amendments to the *Lacey Act* in 2008, "repeatedly pointed out that the Department had little to contribute in the way of enforcement until changes were made in US laws. Until such changes took place, a person could clear cut a protected national park in the heart of a foreign country's rainforest, import the resulting timber into the United States while openly admitting the illegal source, and violate no US law."<sup>29</sup> Even with the 2008 amendments to the *Lacey Act* there has not yet been a single prosecution of a US importer for knowingly or recklessly trafficking in illegally logged timber or wood products.<sup>30</sup>

The World Bank has pointed out the criminal justice system has been used in the fight against illegal logging, but only in very sporadic instances and in limited and ineffective ways. Moreover, in those few cases, it has tended to target low-level criminals whose involvement in illegal logging is due to poverty.<sup>31</sup>

The World Bank reports a four-year study published in 2004 conducted in four resource-rich countries (Brazil, Mexico, Indonesia and the Philippines) found that the cumulative probability of an illegal logging crime being penalised is less than 0.082%. In the case of Papua in Indonesia, the cumulative probability of being convicted of illegal timber shipping was only 0.006%.<sup>32</sup>

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<sup>29</sup> Elinor Colbourn and Thomas Swegle, "The Lacey Act Amendments of 2008: Curbing International Trafficking in Illegal Timber", United States Attorneys' Bulletin, July 2011, pp. 91-92.

<sup>30</sup> Ibid. p.104.

<sup>31</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, "Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging", The World Bank, 2012, p. vii.

<sup>32</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, "Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging", The World Bank, 2012, p. 5.

### **Need for Consumer Countries to be Part of the Solution**

The World Bank sees consumer countries needing to play a role in combating illegal logging through market reform: “consumer countries and industry occupy particular niches in helping to reduce the motive for illegal logging by reforming markets and public procurement policies that discriminate against stolen material.”<sup>33</sup> They urge, as one measure to prevent illegal logging “Promoting independent forest certification schemes and other demand-side measures related to corporate social responsibility (for example, third party audited systems for verification of legal wood origin), especially in cases where demand for timber and other forest products is driven by export markets.”<sup>34</sup> Further “specific opportunities for action by the international community include the following.... Advancements in the role of independent monitors in making forest operations more transparent and in providing legal operators with positive incentives.”<sup>35</sup>

The World Bank states that in their experience independent monitoring, such as that provided through effective certification schemes, is an effective tool against illegal logging: “Work in Cambodia in the late 1990s involved the first use by the World Bank of forest law enforcement professionals in policy analysis and project design. Experiments in third-party independent monitoring of forest crime reporting, support for case tracking systems, and recommendations for timber theft prevention planning were among the innovations.”<sup>36</sup>

The World Bank has recommended that other countries should follow the lead of the US and pass domestic legislation, criminalising the importation of illegal timber and plugging an important gap in international law.<sup>37</sup>

The World Bank has also called for criminal justice strategies that confiscate the proceeds of crime associated with illegal logging<sup>38</sup>, which the *Illegal Logging Prohibition Bill* will allow for. It argues:<sup>39</sup>

*Only substantial punishment and/or confiscation of the proceeds generated by criminal activity – including corruption – will clearly demonstrate to criminals and the public alike that these acts will not be tolerated....Without a genuine threat of prosecution and punishment, these criminal organisations will operate with a sense of impunity and will continue to develop their illegal activities for as long as they remain profitable. Significant penalties and prison time are required not only to punish the present offender, but also to deter potential future offenders – whether they be individuals who could face imprisonment or corporations that could not only be prosecuted but also be rejected by increasingly environmentally aware customers and consumers.*

The Bank has pointed out the Financial Action Task Force (FATF) urges countries to recognise crimes committed in another country as predicate crimes if they would have been such under their own money-laundering laws. Thus, the fact that the predicate crime of timber theft may have occurred in Country A would not prevent Country B from prosecuting any laundering of the proceeds of the theft occurring within its jurisdiction.<sup>40</sup>

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<sup>33</sup> World Bank, “Forest Source Book”, 2008, pp. 191 – 192.

<sup>34</sup> World Bank, “Forest Source Book”, 2008, p. 192.

<sup>35</sup> World Bank, “Forest Source Book”, 2008, p. 196.

<sup>36</sup> World Bank, “Forest Source Book”, 2008, p. 153.

<sup>37</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, “Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging”, The World Bank, 2012, p. 18.

<sup>38</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, “Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging”, The World Bank, 2012, p. viii.

<sup>39</sup> Ibid. p.8.

<sup>40</sup> Marilyne Pereira Goncalves, Melissa Panjer, Theodore Greenberg and William Magrath, “Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging”, The World Bank, 2012, p. 22.

## Concerns raised by Foreign Governments

The Unit notes that the Government of Indonesia has stated “it fully supports the Bill’s overall objective to reduce the harmful environmental, social and economic impacts of illegal logging as well as to impose penalties on those who import illegally logged timber into Australia.”<sup>41</sup> However, the letter from the Minister of Trade shows a very obvious misreading of the legislation in incorrectly asserting “this Bill is discriminatory in that it is set to selectively impose restrictions on timber products from a limited number of targeted countries.” Further the letter implies the Minister of Trade believes the Bill would impose “a unilateral ban on Indonesian imports”. Nowhere do the provisions of the Bill do either of these things. If they did, then indeed the Bill would fail to be consistent with Australia’s WTO obligations.

The request by the Indonesian Minister of Trade for the legislation or regulations to explicitly recognise the Sistem Verifikasi Legalitas Kayu (SVLK) would not appear to be sound from a WTO perspective. Explicit recognition of particular certification schemes may open up WTO challenges from other parties that develop certification schemes of their own and make claims that those schemes are as robust as schemes explicitly recognised in the legislation or regulations. Such parties could then make claims they are being discriminated against by the failure of the Australian Government to recognise the legitimacy of their own schemes. In the risk assessment an importer will be required to undertake as part of their due diligence requirements of the Bill, a certification system such as SVLK might assist the importer in assuring themselves of the legality of the product and in demonstrating they have taken reasonable steps to ensure the product is legally sourced as suggested by Section 14(5).

The Unit understands that dialogue between the Government of Australia and the Government of Indonesia over the Bill has been ongoing. The concerns raised by Indonesia should in no way delay the passage of the Bill, especially Sections 8, 9 and 15 regarding knowingly, recklessly or intentionally importing or processing illegally sourced timber.

The Canadian Government submission to the Senate Rural Affairs and Transport Legislation Committee indicated the Canadian Government supports the objective of the Bill “to reduce the harmful environmental, social and economic impacts of illegal logging.” The Canadian Government welcomed the fact “the due diligence process will be based on a risk management approach.” The Canadian Government pointed out its comments in its submission “will help ensure that due diligence requirements and custom import declarations do not end up imposing unnecessary costs and burdens on Canadian timber exporters”. Indeed it is important in the development of the regulations that they do not add unnecessary costs on producers to demonstrate the legality of their product, where the product is indeed legally sourced. The aim of the legislation and regulation should be to make it as difficult as possible for organised criminals to conceal illegally sourced timber and wood products and profit from them by being able to freely sell them in the Australian market. Concerns about cost implications of the risk assessment process required in the due diligence requirements of importers are at this stage speculative. The Unit notes that in the US, the authorities agreed to a phase in of the declaration requirements during which time no enforcement action was taken for failure to file the declaration.<sup>42</sup> There was then a phase in period for declarations covering different wood and plant products. Such a phase in period for the regulations would also be possible with the *Illegal Logging Prohibition Bill*, making it easier for foreign exporters to work with Australian importers to comply with the requirements of the Bill.

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<sup>41</sup> Letter from Gita Irawan Wirjawan, Minister of Trade of the Republic of Indonesia to Senate Standing Committee on Rural Affairs and Transport, 25 January 2012.

<sup>42</sup> Elinor Colbourn and Thomas Swegle, “The Lacey Act Amendments of 2008: Curbing International Trafficking in Illegal Timber”, United States Attorneys’ Bulletin, July 2011, p. 98.

The suggestion in the Canadian Government submission that the Australian Government “establish a process that assesses the level of risk of illegal harvesting in different countries of harvest, taking into account legal, regulatory and enforcement regimes, and industry practices”, would be likely to increase the risk that the legislation would lead to a challenge under WTO rules. Countries assessed as being high risk on such a list may seek to challenge that assessment as representing an unfair and discriminatory trade restriction on timber and wood products produced in their country.

The submission from the New Zealand Government supports the Bill’s implementing regulations being “outcome-based, not prescriptive, to cater for differences in countries’ harvesting laws, the large range of forest products, complex supply chains and future changes in technology and reporting systems.” By implication this statement supports the view of the Australian Government, that differences in harvesting laws in source countries do not present a WTO problem in relation to the legislation. However, like the Canadian submission, the submission by the New Zealand Government inappropriately requests that New Zealand forest products be formally recognised in the legislation as low-risk. Such explicit national recognition would appear likely to increase the risk of a challenge by other governments under WTO rules.

The Unit notes the evidence given by Dr Jalaluddin Harun, Director-General, Malaysian Timber Industry Board, Government of Malaysia, to the Senate Rural Affairs and Transport Legislation Committee stated “Malaysia appreciates the apparent objective of the *Illegal Logging Prohibition Bill* to restrict the import of illegal timber and timber products into Australia.”<sup>43</sup> The Malaysian Government indicated that it wished to have further input into the development of the regulations associated with the Bill to ensure “that the Bill is workable, implementable and not so stringent that it shifts the use of timber to non-wood alternatives such as plastics and other things.”<sup>44</sup> They also indicated that there were not difficulties in complying with the *Lacey Act*.<sup>45</sup>

Dr Harun went on to assert “we have a system whereby illegal logging is almost non-existent”.<sup>46</sup>

The Unit welcomes the efforts the Government of Malaysia is making to address illegal logging and increase the amount of timber subjected to third party certification.<sup>47</sup>

However, the Unit notes the UN Office on Drugs and Crime (UNODC) has reported that illegally logged timber from Indonesia is trafficked through Malaysia. Smuggling of illegally logged timber from Kalimantan through Sarawak and Sabah has declined since 2004 in the assessment of the UNODC. Timber trafficked into Malaysia includes sawn timber, which is prohibited for export in Indonesia. The timber crosses land and sea into cities in Sarawak,

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<sup>43</sup> Dr Jalaluddin Harun, Director-General, Malaysian Timber Industry Board, Government of Malaysia, Committee Hansard, Senate Rural Affairs and Transport Legislation Committee, 14 December 2011, p. 52.

<sup>44</sup> Ibid. p.52.

<sup>45</sup> Ms Siti Syaliza Mustapha, Director, Public and Corporate Affairs Division, Malaysian Timber Council, Government of Malaysia, Committee Hansard, Senate Rural Affairs and Transport Legislation Committee, 14 December 2011, p. 58.

<sup>46</sup> Dr Jalaluddin Harun, Director-General, Malaysian Timber Industry Board, Government of Malaysia, Committee Hansard, Senate Rural Affairs and Transport Legislation Committee, 14 December 2011, p.52.

<sup>47</sup> Dr Jalaluddin Harun, Director-General, Malaysian Timber Industry Board, Government of Malaysia, Committee Hansard, Senate Rural Affairs and Transport Legislation Committee, 14 December 2011, p. 51.

where processing for export to Viet Nam, China, Thailand, Europe and the USA takes place.<sup>48</sup>

The UNODC assessment concluded the primary method of illegal importation remains the use of fraudulent Malaysian place-of-origin certificates to mask illegal imports from Indonesia.<sup>49</sup>

The Unit notes allegations of involvement in illegal logging have extended to senior government officials in Malaysia. Swissinfo.ch reported on 23 April the Swiss Federal Prosecutor's Office and the Federal Justice Office confirmed that in 2011 Switzerland gave legal assistance to Hong Kong in a money-laundering case against Musa Aman, Chief Minister of the Malaysian State of Sabah on Borneo.<sup>50</sup> Musa Aman is the older brother of Anifah Aman, Malaysia's Foreign Minister. The article stated Malaysian media reported Musa Aman was being investigated by Hong Kong's Independent Commission Against Corruption for having laundered more than \$90 million through UBS accounts in Hong Kong and Switzerland. In return for alleged kickbacks, it is alleged Musa Aman granted concessions to illegally log tropical hardwoods in the Borneo rainforest. The Bruno Manser Fund reported the Sarawak Report, has alleged Malaysian prosecutors have refused to co-operate with Hong Kong in the matter because the Attorney-General Abdul Gani Patai is a relative and a close political ally of Musa Aman.<sup>51</sup> In 2008, the Hong Kong authorities arrested Malaysian national Chia Tien Foh for attempting to smuggle 16 million Singapore dollars in cash to Malaysia. It is alleged Chia Tien Foh was a nominee for Musa Aman.<sup>52</sup>

The Unit notes the terms of reference to the Inquiry refer to concerns having been expressed by Papua New Guinea in its submission to the Senate Rural and Regional Affairs and Transport Legislation Committee inquiry. The Unit has been unable to locate any submission by the PNG Government to the Senate Committee inquiry, nor did the PNG Government appear at the public hearing on 14 December 2011. Submissions were made by the Papua New Guinea Forest Industry Association (PNGFIA). The Unit has already highlighted the credible evidence from the UN Office on Drugs and Crime and Transparency International PNG refuting the claims made by the PNGFIA about low levels of illegal logging in PNG. Transparency International PNG also made assessments of tax evasion associated with illegal logging in PNG.

### **Experience of the US *Lacey Act***

As noted in the introduction, the amendments to the US *Lacey Act* in 2008 to combat illegal logging, have not resulted in any WTO actions by exporting states. The US Department of Justice reports that for many goods requiring declarations, identifying the genus and species has not been problematic.<sup>53</sup> Complex products and reused and recycled materials have been permitted special declaration codes, outlined in a guidance document '*Lacey Act Plant and Plant Product Declaration Special Use Codes*'.<sup>54</sup> By the use of a special code, the importer is able to indicate it is not possible through the exercise of due care to determine the genus,

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<sup>48</sup> UN Office on Drugs and Crime, "The Globalization of Crime. A Transnational Organised Crime Threat Assessment", 2010, p.165.

<sup>49</sup> UN Office on Drugs and Crime, "The Globalization of Crime. A Transnational Organised Crime Threat Assessment", 2010, p.166.

<sup>50</sup> Swissinfo.ch, 'Minister accused of money-laundering via UBS' <http://www.swissinfo.ch/>, 23 April 2012.

<sup>51</sup> Bruno Manser Fund, "Swiss authorities confirm money-laundering investigation against UBS", <http://www.bmf.ch/en/news/?show=301>, 22 April 2012.

<sup>52</sup> Bruno Manser Fund, "UBS faces money-laundering allegations in Malaysian timber scandal", <http://www.bmf.ch/en/news/?show=300>, 21 April 2012.

<sup>53</sup> Elinor Colbourn and Thomas Swegle, "The Lacey Act Amendments of 2008: Curbing International Trafficking in Illegal Timber", United States Attorneys' Bulletin, July 2011, p. 99.

<sup>54</sup> Ibid. p. 99.

species, and/or country of harvest of such materials. If a product is not composed entirely of composite, recycled, reused or reclaimed materials, the importer must indicate the genus, species and country of harvest of all other product components.<sup>55</sup> US authorities are also introducing codes for Common Trading Groupings, where the genus of the plant being used in the product is obvious but a large number of species within that genus may potentially have been used and are difficult to distinguish or identify.<sup>56</sup>

The development of the regulations under the *Illegal Logging Prohibition Bill* will be able to draw on the experience of the *Lacey Act*, and therefore minimise regulatory burden on importers and processors in Australia. This in turn reduces the likelihood of a government seeking to mount any legitimate WTO action in response to an increased regulatory burden on exporters assisting Australian importers in meeting the requirements of the *Illegal Logging Prohibition Bill*.

### **Concerns with the Andrew Mitchell and Glyn Ayres opinion**

The submission made by Alan Oxley to the Senate Rural Affairs and Transport Legislation Committee included a legal opinion by Professor Andrew Mitchell and Glyn Ayres on the consistency of the *Illegal Logging Prohibition Bill* with international trade rules. The assessment, at point 24, asserts that “The sole criterion in the Bill for determining whether timber is ‘illegally logged’ is the law of the place where the timber was harvested”.<sup>57</sup> This is incorrect. The criterion for ‘illegally logged’ is that the timber was “harvested in contravention of the laws in force in the place (whether or not in Australia) where the timber was harvested.” Thus it is not the law in the country of harvest that determines if the timber is ‘illegally logged’, but how well that law is enforced. For example, a country with detailed and complex laws covering timber harvesting, might have very low levels of illegal logging as it has effective law enforcement meaning very little product that is exported to Australia is ‘illegally logged’. On the other hand, a country with few and simple laws governing harvesting might have high levels of illegal export due to poor local law enforcement or high levels of corruption undermining law enforcement. The definition of ‘illegally logged’ is a measure of the effectiveness of law enforcement in the country of harvest, not of the harvesting laws themselves.

The authors go on to raise the hypothetical example of “two identical products made from timber logged using an identical method would be treated differently if the timber in product A was from country where that method was illegal and timber in product B was from a country where it was legal. It would be illegal to import product A but legal to import product B into Australia, thus creating an ‘advantage’ for product B. Therefore, the Bill creates an indirect ‘advantage’.”<sup>58</sup> However, in this case country producing product A would need to argue that it did not want compliance with its own laws governing logging and it wants Australia to launder the proceeds of crime through its markets by placing no restrictions on the import of timber that has been logged in violation of its own laws. It needs to be asked why a state would go to the trouble of bringing a WTO case in this example, rather than simply repealing its own logging laws that it does not wish to see enforced. Such a case may be possible where senior levels of the exporting government have been captured by large enterprises engaged in illegal activity and the government seeks to act on their behalf.

The argument made at point 37 of the opinion states “One of the explicit purposes of the Bill is to modify the conditions of competition in the Australian market so that domestic production is not in ‘unfair competition’ will illegally logged imports. Thus, although this

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<sup>55</sup> Ibid. p. 100.

<sup>56</sup> Ibid. p. 100.

<sup>57</sup> Andrew Mitchell and Glyn Ayres, “The Consistency of Australia’s Illegal Logging Prohibition Bill with International Trade Rules”, p. 7.

<sup>58</sup> Ibid. p. 7.



conclusion may change depending on the content of the legal logging requirements, it is likely that the Bill accords 'less favourable treatment' to 'like' imported products.<sup>59</sup> It is difficult to see the WTO Appellate Body upholding a view that criminally derived products must not be restricted in competition with legal products and the Appellate Body acting to protect trading in the proceeds of crime.

No opinion was offered by the authors as to why no state has yet brought a challenge against the US *Lacey Act*, which, based on the opinion offered, should face the same risks of having a WTO action brought against it.

### **Inadequacies in TheCIE draft RIS**

Those criticising the *Illegal Logging Prohibition Bill* have, in some cases, returned to the Centre for International Economics report in its approach to the Regulatory Impact Statement (RIS) on the *Proposed new policy on illegally logged timber*. Also, the opinion offered by Professor Andrew Mitchell and Glyn Ayres makes a number of references to the TheCIE report. The Unit acknowledges TheCIE study provided a strong economic analysis and a reasonable environmental analysis, but was highly deficient in its social analysis and any consideration of crimes involved in illegal logging was entirely absent in the analysis. TheCIE showed no serious consideration of any international obligations Australia has in combating transnational organised crime or corruption. The report, unsurprisingly, found that illegally sourced timber and wood products have a price advantage on the Australian market. Indeed, that is how the organised criminals gain an advantage in the market and profit from their criminal activity. TheCIE assessed this as a positive to the Australian consumer (who currently enjoy getting wood products about 3% cheaper)<sup>60</sup>, without serious comment on the fact this saving to the Australian consumer was due to the products being proceeds of crime.

In fact, the draft RIS produced by TheCIE took the view, if it were not for the economic costs associated with greenhouse gas emissions, then illegal logging would result in a net economic positive of \$28.5 billion. The conclusion being, in the absence of climate change, the world would be better off economically by allowing illegal logging to flourish.

TheCIE assessment did not consider the disincentives to producers and foreign governments taking action to address illegal logging, if recipient countries like Australia allow such product to maintain a price advantage over legally logged product and over products that are certified as legally produced. Clearly, if consumers are unable to distinguish at the point of sale between illegal and legal product, then the cheaper product of a given quality will have a market advantage. There was no analysis of the need to create markets that reward producers and governments of producer countries that take action to address illegal logging, rather than Australia allowing its market to reward criminal operations involved in illegal logging through the price advantage gained. Further, there was no analysis of the integrity of seeking to assist and encourage producer countries to address illegal logging, while allowing illegally logged product to enjoy a price advantage in the Australian market.

TheCIE also concluded a number of countries benefited financially from illegal logging. They found that illegal logging confers a net financial benefit to high risk countries such as China, Indonesia, Russia and Malaysia of around US\$49 billion a year.<sup>61</sup> However, the study was devoid of any analysis of to whom this economic benefit actually flows. In the absence of any more detailed analysis, it would not be unreasonable to assume much of this financial benefit flows to those in charge of the organised criminal activity and to any high ranking government officials who have been paid substantial bribes to undermine enforcement of local laws. Unlike the World Bank analysis, TheCIE report failed to consider the losses of

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<sup>59</sup> Ibid. p. 11.

<sup>60</sup> TheCIE, Draft Regulatory Impact Statement, p. 27.

<sup>61</sup> TheCIE, Draft Regulatory Impact Statement, p. 29.

legitimate revenue to governments as a result of the tax evasion associated with illegal logging. These losses are likely to come at the cost of services and infrastructure to the wider population of source countries. TheCIE report provided no analysis of the flow of the money from illegal logging and if it is laundered offshore, further concentrating the 'benefits' of the illegal logging to the organised criminals running the operations and minimising any benefits to the wider population in the source countries.

TheCIE acknowledged that it was not able to conduct social analysis, in the section on p.14 regarding 'intangible benefits'. TheCIE stated it was unable to conduct any analysis on the following factors:

- Australia providing a role model to other trading partners;
- Australia 'sending a message' to trading partners that they should also invest in measures to curb illegal logging, with the initiative could be seen as a step towards more effective national and multilateral moves to improve the sustainability of all logging, legal or illegal;
- A sense of morality for those Australians concerned about the issue;
- A stronger position for Australia to negotiate international actions if the country is not seen to be benefiting from illegal or unsustainable behaviour in other countries; and
- Maintenance of existence values such as people gaining benefits from knowing the forests in other countries are not being illegally logged.

The reason that it was unable to conduct such an analysis is that TheCIE was unable "to place a value on these intangible benefits", by which it meant an economic value. On page 15 TheCIE stated it has not modelled the effectiveness of multilateral action for reasons that are not fully explained.

In response to the concerns raised in relation to TheCIE draft RIS the Department of Agriculture, Fisheries and Forestry undertook a more detailed social assessment in formulating the final RIS.<sup>62</sup>

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<sup>62</sup> Illegal Logging Prohibition Bill 2011, Explanatory Memorandum, p. 58.