



# 非法采伐及相关法律问题

## Illegal Logging and Its Associated Legal Issues


中国林科院国际合作处处长

陆文明教授

*Professor Lu Wenming*

*Chinese Academy of Forestry*

*2009--04--21*



**原题目：有关打击非法采伐的  
法律及执行问题**

**Former Title: Legislation on Illegal Logging  
and Their Implementations**

**现：非法采伐及相关法律问题  
Illegal Logging and Its  
Associated Legal Issues**

# 关于非法木材采伐和相关贸易

## Illegal logging and associated trade

- 非法木材采伐和相关贸易：的确是个全球性问题，有些国家也的确较为严重
- Illegal logging and associated trade: Really a global issue, and really a little bit serious in some countries
- 国际社会的努力：的确值得肯定和赞赏，也取得了一定成效
- Efforts by international community: Really be appreciated, and some effectiveness achieved

# 关于非法木材采伐和相关贸易

## Illegal logging and associated trade

- 欧盟森林执法、施政和贸易进程：的确具有建设性意义，也取得了一定进展
- EU FLEGT process: really constructive, and some progress has been achieved
- 总得说来：国际社会对非法木材采伐和相关贸易问题以及相关努力，基本上达成了一定的方向性共识
- In general: International community **basically reaches some consensus of direction**
- 相关研究：宏观方面较多，微观方面相对较少、较浅
- Research: More on macro, less and shallow in micro

# 报告核心议题

## Key issues

- 法律问题：要极其严谨（中国：重证据、轻口供）
- Legal issue: Very strict and rigorous
- 非法采伐的界定
  - 非法采伐和违法采伐的区别（联系是明显的）
  - 非法采伐的内容
- Definition of illegal logging
  - Difference between illegal logging and logging with actions against the law
  - Contents of illegal logging

# 报告核心议题

## Key issues

- 举证问题
  - 正面举证（合法性）和反面举证（非法性）
  - 行为主体举证和具体行为举证
- Proving
  - Positive proving and negative proving (legal and illegal)
  - Proving of entity and proving on action
- 相关贸易（非法贸易和违法贸易）：亦然
- Associated trade (illegal trade and trade with actions against the law): Same as illegal logging

# 相关法律问题的深入研究

## Research on legal issues

- 总体不深：至少在中国，深入的研究较少
- Not in depth, at least in China
- 报告人的相关研究：
  - 研究还是初步的
  - 结论也是不完善的
  - 相关英文对应词汇也有待林业专家、法律专家和语言专家共同完善
- The research of the reporter:
  - The research is preliminary
  - The conclusion is not perfect
  - Need some cooperation among experts on forestry, law and language

# 核心观点一：非法采伐的界定

## Key viewpoint one: definition

- **非法采伐**：定义和内容（指标）仅限于采伐企业的合法性（主要是证照、许可等是否齐全）。中国（国外也大都差不多）一般包括四五个方面的证照、许可。**要严厉打击**
- **Illegal logging**: definition and contents: Only apply to the legality of logging company (license, permit etc). China (also other countries) normally has 4-5 aspects of licenses. Should be seriously tackled.



# 核心观点一：非法采伐的界定

## Key pointview one: definition

- **违法采伐**：所有各类企业（包括采伐企业）都有违法行为（国外也几乎全有）（后面有详述），或者说都违法。**是否严惩、是否惩罚、甚至是否处罚取决于违法行为的严重程度**
- **Logging with actions against the law**: All companies have actions against the law. Whether the punishment (in all kinds of forms) is imposed depends the seriousness of the action.

# 核心观点二：非法采伐的举证

## Key pointview two: proving

- 正面举证（合法性举证）
  - 采伐企业的合法性举证：可以倒置（采伐企业主动出示证照方面的合法性证明）【警察可以要求司机：出示驾照】
  - 生产产品（木材）合法性的举证：不能倒置，谁主张谁举证。市场上销售的所有商品，都是合法商品，除非：有足够证据证明是非法的
- Positive proving (proving on legality)
  - Proving on legality of logging companies: Could be self proving. The company should actively show the evidence of its legality with licenses and permits etc (Police could request the driver to show the driving license by himself)
  - Proving on legality of products: Could not be self proving. All products in the market are legal products, unless the pointer show the evidence that the products is illegal.

# 核心观点二：非法采伐的举证

## Key pointview two: proving

- 反面举证（非法性举证）
  - 违法采伐行为的举证：不能倒置，谁主张谁举证（法律越来越强调零口供）
  - 非法采伐行为的举证：
    - 如果非法采伐的定义和内容如前一幻灯片所述，举证可以倒置，即采伐企业主动出示证照方面的合法性证明
    - 否则，举证不能倒置
- Negative proving (proving on illegality)
  - Proving on logging with actions against the law: Could not be self proving. The pointer should show the evidence that the action of the logging company violates the law.
  - Proving on illegal logging:
    - If the definition of illegal logging is as in the previous slide, then a self proving could be imposed. The company should actively show the evidence of its legality with licenses and permits etc
    - As otherwise, a self proving could not be imposed

# 主要内容

## Main contents

- 一、非法、违法的本质区别
  - Essential difference between illegal logging and logging with actions against the law
- 二、非法采伐的内容（指标）
  - Contents of illegal logging (indicators)
- 三、非法采伐的举证
  - Proving of illegal logging
- 四、非法、违法木材贸易
  - Illegal trade and trade with actions against the law





# 一、非法、违法的本质区别

**Essential difference between illegal logging and logging with actions against the law**

# 法律问题的严谨性和严肃性

## Preciseness of issues about the law

- 非法采伐和相关贸易的实质：属于法律问题
- Illegal logging and associated trade: A issue about the law
- 既然属于法律问题：就会涉及法律诉讼，就得对这个法律问题的方方面面都要有极其严谨的界定
  - 定义、内容（指标）、法理、执行
- As a legal issue: Definition is extremely important, and precise
  - Definition, contents (indicators), principle, implementation

# 有关非法问题的相关词汇

## Vocaborery about illegal logging

- **相关词汇**：非法、违法；合法、不合法；违规、违章；不法、不良、不德、不端（中文都有严谨的区别）
- Vocaborery: Illegal, violating law,; legal, not legal; violating regulations; etc
- **对应词性**：有些词义相同，词性不同；有的词性相同，词义不同
- Word characteristics: same and not same
- **对应对象**：法律（！）、法规（！）、规章、规程等
- Objects: Laws and regulations etc
- **对应主体（行为主体）**：实体、个人
- Actor: Entity and individual

# 不同行为主体法律问题的本质区别

## Essential difference of different actors

- 任何个人（任何企业）：法无禁止皆可为（法律约束的是：不能干的）
- Any individual (and company): Can do anything unless the law stipulates that that could not be done
- 行政部门：法律规定才可为（依法行政）（法律规定的是：只能干的）
- Administration: Can do only what the law allows to do



# 几点笑谈

## Some interesting jokes

- **中国**：只有法律规定可以干的，才可以干
- China: Can do only what the law allows to do
- **法国**：只要法律没有禁止的（法律没有规定不可以干的），都可以干（法无禁止皆可为）
- France: Can do anything except what the law does not allow to do

# 几点笑谈

## Some interesting jokes

- **俄罗斯**：不管法律有没有规定，都可以干
- Russia: Can do anything no matter the law allows or does not allow to do
- **意大利**：不管法律有没有规定，都有可能可以干，也有可能不可以干
- Italy: May or may not allow to do no matter the law allows or does not allow to do

# 非法和违法

## Illegal and violating the law

- 一般大众看来，不管词性如何
- For ordinary people: No matter the characteristics
- 非法问题要比违法问题严重
  - 违法是普遍的
  - 非法是非普遍的，但是是严重的
- Illegal is more serious than violating the law
  - Violating the law is everywhere
  - Illegal is not everywhere, but serious

# 非法和违法

## Illegal and violating the law

- 词性，基本相同
  - 都有：形容词（加名词）、副词（加动词）
  - 违法还有：动词
- Syntactical functions: Basically the same
  - Both are: Adjective (followed by a noun) and adverb (followed by a verb)
  - Violating the law: Is also a verb

# 非法和违法

## Illegal and violating the law

- 词义：Word meaning:
  - 有相通的方面：非法行为是违法行为的一种，且往往严重
  - 有本质区别的方面：
    - 违法：违反法律的任何行为
    - 非法：特指违反法律的行为主体（实体或个人）本身的合法性（执照、许可、身份等）
- Similar: Illegal is a kind of violating the law, normally more serious
- Essential difference
  - Violating the law: All actions against the law
  - Illegal: Specially for the lack of legality of the actor (entity or individual) (such as lack of licenses and permits etc)

# 非法和违法的数学集合关系

## Mathematics relation: set

- 不一定很准确，但很形象：
- Not accurate enough, but also very vivid
- 任何违反法律的行为（不论行为主体是实体还是个人），都属于违法行为
  - 因此，违法行为是这个集合的全集
- Any action violating the law, no matter whom the actor is (entity or individual), is the action against the law
  - So, action against the law is the whole of this set

# 非法和违法的数学集合关系

## Mathematics relation: set

- 行为主体证照方面的违法行为（缺失行为），属于非法行为
  - 因此，非法行为是违法行为的子集
  - 或者说：非法行为是违法行为的一部分（而且是非常严重的一部分）
- Action violating the law about the acting entity (such as lack of licenses and permits etc), is illegal
  - So, illegal is the part of this set
  - Or: illegal action is a part of actions against the law (which is also very serious part of the actions)



# 先谈谈违法行为

**First: Actions against the law**



# 违法行为的普遍性

## Universality of actions against the law

- 无所不在、无人不犯、无时不犯: Everywhere, by every people, at almost any time
- 任何国家：那么多法律法规，几百部，没有一个人能说全，更不可能记得几万页几亿字的法律条文【美国农业法案1770页，谁敢说都能100%遵循】
  - 司机：几乎每天、每时、每刻（有人甚至每分钟）违反交通法（以前叫违章，现在叫违法）
  - 自行车：逆行、乱行
  - 行人：乱穿人行横道
- Any country: There are so many laws with so many clauses, which no one can 100% fully obey by
  - Drivers, bicyclist and pedestrians: traffic security law

# 违法行为的普遍性

## Universality of actions against the law

- 政府部门：真的能做到事事依法行政？（一个报文规定时间内不回复并不说明理由，就是违法行为）（行政不作为也是违法，因为法律规定行政要作为）
- Administration: No organization, no one can guarantee to administrate 100% according to the law
- Actions against the law is also quite common

# 违法行为的普遍性

## Universality of actions against the law

- 一个遵守法律的模范企业：
  - 守法是相对的（即一般没有较为严重的违法行为）
  - 违法是绝对的（劳动法、劳动保护）
- A model company of obeying the law
  - Obeying the law is relative (no serious actions against the law)
  - Violating the law is absolute: labor law, labor protection law

# 违法行为的普遍性

## Universality of actions against the law

- 一个遵纪守法的自然人：
  - 守法也是相对的（即一般没有较为严重的违法行为）
  - 违法也是绝对的（乱穿马路）（道交法）（包括英国等）
- A model individual of obeying the law
  - Obeying the law is also relative (no serious actions against the law)
  - Violating the law is also absolute: traffic security law (UK)
- 其他企业和其他自然人
  - 大多数相对守法
  - 违法行为可能就更多了
- Other companies and individuals:
  - Majority: Relatively obey the law
  - Actions against the law: is quite common

# 违法行为的容忍性

## Tolerability of actions against the law

- 并不是所有违法行为都要受到法律的严惩
- Not every action against the law should be seriously punished
- 一般的违法行为：指出、批评、教育、处分、、、
- Ordinary actions against the law: Point out, criticize, educate etc
- 严重的违法行为（行为的后果）：按照法律的条款进行处理
- Serious action against the law: Punish according to the stipulation as set in the law

# 两个典型且尴尬的例子

## Two typical, embarrassed examples

- 中国所有大学：
  - 绝对都有违法行为
  - 特别是：几乎都违反高等教育法（没有办学方针）（吉大除外）
- All Chinese universities:
  - Absolutely have actions against the law
  - Especially: Violating the law of higher education (without something like bylaw as set in the law)

# 两个典型且尴尬的例子

## Two typical, embarrassed examples

- 中国所有森林经营单位：
  - 绝对都有违法行为
  - 特别是：大部分（甚至可以用绝大部分）都违反森林法（没有森林经营方案，或森林经营方案早已过期）
- All Chinese forest management units (FMUs):
  - Absolutely have actions against the law
  - Especially: Most FMUs violate the forest law (without forest management plan or too old as set in the law)



# 再谈非法和违法的区别

**Again: for the difference between  
illegal and actions against the law**



# 行为主体和具体行为

## Acting entity and concrete action

- 行为主体是否合法：执照、许可、身份等
  - 不合法，当然所有的后续都是不合法的，可以用“非法”
  - 合法：但具体行为违反法律，不能用“非法”，而要用“违法”
- Legality for acting entity: License and permit
  - Not legal: then illegal for all subsequent issues
  - Legal: But has actions against the law, then can not use “illegal” logging
- 两者的性质有着根本的区别，用词也应有根本不同
- The two have fundamental difference

# 行为主体和具体行为

## Acting entity and concrete action

- 很多煤矿：证照不全，属于非法煤矿；证照齐全，就是合法煤矿，但如果严重违法（发生事故），一般用“违法煤矿”，即按合法煤矿有违法行为处理
- Many coal mining fields: Illegal if lack of license; legal as otherwise; Actions against the law is rampant but does not call it illegal mining field or illegal mining
- 三鹿企业：企业主体是合法的，是合法企业；但具体行为严重违法并产生严重后果，用“违法企业”，依法处理
- Sanlu Milk Company: A legal company, but a company with actions seriously against the law, so is punished according to the law as a company against the law

# 本质区别

## Essential difference

- 非法和违法：有本质区别
- Illegal and actions against the law: essentially different
- 非法：指行为主体非法（不合法）（证照不全）
  - 具有严重性，要坚决打击任何非法行为
  - 但不具有普遍性
- Illegal: Not legal for acting entity (lack of licenses and permits)
  - Be serious, so should be tackled
  - But, not popular

# 本质区别

## Essential difference

- 违法：指具体的行为违法
  - 具有普遍性
  - 还具有容忍性
  - 违法程度千差万别，有特别严重的（要严惩），也有非常一般的
- Actions against the law
  - Popular
  - Affordable
  - Varies in seriousness

# 自然人 Natural man

- 一般说来，几乎所有自然人都是合法公民
- Generally, all natural men are legal citizens
  - 中国人在中国几乎都是合法的：很少听说谁是非法公民
  - 所有外国人在中国基本上也都是合法的，也很少听说谁是非法移民：仅在其没有护照签证入境（如偷渡，以及伪造护照签证，或没有护照签证闯关，包括直接闯关或通过其他方式混过边检），则用“非法”
- 可以绝对说来：所有自然人（包括中国人在中国的外国人）都有违法行为（程度不同）（乱穿有人行横道的马路就是违反《中华人民共和国道路交通安全法》）
- Absolutely, all natural men have actions against the law (traffic law)

# 自然人 Natural man

- 典型的例子：Typical examples
  - 一个中国公民，没有驾照驾驶汽车，不管驾驶期间是否违反道交法对具体驾驶行为的规定，都是非法驾驶
  - Illegal driving without license, no matter he may or may not have actions against other law clauses
  - 一个中国公民，具有驾照驾驶驾照对应的汽车，但是违反了道交法对具体驾驶行为的规定，是违法驾驶，而不能叫非法驾驶
  - Legal driving with license but with actions against the law: Is an action against the law, but not illegal driving

# 自然人 Natural man

- 典型的例子：Typical examples
  - 一个中国公民，具有驾照驾驶汽车，但是超越了驾照许可（即C本的驾照开大轿车），不管驾驶期间是否违反道交法对具体驾驶行为的规定，也都是非法驾驶
  - Illegal driving with driving license but over permits, no matter he may or may not have actions against other laws: such as a driver with License C drives a bus which needs License A, even he well obeys all other law clauses

# 企业Company

- 一般说来，除非证照等许可不全，一般的生产企业大都是合法企业
  - 任何国家多多少少都有一些非法企业，政府都会采取取缔等措施
  - 有些合法企业的非法行为，多半指超越许可的严重违法行为
- In general: Normally all companies are legal, unless they lack licenses or permits
  - Any country may have illegal companies, and their government will take measures to deal with them
  - Illegal actions by some legal companies: Normally exceed permits which is a serious action against the law



# 企业Company

- 典型的例子：前不久中央电视台新址火灾，湖南那家企业是合法企业，运输花炮的企业也是合法企业，但是他们超越许可（没有得到所有花炮级别的许可权），也属于非法行为
- 可以绝对说来：所有企业，都有多种多样、程度不同的违法行为（1000个员工，999个买了五险，1个没买、甚至1个买了四险、有1种险没买，企业就违法了《劳动法》）
  - Typical example: CCTV new building fire: Hunan and transport companies are legal, but they exceed permit, which is also a kind of illegal action
- Absolutely speaking, all companies have actions against the law with various and different extent of violating the law (1000 staff, 999 have paid insurance, but one has not, thus violating the labor law)



## 二、非法采伐的内容（指标）

Contents of illegal logging (indicators)

# 非法采伐的界定 Definition

- 定义和内容到底应该如何界定？How to define?
- 按照前述，应该是行为主体非法，其行为就是非法采伐
  - 一个企业证照不全（企业注册、采伐三证）【采伐限额：应该不算企业合法性的内容】，就是非法企业，其行为就是非法行为，非法采伐（李毅中：五证不全的煤矿，是非法煤矿）
- An illegal company leads to an illegal logging
  - A company which lacks licenses (registration, licenses or permits) is an illegal company, and its actions are illegal actions, its logging is illegal logging (harvesting quota should not be a content of the legality of a company)



# 非法采伐的界定Definition

- 一个企业证照齐全，首先这个企业是合法企业
- 没有不违法的自然人，也没有不违法的企业（法律法规几千个，条文几十万条，字数几十亿，哪个企业敢保证绝对不会违反其中的哪怕一条？？？）
- A company with full licenses, is an legal company
- There is no natural man, nor company that does not violate this and/or that law
- 一个合法企业的违法行为，只能说是采伐中违反了某些法律法规的规定
- Actions against the law by an illegal company: Means that this legal company violates the law in their logging operation

# 非法采伐的界定 Definition

- 目前各个进程、倡议等：大都指标几十个，也很难操作
- Processes and initiatives: dozens of indicators, not practically operational
- 如果严格检查：实际上绝大多数企业都很难达到都满足这些指标
- If strictly audited, practically most of companies can not meet all these indicators
- 比较实际的界定：Practical definition
- 采伐企业的合法性，即证照是否齐全
  - 证照齐全的采伐企业，就是合法的采伐企业
- Legality of logging company: Whether with all licenses and permits
  - If with all licenses and permits, it is an legal logging company

# 非法采伐的界定 Definition

- 合法的采伐企业，每天都有违法行为（违法是绝对的，危害程度是千差万别的），就是说合法的采伐企业有不同程度的违法行为
- Even for a legal logging company, there might be actions against the law every day (violating the law is absolute but the seriousness varies), or any legal company have actions against the law but with difference consequences (over loading, over speeding etc)
- 非法的采伐企业，所有采伐活动都是非法的，就是非法采伐
- For an illegal logging company, all logging operations are illegal, or illegal logging

# 行为主体、具体行为和相关产品

## Acting entity, concrete action and products

- 企业的合法性（包括违法行为）和产品合法性：是绝对不同的
- Legality of a company (including actions against the law) and legality of its products: Should be absolutely different
- 非法企业生产的产品，应该就是非法产品，即产品的合法性不存在。非法采伐的木材，木材就没有合法性
- A product produced by an illegal company, is an illegal product, or the legality of this product does not exist. Timber from illegal logging does not have any legality

# 行为主体、具体行为和相关产品

## Acting entity, concrete action and products

- 合法企业的违法行为，应该不影响其产品的合法性
  - 所有企业绝对都有违法行为，但没有说所有企业生产的产品都没有合法性
  - 木材采伐企业也是一样
  - Actions against the law by a legal company should not affect the legality of a product it produced
  - All companies absolutely have actions against the law, but there is no such saying that all products do not have legality
  - Logging companies are the same



# 典型的同样例子 Two same examples

- 行为主体合法的，其衍生产品一般就合法
- If acting entity is legal, its products are regarded as legal
- 具体行为有违法的，一般不影响其衍生产品的合法性
- Actions against the law by a legal company do not affect the legality of its products
- 中国所有大学：
  - 可能都是合法的，但绝对都有违法行为（吉大有别的违法行为）
  - 不能因为所有大学都有违法行为，而质疑我们行为证书的合法性
- All Chinese universities:
  - All may be legal, but all absolutely have actions against the law
  - No one can doubt the legality of the diploma produced by these legal universities with actions against the law, almost every day

# 典型的同样例子 Two same examples

- 中国所有森林经营单位：
  - 可能也都是合法的（或者绝大多数都是合法的），但绝对都有违法行为
  - 不能因为所有森林经营单位都有违法行为，而质疑我们生产出来的木材的合法性
- All Chinese FMUs:
  - May be all legal (at least most are legal), but all absolutely have actions against the law
  - No one can doubt the legality of the timber produced by these legal FMUs with actions against the law, almost every day



# 三、非法采伐的举证

Proving of illegal logging

# 谁举证Who proves

- 分两类，每类分两种情况，共4种
- Two categories, each having two types, all together 4 types
- 正面举证（合法性举证）
  - 采伐企业合法性的举证
  - 生产产品合法性的举证
- Positive proving (proving of legality)
  - Proving of legality of logging company
  - Proving of legality of product



# 谁举证Who proves

- 反面举证（非法、违法举证）
  - 违法采伐行为的举证
  - 非法采伐行为的举证
- Negative proving (proving of being illegal, actions against the law)
  - Proving of logging actions against the law
  - Proving of actions of illegal logging

# 关于谁举证的通理 Proving principle

- 合法性和可持续性：相当于公民的普通和模范；合法性是基本，可持续性是鼓励
- Legality and sustainability: Similar to ordinary and model; legality is baseline, and sustainability is encouragement
- 合法性（普通）：不要证明。除非特殊情况，大家都是合法公民，大家都是普通人
- Legality (ordinary): No need to prove. All people are legal citizens, and ordinary, unless in a special case
- 可持续性（模范）：要证明，而且要举证倒置，自己或别人（最好第三方）提供（申请）材料、证明
- Sustainability (model): Need to be proved, and should be self proved. He should provide evidence to verify

# 关于谁举证的通理 Proving principle

- 行为和产品的合法性的举证：不能倒置，谁主张谁举证
- Legality of actions and products: Proving by accuser
- 只有交警把司机拦住指出其违反了交通法并出示证据（录像、测速仪），没有交警把司机拦住说让司机提供一小时前没有违法交通法（即汽车行驶过程的合法性）的证明
- Police can point the driver an action against the law only he provides evidence (video and speeding equipment), but he can not request the driver to show the evidence of not being violating the law in the past one hour
- 一个人走在大街上，就是普通人，不能让其主动出示合法性证明（紧急状态下要求出示身份证件等除外）
- Any people in the street is ordinary, and no one can request him to show his legality (unless showing ID card under state of emergency)

# 正面举证 Positive proving

- 正面举证（合法性举证） Positive proving on legality
  - 采伐企业的合法性举证：可以倒置（采伐企业主动出示证照方面的合法性证明）。市场上很普遍：商店、专卖商店（烟酒）、餐馆，四五种证照（许可证、专卖证、卫生证、执照等）
  - Proving of legality of logging company: Can be self proved (actively showing licenses and permits)
  - 生产产品（木材）合法性的举证：不能倒置，谁主张谁举证
  - Proving of legality: Can not self proved



# 反面举证 Negative proving

- 反面举证（非法性举证） Negative proving on illegality
  - 违法采伐行为的举证：不能倒置，谁主张谁举证（法律越来越强调零口供）
  - Proving on actions against the law: Can not be self proved. Those who accuse prove (The law is focusing on zero statement of accused)
  - 非法采伐行为的举证：
    - 如果非法采伐的定义和内容如前一幻灯片所述，举证可以倒置，即采伐企业主动出示证照方面的合法性证明
    - 否则，举证不能倒置
  - Proving on actions of illegal logging
    - If the definition of illegal logging is as what the Slide 43 defined, then self proving could be applied, that is that the logging company actively show the legality evidence of licenses and permits
    - As otherwise, no self proving can be applied

# 关于一国企业在国外违法问题

## Law violation by a foreign company

- 这个问题（包括中国企业在国外采伐木材）也普遍存在
- This issue is very common
- 企业的合法性：合法企业和非法企业（企业注册所在国和企业行为所在国所规定的证照是否齐全）
- Legality of company: Full licenses and permits in both countries
- 合法企业的违法行为：按企业行为所在国相关法律法规规定
- Actions against the law of a legal company: According to the laws in operation country
- 任何外资企业也都有违法行为
- All foreign companies (even all legal) have actions against the law

# 关于一国企业在国外违法问题

## Law violation by a foreign company

- 违法行为的处理：Treatment of actions against the law
- 中国自然人违法行为的处理：法律规定全国一律实行属地管辖，没有属人管辖之说Case by natural man in China
- 国际上，外资企业违法行为的处理（涉及国际法范畴）：
  - 4种可能性组合：两国都不管，违法者没人管（逍遥法外）；两国之间商量由其中一国管辖；两国对管辖权有争议时，即属地管辖与属人管辖发生冲突，则根据国际法准则，属地管辖优先，即违法行为发生国来处理
- International law: 4 different types, with local governing as a priority

# 关于一国企业在国外违法问题

## Law violation by a foreign company

- 一国企业在另一国存在违法行为，90%甚至更多的处理责任（这里指处理解决问题的责任）在违法行为的发生国（企业行为所在国）
- For actions against the law by a foreign company, over 90% treating power belongs to the operation country
- 属地管辖优先于属人管辖！
- Operation country is prioritized compared with host country in terms of treating power

# 关于一国企业在国外违法问题

## Law violation by a foreign company


- 作为主权国家，企业行为所在国政府有权依照本国的有关法律法规进行处置（判刑、罚款等），唯一要做的是告知企业注册所在国的外交机构。刑事犯罪先抓人，后告知
- As a sovereignty country, the local government has power to treat the actions against the law by a foreign company (even imprisonment and fined), but should report to the mission of the foreign country
- 但作为企业注册国有适当的教育、帮助该国企业如何遵守驻在国的有关法律法规的责任
- The hosting country is responsible for educating the company to obey by the laws in operation country





# 四、非法、违法木材贸易

Illegal trade and trade with actions against the law



# 木材贸易： 也有非法和违法之别

**Timber trade also has difference between illegal trade and trade with actions against the law**

# 非法、违法木材贸易 Illegal timber trade and timber trade with actions against the law

- 非法木材贸易和违法木材贸易，所有方面都类同于非法木材采伐和违法木材采伐（定义、举证等）
- Illegal timber trade and timber trade with actions against the law: same as logging in all aspects (definition and proving)
- 证照不全的木材贸易公司，属于非法木材贸易公司，其贸易行为就是非法贸易（典型的就是走私）。**要严厉打击**
- A timber trade company with lack of licenses and permits should be regarded as illegal timber trade company, and its trade actions are regarded as illegal trade (smuggling is a typical form), **which should be seriously tackled**



# 非法、违法木材贸易 Illegal timber trade and timber trade with actions against the law

- 证照齐全的木材贸易公司，绝对都有违法行为（程度不同而已）。【逃税、避税（少报数量、少报价格）】【企业三本帐、两本帐问题】【90年代南方胶合板进口，改从价税为从量税】【俄罗斯还有个别多报的现象（官员好大喜功）】  
【其他的违法行为枚不胜数】【多问问海关的同志：合法贸易公司程度不同的违反法律的例子很多很多】
- All timber trade companies with full licenses and permits, which are legal companies, have actions against the law (only with difference extent of seriousness) (taxation, low price reporting etc)

# 非法、违法木材贸易 Illegal timber trade and timber trade with actions against the law

- 这些合法木材贸易公司的违法行为，不能称为非法贸易，只能称为违法贸易
- Actions against the law by a legal timber trade company can not be regarded as illegal trade, but as trade with actions against the law
- 非法贸易：要严厉打击
- Illegal trade: Should be seriously tackled
- 违法贸易：严重的要处罚甚至打击，一般的只是教育、一般处罚（罚款等）
- Trade with actions against the law: Should be seriously tackled for serious one, but may be only moderately treated if not seriously enough



**非常感谢！**

**Thank you very much!**