

Briefing Note for the Competent Authorities (CA) implementing the EU Timber Regulation

December 2019 – January 2020

CHINA BAN ILLEGALLY SOURCED TIMBER IN AMENDMENT TO FOREST LAW

A revised **Forest Law** was adopted at China's 15th meeting of the Standing Committee of the National People's Congress on 28 December 2019 and will enter into force on 1 July 2020. Article 65 of the revised Forest Law bans the buying, processing or transporting of illegally sourced timber. Those found to be in contravention of the law may be fined up to three times the value of the confiscated timber (Article 78). The relevant forestry authorities are also empowered to supervise and inspect timber of illegal sources (Article 67). The Environmental Investigation Agency (EIA) **report** further amendments to the Forest Law, including: commitments to develop a high-quality and effective forestry ecology system; the strengthening of protections for forestry resources and a ban on cutting natural forests; the promotion of afforestation; and strict controls over the annual cutting volume of timber.

China is one of the world's largest importers, manufacturers and exporters of wood-based products, with much of its imported timber sourced from countries associated with illegal logging and 'high-risk' timber¹. **Global Witness** note that what is crucial now is how the law will be implemented and to timber of which origins it will apply, given that the law principally addresses the management and use of China's domestic forests.

IMPLEMENTATION & ENFORCEMENT OF EUTR



The FLEGT/EUTR Expert Group met in Brussels (December 2019)

At the meeting on 12 December 2019, the European Commission (EC) noted the adoption of their Communication on the **European Green Deal**. An update was provided on the situation in Myanmar, including the EU cooperation with authorities and other relevant stakeholders. Applicable legislation is not fully accessible for EU operators, hence it is not possible to take the basic steps necessary for exercising due diligence for wood harvested in Myanmar, and previous conclusions of the Expert Group were upheld (see, for example, conclusions in the **June** and **September** 2019 summary records). CAs discussed checks on imports from Brazil and upheld the current Expert Group conclusion that risk of illegally-harvested timber entering the supply chain in **Brazil** is not negligible, and that operators therefore have to take adequate risk mitigation measures to come to a negligible risk and be able to place such timber or products derived therefrom on the EU market. Updates were provided on the Voluntary Partnership Agreement (VPA) processes with Indonesia and Viet Nam. Presentations were given on the use of **DNA analysis** and its limitations for tracing timber to the stump in Myanmar (University of Adelaide) and lack of transparency in forest certification bodies. The summary records for FLEGT/EUTR Expert Group meetings are available from the EC **Register of Commission Expert Groups**.

The EC has commissioned a 'Study on **certification and verification schemes** in the forest sector and for wood-based products' which will provide a resource to CAs and operators on forest and wood-based product certification, in particular in the context of the implementation of the EUTR.

Commission releases **5th report** on checks performed by EUTR Competent Authorities (January 2020)

This overview of the compliance checks performed and penalties imposed by EU Member States' and EEA Competent Authorities (CAs), to enforce the implementation of the EU Timber Regulation, covers the six-month period January-June 2019. The report is based on data provided by CAs on a voluntary basis. Twenty-five CAs responded to the survey,

¹ See UNEP-WCMC (2018) **EUTR country overview** for the People's Republic of China.

reporting conducting checks on more than 2948 domestic operators, 477 importing operators, 973 traders dealing with domestic timber, 82 traders dealing with imported timber and four monitoring organisations. Going forward, national reporting on CA checks and penalties imposed will be conducted annually as part of the EUTR national report.

WWF publishes a review of enforcement of the EUTR (December 2019)

The analysis of EUTR enforcement was based on a survey of 16 CAs conducted by WWF between October 2018 and March 2019. The analysis highlights good practice and identifies improvements in the enforcement of the Regulation within a number of Member States, but also identifies some severe shortcomings. These include half of surveyed Member States lacking criminal sanctions for EUTR infringements and at least 10 Member States not systematically carrying out checks on due diligence systems and timber legality. In addition, action-taking following the detection of non-compliance was considered to lack clear procedures or decision-making processes within CAs. WWF provide several recommendations at Member State and EU level, the majority of which are considered to be of relevance to all Member States. These include several aspects where additional guidance at EU level is considered to potentially facilitate a more harmonised approach across the EU.

German CA provided updates on action taken to enforce the EUTR (January 2020)

A delegation from Thailand representing the Royal Forest Department, Thai-EU FLEGT Secretariat Office, Thai Customs and Thai Timber Association visited the German CA on 16 January for a **study tour**. The delegation was keen to learn about implementation and enforcement of the EUTR as Thailand is in the process of implementing a national Timber Legality Assurance System as part of the FLEGT VPA process.

Finnish CA provided updates on action taken to enforce the EUTR (January 2020)

The Finnish CA reported that they have started to take samples for origin/species analyses as part of inspection routines. The first samples were collected in November 2019.

Close cooperation between the Dutch and Czech CAs: seizure of timber from Myanmar (December 2019)

The Netherlands Police, the Netherlands CA and the public prosecutor's office conducted raids on six locations across the Netherlands in December 2019, leading to the seizure of teak from Myanmar. The timber entered the EU market via the Czech Republic and was then transferred to the Netherlands. This may have been a deliberate attempt to place timber on the Dutch market whilst circumventing Dutch enforcement. Businesses and houses were searched in the provinces of Utrecht, Gelderland and Noord-Holland. Investigations were also conducted in the Czech Republic by the Czech Police in the presence of the Netherlands Police and CA.

Dutch court ruling on two operators importing teak from Myanmar (January 2020)

In 2017, the Dutch Food and Consumer Product Safety Authority (NVWA) took administrative measures against two operators placing teak from Myanmar on the EU market, without all steps of the due diligence system in place². The operators were ordered to cease and desist. If they continued to import without doing due diligence and reaching negligible risk, a sum of money would be forfeited. The cease and desist order was contested. On 9 January 2020, the court ruled in favour of the NVWA and found the appeals of the operators unfounded. The court noted that the Swedish case referred to by the claimants was specific and not applicable to this case³. The court also noted that not all the documents in the chain from harvest to export had been presented and that risk mitigation measures had not been undertaken.

Swedish CA provided updates on action taken to enforce the EUTR (December 2019)

In December, the Swedish CA **published a message** and notified former and current importers and traders of teak and other tropical species to clarify operator obligations under the EUTR and the related risks of importing teak from Myanmar. They advised that, in line with the opinion of the EUTR Expert Group and the EC, operators should refrain from placing timber on the market in cases where there is a lack of basic information necessary to be able to apply the due diligence system effectively. The CA also reported that inspections for 2019 had ended and the operators that will be inspected in 2020 have been selected.

² See **June–August 2018** EUTR briefing note.

³ In the Swedish case (judgment of 18 May 2018 of the Court in Jönköping, Sweden), a prohibition decision placed on an operator for imports into the EU of teak from Myanmar harvested before 1 April 2017, was found to be too strict. The Swedish court announced that, unless illegality could be proven by the CA, an injunction should be the first measure taken against an operator, as opposed to issuing a prohibition decision. See **September–October 2018** EUTR briefing note.

UK operator sentenced for breaching requirements of the EUTR (December 2019)

The UK CA prosecuted an operator, Heartlands Furniture (Wholesale) Ltd, for two offences: non-compliance with a Notice of Remedial Action (issued in February 2017) and failure to exercise due diligence when placing two products on the EU market in October and November 2017. The operator pleaded guilty to both charges in September 2019 and was sentenced in December 2019 to a fine of GBP 13 347.86 (GBP 4000 for each offence, plus costs).

UK CA provided updates on action taken to enforce the EUTR (January 2020)

In December 2019, an investigation by **Addendum** and **Earthsight** (see below) identified the UK as a destination for oak flooring manufactured by two Ukrainian firms linked to widespread illegal logging, corruption and business malpractice. The UK CA reported that they are looking into the detail of this report with a view to taking appropriate action.

ILLEGAL LOGGING & TRADE



EU demand for oak flooring linked to illegal logging and corruption in Ukraine (December 2019)

An investigation by Austrian news outlet **Addendum** shines the spotlight on two controversial Ukrainian timber dealers, Tayfun and Zunami, which were revealed to have supplied 8300 tonnes of lamellas (the oak top layer used to produce parquet floors), worth USD >35 million, to the four biggest Austrian parquet flooring companies January 2018–May 2019. The investigation, to which **Earthsight** contributed research and evidence, details various malpractices within the two firms' operations, linked to illegal logging of state forests, use of undocumented timber, corruption and money laundering. Whilst the majority of regional state forestries in Ukraine are FSC certified, this investigation highlights the limitations of voluntary certification systems in countries where corruption and bribery are commonplace and the State itself is implicated in the illegal timber trade⁴. It was noted that, since the EUTR came into force, the Austrian Federal Forest Office (Austrian CA) had conducted eight checks on Austrian parquet manufacturers and importers of raw materials, of which seven were reported for violations of due diligence.

EIA investigation into trafficking of mukula rosewood in Zambia, allegedly orchestrated by high profile figures (December 2019)

The EIA expose the continued large-scale trafficking of mukula rosewood (*Pterocarpus tinctorius*) from Zambia's forests, despite a series of government-instituted harvest moratoria and export bans. On average, more than fifty 40-foot containers of mukula were estimated to have been exported monthly June 2017–May 2019, generating approximately USD 7.5 million paid annually in bribes and informal fees. Traffickers interviewed by EIA undercover investigators named prominent figures of the Zambian government and political sphere as central to an illicit mukula trafficking network. Whilst three different routes have been used by traffickers to ship mukula logs out of Africa, the preferred route in recent years was reported to be southwards to Durban, South Africa. According to traffickers, this route was 'safe', provided a confidential permit had been obtained from the Zambian state-owned company ZAFFICO. In June 2017, ZAFFICO was appointed by the government to export seized illegal timber. Traffickers report that the official export of seized logs by ZAFFICO served as a front, enabling well-connected Zambian and Chinese business operators to export thousands of freshly cut mukula logs. Permits issued by ZAFFICO designate Durban as the specific port of clearance.

P. tinctorius was listed in CITES Appendix II on 26 November 2019 and the EIA **calls for Zambia** to establish a zero export quota to suspend trade until the illicit mukula networks are dismantled and the requirements for trading under CITES (including a non-detriment finding and Legal Acquisition Finding) are in place.

Report highlights illegal deforestation in Mato Grosso, Brazil (November 2019)

The NGO Instituto Centro de Vida published a report based on annual deforestation data produced by the Brazilian National Institute of Spatial Research (INPE) between August 2018 and July 2019. INPE found that 9762 km² of the Amazon was deforested over the research period, constituting a 30% increase on the previous year's losses. Seventeen per cent of the deforestation, equating to the loss of 1685 km² of forest, took place in Mato Grosso State; this constitutes the highest rate of deforestation in the last 11 years. The report found that 85% of recorded deforestation was classified as illegal due to an absence of authorisation from the environmental agency. The largest part of this

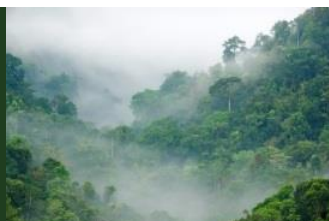
⁴ See Earthsight's **Complicit in Corruption** report, featured in the **June–August 2018** EUTR briefing note.

deforestation (56%) occurred in rural properties registered on the Rural Environmental Register (CAR), signifying that the authorities were aware of the landowners' actions and bringing into question enforcement in the State.

EarthSight investigation into high-risk timber trade focused on companies in Peru and the United States (January 2020)

An investigation by EarthSight draws attention to the continued supply of high-risk timber to the global market from a Peruvian company that has long been associated with allegations of illegal activities, including trading in illegal timber and the use of documents based on falsified information. The company is reported to be Peru's largest timber exporter, with concessions in the regions of Ucayali and Madre de Dios. The EarthSight investigation focuses on a particular US company as one of the top clients of the Peruvian company. It is alleged that the US company continues to import timber despite evidence of illegalities, potentially resulting in violations of the US Lacey Act. The report also brings the value of FSC certification in Peru into question, due to the systematic laundering of illegal timber. In response to the report, the Peruvian company has stated that it has a responsible public procurement policy, while the US company has convened an internal working group to evaluate the information provided by EarthSight.

LEGISLATION & POLICY



European Council adopts conclusions on the Communication on Stepping Up EU Action to Protect and Restore the World's Forests (December 2019)

On 16 December 2019, the Council of the European Union adopted conclusions on the **Communication** on Stepping Up EU Action to Protect and Restore the World's Forests. Member States welcome the Commission's communication on stepping up EU action in this area.

Indonesia and the EU release 2018 annual report on VPA progress (December 2019)

The joint progress report covering January–December 2018 focuses on the roll-out of Indonesia's timber legality assurance system SVLK, trade in FLEGT-licensed timber, institutional strengthening and VPA monitoring. By December 2018, 4477 forest-based enterprises and industries and a total of 22.8 million hectares of production forest (natural and plantation forest) in Indonesia had been SVLK certified, covering 100% of the timber harvested.

The Republic of Congo and the EU release 2018 annual report on VPA progress (December 2019)

The report (in French) describes progress made on the timber legality assurance system, institutional improvements, stakeholder engagement, communication, transparency and monitoring of the VPA agreement. In 2018, advancements on the Republic of Congo's national computerised verification system (SIVL) led to agreement at the Joint Implementation Committee (CCM 9) that the system is ready to be deployed. In addition, two new legality assessment campaigns were carried out, the Independent Observer (CAGDF) carried out one data collection mission and two fact-finding missions and the Independent System Auditor (AIS) carried out four audits of regional forestry boards.

Brazilian government plan to regularise cleared land (December 2019)

On 10 December 2019, Brazil's President, Jair Bolsonaro, signed a **provisional measure** to regularise cleared land. The text of the provisional measure outlines the possibility of legalising public lands occupied a year prior to the publication of the measure (that is, up to 11 December 2018). The size of the land that can be legalised without prior inspection by the land reform agency, Incra, will increase from 4 to 15 fiscal modules. Fiscal modules are set by Incra to reflect the minimum area necessary for economic subsistence and differ in size between municipalities, ranging from 5 to 110 hectares. As a result, areas of just under 1650 hectares could be legalised without requiring an inspection. The new rule took effect on 11 December 2019 but must be approved by Congress within 120 days of this date. It has been **reported** that the motivation of the bill is to speed up the regularisation process, however, there are fears that this decision will incentivise land grabbing and the clearance of forested land.

OTHER NEWS, RESOURCES & PUBLICATIONS



Fern and LoggingOff publish update on VPA progress (January 2020)

The update, which provides country by country information on the progress being made regarding VPAs, discusses the successes and challenges involved in the process. It was written by civil society leaders across the VPA countries in Asia, Africa and South America, and provides their perspectives on the processes.

High Court in Indonesia upholds conviction of corrupt timber trader (January 2020)

A timber trader who ran two companies found to be trading in illegal timber was found guilty and sentenced in October 2019. The Jayapura High Court upheld the conviction after an appeal. Eighty-one of 384 containers (6489.28 m³) of illegal merbau (*Intsia* spp.) seized in 2019 were assigned to the two companies, leading to the trader's conviction. He was sentenced to a five-year jail sentence and a fine of IDR 2.5 billion (~USD 183 171). EIA report that this is the first case of its kind in the Indonesian timber sector and the relatively severe punishment will send a signal against illegal logging in the region.

ClientEarth release latest edition of their EUTR newsletter (January 2020)

The **latest edition** of EUTR News covers the period October–December 2019, and provides an update on activities regarding implementation and enforcement of the EUTR, as well as broader work within the EU and internationally to address the issue of illegal logging.

Mapping the EU's tropical timber footprint (December 2019)

A **report** published by IDH, The Sustainable Trade Initiative, estimates that 25-32% of the 1 473 000 tonnes of primary tropical timber products imported into the EU-28 in 2018 were sourced from certified sustainably managed forests. This figure was estimated using an 'exposure to certification' method due to a lack of trade data on certified timber. The share of FSC and PEFC certified forests in a tropical producer country was compared to the total forest area, then projected onto the export data. Focusing on seven main importing countries of primary tropical timber products, the analysis indicates that the Netherlands is the largest importer of certified primary tropical timber products in the EU, followed by Belgium, the UK, Germany, France, Italy and Spain. Indonesia is the largest supplier (36%), followed by Malaysia (27%), Gabon (15%), Congo (9%) and Cameroon (6%).



Developed by UNEP-WCMC as a consultant of the European Commission in close cooperation with the EU Member States Competent Authorities.

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