

Background

Since 2012, Forest Trends has been working with officials to further understanding of complex and high-risk supply chains for forest products, and support coordinated implementation of legislation aiming to tackle the trade in illegal wood. The process is known as the Timber Regulation Enforcement Exchange (TREE), a series of workshops which bring together a growing group of officials every six months.

Survey of Enforcement Activities

In Spring 2016, Forest Trends surveyed government agencies in the EU, Australia and the US about their enforcement activity during the previous 6 months (September 2015 – March 2016). Responses were collected from fourteen EU Member States, three US Lacey enforcement agencies and the Department of Agriculture and Water Resources in Australia. Of those that responded, all but one is a regular participant in TREE meetings. The survey will be repeated and data published biennially.

EU Member States who responded to the survey were: Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Ireland, Latvia, Luxemburg, Malta, the Netherlands, Sweden, the UK, and one Member State that prefers not to be identified. Several countries have strict privacy laws that limit the publication of information about their enforcement activities, so the total figures are, in fact, considerably higher than those reported.

Company Inspections and System Reviews

Over the last 6 months, enforcement officials from the 14 EU Members States and Australia conducted 495 company site inspections and reviewed 955 Due Diligence systems.¹

Of the countries surveyed, this represents an average of 33 inspections and 64 reviews in the 6-month reporting period. A number of agencies reported that their enforcement work is cyclical and activities fell outside the 6 months of this survey, but should be captured in the next reporting period.

Corrective Actions and Sanctions

European Member States use the penalty regime of their national enforcement agencies, but in most cases authorities have the power to require companies to undertake specific improvements to Due Diligence Systems (DDS), and to issue sanctions to those that do not. Non-compliance actions were divided into Corrective Action Requirements, injunctions or 'cease and desist' letters, and sanctions.² The fifteen countries submitting data reported that a total of 396 Corrective Action Requirements, 4 injunctions and 55 sanctions had been issued in the last six months.

Source Countries and Risk

More than 15 source or processing countries were associated with Corrective Action Requirements, injunctions, and sanctions issued in the last 6 months, with

¹ The Spring 2016 questionnaire did not allow officials to report whether site visits and DDS reviews were separate or combined activities. Future iterations of the questionnaire will allow for a more specific breakdown of activities, for those agencies that are able to provide detailed data.

² The survey asked respondents to report sanction data as a distinct category, but a specific definition of "sanction" was not included. Different enforcement agencies may define the term "sanction" slightly differently, but in most cases we assume that sanctions are associated with financial penalties. In future iterations of the survey the term "sanction" will be defined.

China, Brazil, Cameroon, Myanmar, and the Republic of Congo most frequently identified (figure 1). Narrative reports in the survey highlighted the fact that some Corrective Action Requirements and sanctions related to wood that was harvested in the source country identified, but shipped through or processed in a third country. This means that companies buying from processing countries may in fact be subject to relatively more enforcement activity than the charts below show.

Enforcement officials were also asked to report any observations of specific changes in company purchasing behavior in the last 6 months, and identify which source countries were implicated.

The primary observed change in company behavior was the decision to stop purchasing from individual suppliers who were unable to provide full document sets and/or independently verified chain of custody in favor of others who could (figure 2).

Fig 1. Source Countries Implicated in Non-Compliance Actions

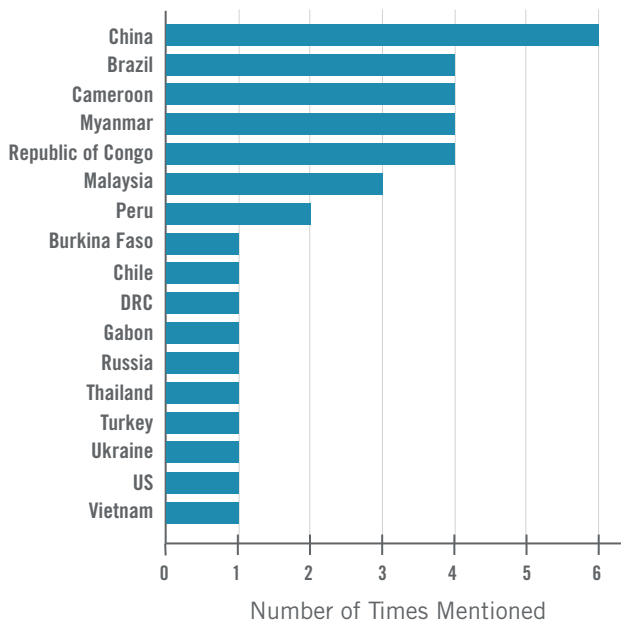
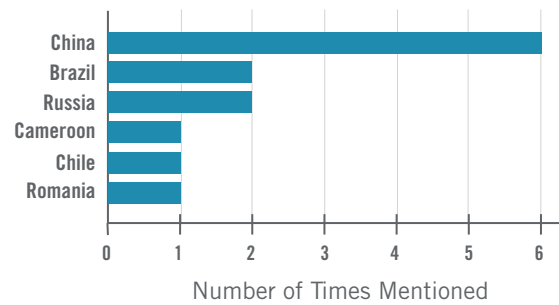


Fig 2. Changed buyer Behavior Affecting Source Countries



Product Sector Focus

Where possible we asked officials to identify the numbers of enforcement activities that were focused on domestic forest producers, timber importers, furniture importers, or pulp/paper importers. Not all agencies were able to disaggregate their data in this way, but those that could provide an indication of where enforcement resources have been focused in the last 6 months, and where non-compliances have most frequently been found.

Table 1. Enforcement Activity Reports by Sector

Domestic forest producers	Number (% reporting)	Timber importers	Number (% reporting)
Site inspections	88 (66%)	Site inspections	186 (80%)
Due Diligence System reviews	91 (60%)	Due Diligence System reviews	276 (80%)
Corrective Action Requirements	24 (60%)	Corrective Action Requirements	93 (80%)
Injunctions	1 (53%)	Injunctions	1 (66%)
Sanctions	0 (53%)	Sanctions	38 (73%)

Furniture importers	Number (% reporting)		Pulp and paper importers	Number (% reporting)	
Site inspections	52	(73%)	Site inspections	20	(73%)
DDS reviews	115	(66%)	DDS reviews	125	(66%)
Corrective Action Requirements	46	(66%)	Corrective Action Requirements	41	(66%)
Injunctions	1	(60%)	Injunctions	1	(60%)
Sanctions	15	(66%)	Sanctions	2	(66%)

Fig 3. Total Inspections and Reviews by Sector

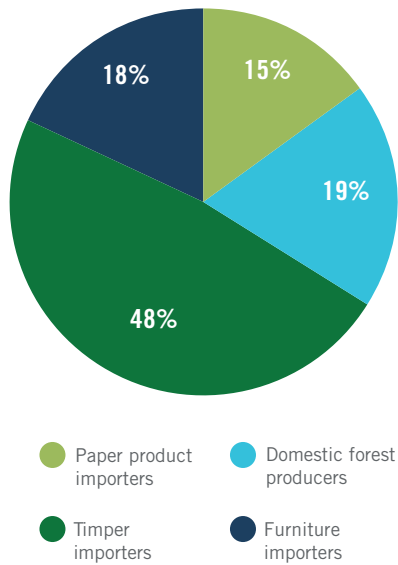
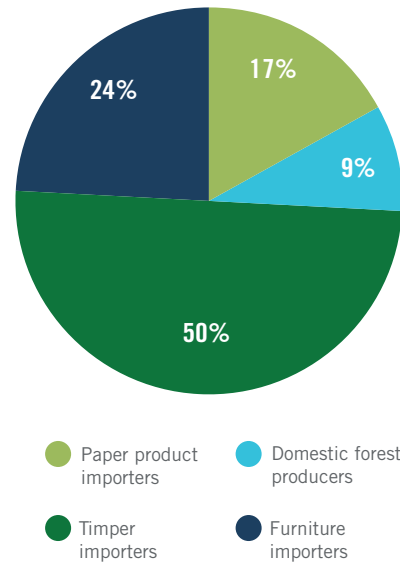


Fig 4. Total Non-Compliance Actions by Sector



US Lacey Act Enforcement

US enforcement, rooted in a different legal construct, does not fit into the same reporting framework as EU and Australian activities, but synergies between the two legal approaches, particularly in relation to the nature of robust Due Diligence and the US concept of ‘due care,’ are emerging. The US Department of Justice (DOJ) detailed three cases at the TREE meeting in Prague.

US vs. Lumber Liquidators Inc.

The US v. Lumber Liquidators, Inc. (LL) case concerned violations of the US Lacey Act. An investigation began when the DOJ received information from the Environmental Investigation Agency (EIA) that the company was importing illegal timber products. Initial allegations focused on wood that had been illegally logged in the Russian Far East, manufactured into flooring in China, and then shipped to the US under false declarations of origin. The Russian Far East is home to the last 450 wild Siberian tigers and 47 Amur leopards (both CITES-I listed), and both species are severely threatened by illegal logging of Korean pine (CITES-III) and Mongolian oak (CITES-III), which raised the profile of the case in the US. A government search of company headquarters revealed internal documents noting the fact that Mongolian Oak could not have come from Germany, as claimed. Evidence was also found that LL staff knew the areas they were buying from were high risk, but failed to mitigate that risk. Ultimately it was clear that LL had 1) Falsely declared timber species and/or harvesting company name/s to cover up the true product identity and origin; and 2) Used a legitimate permit to launder illegally harvested timber. \$3.5M of Mongolian Oak was falsely declared as a different species, and LL bought \$7M of illegally-harvested oak.

As a result, LL pleaded guilty to one felony and four misdemeanor charges and was fined \$13.5 million USD, representing the largest-ever criminal penalty under the Lacey Act. One of DOJ’s key objectives was for LL to sign a detailed factual statement about the crimes committed, which will serve as guidance to the industry, and deter similar crimes in the future.

As part of the settlement LL also agreed to follow an Environmental Compliance Plan, which includes annual auditing and reporting to the court, and five years of court oversight/probation. The DOJ considers this to be the most powerful outcome of the case, particularly because there is now a Chief Compliance Officer at LL, whose task it is to oversee compliance with the Lacey Act, and who can be held criminally responsible for any future infractions. LL also needs to conduct quarterly, on-site investigations of its high-risk suppliers, and establish an unbroken and verified chain of custody for its high-risk products, down to the specific forest.

As community service payment, LL agreed to provide funding to organizations conducting tiger and leopard conservation in the Russian Far East. Additionally, US\$500,000 from the settlement was set aside as an incentive for innovation in the development of technology to enable simple (hand-held, immediate) identification of timber origin, for use at points of import and export (e.g., ports). Teams from the University of Wisconsin and an NGO called Conservation X received this funding to develop two distinct technologies.

The DOJ expects a few major, long-term impacts from this case. First, compliance standards for other medium-to-large operators are heightened. Through this case DOJ aims to move the entire industry toward better implementation of due care standards, by increasing industry awareness of illegal logging schemes, and enhancing understanding about what level of knowledge companies should possess about their supply chains. In addition, the innovation funding from the case will hopefully lead to new technologies that customs agents can use to quickly assess the origin and risk profile for wood imports and exports. The LL case also demonstrates how the USG can successfully partner with NGOs on a criminal investigation. And all US agencies are now hopeful that NGOs will be more willing to bring robust information to the USG concerning evidence of potential criminal activities.

Allegedly Illegal Peruvian Timber Denied Entry at a Port in Houston

The US Department of Justice summarized the public information regarding a shipment of allegedly illegal timber that has been denied entry at the US port of Houston. The timber was logged in the Peruvian Amazon and transported on a ship called the Yacu Kallpa. Due to allegations of illegal logging, US Customs officials have “excluded” the timber, which means it is not allowed legal entry into the country. The timber is the subject of an ongoing investigation among several US agencies. The US government is collaborating with officials in Peru on this case, but the situation is complicated due to interagency disputes inside of Peru and the fact that the official leading OSINFOR, an independent Government oversight agency which had been cooperating with the case, was recently removed from his post.

Spring 2016 Meeting – Prague, Czech Republic

Forest Trends’ TREE program held its Spring 2016 meeting in Prague, Czech Republic from April 5-8, co-hosted by the Ministry of Agriculture of the Czech Republic. The meeting opened with an introduction to the EU Timber Regulation (EUTR), Australian Illegal Logging Prohibition Act (ILPA), and US Lacey Act Amendments for government representatives new to the TREE process and an overview of the development and/or implementation of new timber import controls in Indonesia, Korea, and Taiwan.

In the following days the group discussed legality risks and Due Diligence standards in supply chains from Myanmar, including a detailed presentation of a Swedish EUTR case concerning flooring products from Thailand made with teak from Myanmar. There was also a regional focus on Russia, Belarus, Ukraine, and the Balkans, with presentations on Serbia’s forest control systems, regional illegality risks, Due Diligence standards, the US Lacey case against Lumber Liquidators, and an EU project focused on corruption and the EUTR. The second half of the meeting entailed detailed sessions covering illegal modalities, corporate best practice and compliance challenges in Cameroon and Peru, and information about recent Lacey Act enforcement activities relating to Lumber Liquidators and shipments of wood from Peru to the US.

Presentations and full notes of public sessions are available at: <http://www.forest-trends.org/event.php?id=1266>

Table 2. Spring 2016 TREE – Official Representation

Country	Ministry	Country	Ministry
US	Department of Agriculture Animal and Plant Health Inspection Service	Lithuania	State Consumer Rights Protection Authority
US	Department of Agriculture Forest Service	Malta	Ministry for Sustainable Development, Environment and Climate Change
US	Department of Justice	The Netherlands	Food and Consumer Product Safety Authority
US	Department of Agriculture Fish and Wildlife Service	Poland	Ministry of the Environment
Austria	Federal Forest Office	Portugal	Forestry and Nature Conservation Institute
Belgium	Public Service of Health and Environment	Slovenia	Department of Forestry
Bulgaria	Ministry of Agriculture and Food	Spain	Ministry of Agriculture, Food and the Environment
Croatia	Ministry of Agriculture	Sweden	Forest Agency
Czech Republic	Forest Management Institute	UK	National Measurement and Regulation Office
Czech Republic	Ministry of Agriculture	Australia	Department of Agriculture and Water Resources
Denmark	Nature Agency	Belarus	Ministry of Forestry
Estonia	Ministry of the Environment	Canada	Wildlife Enforcement Agency
Finland	Agency for Rural Affairs	Indonesia	Ministry of the Environment and Forestry
France	Ministry of Agriculture, Agribusiness and Forests	Montenegro	Ministry of Agriculture and Rural Development
Germany	Federal Office for Agriculture and Food	Republic of Serbia	Ministry of Agriculture and Environmental Protection
Greece	Ministry of Environment and Energy	South Korea	Forestry Promotion Institute
Ireland	Department of Agriculture, Food and the Marine	South Korea	Forest Service
Italy	Corpo Forestale	Taiwan	Forestry Bureau
Latvia	State Forest Service	Ukraine	Forest Management Information and Analytics Centre