



Timber Regulation Enforcement Exchange

Newsletter Fall 2016

Background

Since 2012, Forest Trends has been working with Government officials to further understanding of complex high-risk supply chains for wood products and support coordinated implementation of the EU Timber Regulation (EUTR), US Lacey Act, Australian Illegal Logging Prohibition Act (ILPA) and, most recently, the Canadian Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA). The process is known as the Timber Regulation Enforcement Exchange (TREE), an ongoing series of networking and information-sharing meetings, which brings the growing group of officials together every six months.

Survey of Enforcement Activities (April – September 2016)

In late 2016, Forest Trends surveyed government agencies in the EU, Australia, and the US about their enforcement activity during the previous six months (April 2016 – September 2016). Responses were collected from thirteen EU Member States, two US Lacey Act enforcement agencies and the Department of Agriculture and Water Resources in Australia. The survey builds upon a prior survey which tracked enforcement activity from October 2015 through March 2016.¹

US Lacey enforcement agencies were asked to respond with narrative updates rather than providing quantitative data on enforcement activities, given that the Lacey Act is founded upon a different enforcement approach from the EUTR and the ILPA.

EU Member States who responded to the survey were: Croatia, Czech Republic, Denmark, Finland, France, Germany, Latvia, Luxemburg, the Netherlands, Norway, Sweden, the UK, and one Member State that preferred not to be identified.

Company Inspections and System Reviews

Over the six-month period, enforcement officials from the 13 EU Members States and Australia reviewed 558 Due Diligence systems (DDS), which included conducting 327 company site inspections. Among the 14 countries surveyed, the average (median) response reported 19 DDS assessments and 17 company site visits conducted over the six-month period. None of the enforcement agencies reporting conducting any site visits for the sole purpose of outreach or education; each of the 327 reported site visits was directly related to a DDS review or assessment.

Corrective Actions and Sanctions

European Member States use the penalty regime of their national enforcement agency, but in most cases authorities have the power to require specific improvements to company Due Diligence systems, and to issue administrative and criminal sanctions to those that do not. Non-compliance actions were divided into Corrective Action Requirements (CARs) or warning letters, injunctions or “cease and desist” letters, and financial penalties. The 14 countries submitting data reported that a total of 169 CARs, 71 injunctions and 4 financial penalties had been issued in the last six months. The four financial penalties were issued by a total of three enforcement agencies, indicating that the majority of countries did not issue any financial penalties for compliance failures during the six-month period.

The average (median) respondent reported having issued 7 CARs or warning letters and 1 injunction or “cease and desist” letter. Of the total 1,129 enforcement actions reported by the fourteen authorities, the frequency of each type of action for the median respondent was 47% DDS assessments, 36% site visits or company inspections associated with DDS assessments, 6% issuing CARs or warning letters and 1% issuing injunctions or “cease and desist” notices.

FOREST TRENDS

1203 19th Street, NW
4th Floor
Washington, DC 20036
www.forest-trends.org

¹ See the previous Forest Trends enforcement newsletter for statistics from October, 2015 – March, 2016 http://www.forest-trends.org/documents/files/doc_5245.pdf

YEAR IN REVIEW

When the results from this survey round are combined with those of the previous enforcement survey administered by Forest Trends, respondents indicate having conducted 1,513 DDS assessments and 822 site inspections over the one year period from October 2015 through September 2016. Over this same time period, respondents reported issuing a total of 565 CARs, 75 injunctions, and 59 sanctions or financial penalties. Total enforcement actions across all EU countries, Australia, and the US are undoubtedly higher than this, as the Forest Trends surveys captured only a subset of these countries.²

Enforcement Actions by Product Category/Sector

Only six respondent agencies were able to report their activities with regard to the specific type of timber product sector targeted. Out of the total 400 enforcement actions reported by these 6 respondents, 37% targeted domestic timber producers; 36% targeted timber importers; 14% targeted furniture importers; 11% targeted panels and flooring importers; and 3% targeted paper product importers. This is broadly consistent with findings from the 2015 – 2016 survey, although shifts include a decrease in the share of inspections and enforcement actions targeting timber importers and paper product importers, and an increase in the relative frequency of actions targeting domestic producers (Figure 1). The vast majority of DDS assessments conducted by the six enforcement agencies across the five type of timber product companies were first-time assessments. Of the total 181 DDS reviews, 97% were first-time assessments of companies which had not been previously inspected. This indicates that the scope of impact for the EUTR is still expanding, as officials work to enforce the regulation across the full range of operators and traders within their respective countries.

Figure 1. Distribution of Inspections and Enforcement Actions by Product Sector

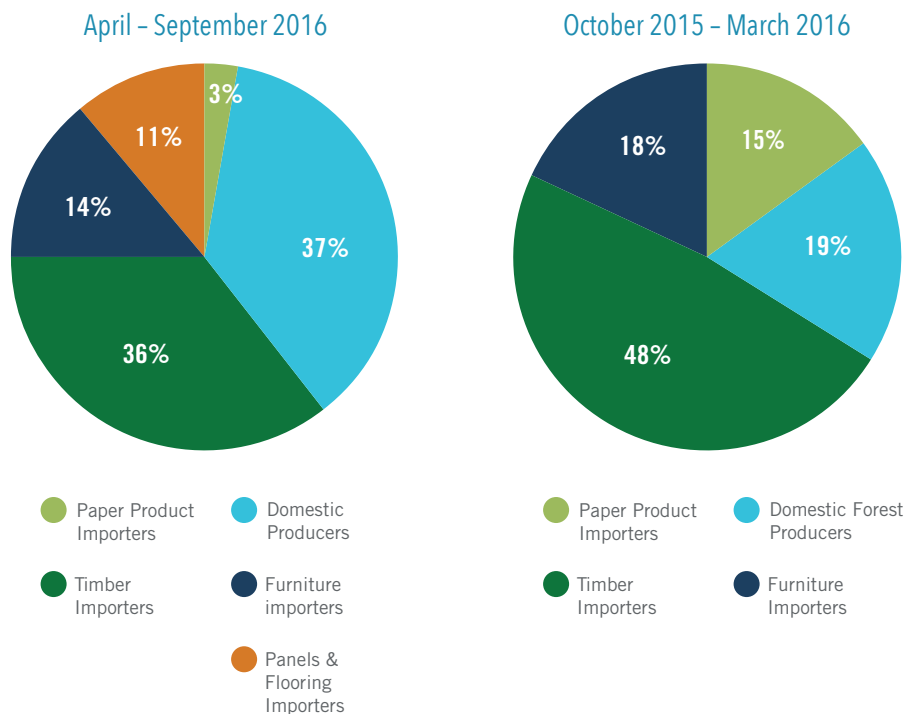


Chart data is derived from six respondents

Chart data is derived from 8–12 respondents (number reporting varies by product sector)

² A total of 15 countries responded to the 2015 – 2016 survey, while 14 countries responded to the 2016 survey.

Source Countries and Risk

The survey also sought to assess the distribution and frequency of enforcement actions by implicated timber-source countries, in an effort to highlight the countries which have been most frequently identified in supply chain due diligence failures over the six-month period. A total of 29 source or processing countries were identified in association with Operators that have been issued corrective action requirements, injunctions, and/or financial penalties in the last six months, with China, Brazil, Russia, India, Vietnam, Cameroon, Malaysia and Myanmar most frequently identified (Figure 2, shown in blue).

An additional 17 countries were reported as having been source countries associated with enforcement actions, but these countries were reported one time only, not multiple times, and therefore are not included in Figure 2. These countries were: Belgium; Bosnia and Herzegovina; Equatorial Guinea; Finland; France; Germany; Ghana; Italy; Mexico; New Zealand; Poland; Romania; Serbia; Singapore; South Africa; South Korea; and Taiwan. Additionally, four countries were mentioned one time in the September 2015 – March 2016 survey, and are not included in Figure 2: Burkina Faso; Chile; Gabon; and Turkey.

Enforcement officials were also asked to report any observations of changes in company purchasing behavior in the last six months, and to identify which source countries were implicated. Observed changes in purchasing behavior were primarily described as a decision by companies 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. China was again the source country most frequently cited as being affected by changed buyer behavior among operators and/or traders related to perceived DDS risk (Figure 3).

Figure 2. Source Countries Implicated in Non-Compliance Actions (October 2015 - September 2016)

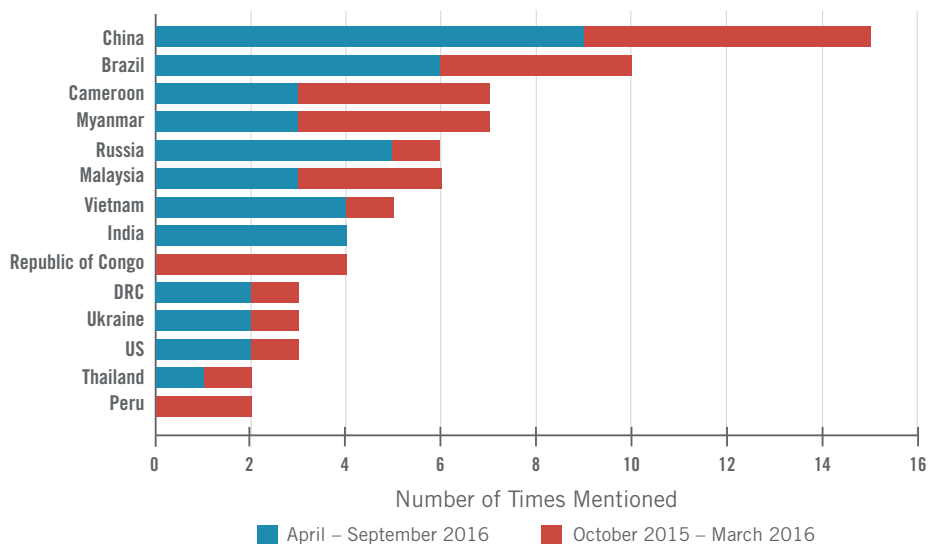
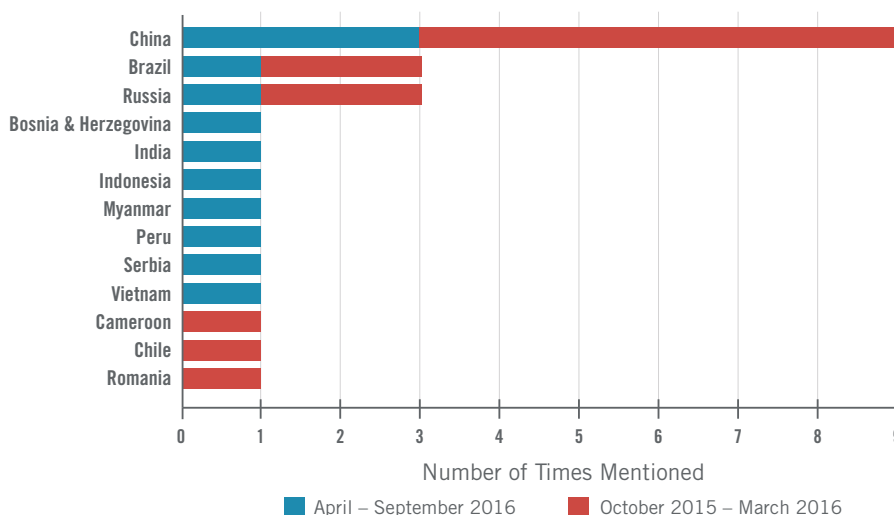


Figure 3. Changed Buyer Behavior Affecting Source Countries (October 2015 - September 2016)



Scope and Coverage

Nine countries reported the total number of operators within their national borders that they are each tasked with regulating under the EUTR (or ILPA in the case of Australia), distinguishing where possible between domestic producers and importers. Collectively, the nine countries are regulating more than 106,000 entities, approximately a third of which are domestic producers, and two-thirds of which are timber product importers. Individual country responses describing the scope of enforcement ranged from a low of 18 entities in one of the geographically smaller countries, to a high of 31,300 total regulated entities in another country. The median response indicated a scope of regulatory oversight covering 5,100 total entities.

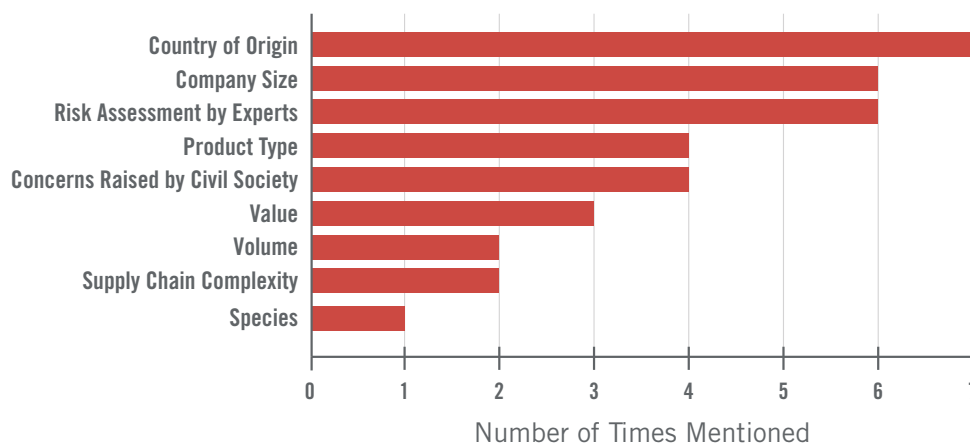
When asked to report the proportion of companies under their scope of enforcement that each of the agencies had been in direct contact with over the six month period, responses ranged widely, with five countries answering less than 1%, two countries reporting in the range of 1-3%, and two countries reporting more widespread enforcement that reached between 40% and 55% of their total regulated entities.

As might be expected, the geographic size of the country was in general directly correlated with the number of total regulated entities falling within the purview of the enforcement agency, and inversely correlated with the proportion of total regulated entities that the enforcement agency had contact with during the current survey period.

Enforcement Targeting Priorities

The survey also asked respondents to rate the importance of various factors in influencing how the enforcement agencies select companies for DDS assessments and other enforcement activities. A total of eleven responses were provided, and Figure 4 describes the relative importance of various factors in directing enforcement. The most important considerations influencing agency decisions about which companies to target included the country of origin of the timber products being imported or traded, the size of the company, and risk assessments by experts.

Figure 4. "Very Important" Factors Guiding Enforcement Targeting (April - September 2016)



US Lacey Act Enforcement

US enforcement of the Lacey Act does not fit into the same reporting framework as EU and Australian activity because of differences in the legislation and corresponding enforcement approaches. The Lacey Act combats trafficking in wildlife, fish and plants, and was expanded in 2008 to include a broader range of plants and plant products, including timber. Under the Act, import declarations containing the country of harvest, scientific name of the plant, quantity, and value are mandatory for certain plants and plant products. The various US government agencies tasked with enforcing the Lacey Act and related trade and import regulations have been collaborating in an effort to streamline the customs declaration process. This updated system was launched in early 2016, and as of the end of March 2016, importers have been required to file Lacey Act import declaration information via the Customs and Border Protection (CBP) Automated Commercial Environment (ACE) system, which now acts as CBP's "single window" through which the trade community electronically reports imports and exports. The effective date for filing this information via ACE for plant and plant product/timber goods entering

U.S. commerce through Foreign Trade Zones (FTZ) was November 28, 2016. Through ACE, manual processes are being streamlined and automated and paper submissions reduced, allowing the trade community to be able to more easily and efficiently comply with U.S. laws and regulations. The US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has been a core member of the TREE network for several years, and has played a key role in making sure that the new ACE declaration system works to enable more efficient and effective Lacey Act enforcement.

Presentations and full notes of public sessions from the October 2016 Paris TREE meeting are available at: <http://forest-trends.org/event.php?id=1406>.

Table 1. Fall 2016 TREE Meeting – Official Representation

Country	Ministry
Bulgaria	Ministry of Agriculture and Foods, Executive Forest Agency (EFA)
Canada	Canadian Forest Service
Croatia	Ministry of Agriculture
Czech Republic	Forest Management Institute
Denmark	Water and Nature Agency
Estonia	Ministry of the Environment
European Commission	European Commission, Directorate-General for the Environment
Finland	Agency for Rural Affairs
France	Ministry of Agriculture, Agribusiness and Forests
Germany	Federal Agency for Nature Conservation (BfN)
Germany	Federal Office for Agriculture and Food (BLE)
Hungary	National Food Chain Safety Office, Forestry Directorate
Latvia	State Forest Service
Lithuania	State Consumer Rights Protection Authority
Malta	Ministry for Sustainable Development, Environment and Climate Change
The Netherlands	Food and Consumer Product Safety Authority
Spain	Ministry of Agriculture, Food and the Environment
Sweden	Swedish Forest Agency
UK	Department for International Development
UK	Regulatory Delivery
US	Fish and Wildlife Service
US	Department of Justice (two participants)
US	Department of Agriculture, Forest Service
US	Department of Agriculture, Animal and Plant Health Inspection Service



This newsletter was financed by the DFID Forest Governance, Markets and Climate (FGMC) Programme.