

Meeting Summary:

Timber Regulation Enforcement Exchange:

Hamburg, Germany

October 10-11 2018



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Introduction

Background: Forest Trends has been working with officials from EU Member States and US Lacey enforcement agencies over the last few years to further understanding of complex high-risk supply chains for wood products and support coordinated implementation of the EU Timber Regulation and US Lacey Act. This process, known as the Timber Regulation Enforcement Exchange (TREE), is an ongoing series of networking and information-sharing meetings which bring the growing group of officials together.

Objective: The TREE process aims to support robust and consistent enforcement of demand-side timber regulations by providing a forum for officials to gain detailed insight into high- and low-risk timber flows entering their countries, discuss practical enforcement issues with each other and relevant experts from the forest sector and other relevant product/environmental sectors, establish emergent norms for Due Diligence/care in relation to different forest products, and build relationships with producer country governments, industry representatives, and other stakeholders involved in combating illegal logging and promoting global markets for legal timber.

Hamburg Meeting: Held in Hamburg, Germany from October 10-11, 2018, this TREE workshop brought together a core group of four US Lacey Act enforcement agencies, eighteen EU Timber Regulation (EUTR) Competent Authorities (CAs), the European Commission, the Korea Forest Service and key experts from the private sector and civil society.

The following report summarizes the presentations and discussions from the TREE meeting in Hamburg. Notes were not taken during government-only training sessions covering forest sector risks in Mexico, Mozambique, and Guyana. In addition, this note only reflects the presentations that expert speakers have given permission for Forest Trends to publicly summarize.

Several topics were covered throughout the week, including:

- a) Country/regional updates to support an understanding of current legality risks and Due Diligence standards for timber sourced from Ukraine, Peru and Brazil.
- b) Document training sessions for enforcement officials to help assess compliance for timber imports coming from Mexico, Mozambique, and Guyana.
- c) Conflict timber and appropriate Due Diligence for companies to ensure that they are purchasing legally sourced timber that is not funding conflict.
- d) The global outlook for pulp and paper and the use of sampling and paper forensics in inspection checks.

Ukraine

Presentations

Stella Boke of the State Forest Service of Latvia reported on a recent EU Expert Mission to Ukraine to better understand forest governance and illegal logging. The mission highlighted that illegal logging “with papers” or “illegal forest management” is a significant problem in Ukraine. This means that timber sourced from Ukraine will often have paperwork accompanying the import but the timber may have been sourced in breach of national legislation. Ms. Boke updated on the institutions involved in governing Ukraine’s forests, highlighting that the State Forest Resources Agency or SFRA manages 73% of all forests. Within these forests, sanitary logging accounts for as much as 40% of logging activities. While sanitary cuts are intended to protect the long-term health of the forest, illegal sanitary cuts have been heavily reported. Part of the problem is that licences for sanitary cuts are issued by forest enterprise directors. Moreover, timber from the sanitary cuts is sold via direct contracts rather than public auctions, which is even higher risk for corruption. Even though the Ministry of Environment and Natural Resources has noted that the old sanitary felling law allowed for abuse, reports of illegal sanitary cuts continue. Enforcement in Ukraine has also been limited by capacity with the Environmental Inspection Agency, the central executive body in charge of environmental law enforcement, having only 188 inspectors focused on enforcing the full range of environmental policies and regulations. Reports of widespread corruption within the state authorities add to the problem. While Ukraine initiated a log export ban in 2015, to date it has been relatively easy to circumvent. Several reforms are now being explored for Ukraine’s forest sector with the Cabinet of Ministers approving the Forest Sector Reform Strategy for the period up to 2022.

Latin America update

Presentations

Jeffrey Nii of US Customs and Border Protection (CBP) presented an overview of his agency and their trade enforcement efforts. CBP processes around 90,000 entries, representing US\$6.3 billion in trade each year. Overseas, CBP has 21 attachés and 27 advisors, and has implemented a number of programs such as the Container Security Initiative, the Immigration Advisory Program, and Preclearance. Agriculture is one of CBP’s Priority Trade Issues and the US has been particularly interested in pursuing cases of illegal timber entering the US from Peru following the US-Peru Trade Promotion Act, which includes a Forest Annex with a number of strong enforcement provisions for illegal timber. The US Trade Representative has been pursuing enforcement aggressively under the trade agreement. However, Mr. Nii noted that there are significant enforcement challenges in addressing illegal timber shipments. Often, the information CPB has access to is insufficient in and of itself to determine compliance with the US Lacey Act, and other organizations in the U.S. and exporting economies are often required to help. Mr. Nii described how CBP became more actively engaged in enforcing the US Lacey Act, following the interception of two large shipments of illegal timber from Peru which arrived at the Port of Houston in 2015 and were found to be in violation of the U.S. Lacey Act. Since 2015, there has been a notable decline in timber shipments from Peru. The US has moved to a “Single Window System” to facilitate and streamline trade, but this still poses challenges in determining if imports comply with the US Lacey Act.

Pavla Slavickova, representing the Ministry of Agriculture of the Czech Republic described her personal experiences from research in the Peruvian Amazon. Ms. Slavickova worked in partnership with Universidad Nacional de Ucayali at a site called CICFOR Macuya. This area was a research center and a protected habitat for natural forest. For more than 30 years, a team of 10 researchers had collected biodiversity and climate data on the forest. However, workers and researchers at the center became increasingly threatened by rebels looking to cut the forest for timber products. Threats increased over time and the research center was eventually burned in 2017. Following the attack on the research center, sixty people with chainsaws and machetes began cutting the natural forest in the protected area around the center. Much of this illegally felled timber has since been transported along the rivers of Peru with end-use and final destination unknown.

Discussion

One participant indicated that they have heard that the situation in Peru has only grown worse since 2015 because people are afraid to report illegal activities to the police. Discussion focused on the challenge of addressing corruption, which reportedly extends into the police as well as into many timber operations in Peru. A participant asked how timber enterprises can circumvent the law and the group discussed reported practices such as a company using the trade name or species for a product rather than the scientific name which has enabled companies to ship protected timber species. A participant asked Ms. Slavickova about the outcome of the attacks on the research center CICFOR Macuya. Ms. Slavickova explained that there were efforts to inform the local police about the attacks, but there have been no legal consequence for anyone involved.

Presentations

Phil Guillery of the Forest Stewardship Council (FSC), presented a new FSC wood identification sampling program. Wood identification technologies have the potential to play a significant role in ensuring that wood products are legal and Chain of Custody systems are effective. The main objectives of FSC's wood testing program are therefore to deter fraud in the FSC system, determine the capacity of wood and fiber testing (both traditional wood anatomy and DNA/Isotope future capacity) to provide additional quality control and assurance, and to determine how wood ID testing can be integrated into FSC chain of custody. In order to do this, FSC forest managers are being asked to take samples in their concessions in order to develop a library to facilitate testing.

As part of this project, FSC is also developing standard procedures to investigate questionable results from testing. The FSC project currently includes 1,500 forests and over 3,000 species, managed by staff in 50 countries. FSC began their wood ID testing program in a partnership with the USFS International Program, Agroisolab, and Kew Gardens, focusing initially on white and red oak in the US. Their goal is for any forest manager or monitor to be able to identify a species within half an hour, using a tool created by FSC in the form of a phone app. FSC is now working to expand this project to South and Central America including Honduras, Guatemala and Peru.

Discussion

A participant asked if the sampling and identification program is only being used in FSC forests, or if it will also be rolled out in forests outside the FSC scheme. Mr. Guillery responded that they are mostly focused on FSC forests now, but have aspirations to expand both the library and the application of the identification tool to other forests that are not under FSC management. Mr. Guillery noted that the biggest challenge FSC has faced

has been getting government approval to collect samples, but is hopeful that with the help of local employees, FSC will be able to overcome resistance to it. Finally, a participant asked about whether FSC had investigated or reacted to any reports of FSC auditors failing to effectively audit FSC timber from Ukraine. Mr. Guillery responded that the FSC has plans to train FSC auditors to better understand the risks associated with corruption and the FSC is trying to take a much more proactive role in identifying potential risks and issues ahead of time, but that specific FSC actions relating to named certificate holders could not be shared publicly while investigations are ongoing.

Flavio Guiera of Ativa Florestal, presented an overview of illegal logging in Rondônia State, Brazil. Rondônia, located in Northwest Brazil in the heart of the Amazon, has seen increasing rates of deforestation since the 1970s. NGO reports have estimated that around 54% of the state has been deforested. As a result, the office of the Secretary of State for Environmental Development has implemented socioeconomic and environmental zoning aimed at protecting the areas with the greatest potential for recovery and restoration. There are several regulatory enforcement tools that have been used such as CAR, a rural environmental registry which is a compulsory electronic system that collects data to support the economic-environmental planning of rural properties. In addition, there is also a database (SINAFLOR) that tracks timber movements, and DETEX, a geospatial monitoring system that can help monitor forest exploitation. Illegal logging is organized in Brazil with links to the mafia and there is reported evidence of corruption throughout the supply chain. Despite increased efforts by law enforcement agencies, illegal logging continues. Some of the main ways in which illegal loggers are operating in Rondônia State include offering bribes to enforcement officers, cutting and transporting the timber in a convoy at night, and damaging infrastructure (such as breaking bridges, opening mud holes, and stacking iron bars to damage 4x4 trucks so that enforcement officials cannot reach more remote locations). To address this, Mr. Guiera suggested the need for more effective social engagement at the local level. This could include companies committing to report illegalities to authorities, and the creation of a local forum to discuss the problem. Mr. Guiera also noted the importance of law enforcement officers collaborating and sharing responsibilities which could be facilitated by a long-term joint strategy for all relevant law enforcement agencies. Finally, he noted that consumers should consider other lesser known timber species which could shift the demand away from the species such as Ipe which is now threatened in Latin America.

Thursday October 11th 2018

Conflict Timber

Presentation

Marigold Norman of Forest Trends, presented trade trends for EU and US timber product sourcing from conflict states. Fragile and conflict-affected states face particularly severe development challenges and are characterized by weak institutional capacity, ineffective Rule of Law, poor governance, political instability, and the threat or reality of on-going, small-scale violence. There is no single source of information on fragile and conflict-affected states or the prevalence of armed conflict. To understand sourcing risks, Forest Trends used the World Bank's annual assessment of fragile and conflict situations, released as the Harmonized List of Fragile Situations, to determine trade flows into regulated markets. While the list provides a national-level classification, it is important to note that the list belies the reality that conflict is generally a spatially explicit phenomenon. Conflict often occurs in a certain place and that is not necessarily at the country-level. Ms.

Norman described recent trade patterns which show that EU imports of wood products from fragile and states are up nearly 20% since 2014, reaching €260 million in 2016, with eighteen of the twenty-eight EU Member States increasing their sourcing over this period. The top fragile and conflict-affected states supplying the EU and US are Ivory Coast, Republic of Congo, and the DRC. The top four EU importers are Belgium, France, Italy, and the UK. In the US, the majority of timber from fragile and conflict-affected states is sourced from the Ivory Coast and the Republic of Congo, though US imports of timber products from Myanmar increased 66% between 2015 and 2016. Ivory Coast is a major source of sawnwood and veneer products for regulated markets, particularly in Europe and the US. Republic of the Congo and the DRC are primarily supplying logs and sawnwood. Sawnwood is the most significant timber product category sourced from Myanmar. Log imports have been declining in value, particularly since Myanmar introduced a log export ban from April 2014 but Italy and Spain have continued to report imports in 2015 and 2016. Overall, while the value of timber products imported into the EU from fragile and conflict-affected states has remained stagnant between 2013 and 2016, there is considerable variation across different EU Member States.

Discussion

In the discussion, Ms. Norman clarified some questions about the sources of the trade data which was collected from Eurostat Comext and UN Comtrade databases.

Presentation

Dorte Pardo López of the European Commission inferred the particular importance that the legislator had attributed to conflict timber from the fact that Recital 3 of the EUTR already explicitly mentions that illegal logging can be linked to armed conflicts. Furthermore, Article 6 (1) (b) on Due Diligence Systems specifically notes that risk assessment procedures that enable an Operator to analyze and evaluate risk of illegal timber shall take into account information including “consideration of the prevalence of armed conflict”, as well as “sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports.” The European Commission recently published a draft guidance document for the EU Timber Regulation on the ‘prevalence of armed conflict’, “sanctions” and consideration of armed conflict in Due Diligence systems which is currently being finalized and was inspired by work done under the recent conflict minerals legislation and by Global Witness. While “armed conflict” is not defined in the EUTR, Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain Due Diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas defines ‘conflict-affected and high-risk areas’ as “areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.” Operators importing timber into the EU should therefore consider collecting information to answer the following key question: “Is any aspect of the timber supply chain located in conflict-affected areas?” With regards to sanctions, Operators should check out the two sanction lists (which are referred to in the draft guidance document) to see whether any supplier in the chain appears on one of the lists. The risk assessment procedure that follows must contain a clear and coherent assessment of the prevalence of armed conflict and an explanation of how the level of risk in relation to the imported timber shipment was determined. Risk mitigation procedures should contain an explanation of how the risk mitigation measures were decided and how the risk has been reduced, including to what level. If the risk cannot be mitigated to a negligible level, the operator has to refuse the shipment. Ms. Pardo López also suggested that risk mitigation measures in the case of sanctions should involve changing the supplier and probably the entire supply chain as well as informing the Competent Authority about the supplier and the supply chain.

Discussion

A participant asked if sanctions apply to all companies and individuals/workers from a country on the sanctions list or whether sanctions only apply to specific named companies or individuals. Ms. Pardo-López clarified that individual sanctions can name persons, groups, and/or other legal entities within a given country. A participant also asked whether companies importing into the EU would be expected to consider the US Treasury Department's Office of Foreign Asset Control sanctions list as well. Ms. Pardo-López clarified that lists of sanctions produced by other countries can be used in the risk assessment procedure but that the new guidance specifically focuses on UN and EU sanctions. Participants further sought to clarify the process and next steps for the EC guidance as this has yet to be formally adopted and endorsed by the European Commission. Discussion noted that review by the EU Member States Competent Authorities was on-going.

Presentation

Susanne Breitkopf of the Environmental Investigation Agency (EIA), presented recent work highlighting the importance of properly investigating where timber is sourced, especially where there is a risk that timber sales may be funding conflict. Ms. Breitkopf provided some examples that show how finance from timber sales is directly funding conflict and terrorist groups. Millions of rosewood logs are being smuggled out of Nigeria to China, with significant volumes sourced from areas controlled by Boko Haram. Rosewood was added to CITES Appendix II in January 2017 but exports continue. This crisis has displaced 1.5 million people, destroyed 1,000 schools, and has claimed more than 17,000 lives. However, it is often very difficult to prove the link between conflict, trade, and the timber. EIA has found that timber traders in Nigeria simply aren't concerned about the links with Boko Haram, as buyers are more focused on whether the timber has accompanying paperwork rather than considering where the timber was sourced. A further case study focused on the region of Casamance, on the border between Senegal and Gambia. Logging is both a result and a source of conflict. All logging is illegal, but an absence of government and presence of rebels makes enforcement challenging, and this has resulted in mass killings. Senegal has consequently sought to add Kosso (*pterocarpus erinaceus*) as a CITES listed species to get international help. In Cameroon, the "Anglophone crisis" is ongoing. The Anglophones are a secessionist movement and conflict has been escalating since the government sanctioned crack downs in October 2016 which led to the deaths of 2,000 people and the displacement of another 170,000. At the same time, timber is still being sourced from concessions in the Anglophone areas. Ms. Breitkopf noted that it is very difficult to determine what "legality" is in a war zone and that it is often impossible for companies to operate in a conflict zone without the support of at least one of the warring factions.

Discussion

A participant asked if it is a violation of CITES to accept a certificate that has been signed or created after it leaves the country of origin. Ms. Breitkopf responded that it is a violation, and that all paperwork should be completed before the product leaves the country in which it was produced.

Presentation

Colin Robertson of Global Witness described how beneficial ownership can be integrated into EUTR Due Diligence and enforcement, drawing on Global Witness research about timber supply chains. A briefing note was made available to participants on this, which included information sources that are used by Global Witness and others to investigate beneficial ownership of companies. Draft European Commission guidance suggests that "in the context of prevalence of armed conflict or sanctions by the UN Security Council or the Council of the European Union, Operators should"

consider “obtaining information on the ownership (including beneficial ownership and corporate structure of supplier and their affiliates...” Mr. Robertson explained that a company’s beneficial owners are the individuals (or single individual) who ultimately own or control the company, either directly or indirectly. This means the persons who control the actions of the company and/or who ultimately receive the profits. Beneficial ownership is oftentimes concealed in order to avoid taxes, launder money, and evade sanctions among other things, and can be an indicator of high-risk timber, particularly when supply chains are complex. There are two main ways in which beneficial ownership is often concealed. The first is through secrecy jurisdictions, or areas in which the owner of an enterprise can be concealed, such as Hong Kong or Dubai. The second is through shell companies, or companies with no independent operations, significant assets, ongoing business activities, or employees. These are commonly held in secrecy jurisdictions. Together, these make it difficult to see who is buying the timber and who is profiting. Operators can perform due diligence checks such as asking suppliers to disclose the beneficial owners of the company that harvested the timber and of the traders involved. They should also check databases and third party reports to make sure these operations are not run by any politically exposed persons. Competent Authorities can ask a number of questions when checking due diligence systems such as: “Have beneficial owners of suppliers been identified?”, “If beneficial owners not identified, has the Operator ceased sourcing timber? If not, what additional risk assessment has been carried out to justify this?”, and “where beneficial owners have been identified, have they been checked against sanctions lists, lists of politically exposed persons and any relevant reports about conflict in the area of harvest?”

Discussion

A participant asked what a company should do when they have reliable documentation for a timber supply chain but they are paying for products through a company for whom beneficial ownership information was unavailable, which was, for example, registered in Hong Kong. Mr. Robertson reiterated that for products from fragile and conflict-afflicted states, understanding financial flows is critical to mitigating the risk of buying conflict timber. Another participant added that European companies need to make sure that the profits arising from their timber purchases are not used to fund conflict.

Pulp and Paper

Presentation

Pierre Bach of Hawkins Wright, presented an outlook for pulp and pulpwood markets. In North America, pulp production is declining. However, in countries like China, Indonesia, and the Latin America region, pulp production has increased in the past few years. In China, this is happening in the face of fiber scarcity and an ongoing wood deficit which has increased by around 115 million cubic meters in the last ten years. At the same time, China is also contributing to 115% increase in global market pulp demand. This has implications for the supply outlook. Mr. Bach predicts a shortage in many parts of the world. Chinese producers are now considered too high-cost which means that China will increasingly seek to import pulp from cheaper producers elsewhere. Indonesia has supplied Japan and China with wood chips in the past, but fires and changes in forest policy have threatened pulp production over the last three years. Australian wood chip exports to China and Japan have significantly increased since 2011, but government incentives to invest in plantations have been stripped back with replanting no longer taking place. Mr. Bach suggested that we are therefore headed towards a fiber crunch. The outlook for demand and supply is certainly inflationary. The emergence of pellet/biomass energy market (e.g. Japan & Korea) could also become an additional threat to the availability of fiber for the paper industry.

Discussion

A participant asked if there is a risk that more expensive fiber will increase the likelihood that illegal wood is used in paper production. Mr. Bach responded by saying it's hard to tell, but there is certainly a risk. In an inflationary environment, people become creative. He noted that everything depends on a number of factors, but he did not believe a company would throw away a pledge not to use an illegal material if they could predict the shortage would only last a few months. Another participant asked whether the reduction in European demand for plastics might increase demand for paper, and put more pressure on supply. Mr. Bach responded by saying that paper needs to remain economically competitive if it is going to replace plastic.

Presentation

Neil Everett of Carnstone Partners Limited, gave an overview of the Book Chain Project. The mission of the Book Chain Project is to help publishers discover information about their supply chains including the source of fiber in their paper. The tool also supports a wide range of broader goals including ensuring the safety of chemicals in the inks and glues used in books as well as the working conditions in factories where books are produced. So far, the project involves 27 publishers, including McGraw Hill, Penguin and Random House as well as over 90 printers and 300 mills. Mr. Everett described the Book Chain Project's Due Diligence approach which includes several steps. This starts by capturing species, region, country information for each input direct from mills. A risk assessment is then carried out which is based on region and country of harvest with third party certification (FSC/PEFC) required for any high-risk source material. Mills with perceived high-risk fiber sources test samples of paper fiber at the mill, printer, and book levels. Paper demand remains high as the publishing industry has seen steady book sales, particularly for children's books, trade publishing, and education materials. Recently, in the wake of inflationary pressure in the paper market and new suppliers emerging to meet the demand, the Book Chain Project is focusing on building capacity at the mill level to promote best practice.

Discussion

A participant asked how the project was able to gain traction with some of the major publishing companies. Mr. Everett explained that they went to big authors like JK Rowling and asked if they knew where the paper they were printing their books on was from and if it was contributing to deforestation. This allowed the Book Chain Project to have such a wide reach.

Presentation

Dr. Andrea Olbrich of the Thünen Institute presented her work on paper forensics and legality verification, describing the process of timber identification in paper and fiber boards and the results from anatomical analysis of more than 40,000 samples since 2013. To identify the species in solid woods, the Thünen Institute uses a microtome to cut along three anatomical plains to obtain 3D information on the wood tissue. Wood anatomists then compare the sample to the Thünen Institute's scientific collection, which includes 11,500 species and 35,000 specimens. Identifying paper and fiber board is a much more difficult process than with other types of timber product. A genetic analysis of paper samples is not possible because the DNA is destroyed by the manufacturing process. In addition, the tissue is destroyed and there are fewer anatomical characters available. To identify unknown samples, Dr. Olbrich looks at the vessel elements located among the fibers. Only 12 main characters are available. Therefore, it is essential to have high value micrographs of the vessel elements of known timbers as references. Based on the characteristics of the vessel elements of different timbers it is possible to match unknown samples with the references. Dr. Olbrich presented how she and

her co-workers analyzed Asian timbers and published references for them, so now these timbers can be identified in paper and fiber boards as well (<http://booksandjournals.brillonline.com/content/journals/10.1163/22941932-20180202>). Furthermore, recycling fibers can be identified under microscope by residues of ink. One drawback to this kind of testing is that it is not possible to tell if recycled paper is actually comprised of 100% recycled paper fibers.

Discussion

One participant asked if the Thünen Institute can ID at the genus or the species level. Dr. Olbrich clarified that they ID at the genus level. Another participant asked if they can measure ratios of types of wood in fibrous products such as toilet paper. Dr. Olbrich responded that they cannot accurately measure ratios, they can only see what is in the product. Lastly, a participant asked if there is any risk of seeing illegal, protected species used in toilet paper. Dr. Olbrich stated that this would be unlikely and in her experience, would not be intentional. Instead, if illegal or protected species were found in a sample, it would be evidence that the producer is clear cutting and not paying attention to the species of timber used in their product.