Meeting Summary:

Timber Regulation Enforcement Exchange:

Singapore

October 17-18, 2019

FOREST TRENDS

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 has recently expanded to the Asia-Pacific region, bringing together a core group of officials representing countries with established and developing timber trade regulations.

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.

Singapore Meeting: Held in Singapore, from October 17-18, 2019, this TREE Asia Pacific workshop brought together a core group of nine Asia-Pacific government representatives, two EU Timber Regulation (EUTR) Competent Authorities (CAs), one US Lacey Act enforcement official, the United Nations Office on Drugs and Crime (UNODC), Interpol, the Australian Department of Agriculture and key experts from the private sector and civil society.

The following report summarizes the presentations and discussions from the TREE Asia-Pacific meeting in Singapore. 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) National updates on the ongoing and development of timber trade regulations in the Asia-Pacific region.

b) Risk based enforcement and scientific testing for species and location authentication in the timber trade.

c) Risk assessment and mitigation for Peru, Cameroon, and Nigeria.

d) Due diligence tools, engagement with the private sector, and CITES risks.

*Some of the text in the following document has been provided by the presenter, and edited by Forest Trends for length/ clarity

Thursday, October 17th, 2019

Updates on National Measures: Indonesia

Presentation

Dr. Rufi'ie, of the Ministry of Environment and Forestry (MoEF) for the Republic of Indonesia presented a brief update on the current status of the Indonesian Timber Legality Assurance System (TLAS). Dr. Rufi'ie began by noting that after the long development that began in 2003, the Government of Indonesia implemented the TLAS as compulsory in 2013.

The TLAS regulates the requirement of legality verification for both imported and exported timber products. The MoEF is tasked with the responsibility of regulating the implementation of the TLAS, including verification and certification processes carried out by independent accredited third-party Conformity Assessment Bodies (CABs); as well as implementing due diligence systems (DDS) for imported timber products. This can be a difficult task as there are many agencies and stakeholders involved, including Civil Service Organizations (CSOs) and others tasked with carrying out the monitoring process. To improve forest governance, an integrated online system has been applied to support the DDS for imported timber products and the issuance of legality assurance documentation for exported timber products (i.e. the FLEGT License for EU markets and the 'V-Legal Document' for other international destinations).

Recently, import controls in Indonesia have changed, becoming a post-border control system. Importers still apply due diligence mechanisms to allow the issuance of a self-import declaration as one (of many) requirements to apply for an import permit from the Ministry of Trade. During the due diligence process, importers are required to fill out and upload information concerning country of origin, country of harvest, proof of timber legality, producer and exporter information, and other information such as volume, timber species, port of loading and discharge, etc. Importers must also provide information regarding proof of legality, which could be: FLEGT licenses, a Mutual Recognition Agreement (MRA), Country Specific Guidelines (CSGs), third party certification, or a letter of authority from the source country government stating that the product is legal.

During a review of timber imports from January 2016 to October 2018, the MoEF found that there were 1930 companies importing 449 species of timber. Imports have been mostly logs and pulp and paper products. With regard to proof of legality for imported timber to Indonesia, most of the legality evidence provided was third party voluntary certification (70.1% FSC, 11.2% PEFC, and 0.21% SFI) and Letter of Authority from the source countries accounting for 11.02% of legality documentation.

Updates on National Measures: Japan

Presentation

Mr. Koji Yamazaki, of the Wood Utilization Division at the Forestry Agency of Japan provided a brief update on the status of the Clean Wood Act (CWA), the Act on Promotion of Use and Distribution of Legally-harvested Wood and Wood Products.

Mr. Yamazaki began by noting that the CWA, which came into effect in May 2017, seeks to increase legally-harvested wood and wood products that are distributed and used in Japan. Under the Act, all "Wood-related Business Entities" (importers, processors, retailers, etc.) are to check the legality of wood and wood products that they handle. In addition, the Act established a voluntary registration system for Wood-related Business Entities. When a Wood-related Business Entity is registered to the system, they can present their status as a reliable business. As of August 31, 2019, there are 363 registered Wood-related Business Entities.

Under the Act, the Japanese government shall collect the information on the relevant laws and regulations and timber distribution in the producing countries and provide the information to Japanese businesses. Accordingly, the government is currently working to enrich the contents of the already established "Clean Wood Navi," an online information portal that provide the useful information mentioned above, to support business entities checking legality of wood and wood products.

Updates on National Measures: Korea

Presentation

Ms. Sunmi Lee, of the Korea Forest Service (KFS) gave a presentation on the status of the Republic of Korea's import regulation, The Act on Sustainable Use of Timbers.

The Korean regulation operated in a trial period beginning in 2017 and came into full effect on October 1, 2018. Under this regulation, all importers are required to file an import declaration with the Forestry Minister, submit all legality documents to the Forest Promotion Institute for inspection prior to customs clearance, and retain these documents for five years. The product scope of this Act includes logs, anti-decay wood, sawn timber, fire-retardant treated wood, laminated wood, plywood, and wood pellets. Currently, the Forest Promotion institute is seeing an average of 190 declarations per day for sawn timber.

Ms. Lee also provided some background on the promotion and implementation of this Act, noting that since the last TREE meeting, KFS has conducted briefing sessions for importers, processors, industry associations, customs brokers and Embassy officials. KFS has also published guidance materials for customs officials and importers and continues to work on capacity building and training to increase compliance and ease implementation.

In the future, KFS plans to conduct scientific species authentication on products from high-risk countries, analyze existing data to conduct on-site inspections, continue to develop country specific guidelines for importers, and keep providing consultation to importers and customs brokers.

Discussion

One participant inquired as to how long it takes KFS to approve customs clearance. Ms. Lee responded by clarifying that KFS does not approve the imports, but rather this is the responsibility of the Forest Promotion Institute. Ms. Lee went on to inform the group that given the volume of declarations currently being processed (190 a day), the Forest Promotion Institute is averaging 3 days for approval.

Presentation

Dr. Mihyun Seol of the National Institute of Forest Science and the Global Forest Resources and Trades team provided further update on the Legal Timber Trades Facilitation System, which will support the implementation of the Korean regulation.

Dr. Seol and her team conducted a survey of 561 businesses to assess familiarity with the system prior to full implementation. The survey ultimately found that small to medium enterprises (SMEs) have a low understanding of the system and the necessary steps they must take as timber importers. 40% of importers also responded that they believe imports would decrease under this new regulation, though 67% believed it would have no impact. Overall, the survey revealed that there was confusion around the new requirements under this regulation and saw significant concerns around the cost of implementation for SMEs. As a result of this survey, KFS will focus their attention on finding a solution for SMEs, and they hope that NGOs and other governments will turn their attention towards support for SMEs as well.

Updates on National Measures: Thailand

Presentation

Ms. Kantian Peaswa-ad, Director of the Forest Economic Bureau of the Royal Forest Department of Thailand provided an update on the in-development control measures for timber imports to Thailand. Currently, three ministries are involved in developing these controls, and they are currently in the process of defining robust due diligence systems. Due diligence is an entirely new system for Thailand and the government is focusing on strengthening the participatory process and improving understanding related to the intricacies of the global timber trade.

Under the new import controls, importers will be required to provide a certificate of origin declaring both the country of origin and export permission, a phytosanitary certificate, as well as a transport permit. These controls are likely to take place pre-import and will be supported by national law.

There is currently discussion concerning the roles of authorities and operators in this process, as well as how to effectively include risk assessments into these controls. Moving forward, RFD sees a need to define the role of operators in this system, and will conduct an impact study, as well as developing single online system that adequately integrates the new import controls with current customs system.

Updates on National Measures: Viet Nam

Presentation

Mrs. Nguyen Tuong Van, Deputy Director of the Department of Science, Technology & International Cooperation (DOSTIC) at the Viet Nam Administration of Forestry (VNFOREST) gave a presentation on the current status of VPA/FLEGT implementation in Viet Nam.

It took six years to conclude VPA negotiations in Vietnam, with the VPA finally coming into effect on June 3rd, 2019. By the end of October 2019, the Prime Minister is expected to issue a comprehensive action plan for VPA/FLEGT implementation. Currently, the most pressing tasks related to the VPA concern public disclosure of information and the development of legality documents to support implementation. Challenges include improving the technical infrastructure and guidelines needed for effectively operating the Viet Nam Timber Legality Assurance System (VNTLAS), as there is a need for large IT database to capture all the information and capacity building necessary for effective implementation.

There are plans to have FLEGT licensing from 2021, and the government is currently developing a decree that will regulate the VNTLAS to focus on managing imported timber as well as to provide an organization and classification system with risk-based management and verification.

Risk Based Enforcement

Presentation

Ms. Marigold Norman of Forest Trends presented risk analysis results for a Global Illegal Logging and Associated Trade (ILAT) project funded by the US State Department. The project ultimately seeks to estimate the likelihood of buying illegal wood and to inform discussion on

risk patterns related to illegal logging over a number of years. The first phase of the project has focused on developing a global data set related to the risk of illegal logging in source countries, bringing together various risk ratings/scores such as the Corruption Perception Index (CPI) and NEPCon Timber Risk Assessment scores. The second phase is an in-depth analysis aimed at better understanding specific source countries and trade/transit routes. Given that forest crime is not widely reported, there are currently no comprehensive data sets available and most available information currently stems from NGO reports and case studies, which are often conducted in donor priority countries even though importers are sourcing from a much broader set of countries.

The project therefore draws on 70 risk indicators and criteria and uses various publicly available global trade data to develop a global relative risk score and category for 211 countries. Ms. Norman highlighted that the main aim of this project is to create information that can be used to support the enforcement of timber regulations worldwide and provided some examples of how this kind of risk analysis could be applied.

Discussion

One participant asked how the project accounts for the intricacies of a log export ban, where a one-size-fits-all approach to flagging risk does not always work as log export bans often only apply to a specific species and are not all comprehensive bans which makes it very difficult to assess with trade data. Ms. Norman responded that the analysis of trade statistics represents only a starting point for further investigation of specific imports from countries with log export ban policies. Digging deeper into trade flows reveal that the imports either do in fact fall within a window of exemption under the export country's partial policy, or are in fact violating the terms of a policy.

Another participant enquired as to the timeline and public availability of the project once completed. Ms. Norman indicated that the project is scheduled to run through April 2021, and that it is currently up to the United States government to decide which elements of the project will be publicly released but the aim is for a public-facing website showing interactive trade data.

Finally, one participant asked why Forest Trends chose to use NEPCon's Timber Risk Assessment scores rather than develop a new Forest Trends timber risk score. Ms. Norman noted that the NEPCon score has been factored into the project approach to risk alongside Forest Trends Average Relative Country Governance Percentile Rank to include harvest risk and forest governance information. Ms. Norman also underscored that the scope and aim of the project is

focused on using existing credible and independent indicators or risk rather than trying to recreate or reinvent the underlying data.

Presentation

Mr. Neil Garbutt, Assistant Director of International Forest Policy, Forestry Branch, at the Australian Department of Agriculture gave a presentation concerning Australia's Illegal logging laws and how it is implementing a risk-based approach to compliance.

Mr. Garbutt began by providing an overview of Australia's Illegal Logging Prohibition Act (ILPA), which came into effect in 2012. The Act requires domestic processors and importers to actively manage the risk that their products may contain illegally logged timber by conducting "due diligence".

The laws' due diligence requirements apply to a wide range of wood based products, including paper products such as stickers and cigarette papers. This means that the Department's enforcement officials often find themselves dealing with businesses that do not traditionally see themselves as being part of the forest industry. Mr. Garbutt explained that it can often be difficult to help these companies understand the complexities of the forest sector.

From 2018-2019, there were 20,700 importers trading with 30,000 suppliers and data shows that 500 of these companies are responsible for approximately 75% of the trade by value. Data also shows that Australia imports from 128 different countries (with the top ones being: China, New Zealand, Indonesia, Malaysia, Viet Nam, and the United Sates). It is estimated that approximately 9-10% of this trade comes from high-risk sources.

The Australian compliance model is built on the assumption that most companies will want to comply with all applicable laws, so the government focuses on providing education, guidance, and assistance in understanding legal obligations. Where businesses fail due to misunderstandings, enforcement officials provide increased guidance and audits. Those who deliberately contravene laws, though, are subject to potential sanctions and other enforcement actions. Additionally, the government has invested heavily in IT systems to better inform their risk-based enforcement, and to observe trade patterns and create bespoke case management.

After an initial period of soft implementation, the Department of Agriculture published its Compliance Plan in early 2018, which identified the following areas of focus: imports from conflict states, businesses dealing with CITES listed species, complex supply chains, instances of previous non-compliance, and industry/NGO tip-offs.

In the future, the Department of Agriculture expects to make greater use of intelligence led assessments to better target and identify non-compliant importers. Such an approach is expected to draw on a range of intelligence and data sources, including social media and re-sale sites like E-bay and Alibaba.

Discussion

One participant inquired if the Australian government's IT systems had a way to automatically flag inconsistencies in import declarations e.g.: Ipe declarations claiming the country of origin to be Belgium (when it should be Brazil). Mr. Garbutt noted that Australia's current trade data the system does not require the importer to declare the species at the point of import, so it is not currently possible to do such a fine level of analysis. However, the government is continuing to explore how it can improve its profiling systems to support its illegal logging compliance efforts.

Another participant wondered if the current Australian legislation covered woodchips and pellets. Mr. Garbutt responded that woodchips and pellets were likely to be regulated under the illegal logging laws.

Presentation

Ms. Nicole Quijano-Evans of the United Nations Office on Drugs and Crime gave a presentation regarding timber identification training for law enforcement. Ms. Quijano-Evans is part of a project that runs training sessions as part of the Law Enforcement Assistance Program (LEAP), run in partnership with INTERPOL and Rhipto. These trainings attempt to target the whole supply chain, beginning at the point of seizure of goods in a port. Ms. Quijano-Evans noted that, while there is not traditionally a lot of interest in timber from law enforcement, the loss in tax revenue on illegal timber shipments is significant and it's important that governments recognize this.

This program offers two kinds of training. The first training type focuses on wood identification and is used to help customs officials identify CITES listed species and illegally logged timber. The second training focuses on document fraud and prepares customs officials to identify document-based risk indicators and fraud.

There are three indicators to look for when attempting to identify a timber species. These microscopic anatomical characteristics are pores, rays, and parenchyma. It is difficult for many customs officials to identify these elements so they must work closely forestry authorities when possible. To assist customs, there needs to be constant awareness training to be able to identify red flags, and Ms. Quijano-Evans noted that there are many open-source resources available to officials including: CITES annotations, Wood Database, TropicalTimberInfo, and the Red List Database.

When inspecting documents for fraud, Ms. Quijano highlighted key areas of risk for customs officials. First, customs should check the volume declared on the import against the volume present in the shipment. Second, customs should check if there is any existing information on the importer, carrier, transportation company, exporter, etc. to discern if they

have been involved in illegal trade in the past. It was noted that information sharing of this kind among law enforcement agencies can often be very difficult. Customs should also check that the shipment is not a CITES listed species. Finally, customs should evaluate the transport route of the shipment, and increase their inquiry if it transited through high-risk regions- unusual and round-about routes are often used to disguise the country of origin and customs should be aware of this as well.

These training sessions have been run with success in Viet Nam and Malaysia, and will be run in Java, Indonesia at the Surabaya port soon. The UNODC hopes that this training session will see attendance from a wide range of authorities including customs, forestry authorities, and prosecutors.

Discussion

One participant wondered what customs' process for verifying third-party certification looked like. Ms. Quijano-Evans responded that officials typically receive documents a few days in advance, and look for things such as the correct color and placement of the certification logo, ensuring that both the company and the product are covered under the certificate, referencing claim numbers against a central database, amongst other methods.

Another participant wondered how customs officials can manage testing for such a high volume of trade. Ms. Quijano-Evans underscored that the trainings involve taking a risk-based approach and focusing resources on shipments already considered likely to be illegal.

Finally, a participant inquired about how to identify wood species in heavily processed products such as furniture. Ms. Quijano-Evans noted that in many cases, customs would not have the capacity to test such products and would need to send samples for further Isotopic testing which is the only way to identify species in woods that have been heavily processed.

Testing for Location ID

Presentation

Ms. Jade Saunders of Forest Trends presented the results of the TREE Timber Testing Survey, run by Forest Trends in June, 2019. This survey was circulated to various officials responsible for implementing timber legality legislation and Ms. Saunders' presentation represents 28 responses from EU Member States, the USA, Australia, The Republic of South Korea, and Thailand.

The survey inquired about current and future plans for scientific testing as part of risk-based enforcement and risk management and found that over half of the respondents indicated that scientific authentication was already established in the enforcement of their legislation, with the most popular method being physical analysis- the cheapest and most widely understood method. Sawnwood was the most widely tested product, followed by panel products. Ms. Saunders noted that there is also a lot of enforcement activity concerning plywood but testing resources have mostly been applied to less-processed products thus far.

As timber legislation has continued to mature, enforcement officials have begun to prosecute egregious actors who purposefully contravene established legislation and testing of this type is an easy way to present complex information in a court. Given that judges are not typically be well-versed in global forest governance issues, negative testing results quickly show whether any documentation used in due diligence is trustworthy or not.

A significant challenge in scientific authentication is the lack of a global and open-source reference database as it is not possible to conduct any kind of scientific authentication without a reference sample to compare results against. Another challenge is the cost of testing, but the survey indicated that some countries would be interested in participating in a collective TREE testing group that would diffuse the cost of testing among many stakeholders. There are also new methods of testing becoming available, and as technology advances they become cheaper. The survey indicates, for example, an increased interest in the DART TOF-MS machine, which, after the initial cost of the machine, offers cheap identification.

Ms. Saunders concluded her presentation by noting that effective scientific authentication that can hold up in courts must come from the enforcement side, highlighting the need for increased coordination and communication regarding lab procedures and ISO standards.

Presentation

Mr. Bo Li of the World Resources Institute (WRI) gave a presentation on scientific testing for location identification. Beginning with an overview of scientific testing as a whole, Mr. Li noted that there are two are methods of scientific testing to determine the origins of timber: DNA analysis and Isotopic testing. DNA analysis can be used to identify both timber species and origins, whereas isotopic analysis is conducted via machine at the isotopic level, and can be used to determine the origin of harvest of a particular tree, but cannot determine the species.

Isotopic analysis requires a spectrometer, and measures the isotopes present in any given sample. Each tree will have a unique number of isotopes absorbed from the environment in which it grew and these isotopes provide location information not only at the country level, but can identify all the way to the local level- meaning you can potentially identify the concession from which the tree was cut given there is adequate reference material. DNA

analysis is based on comparing various DNA markers to a reference sample. DNA can be correlated to origin but it is not always directly related, especially in the case of non-native plantation timber. Both DNA and isotopic analysis are robust methods of timber authentication that can be conducted on finished products; DNA testing, however, can be more labor intensive and requires a larger reference database to generate accurate results.

Mr. Li also explained that WRI has worked with the World Wildlife fund (WWF), and the United States Forest Service (USFS) to conduct a testing project on 73 different wood products from 29 retailers in the United States. The sampling took into account whether or not the product type was listed correctly and if the species listed was correct. The results of this testing showed that 38% (28 out of 73) had correctly listed their product type and species, while 41% had listed the correct product type but the incorrect species. The remaining 21% had incorrect or missing information for both categories.

Mr. Li concluded by noting that there are many initiatives working on capacity building for both kinds of scientific testing. The Global Timber Tracking Network (GTTN) is working on this issue, as well as World Forest ID (WFID) who works with Kew Gardens, AgroIsolab, FSC, WRI, USFS, and the University of Connecticut to create a globally accessible database of reference materials for isoptic testing.

Discussion

One participant asked what kind of products and product groups WRI's (et. al) testing project focused on, and also wondered where the products were bought. Mr. Li responded that all products were finished products such as flooring, furniture, and instruments, all in trade in the United States. The project targeted finished products from high-risk species, namely rosewood. This participant then asked for further clarification on the project's methodology, wondering whether WRI tested the product's import/customs declaration, or the retailer's product description and Mr. Li clarified that the testing focused on authenticating the retailer's product description.

Another participant inquired about the WFID project and asked whether the focus was on isotopic technology or DNA analysis. Mr. Li explained that the WFID project is concerned with collecting samples to create a global, open-source database of materials to aid in both DNA and isotopic analysis. Under WFID, once samples have been collected, they are geotagged with specific coordinates and sent to Kew Gardens in London for initial DNA analysis to determine species, but samples are also prepared for isotopic testing.

Finally, another participant asked if Mr. Li was aware of any businesses who have built this kind of testing into their core business model. Mr. Li responded that isotopic testing has existed in

the food industry for years, so there are many businesses providing these services. Another participant added to this discussion by noting that some EUTR competent authorities have built testing into their enforcement model and have established contracts with various isotopic testing labs. This participant also clarified that the European Commission's most recent guidance on risk mitigation includes reference to testing and businesses are increasingly expected to conduct their own.

Presentation

Ms. Belinda Christensen gave a location testing enforcement update presentation, describing EUTR enforcement processes from the Swedish perspective. Beginning with an overview of Swedish forestry sector, Ms. Christensen noted that there are 4700 regulated companies in Sweden, and 300 of these companies are responsible for 95% of timber/timber product imports to Sweden. Ms. Christensen also noted that the EUTR came into force in Sweden in 2014, so the competent authorities have had five years to robustly identify their enforcement needs.

The main section of Ms. Christensen's presentation focused on her department's scientific testing for enforcement experience. Every six months, enforcement officials coordinate with Swedish customs to generate a list of all EUTR imports to Sweden. Enforcement then uses this list to inform their testing priorities as a base for the annual risk-based plan. Enforcement carries out 40 inspections per year on 30 importers, 5 domestic timber purchasers, 5 traders, and any operators for which they have substantiated concerns. Ms. Christensen noted that many Swedish companies appreciate when they are inspected, as many companies have enthusiastically taken on the responsibilities outlined in the EUTR. Inspections are announced two-to-three weeks ahead of time, any injunctions issued must be remediated within three months, and any fines issued are determined by the company's total revenue per year.

In 2018, enforcement officials tested 17 samples from 14 operators. These tests included paper products, which not all competent authorities test. There is currently one on-going case involving a incorrectly declared species, this case is currently in court as the company has appealed the injunction placed on them.

Discussion

One participant inquired about the cost of a testing project such as the one described in the presentation. Ms. Christensen stated that determining a budget was one of the first steps in this project and state that in 2018 they paid approximately EUR200 per sample.

Another participant asked if enforcement officials inform the operators that their products have been selected for testing, and whether this happens before or after customs clearance. Ms. Christensen responded by saying that they do not inform operators that their products have been selected for testing during first contacted when the company is notified of their inspection. Given that the EUTR is a post-market placement regulation, the companies never know before importing if they will be selected.

Presentation

Mr. Taiji Fujisaki of the Institute for Global Environmental Strategy (IGES) gave a presentation on his organization's studies to support implementation of the Japanese Clean Wood Act (CWA).

The Government of Japan commissioned IGES to conduct country studies to support companiess' due diligence, as required under the CWA. IGES looked for common challenges for Japanese importers looking to conduct robust due diligence. IGES found the biggest obstacles to be complex supply chains and complex and varied laws in source countries. For example, adequate due diligence for a product from Papua New Guinea (PNG) would begin with collecting 25 different documents, issued by different ministries and departments, some of which are very difficult to obtain. IGES also found the risk of fraudulent documents to pose significant issue for Japanese importers.

There are a variety of online data and information sources that Japanese importers can make use of, though IGES acknowledges language barriers as most resources are only available in English. To help increase access to information, IGES has been contracted to increase the number of country studies available on the information platform of the Government of Japan, the Clean Wood Navi. These expanded country reports offer an overall description of the forest sector in certain countries and an overview of the applicable laws and regulations, while also providing examples of documents used to demonstrate legality of products, and any reported cases of illegal logging and trade.

Mr. Fujisaki concluded his presentation by noting that the need for centralized information of this type, and the importance of companies' capacity to understand and analyze information. He also discussed that existing resources have focused on forest management and harvest, with less coverage of processing. Given the challenges in addressing timber legality and trade, it is important to share good practice to reduce legality risks at different levels, as well as to enhance understanding about local contexts and challenges of producing and processing countries.

Presentation

Ms. Maggie Zhang, of the Book Chain Project gave the final presentation of the day and spoke about fiber sourcing for complex paper supply chains. The Book Chain Project is a forest source-country risk tool and grading system that works with 27 different publishers with a combined annual turnover of GBP28 Billion. This project focuses on site level engagement with mills located in high-risk forest and transit areas, with the ultimate goal of helping publishers understand how paper mills manage their supply chains and fiber sourcing so that they can better undertake robust risk management.

Currently, the Book Chain Project is seeking to increase mill-level ownership over the supply chain and seeks to increase the motivation for mills to manage their own deforestation risk. In conducting on-site assessments, the Book Chain Project is able to score mills on their ability to meet timber legislation requirements and can help identify mills which are enthusiastic in their approach to risk management. So far, the Book Chain Project has conducted one on-site assessment in Poland, six in China, and one in India.

The Book Chain Project has found that the motivation for mills to move "beyond compliance" typically comes from regulated demand-side regions such as the United States and Europe. They also found that some mills are willing to stop working with suppliers who cannot provide adequate evidence of legality. As a result of their internal risk assessment, for example, a Chinese mill cut ties with one of their Brazilian pulp suppliers.

Ms. Zhang also highlighted that there is often a limited understanding of risk management at many mills, who are mostly concerned with mitigating illegality rather than looking at illegality and broader social and environmental issues. As such, the Book Chain Project will seek to increase mill's understanding of responsible fiber management and aims to integrate a broader scope of human rights into their assessments in the future.

Discussion

One participant inquired as to the difference between the Book Chain Project's accountability framework and third-party certification, such as FSC. Ms. Zhang responded that most mills already have third party certification and rely heavily on it as proof of legality. The ultimate aim of the Book Chain Project is to encourage mills to move beyond this and consider a broader scope of legality including social and environmental responsibility.

Friday, October 18th, 2019

Risk Assessment and Mitigation for Peru

Presentation

Mr. Alfredo Rodriguez Zunino of Forest Trends began the second day of presentations with a presentation on due diligence and risk management in Peru based on his own experiences conducting due diligence for EU operators . Beginning with background on the Peruvian forest sector, Mr. Rodriguez-Zunino explained that the current operational timber legislation in Peru was initially passed in 2011 and was finalized in 2015. Productive forest lands are managed by the Ministry of Agriculture and Irrigation, with the National Forest Service (SERFOR) operating through decentralized subnational offices and dividing enforcement responsibilities. There is also a national oversight body, OSINFOR, who is responsible for the supervision of harvesting activities and regulatory compliance at the forest level.

Documentation is relied on heavily for forest management in Peru. All forest users must apply for land tenure licenses and have their forest management plans approved by their subnational office. Operators may not transport their logs from their forest concession without a transport bill, and sawmills must keep records of all transport bills for loads entering their mill. Regional checkpoints along transport routes are responsible for checking that all applicable documentation is present at any given checkpoint. However, required documents for legal compliance do not provide reliable information. Neither SERFOR, nor the subnational offices, have an open system to crosscheck documentation. Thus, in 2018 OSINFOR supervisions found that approximately 340,000 m^3 of timber was illegally logged. Therefore, it is recommended that companies take additional precautions and risk management when sourcing from Peru.

After detailing the main challenges of conducting due diligence related to: the lack of verification systems, missing and incorrect documentation, documents with irregular or unclear data, inconsistent information, and double counting timber balances, Mr. Rodriguez Zunino concluded his presentation by highlighting that due diligence systems must go beyond managing documents, rather, they should crosscheck information and establish reliable systems for verification. At the same time, due diligence is a process of continuous improvement which should not be a burden but rather an effort to increase organization and efficiency. The cost of practicing robust due diligence is far lower than the price of fines and a poor reputation.

Discussion

One participant wondered how OSINFOR decides where to conduct their onsite assessments and Mr. Rodriguez-Zunino responded that they already have internal knowledge as to where

illegality occurs, so these are usually the areas they target first. They also look at companies who deal with high-value species and visit concession with CITES listed species.

Another participant asked how prevalent FSC and PEFC certification is in Peru, and how much weight this kind of third-party certification should be given when conducting due diligence in Peru. Mr. Rodriguez-Zunino noted that there are no PEFC concessions in Peru as PEFC is mostly related to printing facilities there and the country does not produce a lot of fiber. Less than 10% of the forest is FSC certified and most certified companies are well known and often only log from their own concessions.

A third participant noted that she had heard that OSINFOR was under threat of being disbanded and wondered what its current status was. Mr. Rodriguez-Zunino responded that clashes between public sector departments are not uncommon in Peru, and at the beginning of this year, amidst these clashes, OSINFOR was moved to the Ministry of Environment. However, after concern from the United States Trade Representative and international civil society, OSINFOR was moved back to the Counselor of Ministries.

Finally, another participant wondered if Mr. Rodriguez-Zunino had any experience with companies seeking to encapsulate broader social and environmental responsibilities in their DDS. Mr. Rodriguez-Zunino responded by noting that in many cases, he finds companies are seeking only timber legality, with some going slightly beyond and seeking forest management certification schemes such as FSC.

Presentation

Mr. Mathis Freytag of INTERPOL gave a presentation on the INTERPOL's work on forestry crimes. Mr. Freytag began by stating that INTERPOL believes forest crime to be one of the most lucrative environmental crimes, estimating that 30-50% of the global timber trade is likely illegal. This statistic largely stems from the fact that that there is a low risk of being caught, a high demand for illegal timber, and the various actors involved throughout the supply chain make it easier to disguise illegality.

INTERPOL addresses illegalities and crimes in the timber supply chain through information and intelligence collection, analysis, and information distribution. Information is collected through the National Central Bureaus (NCB) which connects Interpol to local law enforcement, through third parties such as NGOs, and open source. Data and information is entered into INTERPOL databases and criminal analysis files to which law enforcement authorities in member countries can access through the NCB. INTERPOL also produces analysis encouraging member countries to further investigate specific cases.

In Latin America, INTERPOL's Forestry Team has a specific focus in six target countries. The team, however, provides support to all INTERPOL member countries. In Latin America, seven regional operations coordinated, involving 12 different countries in the region and resulting in the seizure of USD200 Million worth of timber 450 arrests (though not all of these arrests resulted in convictions).

Mr. Freytag detailed the process of seizure in what is known as the "Yacu Kallpa" case. Law enforcement in Peru estimates that 40-60% of logging in Peru occurs illegally. INTERPOL received information from an NGO concerning illegal logging activities in Per. INTERPOL then assisted law enforcement in tracking the shipment (on a container ship called the Yacu Kallpa), through the Amazon and Caribbean where it was not allowed to port. The container ship then moved on to Mexico where authorities held the vessel in port. The timber was seized and 90% of the shipment was found to be illegally harvested. This kind of investigative support sees Interpol assigning specialist task forces and investigation support teams working with local law enforcement to reduce environmental crime.

Presentation

Mr. Mark Romley of the United States Department of Justice gave a presentation on the United States Lacey Act from the prosecutor's perspective. Mr. Romley began by clarifying that the Lacey Act is a de-facto prohibition of illegal wood entering the United States and does not take a risk management approach like the EUTR. The Lacey Act is 122 years old and was amended in 2008 to include reference to illegal logging. A significant challenge in prosecuting under the Lacey Act, though, is the burden of proving that illegality was committed in contravention of foreign law, not just US law. However, prosecutors can circumvent this issue by focusing on customs declarations and proving that the illegal shipments were purposefully mis-declared, as this would be a violation of domestic law. Here, Mr. Romley referenced one of the biggest Lacey prosecutions in recent years, which saw the US company Lumber Liquidators face fines of USD33 Million.

Mr. Romley provided an example of a successful lacey investigation, which eventually saw an illegal timber shipment attempt to port in Texas, where it was seized by Customs and Border Patrol (CBP). This was the first Lacey investigation into illegal timber after the 2008 amendment. The illegal logs were initially held in a customs facility in Houston, Texas, where there was much debate about what should happen to the load. Ultimately, the logs were destroyed so that they did not take up any market share that could be held by legal materials. While there were no arrests or convictions in this case, Mr. Romley does believe that it has had a deterrent effect on illegal loggers.

Risk Assessment and Mitigation for Cameroon and Nigeria

Presentation

Ms. Sophie Dirou of Terea, gave a presentation on conducting risk assessment and mitigation for Cameroon. Ms. Dirou has been working in this region for 12 years and has worked with the private sector, local African administrations, NGOs, and certification schemes.

Cameroon shelters a part of the Congo Basin and earns 4-6% of its GDP from the forest sector, exporting 3 Million cubic meters of timber each year. The main markets for Cameroon are the EU for sawn timber, and China for raw logs; it is estimated that up to 50% of logging in Cameroon happens illegally. Cameroon has been engaged with the FLEGT VPA process since 2010, however there is still not complete implementation.

Given the very high risk of illegality, when sourcing in Cameroon, operators should seek either SFM (FSC or PEFC) or legality (OLB, Legal Source, etc.) third party certification to minimize the risk. This is where the risk of illegality is lowest. Obtaining many documents in Cameroon is necessary to lower the risk of illegality so it is suggested that operators looking to source in this area ensure they are well versed in document verification specific to Cameroon (or engage with experts). Purchasing third-party certified wood decreases the risk of illegality.

When sourcing in Cameroon, it is imperative that operators ensure, at a minimum, their suppliers have obtained legal registration as a trader and exporter, a Decret D'attribution (legal title), a local management plan letter of approval, an annual allowable cut authorization which states what species are allowed for the consistent year, export registration, and a notice that all taxes have been paid. Operators should not, however, take the presence of each of these documents as a greenlight for legality and should conduct further due diligence, such as field visits, as well.

It is important for operators to know that there are currently 20 species under a log export ban (LEB) in Cameroon, and most of these are commercially traded species meaning that purchasing raw logs from Cameroon is a red light in term of legality (meaning the logs come with a high-risk of illegality). Additionally, logs and lumber from the Central African Republic (CAR) and Northern Congo can also be exported from Douala port in Cameroon. The risk of illegality from these areas is as high as in Cameroun, but in these countries exporting logs is allowed or under quota. Therefore, there is a risk of a mixing sources to justify log export. Ultimately, Ms. Dirou recommends that document verification for risk management in Cameroon should be considered only as a first step and that operators wishing to source in this region should also conduct additional due diligence, including field visits.

Discussion

One participant asked if Ms. Dirou knew how much timber leaving Douala port actually comes from Cameroon, and how much comes from neighboring countries? Ms. Dirou responded that all timber from neighboring CAR leaves through Douala port, totaling about 33-50% (rough estimate) of the total timber exports from the port.

Another participant had concern about the cost of field visits and wondered if there were third parties that could conduct robust field visits on behalf of operators. Ms. Dirou noted that her organization, Terea, often conducts field visits of this type, and suggested using open-source forums like the Open Timber Portal (OTP) to offset some of the cost of document verification. She also added that normal timber quality checks are conducted often and that combining these checks with legality field visits should not increase costs significantly.

Presentation

Mr. Adrian Hawkes, of the United Kingdom Office for Product Safety and Standards (OPSS), gave a presentation evaluating the impact of enforcement engagement with UK businesses sourcing in Cameroon. Mr. Hawkes noted that there is a significant volume of direct trade of products covered by the EUTR to UK from Cameroon (second only to South Africa from sub-Saharan Africa), and that most of this is in sawnwood and rough wood. To better understand EUTR compliance levels related to Cameroon, OPSS conducted an engagement project with businesses sourcing in the area.

This project began in 2015, two years after EUTR implementation, and was seen as a kind of benchmark for enforcement effectiveness. Initially, enforcement officials found very low compliance levels, with only one out of 17 businesses fully complying with the EUTR. Part of the issue was that some companies did not realize that they were operators and had no idea of their obligations under EUTR. Others had delegated responsibility for compliance to their suppliers, some had legality documents which were only available in French and then demonstrated no ability to understand or speak French. The main reason for non-compliance however, was an insufficient understanding of risk, particularly with regard to governance systems and corruptly issued documentation.

Non-compliant companies were sanctioned and initially added to a risk register, and subsequent engagement found that 50% of these companies stopped sourcing from Cameroon completely, while 36% had become compliant and 14% remained non-compliant. Those found to be non-compliant were issued with Notices of Remedial Action (NRA). The OPSS estimates that this engagement project reached approximately one-third of the UK companies sourcing and importing from Cameroon.

Discussion

One participant wondered if this type of engagement project had been run on other areas of interest, and also inquired about what subsequent engagement looked like. Mr. Hawkes responded that similar projects have been run on other risk categories- furniture from Turkey, for example. He also stated that OPSS ran a series of sector-specific workshops to better help companies understand the risks in their timber supply chains.

Another participant asked if the OPSS knew where the companies who stopped sourcing from Cameroon began to source from instead. Mr. Hawkes responded that this import information came from customs data, and they ultimately did not reach out to the companies to see where they had begun to import from instead.

Presentation

Ms. Catherine Rutherford of Forest Trends gave the final presentation of the day on CITES, rosewood, and West Africa. Beginning with an overview of the convention, Ms. Rutherford stated that CITES regulates the trade of around 6000 animal species and 30,000 plant species, 500 of which are tree species. In order to obtain an export permit under CITES, officials in the country of export must determine that a specimen has been legally acquired according to all applicable domestic legislation; this is known as a legal acquisition finding (LAF). Officials must also determine that the trade in that particular specimen is sustainable and non-detrimental to the species' survival in the wild, this is known as a non-detriment finding (NDF).

Since coming into force 40 years ago, there have been no guidelines to support CITES officials in determining whether a specimen has been legally acquired. This means that there is a lack of clarity on what is required as well as inconsistency in the methods used to determine legality which ultimately undermines the credibility of the legislation as it cannot consistently aid the implementation of other timber regulations. However, new LAF guidelines were adopted at the Conference of Parties (CoP18, Geneva, August 2019) recommending that before issuing an export permit, Management Authorities should consider various factors, including the source of the specimen, geographical factors such as armed conflicted in the region of harvest, documented legal harvest or trade, the applicant's trade history including that of non-compliance, and the monetary value of the specimen.

Ms. Rutherford then moved on to explain that Rosewood poses a challenge for CITES enforcement, noting that there are many genera and species traded under this name. *Pterocarpus erinaceous* accounts for 80% of the global trade in "rosewood," but several other species are highly traded and may also meet the criteria for CITES listing due to unsustainable

trade. Parties to CITES in West and Central Africa face particular challenges regarding CITES implementation and have been subject to more CITES trade suspensions than any other subregion in the world due to lack of adequate legislation and enforcement, corruption, lack of monitoring of significant levels of trade, and an absence of NDFs and LAFs.

Ms. Rutherford concluded her presentation by highlighting that CITES permits should not be considered de facto evidence of legality and if there is any doubt surrounding the validity of an export permit, concerned importing parties should contact their local Management Authority to verify the determination of legality made by the exporting Party. She noted that West Africa has substantial challenges in enforcing legal trade and any species from the region should undergo additional scrutiny.

Discussion

One participant wondered if the new LAF and Management Authority guidelines approved at the CoP19 will improve the situation for rosewood. Ms. Rutherford responded that she did believe these new adoptions will help as there is now a valid reason to query permits if all the information is not present, but ultimately countries will need to make a decision on whether to continue to import high-risk CITES listed species.