

Meeting Summary:

Timber Regulation Enforcement Exchange:

- Eastern Europe & the Balkans
- Cameroon
- Peru

Prague, Czech Republic

April 5 – 8, 2016



MINISTRY OF AGRICULTURE
OF THE CZECH REPUBLIC

Introduction

Background: Since 2012, Forest Trends and Chatham House have been working with officials from EU Member States and US Lacey enforcement agencies, 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. These two workstreams merged into a process called the Timber Regulation Enforcement Exchange (TREE), an ongoing series of networking and information-sharing meetings which bring the growing group of officials together every six months.

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.

Prague Meeting: Held in Prague, Czech Republic from April 5-8, 2016, this TREE workshop was co-hosted by Forest Trends and the Ministry of Agriculture of the Czech Republic. In addition to bringing together a core group of US Lacey Act enforcement officials, EU Timber Regulation (EUTR) Competent Authorities (CAs), and an Australian official implementing the Illegal Logging Prohibition Act (ILPA), this meeting also included government representatives from several other countries that are developing or have enacted their own timber import controls, such as Canada, Indonesia, Korea, and Taiwan, and Ukraine, Belarus and a number of Balkan countries exporting to the EU.

The following report summarizes the presentations and discussions from the TREE meeting in Prague. Notes were not taken during Government only training sessions on April 5th covering forest sector risks and document systems in Cameroon, Peru, and Ukraine, so this document summarizes only the sessions that followed.

Several topics were covered throughout the week, including:

a) An introduction to the EU Timber Regulation (EUTR), Australian Illegal Logging Prohibition Act (ILPA), and US Lacey Act Amendments for government representatives new to the TREE process

b) An overview of the development and/or implementation of new timber import controls in Indonesia, Korea, and Taiwan

c) Legality risks and Due Diligence standards in supply chains from Myanmar

d) A regional focus on Russia, Belarus, Ukraine, and the Balkans, with presentations on Serbia's forest control systems, regional illegality risks, Due Diligence standards, the US Lacey case against Lumber Liquidators, and an EU project focused on corruption and the EUTR

e) Legality risks and Due Diligence standards in supply chains originating in, and passing through, Cameroon

f) Legality risks and Due Diligence standards in supply chains from Peru

Tuesday, April 5, 2016

Introduction to EUTR, ILPA, and Lacey for new government representatives

Presentations

Natalie Benesova from the Ministry of Agriculture of the Czech Republic gave an [overview](#) of the European Union Timber Regulation (EUTR), including its state of implementation in the Czech Republic. The EUTR came into force in March, 2013 with the goal of minimizing the risk of placing illegal timber on the EU market. The regulation defines Operators as entities that place timber or timber products on the EU market for the first time, and Traders as entities that subsequently buy and sell timber or timber products already previously imported into the EU. Under the EUTR, Operators must establish Due Diligence Systems (DDS) which ensure they are not placing illegal timber products on the market. DDS requirements include compiling information on suppliers, designing and executing assessment procedures to evaluate the risk of purchasing illegal wood, and mitigation procedures to minimize that risk. The EUTR requires Traders to keep records that allow supply chains within the EU to be traced if necessary, including both their suppliers and customers.

Each EU Member State is obligated to establish a Competent Authority (CA) to oversee EUTR enforcement, including a system of checks and an adequate sanction system. The European Commission (EC) assists CAs as needed, evaluates the EUTR periodically, and recognizes Monitoring Organisations, which are formally recognized institutions, with a compliance-supporting role that is defined in the Regulation and supporting guidance. If any Monitoring Organisation fails periodic CA checks, the EC can revoke its status. The EUTR has been operational within the Czech Republic since 2013 and implementation is continually improving.

Parul Patel of the United States Animal and Plant Health Inspection Service (APHIS) presented on [the U.S. Lacey Act](#). The Act was originally passed in 1900, targeting unlawfully harvested or illegally killed wildlife or wildlife products. It has expanded in scope over the years, and was amended in 2008 to prohibit trade in all illegal plants and plant products. APHIS (under the U.S. Department of Agriculture) is the lead U.S. government agency in charge of enforcing the plant provisions of the Lacey Act, and coordinates with many other relevant U.S. Government agencies. The *Legality Requirement* of the Lacey Act stipulates that all plants and plant products imported into the U.S. must be legally harvested, sold, and transported. In order to operationalize and enforce this requirement, the *Declaration Requirement* requires that all formal, commercial entries of plants and plant products be declared, for those products which APHIS has added to its implementation schedule. As APHIS attempts to add new products (HTS Codes) to the implementation schedule, the agency is committed to providing a notice of six months to allow businesses to adjust their practices to comply with the declaration requirement, so the scope of coverage is continually expanding. While the vast majority

(90%) of Lacey declarations are filed through the pre-existing U.S. customs declaration system, a new customs system (Automated Commercial Environment - ACE) is currently under development and deployment which will hopefully streamline and improve compliance under the Lacey Act.

Teresa McMaugh from the Australian Department of Agriculture and Water Resources described [Australia's Illegal Logging Prohibition Act \(ILPA\)](#), which became law in 2012. Under the ILPA, criminal penalties can be issued to entities that “intentionally, knowingly or recklessly import illegally logged products,” while offences which are less than first degree are subject to penalties. A DDS is required for all regulated products, which includes gathering information, conducting a risk assessment, and mitigating the identified risk. Importers can comply by 1) importing wood under recognized frameworks, such as FSC, PEFC, or FLEGT licenses; 2) following country-specific guidelines issued by the Australian Government outlining ‘low risk’ export pathways for a number of countries; or 3) designing their own unique DDS that takes into account risks of illegality, conflict in the area of harvest, species-specific risks, product complexity, and any other relevant information that increases or decreases risk. The Australian Government executes the ILPA through collaboration between the Department of Agriculture and Water Resources (Forestry Branch; and Targeting and Enforcement Branch), the Department of Environment, and the Department of Immigration and Border Protection (Customs).

From November 2014 through February 2016, approximately AUD\$9.4 Billion in trade was regulated by the Australian Government under the ILPA, with nearly one-third of this value comprised of imports of furniture and paper from China. Since March 2015, the Australian Government has initiated 439 DDS compliance assessments, and completed 240 of these. These compliance assessments targeted the businesses importing the greatest value of trade, responsible for 74% of all regulated trade to date. Of these assessments, results showed that 40% of businesses were non-compliant in one or more aspects, while 45% were fully compliant. Relatively higher levels of non-compliance were found for furniture and for products with complicated supply chains coming from processing countries such as China, Malaysia, and Vietnam. A DDS is assessed against five penalty provisions, each worth \$3,600 as a fine for an individual, or up to \$18,000 each for a business, if found inadequate by legal proceeding in court. However, a soft-start period for the ILPA is in place—likely through to the end of 2016—and the aim is to facilitate and encourage compliance rather than issue sanctions. Aspects of the ILPA are currently under review, and some changes may be implemented to reduce the perceived burden of compliance for small businesses.

Asian Legislative Developments

Presentations

Mr. Sigit Pramono from Indonesia’s Ministry of Environment and Forestry presented [Indonesia’s new timber import controls and due diligence requirements](#). Since 2007, Indonesia has been negotiating a Voluntary Partnership Agreement (VPA) with the EU. As part of the multi-stakeholder process to develop a Timber Legality Assurance System (TLAS), the Government of Indonesia enacted a regulation requiring importers to conduct due diligence to verify the legality of their wood imports. Full implementation of the regulation began on January 1, 2016. Companies must be formally registered to import and trade in timber and they are required to analyze and mitigate legality risks before importing wood. Using an online system called SILK, registered companies must submit detailed data about their timber imports, including product category, importer/exporter information, Bill of Lading, port of export, country of harvest, country of origin, and proof of legality. The system is monitored by auditors who do regular surveillance checks and investigate possible violations of the regulation. Enforcement of the regulation is still in its

early stages, so both industry and the government are in an adjustment period as importers familiarize themselves with the new requirements and technology.

Mr. Hong Gi of the Korean Forest Service presented on [legislative developments in Korea](#). The country has transitioned since the mid-20th century from a state of low forest cover to relatively high forest cover, after a concerted national reforestation effort. Yet, Korea currently imports 84% of the wood products used in the country, at a cost of US\$3.4 billion in 2014. Two separate pieces of legislation regulate logging and the timber trade in Korea. The Forest Resources Act governs domestic timber harvesting within Korea and enforces standards to ensure the environmental sustainability and legality of these harvests. The Act on Sustainable Use of Timber, which was most recently amended in 2013, aims to prevent the distribution of illegally logged timber, including timber being imported from outside of Korea. However, this law has not yet been fully operationalized, and the Korean Forest Service is now considering how best to implement it. This would likely include providing guidance and conducting public outreach activities with the goal of preventing the distribution and use of illegally cut timber.

Mr. Chun-I Liu of the Taiwan Forestry Bureau gave an overview of the situation in Taiwan, which is still in the early stages of considering a regulation to protect against illegally logged wood products entering the Taiwanese market. Like many industrialized countries, particularly small island states, Taiwan has experienced an evolution from heavy logging in decades past to conservation and sustainable harvesting of its domestic timber resources. The country is highly dependent on wood imports, as domestic timber harvesting is very limited. Current Taiwanese timber cover CITES listed species, but do not necessarily take into account nation-of-origin laws concerning the legality of the timber being imported. However, domestic timber harvesting, distribution, and trade is highly regulated under the country's Forest Act. Taiwan aims to become more self-sufficient in meeting domestic demand for timber and wood products through domestic harvesting, although that will be challenging given the highly-regulated and conservation-oriented focus of Taiwanese forest management. The country is also developing its own national forest certification system, in addition to utilizing existing international forest certification and chain of custody systems such as FSC and others.

Myanmar Risks and Due Diligence Systems

Presentations

Kerstin Canby of Forest Trends provided an [overview of Myanmar's forest sector and associated legality risks](#), beginning with a discussion of the five key sources of timber from Myanmar's forests. Each of these five sources is associated with different geographies, actors, legality risks, and land rights issues (discussed in more detail in [this Forest Trends report](#)). The sources include: a) state-managed forests (mainly teak); b) logging concessions in natural forests (mostly in ethnic conflict zones); c) land conversion in natural forests (mainly driven by agribusiness); d) tree plantations (very limited); and e) community forests (prohibited from harvesting for commercial purposes). A significant amount of mixing occurs between these timber sources from natural, plantation, and managed forests, making it very difficult to track wood from harvesting through processing and on to export. According to national Myanmar law, all timber exports are required be shipped out of the southern port of Yangon; a log export ban also came into effect in April 2014.

Given the political situation in Myanmar, forest governance is fragmented. Ethnic groups control most of the old growth forests in the border zones, and depending on their degree of autonomy, these groups often determine their own forest policies which are separate from the policies of the centrally-managed, state-controlled zones. Most of

the land conversion in natural forests—typically clear-cutting for large-scale agriculture—occurs in the ethnic zones. The “conversion timber” coming off of this land is likely the most significant source of timber being harvested in Myanmar. Corruption is reported to be widespread in Myanmar, making it difficult for importing companies in the US, Europe, and Australia to mitigate risks of illegality. However, following the elections in 2015, many observers believe Myanmar is entering a new era of reform, so it will be important to keep abreast of changes in the forest sector as the country transitions to democracy after many decades of military rule.

Belinda Christensen, from the EUTR Competent Authority (CA), The Swedish Forest Agency, provided a brief overview of Sweden’s EUTR enforcement strategy and described several recent cases relating to wood imports from Myanmar. The Swedish CA regularly performs checks on Operators’ Due Diligence Systems (DDS), which includes an assessment of documents, the Operator’s written procedures, and information on risk assessment and mitigation. The Swedish CA has performed checks on 117 different samples from 19 countries, with 46% coming from China. Following an inspection, if a DDS is deemed insufficient, the Swedish CA will either request additional information or issue an injunction, which in some cases may lead to a fine. Three companies importing Myanmar teak have received injunctions. The first two cases were small/medium companies, and the third was a larger company using Bureau Veritas as a Monitoring Organisation. This third case involved teak imports harvested in Myanmar and sold through a supplier in Thailand. During the inspection, the company could produce some documentation but not all the paperwork that was expected, and they claimed—as per guidance from Bureau Veritas—that the shipment was low risk because it was under a threshold of 1,000 cubic meters. The Swedish CA did not consider this to be proper risk assessment/mitigation, and thus issued an injunction.

Discussion

A participant asked whether there would be any repercussions for Bureau Veritas relating to the Swedish injunction. Although it is not yet clear whether the European Commission (EC) will issue a formal response, the Swedish case is likely to trigger a discussion about whether additional EC guidance is needed for Monitoring Organisations. A representative from another Monitoring Organisation noted that based on their own expert assessment, they do not believe it is currently possible to mitigate risk to negligible levels when importing wood from Myanmar.

Presentations

Next, **Rachel Butler** from the Global Timber Forum provided [background information](#) on the state of the forestry industry in Myanmar and discussed some emerging issues. The Global Timber Forum is engaged in several areas of work, including: communications and the dissemination of industry news; capacity building for the industry on issues relating to market access; and providing a voice for smaller players in the industry. Although Myanmar’s exports to the EU and US consist of a relatively small volume of wood, the value of these markets is particularly high and there is a desire within the country to become the top tropical wood supplier in the region. As part of Myanmar’s engagement in the EU’s Forest Law Enforcement, Governance, and Trade (FLEGT) initiative, a consultant is conducting a gap analysis of Myanmar’s legal framework in order to inform the development of a Timber Legality Assurance System (TLAS). The Myanmar Timber Enterprise (MTE) currently controls the country’s timber trade, but it is unclear what their role will be in the future following the recent election and ongoing reform efforts. Some observers believe it will be phased out or transformed, but the future of the MTE is still uncertain.

Cindy Squires, from the International Wood Products Association (IWPA), presented on the [license the US government has granted IWPA members](#) to import Myanmar wood. The IWPA is a US-based trade association representing North American companies and overseas members. Because the Myanmar Timber Enterprise (MTE) is

on a specially designated national list which prohibits US entities from trading with them, the IWPA negotiated for a Specific License from the US government which allows IWPA members to import wood directly from Myanmar, as well as via third countries. The IWPA aims to encourage and support the reform process in Myanmar, help member companies develop long-term trading relationships with Myanmar suppliers, educate companies in both the US and Myanmar, and develop chain of custody processes in Myanmar mills. Within the Myanmar industry, there is a desire to expand their forest resources and develop more infrastructure to increase processing capacity, which is currently rather limited.

Discussion

Historically investors have not focused on developing processing capacity inside Myanmar for various reasons, including the ethnic conflicts, governance challenges, and difficulty maintaining consistent electricity in the country. However, as part of the current reform process, the government aims to attract more investment in mills. That said, many outside investors are still nervous to spend money on capital improvements during a time of uncertainty. Although the majority of Myanmar's exports currently go to India and China, the industry is very interested in increasing trade to the US and EU, since these are higher value markets.

Wednesday, April 6, 2016

Russia, Belarus, Ukraine, and the Balkans: Due Diligence Options and Risks

Presentation

Dusan Jovic, of the Serbian Ministry of Agriculture and Environmental Protection, highlighted the [state of forest management and governance in Serbia](#). Serbia's total forest area is split nearly equally between public and private ownership, with more than one million Serbians owning very small private forest areas. The majority of timber harvesting is conducted on public forest lands, which are nearly all FSC-certified, and overall the country is a net importer of wood. Two state-owned forest management enterprises control timber harvesting on public lands. In 2015, the government conducted nearly 10,000 inspections, found 1,500 violations, and punished 24% of these violations. Only one of 113 crime claims was prosecuted in court, which speaks to the fact that enforcement is not where it needs to be but is slowly improving. One challenge is that judges tend to act more on common practice established by their peers rather than strictly enforcing the letter of the law.

EUTR preparations are proceeding slowly, as Serbia is in the process of formally joining the EU. Due diligence standards and systems are not well developed, although Bureau Veritas recently conducted a review of one Serbian timber company, and it passed. Unregistered/illegal logging does occur in the country in some instances because of government corruption. Other challenges include the fact that procedures for granting private forest owners the right to harvest their own trees are complicated, and the timber and wood products industry does not have sufficient collaboration or communication with the government. At the present time, there are no meetings among forest producers/companies in Serbia to discuss illegality risks, but Mr. Jovic thinks now is the time to foster these discussions in order to reduce future risks.

Discussion

A participant asked how someone could purchase legal sawn wood from Serbia. Mr. Jovic indicated that the most common way would be to apply to participate in a semi-annual bidding process hosted by one of the two state-owned forest companies. Buyers could also purchase directly from private forest owners, as long as these owners have the proper harvesting permits and documentation. Exporters of wood from Serbia must have documentation stating where the wood comes from, that they are the legal buyer, and that they have permission to transport and sell the wood. The challenge is that these documents are written in the Serbian language, though Mr. Jovic is pushing internally for these documents to include English translation. Another participant mentioned that she is hoping to work with the Government of Russia to verify the documentation of timber coming out of Russia and into other Eastern European countries, with the aim of partnering with Serbia to accomplish this since the two countries have close ties.

Presentations

Brian Milakovsky from the World Wildlife Fund gave a pre-recorded [slideshow presentation](#) discussing regional illegality risks in sourcing from Russia and Ukraine. He pointed out that Russia and Ukraine typically do not receive as much attention as tropical forest countries, but both have struggled with illegal logging and corruption in the forest sector in the Post-Soviet era. Illegal logging ‘with papers’ (i.e., corruption, fraud) is much more common than outright timber theft, and many illegally harvested logs pass first through China, making them difficult to track. Common tactics include harvesting logs of a higher quality/value than listed on the permits, or abusing phytosanitary permits to remove the best logs in areas where commercial logging is not permitted (e.g., protected forests.) In the Russian Far East in particular, very large areas are leased out to timber companies, and due to the remoteness of the region, enforcing legality provisions is very difficult logistically. Both Russia and Ukraine have too few government officials to effectively police logging in remote territories. However, in contrast, neighboring Belarus has a lower illegality risk and in general does a more effective job of managing its forests in accordance with its laws.

Mr. Milakovsky was careful to point out that on the whole, Russian timber exports are not particularly high risk. However, certain regions of the country and certain timber species require high levels of due care. Border regions are characteristically among the highest risk. These include the North Caucasus region, with high-value species such as oak, chestnut, and beech; Southeast Siberia, with high-grade Scots pine which usually passes first through China before being exported elsewhere; and the Russian Far East, with Mongolian oak, Manchurian ash, Amur linden, and Japanese elm. Mongolian oak and Manchurian ash are now both CITES listed, and the U.S. Lacey Act case against Lumber Liquidators highlighted the risks of the Russian Far East region in particular. Ukraine has lower levels of illegality than Russia, but particular risks include beech and oak coming from the Carpathian region (Zakarpatyie) of Western Ukraine. Yet overall, Ukraine exports a large amount of legal timber—much of which is FSC certified—and imported by other European countries. Ukraine’s recent roundwood ban should also help to curtail illegal export.

Klara Popovova, from the Czech Operator Herrmann & Vogel, spoke about the company’s [experience with PEFC certification and the EUTR](#). Herrmann & Vogel is a small family business that has been operating since 1992, selling mainly to Central Europe (Czech Republic primarily) and a newly emerging market in South Africa. The company has been PEFC-certified since 2002, and 52% of its purchases and 50% of its sales are of PEFC-certified wood. The company sells PEFC wood only to customers who require it, using a percentage method to ensure that it buys at least as much PEFC wood as it sells in any given month or year. One key challenge the company faces is that its buyers are not willing to pay any price premium for PEFC-certified wood, and the company’s salesman have not been trained to market PEFC wood as deserving a higher price. Another challenge for the company is trying to evaluate documentation from its suppliers that are not FSC- or PEFC-certified, since this requires specific and in-depth

knowledge about timber-related laws and procedures from each supplier country. The announcement of the EUTR was a big challenge and surprise for the company, and it did not know about the law until the first inspection was conducted. The company initially was unclear of the differences between PEFC and EUTR requirements.

Patrick Duggan, an attorney from the U.S. Department of Justice (DOJ), gave an overview of the [U.S. v. Lumber Liquidators, Inc. \(LL\) case](#) which concerned violations of the U.S. Lacey Act. The investigation began when the DOJ received information from the Environmental Investigation Agency (EIA) that LL was importing illegal timber products. The allegations were initially focused on wood that had been illegally logged in the Russian Far East, manufactured into flooring in China, and then shipped to the U.S. under false declarations of origin. The Russian Far East is home to the last 450 wild Siberian tigers and 47 Amur leopards (both CITES-I listed), and both species are severely threatened by illegal logging of Korean pine (CITES-III) and Mongolian oak (CITES-III), a fact which helped raise the profile of the case. The DOJ conducted its own investigative work before presenting evidence to other USG agencies, including the U.S. Fish and Wildlife Service (FWS) and the Department of Homeland Security (DHS).

DOJ obtained a sealed search warrant and searched LL headquarters in Virginia, which was accidentally leaked to the press. The media attention led environmental NGOs to publicly advocate for prosecution of the case, and in response to the news, LL's stock lost value dramatically. The investigation revealed that LL did not exercise due care over its timber imports, since LL's own internal system showed that it should have known that Mongolian Oak could not have come from Germany, as it had claimed. Documents also showed that LL knew the areas it was buying from were high risk, but failed to mitigate that risk. LL acted illegally in two ways in this case, including 1) Falsely declaring the timber species and/or harvesting company to cover up the true product identity and origin; and 2) Using a legitimate permit to launder illegally harvested timber. USG evidence, using internal LL documents, showed that \$3.5M in Mongolian Oak was falsely declared as a different species, and that LL bought \$7M of illegally harvested oak.

Ultimately LL pleaded guilty to 1 felony and 4 misdemeanor charges and was fined \$13.5 million USD, representing the largest-ever criminal penalty under the Lacey Act. One of DOJ's key objectives was getting LL to sign a detailed factual statement about the crimes committed, which serves as guidance to the industry to deter similar crimes in the future. As part of the settlement LL also agreed to follow an Environmental Compliance Plan, which includes annual auditing and reporting to the court, and five years of court oversight/probation. The DOJ considers this to be the most powerful outcome of the case. With court-enforced oversight, LL created a Chief Compliance Officer position to oversee compliance with the Lacey Act. Going forward, this individual can be held criminally responsible for future infractions, creating a much stronger incentive for compliance. LL also needs to conduct quarterly, on-site investigations of its high-risk suppliers, and establish an unbroken and verified chain of custody for its high-risk products, down to the specific forest. As community service payment, LL agreed to provide funding to organizations conducting tiger and leopard conservation in the Russian Far East. Additionally, US\$500,000 from the settlement was set aside as an incentive for innovation in the development of technology to enable simple (hand-held, immediate) identification of timber origin, for use at points of import and export (e.g., ports). Teams from the University of Wisconsin and an NGO called Conservation X received this funding to develop two distinct technologies.

The DOJ expects a few major, long-term impacts from this case. First, compliance expectations for other medium-to-large operators are heightened. Through this case DOJ aims to move the entire industry toward better implementation of due care standards, by increasing industry awareness of illegal logging schemes, and enhancing understanding about what level of knowledge companies should possess. Finally, the innovation funding from the case will hopefully lead to new technologies that customs agents can use to quickly assess the origin and risk profile for wood imports and exports.

The LL case also demonstrates how the USG can successfully partner with NGOs on a criminal investigation (discussed further in [this article](#)). NGOs will hopefully now be more willing to bring information to the USG concerning evidence of potential criminal activities.

Discussion

When asked by a participant if Mutual Legal Assistance Treaties (MLATs)—which enable cooperation on law enforcement between national governments—are helpful, Mr. Duggan responded that MLATs are a great tool in theory, and can lead to receiving the necessary information, but in practice can take a very long time to establish, especially if it is a high-profile case. MLATs can facilitate easier use of evidence in trial because the evidence is readily admissible, having been officially validated by the partner government with jurisdiction. In the LL case, geopolitical issues prevented the U.S. from collaborating closely with the Russian government, which was unfortunate since there were individual Russian government officials who were eager to help. The best scenario is when government agents from different countries can directly collaborate; the U.S. has arrangements of this sort with several countries.

Another participant asked if information on LL's performance during the upcoming 5 year probationary period will be made public. Mr. Duggan explained that he will request the court to make the information public given its public importance, but he expects LL will argue against this. The judge will make the final decision.

When asked about impacts of the case on the Chinese intermediaries involved, Mr. Duggan explained that their public reaction has been appreciative of the action taken to help move the industry in the right direction. It is difficult to say if the case has changed their behavior, but the imports of many of these companies have dropped significantly. It could be that they are really processing and selling less timber product volume, or that they are just selling it to other markets outside of the U.S. LL was the largest customer of three of these Chinese intermediaries named in the case, and it is the largest hardwood flooring supplier in the U.S. and Canada, so the impact should be significant.

Finally, a question was raised about the impacts of the case on other U.S. companies, and whether they should be conducting third party, quarterly audits, as LL has been required to do. It is difficult to provide a precise answer to this question since due care is context-specific and the USG does not prescribe specific requirements of due care. However, for similar large companies with high-risk suppliers, the standards laid out in the LL compliance plan should offer valuable guidance as to what the USG considers baseline levels of due care. Smaller companies importing much smaller amounts of wood would likely be held to different standards.

Presentation

Lorenzo Segato, from the Research Center on Security and Crime (RiSSC) based in Italy, presented on the work of the EU-funded [TREES project](#), which aims to understand if and how the EUTR can be used as an effective tool to combat corruption in the forest sector. The project works at the intersection of the EUTR, corruption, and illegal logging, focusing on Italy and the Balkan countries. Italy is a major importer of timber and timber products and has significant corruption problems. Primary underlying drivers of corruption in the timber sector include poor ethics by buyers; the potential for large monetary gains from trafficking in illegal timber; low perceived risks for engaging in criminal actions; high demand for illegal timber; and a lack of education and training for actors in the timber supply chain. Examples from Guatemala and Indonesia highlight the presence of corruption in exporting countries, from local police to national government officials. Various factors increase the risks of corruption in both importing and exporting countries, including long and opaque supply chains that are difficult to track. Overall, rates of corruption in

the timber sector are in line with overall rates of public sector corruption in any given country. In the case of Italy, in 2012 it adopted an anti-corruption law that introduced the risk assessment and risk mitigation approach, similar to EUTR requirements, which was a welcome development.

Some of the weaknesses of the EUTR identified by the TREES project are that it does not adequately define corruption; it fails to distinguish between petty and grand corruption, when in reality there are important differences between small-scale bribery and state/elite capture of timber resources; risk assessment and mitigation measures are not sufficiently standardized at the EU-level; and the EUTR system is generally not perceived positively by Operators. However, promising aspects of the EUTR include its potential to develop and enforce traceability systems to increase risks of detection for corrupt actors in the supply chain, to reduce opportunities for falsifying the origin of timber, and to provide evidence for law enforcement. The TREES project aims to develop new maps to highlight illegal timber flows and to better solidify relationships between relevant enforcement agencies in the EU in order to establish a clear chain of EUTR enforcement.

Thursday, April 7, 2016

Cameroon: Trade Data and Due Diligence System Standards

Presentation

Eve Richer of Forest Trends presented an [overview of trade data analysis](#) for Cameroonian timber imports and exports, based on UN Comtrade data. Experts report that Cameroon receives significant informal flows of timber from its neighbors to the east—Central African Republic and the Congo—which are then exported to the west and other regions. Unfortunately Cameroon import data tends to be patchy and unreliable, so these trends are difficult to demonstrate in the official data. However, it is nonetheless an important dynamic to understand when analyzing legality risks of Cameroon’s wood exports. The top four destinations for Cameroonian timber exports are the EU (50%), China (33%), Vietnam, and the USA. Cameroon primarily exports logs to China and Vietnam—a large portion of which are presumably re-exported after additional processing—and sawn wood and veneer to the EU and USA. The top EU member states importing from Cameroon are Belgium, Italy, UK, France, Germany, Spain, and the Netherlands. Italy is by far the largest importer of veneer from Cameroon among all EU member states. Canada also imports mostly sawn wood and some veneer from Cameroon, although a much smaller volume than the EU or USA. The EU imports a small and declining value of logs from Cameroon, but this represents a much smaller portion of imports than sawn wood and veneer. Importantly, the Comtrade data is based on the first port of entry, and does not indicate the final destination of timber which may be different from the Member State in which it is first declared.

Cameroon: Risk Assessment and Compliance Tools

Presentation

Alexandra Banks of NEPCon presented on [timber legality risks in Cameroon](#) and the steps a company can take to conduct Due Diligence when sourcing from this country. NEPCon is a recognized EUTR Monitoring Organisation and has developed a publically available Due Diligence System called Legal Source. The organization has also been conducting national risk assessments for 63 major timber-producing countries, including 20 that are published online and many others that are in their final stages of readiness. NEPCon’s risk assessments involve analysis across many

legal categories, including legal rights to harvest, taxes and fees, timber harvesting activities, third parties' rights, trade and transport, and Due Diligence/care procedures. These legal categories break down into 21 distinct sub-categories which each receive a rating of "low risk" or "specified risk." In the case of Cameroon, NEPCon found specified risks for 14 of the 21 sub-categories (see [slides 12-19](#) for detailed information).

After discussing the results of this national risk assessment for Cameroon, Ms. Banks concluded by presenting a case study based on one of their clients that requested to be certified under NEPCon's Legal Source standard. Because it is a large company with many complex supply chains from high risk countries, the certification process took about 15 months. Three major legality risks stood out when this company assessed its supply chains from Cameroon. The first linked back to risks at the forest level because a planned/new supplier had not been third-party audited. The second was a risk of mixing found at a Cameroonian saw mill. Lastly, the third major risk stemmed from sourcing Origine et Légalité des Bois (OLB)-certified wood, because an analysis of this certification system found that it does not fully comply with EUTR requirements. Following the assessment, NEPCon and the client worked together to mitigate these legality risks and remove suppliers of potentially illegal wood.

Discussion

Companies often need to be able to make a business case to justify holding themselves to Due Diligence standards that are as stringent as those presented by NEPCon, and participants discussed how a company may be able to make this case. There are numerous benefits to having a transparent supply chain, including avoiding the reputational risks of being targeted in environmental advocacy campaigns and having better control of materials and production processes, which is important for quality assurance. One participant noted that it is probably not a coincidence that Lumber Liquidators has faced charges relating to formaldehyde/health issues in addition to the legality of their timber. Also, there are anecdotal reports that some bigger companies in the EU that have invested in their Due Diligence Systems are now being asked to serve as the Operator for smaller companies.

Presentations

Filip Verbelen from Greenpeace presented [research examining Cameroon's timber sector](#). Illegal activities are widespread in Cameroon and fraud is a major challenge, not only in the forest but also in the allocation of logging titles. Cameroonian law stipulates that logging titles (e.g. long term concessions or Forest Management Units) and short-term permits (e.g. Sales of Standing Volume, also known as *Ventes de Coupe* in French) should be allocated based on a public bidding process. Mr. Verbelen presented recent information highlighting systemic problems in the allocation of short-term logging titles (*Ventes de Coupe*). In practice, such titles are frequently granted to political cronies and military connections. Titles that were awarded without respecting legal procedure should be considered illegal along with the resulting wood that is exported to the EU market.

Greenpeace recently conducted a test case for the EUTR (based on the Due Diligence obligation), which focused on a Lebanese-owned trading company in Cameroon called CCT. Based on Greenpeace's analysis, most of CCT's wood comes from short term-logging titles (*Ventes de Coupe*), where no forest management plan is required and destructive "cut-and-run" logging is commonplace. Although CCT may offer official paperwork, it is often disconnected from the actual area of harvesting (logging outside the legal boundaries of the *Ventes de Coupe* cutting title is a commonly observed practice). Most of CCT's log exports go to China and other parts of Asia, while most of the sawn wood goes to Europe (especially to Spain, Netherlands, and Belgium). Given the mixing that happens with the sawn wood, it is very difficult to see how it can be traced back to its source to verify legality. Mr. Verbelen

recommended that when dealing with wood from Cameroon, Operators and enforcement officials should take corruption into account and read information provided by officially mandated Independent Observer organisations.

Andrea Johnson, an independent consultant affiliated with the Environmental Investigation Agency (EIA), presented on [the emergence of Community-Driven Forest Monitoring \(CDFM\) platforms](#) as an important resource for information concerning illegal timber harvesting and trade. As technology advances to better enable CDFM, the increase in the quality and quantity of the information being generated is making the findings increasingly relevant to policy makers and the private sector. Technologies are enabling the many eyes on the ground—including of both local community members and NGOs—to act as monitors, collecting and disseminating information about illegal logging activities more effectively than ever before. Ms. Johnson shared examples of CDFM networks active in Cameroon, Liberia, Peru, and Indonesia. However, this wealth of information being collected by CDFM networks and local NGOs has not yet managed to find effective communication channels with “target audiences” in the compliance and enforcement communities. Ms. Johnson expressed her conviction that mainstreaming the use of CDFM knowledge/information into due diligence practices is necessary in order to achieve the objectives of the EUTR, the ILPA, and the Lacey Act. EIA is currently experimenting with designing a platform to channel, organize, and make CDFM information more accessible, but requested the assistance of the TREE network to better understand how they could use this information.

Discussion

In the discussion that followed, one of the CAs noted that the European Commission could be a good target audience or forum in which to share this type of information, particularly where it involves EC-funded projects. Another CA suggested connecting CDFM networks on the ground with companies in the EU, USA, and/or Australia, as an effective way to raise red flags about suppliers or supply chains linked to abuses by certain logging operations or in specific geographies.

Cameroon: Due Diligence Responses

Presentation

Ewa Bazydło, representing a UK Operator called Lathams, provided an [overview of the company’s timber sourcing practices](#), with an emphasis on how they conduct Due Diligence on supply chains from Cameroon and other nearby countries. Lathams has long prioritized sustainability alongside legality, so when the EUTR came into effect the company already had systems in place to assess and mitigate risks. Lathams assesses risk in many dimensions, including an evaluation of corruption levels in the country, a commitment to avoid conflict timber and wood that is subject to sanctions by the UN and EU, and an analysis of timber species in the context of CITES requirements, harvest bans, and log exports bans. When sourcing from Cameroon, they assess a variety of documents related to tax payments, forest management plans, and legal certificates. Risks increase as the complexity of a supply chain increases, so Lathams also assesses where mixing might occur in a supply chain, what sources may be mixed in, and then evaluates whether legality risks can be mitigated to negligible levels. Latham’s Due Diligence strategy includes a preference for transparency, shorter supply chains, third-party certification, and the cultivation of long-term relationships with trusted suppliers.

Discussion

One participant asked how Lathams is able to verify official signatures when sourcing from countries such as Cameroon, where corruption levels are high. Ms. Bazydlo explained that she maintains records of the names of government officials responsible for signing documents. However, when dealing with non-certified timber from West Africa, risks are higher, so documents with signatures are insufficient and must be complemented by proof of payment and felling certificates. This allows Lathams to estimate harvesting volume, productivity of the forest corresponding to the concession, and productivity of the saw mill, which helps them check the validity of the documents and mitigate risk.

Armand Stockmans from SOMEX, a Belgian timber importer, shared the experiences of SOMEX in integrating the EUTR requirements into its operations. Mr. Stockmans is the purchase director for SOMEX in Antwerp, and president of the Hardwoods Division of the European Timber Trade Federation. Approximately half of all timber SOMEX imports is certified by FSC, PEFC, or OLB, although it also accepts V-Legal / SVLK certified timber from Indonesia. The majority of timber traded by SOMEX is sold to buyers in Belgium (50%), France (35%), or other EU countries (15%). The structure of the DDS utilized by SOMEX depends on the country of origin for the timber in question, as each country supplies different documents. For countries with a low score on the Corruption Perceptions Index (CPI), SOMEX practices enhanced Due Diligence, taking into account the reputation of suppliers, internet reports of potential recent violations by suppliers, information compiled by NGOs about certain suppliers, and a host of other information requested by SOMEX to try to validate the legality of its timber imports. Raising awareness among suppliers is a long-term task, which SOMEX started doing with its Cameroonian suppliers back in 1995 in collaboration with WWF. Mr. Stockmans noted that the most difficult aspect of DDS is putting it into practice effectively. SOMEX conducts regular visits to its African suppliers (every six weeks). It has cut off relationships in the past with suppliers in Africa, Latin America, and Asia when problems have been identified.

Concerning the Cameroonian context specifically, timber can originate from three types of sources: 1) Forest Management Units (FMUs), which are covered by 30 year leases and are very large in size; 2) Vente de Coupe, which are covered by 3 year leases and are intermediate in size; and, 3) Community Forests, which are owned by local communities and are typically small in size. SOMEX prefers timber from FMUs when possible, which are the only type of the three which can be FSC certified, and avoids timber from community forests given the associated difficulties in fulfilling DDS for this timber. As part of its DDS, SOMEX attempts to verify that the numeric markings on its imported timber match valid concession areas, and that the species of the imported wood matches the species eligible for harvest in the given concession area. It also verifies log transport licenses/permits. Overall, DDS is a very expensive task for SOMEX and other operators. SOMEX fully supports the EUTR, but the resulting cost burden is difficult for SOMEX to recuperate. SOMEX believes the EUTR is achieving its ultimate objective of protecting forests, but believes that all countries need to pass comparable legislation, since the timber trade is global in scope.

Discussion

In the ensuing discussion, Mr. Stockmans stated that SOMEX had in fact discontinued its relationship with at least one Cameroonian supplier, when problems were discovered with its supply chain. In response to a question about timber from Cameroon being routed through a third country such as Indonesia before being V-Legal / SVLK certified and coming to Belgium, Mr. Stockmans clarified that SOMEX does the work of trying to verify the original source of the timber in Cameroon, rather than relying solely on the V-Legal certification. When asked if Vente de Coupe certification was sufficient for timber origination from these sources, Mr. Stockmans agreed that Vente de Coupe sources are difficult, and extra checks of the certificates are necessary. SOMEX is more careful with timber coming from Vente de Coupe than with timber coming from large FMU concessions. Regarding verification of CITES

certificates, Mr. Stockmans explained that SOMEX relies on suppliers they trust, and they avoid getting CITES species from countries like the Congo. SOMEX takes into account the reputation of the supplier, and refuses to buy from 'shady' suppliers.

Friday, April 8

Peru: Risk Assessment/Compliance Tools

Presentations

Alexandra Banks of NEPCon presented an [overview of the draft risk assessment being conducted for Peru](#) as part of the Forest Stewardship Council's Controlled Wood project. The first risk category NEPCon evaluated is that concerning the "legal rights to harvest," which consists of a total of four sub-categories which were all found to have specified risk. Within the sub-category of land tenure and management rights, the risks include high levels of corruption, widespread lack of compliance with contractual obligations, and failure of management plans. The "taxes and fees" risk category was found to have low levels of risk. NEPCon is continuing their evaluation of Peru's legal framework based on a standard matrix of risk categories, and a completed draft of the assessment is expected in June or July 2016. NEPCon is happy to share a draft at any stage of the process and welcomes input.

Ryan Connors of the U.S. Department of Justice summarized the [public information](#) regarding a shipment of allegedly illegal timber that has been denied entry at the U.S. port of Houston. The timber was logged in the Peruvian Amazon and transported on a ship called the Yacu Kallpa. Due to allegations of illegal logging, U.S. Customs officials have "excluded" the timber, which means it is not allowed legal entry into the country. This issue is the subject of an ongoing investigation among several U.S. agencies. The U.S. government is collaborating with officials in Peru on this case, but the situation is complicated due to interagency disputes inside of Peru and the fact that the official leading OSINFOR, an independent oversight agency, was recently terminated from his position. There are reports that this official and other Peruvian inspectors have received death threats and had coffins with their names symbolically dragged through the streets.

Shelley Gardner of the U.S. Forest Service (USFS) presented an [overview of U.S. Government \(USG\) and USFS partnership with Peru](#) concerning forest management and regulation of the timber trade. The partnership is anchored in the US-Peru Trade Promotion Agreement, signed between the two nations in 2009. The agreement contains an annex devoted entirely to issues of forest sector governance, which is the first of its kind in a bilateral U.S. trade agreement. The USFS is the main implementing agency of the technical cooperation portion of the agreement, and since 2009 has been working with Peruvian national and subnational government agencies to strengthen their capacity for forest governance, law enforcement, and trade. Ms. Gardner expressed her conviction that the U.S. Lacey Act and the Trade Agreement are together putting pressure on the Peruvian Government and timber companies to strengthen forest governance and timber management, with the support of USFS and other USG agencies. The USFS has a country office in Peru and strong relationships with the Peruvian government, and Ms. Gardner expressed her willingness to help make connections with Competent Authorities and the private sector who are looking to get more information on timber coming from Peru.

Next, **Mikaela Weisse** from the World Resources Institute presented on [technological tools available for risk assessment and timber monitoring](#) through the Global Forest Watch (GFW) project. Previously, data on forests was

often outdated and difficult to analyze, so GFW aims connect users to the best available data in a way that is easy to interpret and understand. In turn, users can feed data back into the system, improving the quality of information. The core of the GFW data consists of annual figures for forest cover loss across the entire globe. For some countries they also have more detailed data on land use such as concession and permit information, including Peru, which has forest concession data allowing a user to view a map of various types of concessions, such as for brazil nuts, timber, and permanent forest estates.

In March 2016 they released a new forest monitoring system called [GLAD alerts](#) (Global Land Analysis and Discovery), developed by the University of Maryland. The alerts are identified using the latest Landsat imagery and are updated online weekly. The alerts are at 30 meter resolution, meaning that each pixel is 30 meters on each side – about the size of two basketball courts. The alerts are updated more frequently than any other forest change data currently available and are also higher resolution than previous monitoring systems. GLAD alerts are currently available for Peru, the Republic of Congo, and Kalimantan, and WRI expects to expand this methodology to the rest of the tropics by the end of 2016. Lastly, Ms. Weisse presented a brief demo of a new risk assessment tool for evaluating palm oil mills. For GFW's global dataset, the standard resolution available is 30 meters, which means users can sometimes detect forest degradation. Where possible, imagery up to 5 meter resolution is provided through the tool, but this is not available for all countries.

Juliane Lemcke of Germany's Import Promotion Desk (IPD) [discussed the work of the IPD in promoting responsible timber imports](#) into Germany. The IPD is funded by the German Ministry for Economic Cooperation & Development (BMZ), and has a small team of staff that work with German importers to help them find legal and sustainable sources; within the timber sector this particularly includes wood for flooring and outdoor decking. As of now, the work of the IPD in the timber sector focuses exclusively on Peru and Indonesia, and it has been working in Peru for the past two years in partnership with GIZ. Based on Peru's Corruption Perception Index (CPI) of 36, the IPD recommends that German importers source only FSC-certified wood from Peru, to ensure the legality and sustainability of their imports.

The government of Peru has set aside 25 million hectares of forest for permanent timber production (concessions), which is a bit more than one-third of the country's 67 million hectares of total forest cover. Peru's main timber product exports are sawn timber and plywood, and its main timber trading partners (buyers) are China, the USA, Mexico, and the Dominican Republic. Exports to the EU are small, but increasing. Approximately half of Peru's timber exports come from large concessions, and half from community lands. The Peruvian government's Independent Forest Sector Oversight Agency OSINFOR is responsible for supervision and control of timber harvesting in both concessions and native communities. The provinces of Loreto, Ucayali, and Madre de Dios produce the majority of timber exports from Peru; Madre de Dios has the largest proportion of FSC certified forests. Timber concessions are allocated via public auction, and applicants have to prepare a forest management plan, which must be approved by the regional Forest Authority, and then followed by submission of annual operating plans.

Peru is battling with widespread illegal logging and one of the most common forms of illegality is the use of fraudulent timber transport licenses, which obscure the real origin of the wood within Peru. The IPD encourages importers to verify that the title number on the relevant export/import documents matches the concession location on the OSINFOR website, to make sure the concession is still valid. It also encourages importers to look up the registration number of the exporting company on the SUNAT (National Tax Administration) website to verify its legitimacy. Current policy reforms—being driven by the US-Peru trade agreement—are seeking to restructure and decentralize forest governance and administration, and thanks to the efforts of NGOs like EIA and the support of the

U.S. Government, past corruption problems which prevented prosecution for timber crimes are now beginning to change. Reflecting on recent changes in the Peruvian timber sector, Ms. Lemcke expressed her belief that the work of OSINFOR and the impact of the US-Peru bilateral trade agreement are together shining a spotlight on Peru's forest industry and spurring major improvements in forest governance.

Discussion

In the discussion that followed, Ms. Lemcke clarified that the IPD does not assume risk for its supplier recommendations. IPD staff do their best to recommend quality suppliers, but final responsibility lies with the German importing company to conduct sufficient Due Diligence. The IPD is working with Bozovich, the largest timber importer in Germany, which is controversial, but the IPD's hope is that this engagement will alter the behavior of the whole timber and wood products industry in Germany and move it in the direction of greater sustainability.

Closed session for government only

During the final closed session, the CAs discussed the use and limitations of document-based Due Diligence. Many public reports and experts have noted that illegal logging schemes frequently involve the illegitimate use of "official" paperwork to launder illegal wood. It is important that Operators are aware of this when sourcing from countries with high levels of corruption, and that they have systems in place to properly assess and mitigate the legality risks in their supply chains. The CAs discussed the implications of this for their inspections and enforcement work, noting in particular the need for consistency across the EU.