

EIA ALERT on EUTR NON-COMPLIANT MYANMAR TIMBER SHIPMENTS

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Corruption, bribery, and illegality underpin chaotic Myanmar timber production and trade, in both state and non-state controlled areas

An EU Timber Trade Federation (ETTF) report by an EUTR Monitoring Organization concludes that current controls do not allow for EUTR compliant trade in Myanmar timber

However, since the EUTR came into force in March 2013 more than 17 million dollars of Myanmar timber have been imported into the EU. All of these shipments are likely in breach of the EUTR due diligence obligations, if not also the prohibition

EUTR Competent Authorities must monitor compliance of all operators importing from Myanmar, in relation to all individual shipments

Despite the lifting of sanctions, EU Operators should desist from placing Myanmar timber on the EU market until it can comply with the EUTR. This will require substantive reforms

EUTR Obligations for Operators Placing Myanmar Timber on the EU Market:

The EUTR prohibits the placement of illegal timber on the EU market, and obliges operators to apply a due diligence system incorporating risk assessments and risk mitigation measures to all consignments of timber.

Such due diligence measures require operators to identify the concession within Myanmar from which such timber has been harvested, and reduce the risk that relevant forestry and trade laws have not been complied with to “indiscernible” levels. Where risks of illegality cannot be reduced to indiscernible levels, timber should not be placed on the EU market. Any placement of timber on the EU market where risks of illegality can be discerned is in clear breach of the EUTR. ⁱ

Systemic Illegality in Myanmar’s Forestry Sector:

In September 2013, the recognized EUTR Monitoring Organization (MO) – [NEPCon](#) – [produced a report](#) commissioned by the EU Timber Trade Federation (ETTF) on the feasibility of complying with the EUTR when trading in timber from Myanmar.

The report found that bribery and corruption in the allocation of harvesting rights was “normal” and “essential”, and concluded that: “even timber with the legally required hammer marks and documents at the point of export will be subject to considerable risk that the original logs have been harvested or transported in ways that are not in compliance with the Myanmar Forest Law or the EUTR.”ⁱⁱ

Additional research by EIA found that over the past 15 years 47% of logging in Myanmar was illegal, 72% of log exports were illegal, and that this resulted in 16.4 million cubic meters of logs worth \$5.7 billion being smuggled out of the country.¹ The UN Office on Drugs & Crime has similarly found that 85% of all Myanmar timber exports are illegal.ⁱⁱⁱ

Doing EUTR Compliant Due Diligence in Myanmar:

Myanmar's existing control and traceability mechanisms are not implemented in accordance with key legislation, and are not currently capable of facilitating the levels of due diligence required by the EUTR.

Efforts to establish a national timber certification system have floundered for over 15 years, and while a new committee has been established to develop a scheme, it remains a work in progress. No private certification schemes that mitigate the risks of illegality to unidentifiable levels exists to date in Myanmar, and while some are reportedly under development it remains debatable to what degree that could credibly mitigate the risks of corruption in resource allocation that are acknowledged by the ETTF and an EUTR Monitoring Organisation.

EIA argues that it is not possible to do EUTR compliant due diligence in Myanmar at the current time, and that in turn it is not possible to comply with the EUTR when placing Myanmar timber on the EU market.

Recent EU Imports of Myanmar Timber:

EIA research shows that since March 2013 (when the EUTR came into force) USD 17,136,394 of EUTR regulated timber and timber products have been imported into the EU directly from Myanmar, principally to **Germany, Italy, Denmark, the Netherlands, Belgium and Sweden.**^{iv}

EIA contends that these multi-million dollar imports are occurring in violation of the European Union Timber Regulation (EUTR). EIA is concerned that these shipments are not being assessed for compliance by Competent Authorities in these countries.

Recommendations:

Competent Authorities should ensure all shipments of Myanmar timber placed on the EU market are rigorously audited for compliance with the EUTR.

Operators should ensure no Myanmar timber is placed on the EU market until risks that corruption and crime have occurred in production and trade are reduced to unidentifiable levels.

Myanmar's Government should ensure its reforms are robust and widespread enough to allow Myanmar exporters to legally access the EU market, by being compliant with the EUTR.

ⁱ Article 6 of Regulation No 995/2010 (the EUTR), combined with Paragraphs 3 & 4 of Article 4 of Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012, require that "where the risk of illegal harvesting between concessions of harvest in a country or sub-national region varies" operators are required to provide information on the concession of harvest, rather than just the country or sub-national region of harvest. Illegal logging rates do indeed vary between different concessions within Myanmar, triggering this requirement. The EUTR also obliges operators to assess and mitigate risks of non-compliance with applicable legislation to "negligible" levels. Section 2 of EC Guidance Document for the EU Timber Regulation stipulates that "Negligible risk should be understood to apply to a supply when, following full assessment of both the product-specific and the general information no cause for concern can be discerned."

ⁱⁱ Myanmar Forest Sector Legality Analysis, NEPCo, for the European Timber Trade Federation, September 2013, <https://docs.google.com/file/d/0B5tKhrSFViK2dDZobHpDNnRUdUU/edit>

ⁱⁱⁱ Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment. United Nations Office on Drugs and Crime (UNODC), 2013.

^{iv} UNCOMTRADE data downloaded by EIA, <http://comtrade.un.org/db/>