

Forests

Taxing Questions

Evidence of tax evasion in
teak exports from Myanmar

March 2021





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ABOUT EIA

We investigate and campaign against environmental crime and abuse.

Our undercover investigations expose transnational wildlife crime, with a focus on elephants, tigers and pangolins, and forest crimes such as illegal logging and deforestation for cash crops like palm oil. We work to safeguard global marine ecosystems by addressing the threats posed by plastic pollution, bycatch and commercial exploitation of whales, dolphins and porpoises. Finally, we reduce the impact of climate change by campaigning to eliminate powerful refrigerant greenhouse gases, exposing related illicit trade and improving energy efficiency in the cooling sector.

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Above:
Seized timber in Myanmar.

Front cover:
A ship at Rijeka Port. EIA has observed documentation related to ten shipments of Myanmar teak that arrived in Rijeka.

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Overview

After viewing documents for 10 shipments of teak imported into Croatia and analysing trade data of reported timber exports from Myanmar to a range of countries, the Environmental Investigation Agency (EIA) has identified a pattern of apparent tax evasion by companies exporting timber products from Myanmar.

Myanmar applies a Special Goods Tax (SGT) on exports of wood logs and wood cuttings, including sawn wood, but not on more processed timber products. Additionally, the Myanmar Customs Tariff (MCT) has a higher rate for export of less processed timber products compared to those that are value added.

Based on the documents EIA has viewed, we believe private companies exporting timber purchased from the state-run Myanmar Timber Enterprise (MTE) have been overstating how processed their timber is in order to avoid paying the SGT and to pay a reduced MCT, specifically in relation to shipments of teak board¹. The documents EIA has inspected also raise concerns about other illegal actions. Specifically, EIA believes:

- private companies in Myanmar are not paying the amount of tax they ought to on exports of teak to the EU. These exports include several that were delivered to Viator Pula in Croatia. We found that the companies avoided paying nearly \$80,000 in taxes (SGT and MCT). Analysis of trade data leads us to believe that this tax evasion is more systematic, amounting to many millions of dollars in unpaid SGT and MCT;

Below: In Europe, Myanmar teak is used for the luxury yacht market, on boats owned by some of the world's wealthiest people.



- if the discrepancies EIA has observed are reflected in the Myanmar companies' export declarations, they will be committing criminal offences under Myanmar tax and customs law, amounting to tax evasion and customs fraud;
- based on the above, it is likely that Viator Pula, the Croatian company acting as the EU "operator" by placing the timber on the market in the EU, has imported "illegally harvested timber" as set out in the EU Timber Regulation (EUTR), as violations of customs and trade rules related to timber are predicate offences under the EUTR;
- there is evidence suggesting similar violations may have occurred for timber supplied for renovating the Gorch Fock tall ship of the German Navy;
- there is evidence of trade mis-invoicing to avoid taxes on company profits in Myanmar. This involves many of the Myanmar companies trading their teak through related parties in Singapore at significantly lower prices than the traders in the EU are being charged. This would be done by the companies in order to understate their income and thus reduce their tax burden in Myanmar;
- four companies (ABC in Slovenia, HF Italy in Italy, Houthandel Boogaerd in the Netherlands and WOB Timber in Germany) in the EU have received this illegally harvested timber and benefitted from having paid reduced price for their timber.

Analysis of trade data² leads us to believe that the tax evasion identified is more widespread than just the shipments to Croatia covered in the documents shared by the Croatian authorities. This pattern may be depriving the Myanmar Government of millions of dollars of tax revenue every year (e.g. in 2019 we calculate that nearly \$21 million was not paid by companies through this approach), creating an uneven playing field favouring companies which are avoiding paying tax and violating laws in other countries prohibiting the import of illegally harvested timber.

EIA's findings and their implications for Myanmar's timber trade are set out in this briefing.

ပြည်ထောင်စု သမ္မတ မြန်မာနိုင်ငံတော်
REPUBLIC OF THE UNION OF MYANMAR

N 166

တရားဝင်သစ်တောထွက်ပစ္စည်းဖြစ်ကြောင်း ထောက်ခံချက်
CERTIFICATE FOR LEGALITY OF FOREST PRODUCTS

(Original)

ကုမ္ပဏီအမည်
 Name of Company: National Wood Industry Ltd.

လိပ်စာ
 Address: No. 113, Paderaw, 11 Stance Road, East Dagon Industrial Zone, Dagon Myothit East TZR.

ပစ္စည်းအမျိုးအမည်
 Name of Forest Products: Teak Sawmill

အရေအတွက်
 Quantity: 20002980000 13.3.19 1720 (Kus) 11.3923 (CBT) 1 Bal; Nil

- ကိန်းဂဏန်း
 (in Numbers)

- စာသား
 (in Words): တစ်ထောင်ခုနစ်ရာနှစ်သိန်းသုံးထောင်တစ်သိန်းတစ်ရာသုံးထောင်နှစ်ရာသုံးထောင်
၂၀၀၂ ခုနှစ်၊ မတ်လ ၁၃ ရက်

ထုတ်ပေးသည့်ရက်စွဲ
 Date of Issue: 07 MAR 2019

သက်တမ်းကုန်ဆုံးသည့် ရက်စွဲ
 Date of Expiry: 06 JUN 2019

The Croatian connection – more than due diligence failures

Following a Freedom of Information request in March 2020, EIA received more than 1,000 pages of documents from the Croatian Ministry of Agriculture for 10 shipments of Myanmar teak being imported into Croatia.

The shipments originated in Yangon port and were imported into Croatia through Rijeka port. The documents revealed a scheme to use a Croatian company, Viator Pula, to supply teak to companies throughout Europe, avoiding enforcement of the EUTR in a range of countries where direct trade in Myanmar teak had been stopped.

Agriculture, making it impossible to verify the chain of custody (i.e., that the timber products in the shipments originated from specific forest stands and were legally harvested). In May 2020, EIA published a report *The Croatian Connection Exposed* on the early findings of the work focusing on attempts to circumvent the EUTR³.

Analysis found major weaknesses in the documentation provided by Viator Pula to the Croatian Ministry of

Above: Documents EIA was able to view of shipments from Myanmar to Croatia.

2 Posiljatelj/izvoznik		Br: ---		33 Tarzna oznaka 44072995 00		15 Sif. zem. otp./izv. ---	
31 Pakiranje i opis robe		32 Br. st. 1		34 Sif. zem. podr. a MM b		35 Bruto masa (kg)	
(10892 PC PAKETI) (CSNU6721370) DASKE OD TIKOVINE NE BLANJANE I NE BRUŠENE Drvo obrađeno po dužini piljenjem ili glodanjem, rezano ili ljušteno, neovisno je li blanjano, brušeno ili spojeno na krajevima ili ne, debljine veće od 6 mm:--ostalo:-- teak, tiama, tola:---ostalo:---ostalo:---ostalo		37 Postupak 4200		38 Neto masa (kg) 15.744,770		36 Prefer. 100	
		39 Kvota		40 Isprava/prethodni dokument (Z ZZZ 60178/2019/447/003728 OD 18.03.19.)		41 Posebna mjerna jedinica (18,742 MTQ)	
		42 Vrijednost stavke 274.184,76		43 MV 1		46 Statistička vrijednost 1.806.457,91	

14.No	15.Hscode	16.Description of Goods	17.UnitCode	18.UnitPrice	19.Quantity	20.Value(USD)
	4418100030	Teak Scantling, Board, Decking, Skirting and T & G Teak Scantling T(1"~1.75") x W(4"~5") x L(6'~15") As Per List Attached (10) Items Only	KG		15744.7677	65870.60

21. Remarks Send a copy of Bill of Lading after completion		23. Conditions EICC (11/2019) Incoterm ပါသတ်မှတ်ချက်များအတိုင်းလိုက်နာ ဆောင်ရွက်သွားရန်ဖြစ်ပါသည်။ သစ်တောဦးစီးဌာန၏ (16.01.2019) ရက်စွဲပါစာအုပ် အမှတ် (N - 158) စာမျက်နှာအမှတ်(30) အရ ခွင့်ပြုသည်။ ခွင့်ပြုပစ္စည်းမှလွဲ၍ အခြားပစ္စည်းများ ရောနှောသယ်ဆောင်ခွင့်မပြုရန်ဖြစ်ပါသည်။	
22. The particulars declared by me/us are true and correct. Signature : Name : Min Thu Designation : 121/DA GA TA (N) 056485/ 09794774925 Date : သစ်တောဦးစီးဌာန၏ စိစစ်ထောက်ခံသည့် အမှတ်အမှား အရေးအကွပ်ပါမဟုတ်အတိုင်းသာသင်္ဘောဆောင်ပို့ရမည်။		25. EXPORT LICENCE issued subject to conditions stated herein. for DIRECTOR GENERAL Date of Issue: 17/1/2019 Stamp:	
24. Revenue Stamp 			

Above: A comparison of the HS codes and product descriptions used in one of the shipments. [Above] is the information on the import into Croatia while [below] is the export from Myanmar. The documents above and right are for Shipment 6, Table 1

Right: A comparison between the declared price on export from Myanmar, and the invoice issued from a Singapore company to Viator Pula in Croatia. The invoice to Viator is much higher than the value declared on export. The values are highlighted with a red circle.

The description of the goods on import is in the box labelled 31, and translates as: Teak boards, not planed or sanded / Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm: tropical: other: teak: tiama, tola other: other: other.

R.B.	Naziv artikla - usluga/product or service name	Kol / quan. /Ton	CIJENA/ price in KN per Ton	CIJENA/ price in USD per Ton	IZNOS u KN /amount in KN
	Teak Deckings:				
01.	24mm x 62mm x 3500mm+	2,8296	132.098,05	20.235,00	373.784,63
02.	15mm x 62mm x 2400mm+	0,9616	115.287,94	17.660,00	110.860,88
03.	19mm x 62mm x 2400mm+	0,9856	115.287,94	17.660,00	113.627,79
04.	22mm x 75mm x 3000mm+	0,6522	139.833,96	21.420,00	91.199,71
05.	24mm x 75mm x 3000mm+	1,0298	139.833,96	21.420,00	144.001,01
06.	24mm x 130mm x 3000mm+	1,6429	158.961,57	24.350,00	261.157,96
07.	24mm x 100mm x 3000mm+	1,8496	145.905,18	22.350,00	269.866,22
08.	12mm x 48mm x 900mm+	1,0958	108.563,90	16.630,00	118.964,32
09.	11mm x 70mm x 350 mm	1,3325	17.789,33	2.725,00	23.704,28
10.	22mm x 5" x 10'+	0,4235	94.136,59	14.420,00	39.866,85
11.	17mm x 5" x 10'+	0,1083	94.136,59	14.420,00	10.194,99
12.	17mm x 8" x 2.5'~6.5'	0,139	79.382,86	12.160,00	11.034,22
13.	22mm x 8" x 2.5'~6.5'	0,0925	79.382,86	12.160,00	7.342,91
14.	11mm x 73mm x 6'+	0,0953	29.213,68	4.475,00	2.784,06
15.	1" x 6" x 10'+	1,2376	158.961,57	24.350,00	196.730,84
16.	1" x 5" x 6'+	1,5542	41.323,48	6.330,00	64.224,95
17.	1.75" x 4" x 6'+	0,4945	41.323,48	6.330,00	20.434,46
	Paritet: FCA RIJEKA	16,5242			

Sveukupni iznos daje protuvrijednost USD 284.884,23 po
srednjem teč. HNB na dan 04.03.2019 - 6,528196

UKUPNO: \$ 284.884,23 1.859.780,10
PDV 25%: 0,00
SVEUKUPNO: \$ 284.884,23 1.859.780,10

Customs broker code 533001

Export control No. 430021512840
AWB No. -
Loading location MMRGN YANGON
Via location -
Final destination HRZZZ- RIJEKA
Voyage No. 009S
Loading planned IMO No./Vessel 9138147
Conveyance name MV.ISEACO GENESIS
Estimated departure 2019/02/01

Packages 10,892 PS
Warehouse A1Y002 - AWPT
Gross 15,744.768 KGM
Net 15,744.768 KGM
Total containers 1 Container cargo C

Myanmar Forest Products and Timber Merchants Association

Marks and Nos. N/M

Reg. No. 2522 Pg. No. 09
Date: 07 FEB 2019

Export license/approval
(01) ELNS YGNELF181900794
(02) MRECN/158/30/16-01-2019
(03)
(04)
(05)
(06)
(07)
(08)
(09)
(10)
(11)
(12)

Invoice A -
Electronic No.
Invoice price A - FOB - USD- 65,870.60
FOB price (MMK) 100,505,361.48
Total customs value (USD) 100,505,361.45
Total item value 65,870.54
Physical examination completion 65,870.6000 -

Taxes and fees

Code Name
CD IMPORT/EXPORT CUSTOMS DUTY
AT ADVANCED INCOME TAX
SF SECURITY FEE
MF MACCS SERVICE FEE

Total amount	Number	Exemption/Reduction	Total
0	0	Taxes and fees	0
2,010,107	*	Exchange Rate (1) USD-	2,060,107
20,000	*	(2) -	1,525.8
30,000	*	Deposit C	
		Total pages	5
		Total items	10

These documents also provide the basis for EIA's concerns about possible evasion of tax in Myanmar. Our concerns originate from discrepancies in weight, value and Harmonised System (HS) code⁴ (see table 1 for overview of the shipments), which are strong indicators of attempts to evade paying tax and, possibly, other disreputable activities.

EIA is also concerned about the possibility of money laundering where tax evasion provides a predicate offence. The discrepancies in the documents can be summarised as follows:

- four of the 10 shipments (shipments 4, 7-9, table 1) had changes in weight between export and import declarations in Yangon and Rijeka, respectively;

- HS codes for seven of the shipments were different between declarations in Yangon and Rijeka (shipments 1-2, 4-8). HS codes are an international customs code that indicate what kind of product is being cleared through customs⁵. The difference in the HS codes is notable as they are declared as highly processed (441810⁶) when leaving Yangon and less processed when arriving in Rijeka (440729⁷); eight shipments (shipments 1-3, 5-8, 10) were declared as "teak boards, not planed or sanded" on import into Croatia. One shipment (shipment 4) was declared as "teak sanded boards" and one final one (shipment 9) was "finished teak floor". Where EIA had the documentation, apart from one instance, the shipments declared as teak boards on import had been declared as teak mini-decking or teak

Table 1: Overview of the 10 shipments⁹

	Shipment 1. Viator Pula	Shipment 2. HF Italy	Shipment 3. Crown Teak	Shipment 4. ABC
Shipment dates (departure Yangon - arrival Rijeka)	D: 13/08/17 A: 20/09/17	D: 22/12/17 A: 30/01/18	D: 07/07/18 A: 17/09/18	D: 29/07/18 A: 30/08/18
Weight (Kg) Yangon (Export licence)	Not available (NA)	NA	NA	10,921.44
Weight (Kg) Rijeka (SAD ¹⁰)	14,400	13,970	11,550	17,380
Pieces - Yangon (Export declaration (ED))	1,046	1,891	676	9,042
Pieces - Rijeka (SAD)	1,046	1,891	676	9,042
US\$ Value Yangon (ED) ¹¹	48,248.26	45,686.98	48,058.65	62,502.58
Value of shipment (ED and shipment costs (US\$))	49,723.32	46,883.59	49,686.02	64,651.07
US\$ Value Rijeka (SAD)	70,152.58	77,118.45	67,543.60	74,090.70
US\$ value difference (Rijeka (SAD) - Yangon (ED and shipping costs))	20,429.26	30,234.86	17,857.58	9,439.63
HS code Yangon (ED)	4418100030	4418100030	4407	4418100030
HS code Rijeka (SAD)	44072985	44072995	44072995	44072995
Estimated (SGT@10%) tax avoided for export (US\$ ¹³)	4,824.83	4,568.70	0	6,250.26
Estimated Customs Duty avoided (15% for 4407 & 3% for 4418 (US\$))	5,789.79	5,482.44	0	7,500.31
Estimated total unpaid SGT and MCT (US\$)	10,614.62	10,051.14	0	13,750.57

scantling on export – once again, more processed on leaving Myanmar than on arriving in Croatia;

- there were often notable differences in the declared values of the shipments in Yangon and Rijeka⁹. For example, one shipment (shipment 6) has a declared value of \$65,870 on the export declaration and a value of \$274,184 on the declaration (SAD) in Rijeka. With the shipping costs being \$2,670, this means that the value changes by \$205,644 during shipment.

- ABC Net (Slovenia)
- Crown Holdings (Belgium)
- HF Italy (Italy)
- Houthandel Boogaerd (the Netherlands)
- Vandecasteele Houtimport (Belgium)
- WOB Timber (Germany)

According to the documents, the 10 shipments were all imported into Croatia by Viator Pula and nine of them were then sold to various companies in the EU:

Shipment 5. WOB Timber	Shipment 6. Houthandel Boogaerd	Shipment 7. HF Italy	Shipment 8. ABC	Shipment 9. Houthandel Boogaerd	Shipment 10. Vandecasteele Houtimport
D: 13/12/18 A: 15/01/19	D: 01/02/19 A: 19/03/19	D: 25/02/19 A: 27/03/19	D: 20/03/19 A: 24/04/19	D: 20/03/19 A: 24/04/19	D: 06/04/19 A: 29/05/19
NA	15,744.77	11,447.39	10,854.00	11,454.33	NA
20,050	15,744.77	16,710	13,400	14,100	7,230
2,617	10,892	1,430	1,720	27,840	2,206
2,617	10,892	2,566	1,720	27,840	2,206
52,105.51	65,870.60	46,775.76	41,123.48	108,153.92	62,681.15
54,959.22	68,540.98	48,352.02	42,871.17	109,899.36	NA ¹²
90,542.81	274,184.76	66,377.37	56,663.72	97,132.10	101,833.07
35,583.59	205,643.78	18,025.35	13,792.55	-12,767.26	NA
4418	4418100030	4418	4418100030	4418	4407296900
44072985	44072985	44072995	44072985	44189990	44072995
5,210.55	6,587.06	4,677.58	4,112.35	0	0
6,252.66	7,904.47	5,613.09	4,934.82	0	0
11,463.21	14,491.53	10,290.67	9,047.17	0	0

Myanmar's tax system and the document discrepancies

Myanmar's export procedures

In order to have committed tax evasion, the companies exporting timber would have to mis-declare the nature of the goods being exported when clearing customs in Myanmar.

Export licenses are required for the export of timber products from Myanmar¹⁴. Exports through Yangon Port are processed through a customs clearance system whereby documentation must be submitted, followed by a possible physical examination of the goods being exported and a confirmation that any taxes have been paid.

The Myanmar Trade Portal explains the export process as follows¹⁵:

The user submits electronically the export declaration (EDC) along with supporting documents via the MACCS [Myanmar Automated Cargo Clearance System]. For the complete and correct application, the authorized

officer will examine the cargo as categorized by the Customs Inspector (CKO). ... If a tax is applied to the exported consignment, the user will be required to proceed for the registration of tax payment and wait for the registration of tax payment receipt confirmation (RCC). Once the user submits the RCC, the authorized officer will allow the shipment.

It also explains tax payments:

Once a declaration has been submitted and accepted by Customs, Customs will require the payment of duties on specific export products.

This means that the export declaration submitted by a company is used as the basis to determine the duties that are paid on exports.

A crucial step in the process is the application for an export licence. This involves the company applying for the licence to provide details of the product being exported, including a description of the goods, HS code, value and quantity. These are all details provided in a document to the Department of Trade.

Below: Yangon port, where all the shipments originated.



When EIA met with the Container Control Unit of Myanmar Customs in 2017, the procedure for inspecting exports was described as follows:

For all wood exports (including finished products) both customs and Forest Department are involved. FD staff are responsible for inspecting wood products in situ at the point of loading into containers, usually at wood depots / factories. FD staff then attach a seal to the container after inspection. When the container arrives at the port, customs check the seal is intact and then replace it with a customs seal and the container is cleared. If there is evidence of tampering the container is put through the x-ray machine.

This procedure ought to protect against smuggling of illegal timber by mis-declaring quantities of timber in containers. However, customs officers do not physically inspect the goods and therefore may rely on accurate declarations when they come to assess features of the timber related to customs and export tariffs, including the HS code, value of the goods and descriptions of the goods.


Myanmar’s tax system for sale and export of timber products

Under legislation introduced in 2016¹⁶, Myanmar applied a “Special Goods Tax for Export¹⁷” (SGT) of 50 per cent on timber logs and wood cuttings¹⁸. This SGT was applied to teak and hard wood logs as well as teak and hardwood cuttings of 10 square inches and above. The SGT was reduced in 2017 (coming into force 1 April 2017) to a rate of 10 per cent¹⁹.

According to advice from a Myanmar law firm, the Special Goods Tax applies to rough sawn goods, including sawn timber, flitches²⁰ and tabletops, but does not apply to more processed wood products such as window frames or furniture²¹. Under the Harmonised Code system, the SGT for 2017 onwards would apply to timber declared under the HS Code 4407 but not under the HS Code 4418. A Government Notification setting out the interpretation of the tax clarifies this further, as it sets out specific goods within the 4407 HS code that the tax applies to²². According to this document, one of the goods to which the tax does apply is teak board.

Additionally, under the Customs Tariff (MCT), which was amended in 2017²³, a Duty rate of 15 per cent was applied for less processed timber products (e.g. 4407) compared to three per cent for more processed products (e.g. 4418). However, the law firm’s advice indicates that in practice the Myanmar Customs Department usually does not collect the MCT for these types of goods. EIA is unable to ascertain the reason for this.

This distinction in the application of the SGT and MCT means that when any taxable timber product is exported from Myanmar and is incorrectly declared to



Serial	Type	H.S Code	Specification
1	Sawn Timber/Conversion/Lumber	44.07	(Rough Sawn)
	A Square	44.07	(Rough Sawn)
	B Post	44.07	(Rough Sawn)
	C Flitch	44.07	(Rough Sawn)
	D Plank	44.07	(Rough Sawn)
	E Board	44.07	(Rough Sawn)
2	Flitch for Veneer	44.07	(Rough Sawn)
3	Natural Decorative Board/Table Top	44.07	(Rough Sawn)

Above: Photocopy of Government notification of goods under HS code 4407

be more processed than it is, the company exporting the product is paying less tax than it ought to be.

One of the policy aims of taxing processed goods less than raw materials will be to shift the incentives on timber producers away from cutting forests down and exporting timber as rapidly as possible, to investing more in processing value added products in Myanmar for export.

This approach is important for economic development as it will encourage investment in industry in Myanmar to produce more processed timber products and also good for forests as it encourages investment in creating higher quality products rather than felling as much timber as possible²⁴. Failing to pay this tax undermines these policy goals and hurts Myanmar’s economic and social development, as well as its forests.

Unpacking the tax evasion in the 10 shipments

Analysis of the documents of the 10 shipments led EIA to conclude that the traders did not pay nearly \$80,000 in SGT and MCT (Table 1).

When EIA presented this analysis to Viator Pula, it responded by stating that the picture is nuanced, explaining that it is the description of the goods rather than the HS code which is most important for the application of the export taxes, specifically the SGT – so not all products which the code 4407 applies to are necessarily taxable.

We were also presented with a translation, certified by a notary public in Myanmar, of a Government Notification providing a more detailed definition of goods to which the SGT is applied. This definition included a list of product “types” to which the tax applied. Crucially, one of these types is “board” (see image above).

This response from Viator Pula seems to be arguing that the SGT is applied to only some products which fall within the HS Code 4407, excluding the teak products being exported by the Myanmar companies and imported into Croatia. However, in nine instances the timber was declared as “teak board” on import into Croatia, meaning that either the import declarations were wrong in Croatia or the export tax should have been applied to those shipments in Myanmar.

Viator’s explanation does not really answer the problem either, since the HS Code must match the description of the goods and if it does not, then the HS code has been incorrectly provided.

The documents for the 10 shipments also show possible transfer mispricing. Transfer mispricing is

Below: Timber EIA investigators viewed at a warehouse in Myanmar.

when two related parties (e.g. as a subsidiary, affiliate, as well as ownership) trade with each other; however, when agreeing on a price for the transaction, they reduce or increase the value of the goods outside the market average in order to reduce the tax burden. In this instance, the documentation demonstrated possible signs of trade mis-invoicing, specifically export under-invoicing, described by Global Financial Integrity as:

Export under-invoicing involves under-reporting the amount of exports leaving a country in order to evade or avoid taxes on corporate profits in the country of export by having the difference in value deposited into a foreign account²⁵.

This may explain the significant changes in the value of most of the 10 shipments.

The documents for the 10 shipments include invoices issued to Viator Pula by entities in Singapore for the



timber. There are no invoices between the entities in Singapore and the companies in Myanmar supplying the timber.

Because of this missing link, we are lacking information necessary to identify how much money the Myanmar companies are making from the timber and how much, if any, of the profits for the timber are ever actually transferred into Myanmar. The only evidence we have for the value being received in Myanmar for the timber are the figures being declared on export, which in all cases differ, often significantly, from the values in the invoices and the import declaration (SAD) in Croatia.

However, we do have documentation showing:

- wood products were exported from Myanmar to Croatia;



- those products arrived and were imported into Croatia;
- invoices for this timber were issued from Singapore companies to the Croatian company Viator Pula;
- there were significant price differences between the declared export value and the declared import value (which reflected the price in the invoices).

This suggests that the timber was first sold by the Myanmar companies to the Singapore companies, which then sold the timber on to Viator Pula. The difference in value potentially indicates that the Myanmar companies under-declared the value of the timber when selling it to the Singapore companies; when the Singapore companies then sold the timber on to Viator Pula, the difference in value remained in Singapore.

Companies in Myanmar pay a Corporate Income Tax of 25 per cent. As this tax is applied to corporate profits, a company can evade the tax if it can mis-declare its profits. One way of doing this is by under-declaring the value of exported goods and receiving actual payment for the goods into another country with a lower corporate tax rate – such as Singapore, which has a corporate tax rate of 17 per cent.

Analysis of the documents, as well as additional research, determined that at least five of the shipments transited in Singapore on the way to Croatia. According to the documents, the ownership of the shipments was also transferred from Myanmar companies to traders registered in Singapore.

Follow-up research found there were overlaps in the ownership of the companies within Myanmar, but, more notably overlapping owners and directors between the Myanmar companies and those in Singapore. We found that the Myanmar/Singapore ownership and management overlap covered eight of the shipments.

When we contacted Viator Pula and suggested that the changes in value could be connected to tax evasion, it responded by stating “the value declared on export from Yangon is the sales of Myanmar company to Singapore company, and the value declared on import to Croatia is the invoice of Singapore company (the one we are buying from) to our Croatian company”.

This might be a reasonable excuse if the Myanmar/Singapore was an arms-length transaction. However, the shared ownership between the companies indicates that it is not. Rather, the admission that the invoice price between Myanmar and Singapore is much lower than the invoice price between Singapore and Croatia raises further suspicions that this is transfer mispricing in order to avoid paying income tax in Myanmar.

Broken laws

Chapter X of the Special Goods Tax Law (2016) makes clear it is illegal to provide incorrect information in order to pay less of the tax. If a person wilfully evades the payment of tax, they are liable for paying the sum of the evaded tax again on top of the owed amount; if they fail to do this, they can be imprisoned for up to three years or pay a fine of up to one million kyat (\$740). Since 1 October 2019, these provisions have been replaced by the Tax Administration Law²⁶, which penalises an exporter with a fine or imprisonment if it negligently or intentionally underpays tax due to an incorrect statement or omission in tax information.

Declaring the wrong information in order to avoid the Special Goods Tax is, therefore, a breach of the law in Myanmar.

False export declarations are also a violation of Myanmar customs law. Under Section 167 of the Sea and Customs Act, an exporter can be penalised for making a declaration to Myanmar Customs while knowing the declaration is false or fraudulent.

On the information available to EIA, it cannot be ruled out that the companies were making errors or that Myanmar officials approved the exports while knowing the products being cleared through customs did not match the declarations. In those circumstances, the companies involved may not be committing criminal tax evasion. However, the mismatch between the actual products being cleared and the codes being used to declare them suggest at least that the Myanmar Government is being deprived of a significant sum of tax revenue due to taxes that ought to be paid on exported timber products.

Calculating the tax avoidance

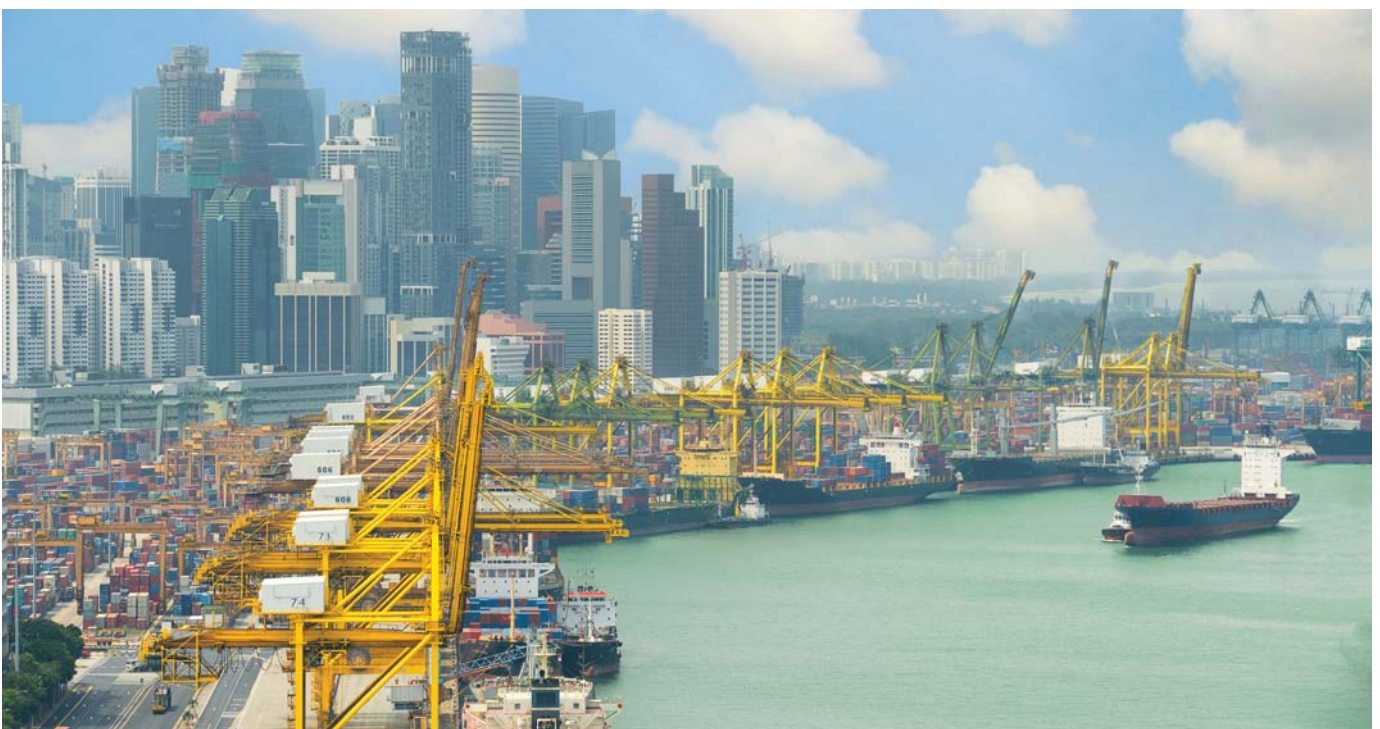
Through analysing documents for other timber shipments made available by the Croatian Ministry of Agriculture, scrutiny of shipments of teak to other countries in the EU (Text box 1) as well as analysis of trade data from UNComtrade showing export and import declarations between Myanmar and the rest of the world, EIA has found evidence that the Special Goods Tax and MCT is being systematically avoided, costing the Myanmar Government millions of dollars of lost tax revenue.

When comparing the declared exports of HS code 4407 from Yangon to various countries and declared imports of HS code 4407 in these countries, it is possible to estimate the amount of SGT and MCT that the Myanmar exporters avoided paying. This information is based on trade data available from the UNComtrade database²⁷.

A review of the declared exports of timber products from Myanmar to Croatia and Croatia's declared imports for 2018 and 2019 allows us to estimate that the actual SGT paid was \$96,476; based on the declared HS code 4407 imports to Croatia from Myanmar, the amount that should have been paid was an estimated \$568,027.

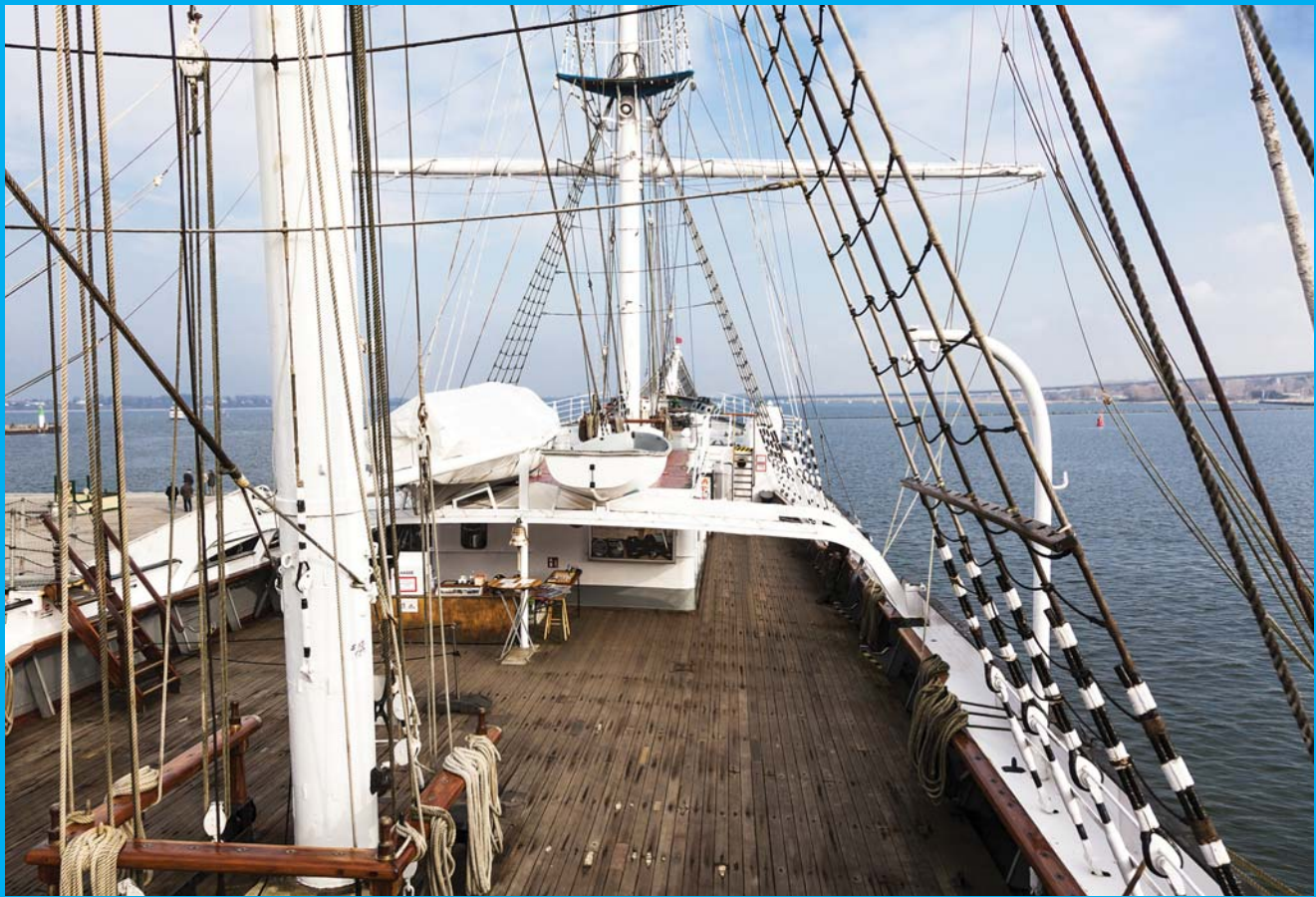
In terms of MCT, the amount we calculate to have been paid for 2018 and 2019 was \$28,943, while the amount that should have been paid was \$852,041. Therefore, for Myanmar timber exports to only Croatia for the period 2018-19, we calculate the total avoided tax to be \$1,294,649.

Below: The Port at Singapore. EIA was able to confirm multiple shipments transited through Singapore.



Text box 1.

The German connection – using public funds to buy illicit, tax-evading timber



In 2019, EIA was given additional sets of shipping documents which appear to relate to an estimated 10 shipments of teak destined to be used for the renovation of the *Gorch Fock*, a very high-profile ship in the German Navy.

These documents have various things in common with the documents EIA received from the Croatian Ministry of Agriculture – namely, timber originating in Myanmar in contravention of the EUTR, incomplete documents that are far from being sufficient to demonstrate due diligence and also documents which had HS codes changing along the chain of custody.

It is, however, difficult to get a complete picture for the *Gorch Fock*-related shipments when compared to those for Viator Pula. The key issue is that many more of the documents are missing and they have been heavily redacted.

Despite the gaps in the information, we are able to conclude that of the 10 shipments associated with *Gorch Fock*, two were from before January 2016, when the Special Goods Tax (SGT) was introduced

Above: The *Gorch Fock* tall ship of the German Navy.

in Myanmar. The HS codes for these two shipments had the same HS code for all the documents. The documents for six of the remaining eight shipments had changes to the HS code. In other words, it appears that the differences in HS codes appeared after the SGT was introduced.

The significance of these issues is amplified further by the fact that the teak is used for an important symbol of the German navy – the *Gorch Fock*. The *Gorch Fock* is a Navy training vessel built in 1958 and, since 2015, under refurbishment.

This refurbishment has already become somewhat of a scandal, illustrated by the issue being raised in the German Parliament. The scandal centres around several alleged illegalities and hugely escalating costs, as well as the use of teak from Myanmar, and now we believe that the companies involved, and also the German Navy, may have benefitted from getting hold of timber for which the appropriate customs taxes had been evaded.



Above: The differences in value between the export declarations and invoices could not be explained by additional shipping costs alone.

Analysis of the trade data also indicates that this issue is not confined to exports to Croatia. The discrepancies on a global level is shown in Table 2 for the year 2019. In terms of avoided tax (SGT), this difference amounts to nearly \$6 million, while the avoided MCT for the same year is nearly \$14.8 million.

When looking at this issue over a longer time period, requiring complete trade data, we found this problem has apparently been present for several years (Table 3).

For the 2016-19 period, when looking at EU28 the actual SGT paid for HS code 4407 would have been an estimated \$2.5 million, whereas based on the declared imports of HS code 4407 to the EU28 countries it should have been more than \$13.7 million.

For the MCT, we calculate the actual amount paid for exports of 4407 and 4418 was slightly more than \$1.6 million, while the amount that should have been paid was nearly \$21 million.

In 2019 Italy was the largest importer of both timber products (4407 and 4418) in the EU. The next largest importing countries in the EU were Croatia and then Greece²⁸.

Finally, analysis of the trade data for the USA also tells a similar story (Table 4). In this instance, during the period 2016-19, we estimate that the Myanmar companies avoided paying more than \$4.1 million in SGT during that period. In the same period, they would have also avoided paying over \$5.4 million in MCT.

Table 2: Declared exports and imports HS codes 4407 and 4418 Myanmar and world for 2019 ²⁹

			HS Code	Weight (kg)	Value \$
Myanmar	Export	World	4407	35,414,138	43,525,889
World	Import	Myanmar	4407	125,608,045	154,674,162
Myanmar	Export	World	4418	33,756,435	68,549,248
World	Import	Myanmar	4418	3,744,094	5,422,012

Table 3: Declared exports and imports HS codes 4407 and 4418 Myanmar and EU28 for 2016-19 ³⁰

			HS Code	Weight (kg)	Value \$
Myanmar	Export	EU 28	4407	16,566,050	25,402,179
EU 28	Import	Myanmar	4407	23,675,948	137,724,283
Myanmar	Export	EU 28	4418	6,120,069	28,525,564
EU 28	Import	Myanmar	4418	376,064	1,720,307

Table 4: Declared exports and imports HS codes 4407 and 4418 Myanmar and USA for 2016-19 ³¹

			HS Code	Weight (kg)	Value \$
Myanmar	Export	USA	4407	7,127,134	10,070,575
USA	Import	Myanmar	4407	45,552,319	51,945,679
Myanmar	Export	USA	4418	1,283,090	6,251,253
USA	Import	Myanmar	4418	233,102	526,115



Implications

The EUTR prohibits European timber operators (such as Viator Pula) from placing illegally harvested timber on the market and requires them to conduct due diligence to assess and mitigate risks that the timber was illegally harvested. Illegally harvested timber is defined to include breaches of legislation related to “trade and customs, as far as the timber sector is concerned”.

Customs taxes and laws related to the export of timber from Myanmar clearly fit this definition for illegally harvested timber. This is especially so when the special goods tax for export is applied to timber. On that basis, where customs forms are incorrectly filled out for shipments of timber to avoid paying the special goods tax, the timber is rendered “illegally harvested” under the EUTR.

Based on the reasoning above, all of the timber declared as teak board (HS code 4407) when entering Croatia but declared with the HS code 4418 when exiting Myanmar is illegally harvested and therefore placed on the European market in violation of Article 4 of the EUTR.

At the very least, the changes in HS code declarations and product descriptions from Myanmar to Croatia present a clear risk that the Special Goods Tax is not being paid on these teak exports from Myanmar.

The risk is compounded by the pattern of declarations in trade data showing large quantities of timber being declared as more processed when it leaves Myanmar than when it arrives in other countries.

Companies trading in Myanmar timber could take steps to mitigate these risks, for example by obtaining receipts or transaction records showing the correct amount of tax has been paid to the Myanmar Government and presenting those as a part of their due diligence system. A specific example would be the tax

payment receipt confirmation (RCC) mentioned in the explanation of Myanmar’s customs procedures in the Myanmar Trade Portal³². EIA has not seen such records in the documentation we have viewed.

In addition, based on EIA’s analysis of the trade data showing the differences in declarations between Myanmar and importing countries, this tax evasion appears to be structural and occurring for exports to many different countries.

The USA’s Lacey Act makes it an offence to import any plant that has been transported without the payment of appropriate taxes required for the plant by any foreign law. Notably, this does not require the company to have committed an offence of criminal tax evasion, it merely requires that the appropriate tax was not paid.

This means the mere fact of an incorrect declaration of the HS code, resulting in underpayment of tax in Myanmar, would render the timber imported into the USA illegal.

All EU and US companies trading in Myanmar teak will be wrongly benefitting from this scheme in two ways. The first is that the price of their timber will be lower than it ought to be, because they will be saving the cost of the tax, undermining responsible businesses. The second is that the scheme is unfairly undermining Myanmar’s attempts to encourage added-value timber products rather than continuing to rely on raw or sawn timber exports. This means EU and US companies do not have to compete with added-value industry in Myanmar and will also likely keep prices of timber lower for them as industry in Myanmar is not demanding the timber they are using.

Above: [The European Parliament building, Brussels, Belgium.](#)

Going forward and recommendations

In February 2020, Myanmar was designated a “jurisdiction under increased monitoring – with Strategic Deficiencies” by the Financial Action Task Force (FATF) due to increased money laundering risks.³³

Myanmar has made commitments to strengthen the effectiveness of its anti-money laundering regime in order to improve its FATF status. These include commitments to investigate money laundering in line with risks and to demonstrate investigation of transnational money laundering cases³⁴.

The possible tax evasion by timber exporters presents Myanmar with an opportunity to take steps on these commitments. Tax evasion is typically treated as a predicate offence for money laundering and the use of Singaporean bank accounts to receive payments where tax is unpaid presents an opportunity for Myanmar to investigate tax evasion and transnational money laundering by coordinating with authorities in Singapore.

Myanmar can also coordinate with authorities in Europe by confirming cases of tax evasion as a predicate offence under the EUTR.

Another avenue to address the tax evasion in the exports of Myanmar timber is through the Extractive Industries Transparency Initiative (EITI)³⁵, of which Myanmar has been a member since 2014.

EITI is a global standard to promote the open and accountable management of extractive resources³⁶. It requires the disclosure of information along the value chain from the point of extraction to revenue allocation, including to government offices and the general public. Myanmar’s commitment to EITI is partly to increase its tax revenue, ensuring that appropriate taxes and royalties are being paid in the sector. By addressing the findings shared in this briefing, Myanmar can demonstrate its commitment to EITI.

Recommendations

EIA recommends the following to EUTR competent authorities:

- Investigate and, where appropriate, prosecute suspected instances of tax evasion by suppliers of timber leading to breaches of Articles 4 and 6 of the EUTR by European operators
- Require due diligence systems to include tax receipts or other evidence of tax payments where invoices for timber are for payment into countries that are not the origin country of the timber
- Require due diligence systems to include tax receipts or other evidence of tax payments where harmonised system codes change between country of export and country of import

Myanmar Customs Department and Internal Revenue Department:

- Investigate misdeclarations at customs that may give rise to tax evasion and prosecute offenders under Myanmar law
- Coordinate with authorities in Europe and Singapore to investigate instances of trade-based tax evasion, money laundering and violations of the EUTR

Myanmar Financial Intelligence Unit:

- Launch an investigation into financial flows linked to tax avoidance and corruption in the export of Myanmar teak

US Department of Justice:

- Investigate possible violations of the Lacey Act where taxes on timber exports have not been paid

References

1. To export teak from Myanmar, domestic private companies must first purchase it from the State-owned MTE.
2. Based on EIA analysis of UNCOMTRADE data.
<https://comtrade.un.org/data>
3. <https://eia-international.org/report/the-croatian-connection-exposed/>
4. International trade uses a coding system, known as HS Codes, to help customs identify the contents. This is important, for example, to ensure that appropriate taxes are paid.
5. HS codes are harmonised globally to 6 digits. Variations can occur beyond this between countries, however the variations here are at the 4-digit level.
6. 441810 - Wood; windows, French-windows and their frames
7. 440729 - Wood, tropical; sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, thicker than 6mm
8. The value of exports is universally declared as “free on board” (FOB), which refers to the market value of the commodity. On the other hand, the value of imports is reported as “cost – insurance – freight” (CIF), which refers to the cost, or market value (i.e., FOB), of the commodity as well as the insurance and freight paid by the importer. The CIF price reported by the importer will therefore always be greater than the FOB price reported by the exporter. Any variation between the two prices that is not “explainable” by insurance and freight can suggest illicit activity such as trade misinvoicing. For the shipments of timber going from Myanmar to Croatia, the value differences are well above those that could be explained by the difference in shipping costs.
9. All the shipments were imported into the EU by Viator Pula, shipments 2-10 were then sold onto various companies in the EU
10. Single Administrative Document is the main customs form used in international trade to or from the EU. In this case the SAD was completed to declare import of the teak products into the EU.
11. All Free on Board (FOB)
12. Document detailing the shipment costs for this consignment was not provided
13. The amounts to be paid for the SGT and MCT was calculated based on the HS code and product value provided in the shipments’ Export Declaration
14. All timber being exported must leave through designated Yangon timber ports
15. <https://www.myanmartradeportal.gov.mm/en/guide-to-export>
16. Pyidaungsu Hluttaw Law No. 11/2016 - Special Goods Tax Law
17. The Special Goods Tax is sometimes known as the Specific Goods Tax
18. The percentage will be applied to the value of the goods.
19. Pyidaungsu Hluttaw Law No. 4/2017 - Union Tax Law
20. A flitch is a beam of sawn wood.
21. “Rough sawn” is a degree of processing beyond raw wood (exports of raw wood from Myanmar are banned), but not beyond the wood being sawn or chipped.
22. Notification No 68/2017, Ministry of Planning and Finance (Myanmar), 13th July 2017 (notarial translation).
23. <https://www.customs.gov.mm/sites/default/files/UpPDF/Customs%20Tariff%20of%20Myanmar%202017.pdf>
24. Robert Piermartini, The Role of Export Taxes in the Field of Primary Commodities, WTO Discussion Paper, World Trade Organization, 2004.
25. Global Financial Integrity, Hiding in Plain Sight: Trade Misinvoicing and the Impact of Revenue Loss in Ghana, Kenya, Mozambique, Tanzania, and Uganda: 2002-2011, May 2014.
26. Pyidaungsu Hluttaw Law No. 20/2019 - Tax Administration Law
27. UNComtrade data is used widely by international governmental bodies and other NGOs when analysing international trade, including of timber products. However, some governments are unable to ensure the quality of the data and its sharing in a timely manner. For more info see <https://comtrade.un.org/> and Egas, A F, Ren, P, Zhang, J, Júnior, EU, Bila, NF and Siteo, EC. 2018. Tackling discrepancies in timber trade data: comparing China and Mozambique. IIED Issue Paper. IIED, London.
28. EIA, 2020, based on UNComtrade database
29. EIA, 2020, based on UNComtrade database
30. EIA, 2020, based on UNComtrade database.
31. EIA, 2020, based on UNComtrade database.
32. <https://www.myanmartradeportal.gov.mm/en/guide-to-export>
33. <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>
34. <http://www.fatf-gafi.org/countries/d-i/iceland/documents/increased-monitoring-february-2020.html>
35. <https://myanmareiti.org/en>
36. Myanmar and Liberia are the only countries to include timber in their EITI work

