



Myanmar Timber Enterprise log depot, Sagaing Division, Myanmar © EIA

OVERDUE DILIGENCE

Teak exports from Myanmar in breach of European Union rules

Following an investigation into the placement of Burmese teak from Myanmar onto the European Union (EU) market, the Environmental Investigation Agency (EIA) has submitted legal complaints to authorities in five countries regarding violations of the European Timber Regulation (EUTR) by nine companies.

EIA believes these companies have failed to ensure that illegally logged wood has not entered their supply streams, putting customers at risk of purchasing illegal timber.

EIA has identified several shipments of Burmese teak, including teak destined for sailing yacht 'A'. Sailing yacht 'A' is currently being built in Germany for Russian billionaire Andrey Melnichenko at a cost of £260 million; at 100m tall and nearly 150m long, it is the largest sailing yacht ever built.

The companies involved, which include the largest teak dealers in the EU, are:

- **Antonini Legnami, Basso Legnami and Bellotti Spa**, which have placed Burmese teak on the market in Italy;
- **Boogaerdt Wood, Gold Teak Holdings and World Wood**, which have placed Burmese teak on the market in the Netherlands;
- **Crown Teak**, which has placed Burmese teak on the market in Belgium;
- **Keflico**, which has placed Burmese teak on the market in Denmark;
- **Teak Solutions**, which has placed Burmese teak on the market in Germany.



Sailing yacht 'A', by Feliz (via Wikimedia)



Log yard in Myanmar © EIA

The result of a two-month investigation by EIA, the complaints focus on the 'due diligence' obligations of the EUTR, which require companies to identify and take steps to mitigate any risks of illegality in their supply chains. EUTR offences committed by the companies range from failing to verify where and how the timber was felled to accepting documents they believed to have been faked¹.

EIA recognises that the companies involved have all made some effort to comply with the EUTR due diligence obligations but were prevented by the Myanmar Timber Enterprise (a Government entity responsible for the harvest and sale of teak in Myanmar) from acquiring or verifying any of the essential information required. Nonetheless, each company has still proceeded to procure and place products on the market in the absence of information fundamental to due diligence.

EIA's analysis of the inability to meet the standards demanded under the EUTR for Burmese teak focuses on the high risks of illegality associated with timber from Myanmar and the lack of any verification of legality upstream of the point of sale by the Myanmar Timber Enterprise (MTE). EIA considers the following statements about the supply chains to be true of all of the companies concerned, which present fundamental risks of illegality that cannot be mitigated:

- information demonstrating the source of timber is unavailable and unverifiable;
- information demonstrating a clear right to harvest is unavailable and unverifiable;
- information that might mitigate risk of harvesting in violation of relevant forestry provisions is unavailable and unverifiable.

Under the EUTR, due diligence requires operators (companies regulated by the EUTR) to identify the concession within Myanmar from which timber has been harvested and reduce risks that relevant forestry and trade laws have not been complied with to "indiscernible" levels; where risks remain discernible, timber should not be placed on the market. Any placement of timber on the EU market where risks of illegality can be discerned and remain unmitigated is a clear breach of the EUTR².

Due to the high risk of illegality associated with timber from Myanmar and structural refusal from the Government to allow access to information that might evidence compliance, no Burmese teak can legally be placed on the EU market. Should the Government not remove the barriers MTE upholds to information that might mitigate discernible risks, Myanmar risks indefinitely losing access to the entire European marketplace.

Risks of illegality associated with Burmese teak

The level of risk associated with illegal harvesting in the species and country concerned cannot be considered anything other than extraordinarily high. There is broad consensus across a wide range of government agencies, trade federations, EUTR Monitoring Organisations, NGOs and industry experts that timber from Myanmar poses a significant risk of illegality, including:

- the UN Office on Drugs & Crime has found that 85 per cent of all Myanmar timber exports are illegal³;
- the EUTR Monitoring Organisation NEPCon has found that

bribery and corruption in the allocation of harvesting rights was "normal" and "essential", and that "*the overall high level of risk of corruption and issues with timber throughout the supply chain means sourcing low risk timber from Myanmar is basically impossible*"⁴;

- HAWA (a Vietnamese trade federation) has reported that "*there is no operational Due-Diligence system which would allow Burma to export timber products (inclusive of furniture and accessories) to the EU, when the European Union Timber Regulation (EUTR) will come into effect*" and that no Burmese teak has "*any other process of due diligence implemented*"⁵;

- a 2016 report, under an EU-funded project managed by ALARM, found that “*illicit logging practices have been widespread*”, detailing a range of non-compliances across 11 areas, including corruption, illegal logging, overharvesting, laundering of illegal timber and falsified documents⁶;
- guidance issued by WWF concluded that “*most of the timber Myanmar produces is illegally harvested or traded,*

or comes from natural forests being managed or converted without regard for broader conservation values”⁷.

In this context, and in the absence of any meaningful evidence of compliance, it is impossible for EU operators to successfully apply due diligence systems to Burmese teak originating from Myanmar.

Basic due diligence

None of the companies EIA has investigated appear able to verify information about their supply chains beyond the point of sale by the Myanmar Timber Enterprise, resulting in fundamental failures in their due diligence systems. Specifically, EIA believes the companies have all failed to:

- identify the concession within which the timber was felled;
- identify who actually carried out the harvest;
- take steps to mitigate the high risk of bribery and corruption in the allocation of harvesting rights;
- view MTE’s or its contractor’s harvest permit (for the annual coup), thereby establishing the actual right to harvest;
- confirm that harvesting conditions were respected by loggers, including the Annual Allowable Cut (AAC);
- confirm correct markings were applied to logs during harvest/transport;
- identify the transportation operators involved at all points of the supply chain, that transport conditions were followed and confirmed no laundering of unknown origin timber occurred.

Wilful negligence

Speaking to EIA investigators posing as potential clients, some of the companies subject to EIA’s EUTR complaints were candid about their inability to access the information required to comply with EUTR due diligence requirements. Nevertheless, they wilfully opted to ignore these realities in conducting trade.

Teak Solutions - Assumption without verification prior to purchase and placement on the market:

*“We have no control over what the MTE offers for sale. We must **assume** that they are from the area they say and that they are legally cut”.*

*“Verifying where a log is cut is not possible as most logs which come for sale were cut two or three years back or more ... Again, when one buys timber, the **assumption is made** that the stamp was applied the day the log was cut and that it is a true reflection of the area cut.”*

Keflico - “Nothing we could do” ... except violate the EUTR
*“The MTE (Myanmar Timber Enterprise) do **not allow** anybody to go back to the forest to **control**. Only back to their Yards, where they are selling the logs on Tenders ...*



Myanmar Timber Enterprises Yard, Rangoon, Myanmar (supplied)

This brings Myanmar to a High Risk country in the EUTR system”.

*“We could **not get any information about the supply chain** from the forest to the sawmill. This is something we and all other still need to pressure the Burmese to implement. The only possibility we have is to discuss this always. But as long as the MTE are not allowing people to go the last step backwards there [is] nothing we could do.”*

Overharvesting

Harvesting in excess of volumes established through the application of the Myanmar Selective System (MSS) has been common practice by the Myanmar Timber Enterprise (the main company responsible for logging in Myanmar) and its contractors. It is accepted by all credible observers of Myanmar’s forestry sector that this constitutes illegal logging and is one of the highest risks for EU operators.

Analysis by ALARM found that in 2013-14 the national Annual Allowable Cut was exceeded in Sagaing Division alone.

In 2013, NEPCon concluded that: *“One of the most obvious problems is the consistent over-harvesting that has been of widespread occurrence in Myanmar for a number of years. Even though the official forest management system is based on a pre-defined AAC, in reality the actual production of logs has been based on revenue targets”.*

NEPCon added that *“disregarding AAC has resulted in overharvesting as well as harvest practices that do not meet the basic principles of the Forest Law”.*

The right to harvest

EIA believes that no EU operator, nor any or third party certifier, has verified the actual formal Government permit conferring a right to harvest in the specific area and timeframe where harvesting occurred for any shipments placed on the EU market and so has not verified the 'right to harvest' of Myanmar Timber Enterprise or its contractors. This prevents the most basic due diligence.

Even if an operator or third party certifier had seen the 'right to harvest' permits, as they are unable to even identify let alone gain access to the concession of harvest, they are unable to verify that the conditions of the permit have been met.

As such, any operator placing Burmese teak on the EU market will have failed to undertake even the most basic level of due diligence required by the EUTR.

Time for EU Member State and European Commission action

EU member state Competent Authorities have a legal obligation to uphold the EUTR and prevent non-compliant shipments from placement on the EU market. Where they fail to do so, the European Commission is obliged to sanction them.

Failure of either party to honour these obligations will undermine all incentives for forest and timber sector reform in Myanmar. EIA urges tough action, now.

For more information: The full submissions to each country's Competent Authority are available for download from the EIA website at <https://eia-international.org/2016-eutr-teak-substantiated-concerns>

REFERENCES

1. Keflico, a major Danish timber firm, admitted to EIA it is aware Myanmar Timber Enterprise is providing it with parcels of teak claimed to originate from a single location when in fact these comprise logs from multiple areas with fake origin documents (August 2016)
2. 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 July 6, 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 EUTR 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."

3. Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment. United Nations Office on Drugs and Crime (UNODC), 2013.
4. Myanmar Forest Sector Legality Analysis, NEPCo, for the European Timber Trade Federation, September 2013,
5. Myanmar, a New Market? HAWA, 2012
6. Legally and Illegally Logged out: Extent and Drivers of Deforestation & Forest Degradation in Myanmar, Thorsten Treue, Oliver Springate-Baginski, Kyaw Htun
7. Guidance note on sourcing forest products from Myanmar (Burma), WWF, November 2013

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