



global witness

Background briefing on the upcoming ban on imports of illegal timber into Europe

4 March 2013

Introduction

As of 3 March 2013 companies will be violating EU law by bringing illegal timber or timber products into the EU or by failing to exercise due diligence to make sure their supply chains do not contain illegal timber.

This briefing sets out some basic background facts about the new EU law (known as the European Union Timber Regulation, or 'EUTR'). It then uses the example of recent exports of illegal timber from Liberia to underline the scale of the challenge timber importers will face in complying with the EUTR when sourcing from countries with weak rule of law.

Liberia has recently experienced a massive legal breakdown which has seen 40 per cent of its forests handed over to logging companies through the widespread and illegal issuance of logging licences called Private Use Permits (PUPs). The systematic abuse of these permits has allowed companies to bypass environmental and social regulations¹ and threatens the fragile progress made so far in reforming Liberia's forestry sector following a brutal war that was financed in part by timber and diamonds.

Once the extent of the abuse of Private Use Permits was exposed by Global Witness and Liberian civil society organisations, President Ellen Johnson Sirleaf ordered an independent investigation and declared a ban on logging and export of timber cut under these permits. The independent investigation concluded that all Private Use Permits were issued in violation of Liberian law, leading the President to issue an Executive Order on 4 January 2013 banning logging and exports by any company or individual involved in the abuse of Private Use Permits. This shut down most logging operations in the country. She further called for the prosecution of companies and individuals found to have acted in violation of Liberia's laws, and the confiscation of timber cut under the permits. Nonetheless, throughout 2012 companies flouted the President's efforts to gain control of the situation and continued to export timber cut under Private Use Permits to destinations around the world, including the EU.

The EUTR is meant to support efforts like those taken by President Johnson Sirleaf to stop corruption and improve governance by preventing illegal timber from being sold on European markets. Under the new law, companies importing illegal timber, or products made from illegal timber, into the EU could face criminal penalties. Global Witness has traced timber from Private Use Permits to ports all over the world, including China, India, Turkey and UAE. Most significantly, several shipments of illegal timber cut under Private Use Permits recently arrived in France. Global Witness has identified such logs in the port of Nantes, France. These logs were apparently bought by a German company. Although the EUTR was not yet in effect when these logs arrived in France, under the new law such imports could mean confiscation of the logs, up to two years in prison, and a possible 50,000 euro fine for the importer.

¹ *Signing Their Lives Away: Liberia's Private Use Permits and the Destruction of Community-Owned Rainforest*, Global Witness, Save My Future Foundation (SAMFU) and Sustainable Development Institute (SDI), 4 September 2012. <http://www.globalwitness.org/library/signing-their-lives-away-liberia%E2%80%99s-private-use-permits-and-destruction-community-owned>

Background facts

1. The global illegal timber trade and Europe

- The EU agreed the EU Timber Regulations (EUTR) in 2010, making it illegal as of 3 March 2012 for any company to place illegally harvested timber or products made from illegal timber on the EU market.
- The US already has similar legislation (the Lacey Act of 2008) which saw iconic guitar manufacturer [Gibson Guitars settle a case for \\$300,000 last year](#) for importing illegal wood from Madagascar. A joint investigation by Global Witness and the NGO Environmental Investigation Agency in 2009 played a key role in exposing the legal violations in Madagascar that led to the case.²
- Australia has recently passed a similar law (the Illegal Logging Prohibition Act of 2012) which will take effect in 2014.
- Illegal logging, as defined under the EUTR, is the harvesting of timber in contravention of the laws and regulations of the country of harvest.
- A recent UNEP/Interpol report indicated that illegal logging accounts for 50-90 percent of the volume of all timber production in key producer tropical countries in the Amazon Basin, Central Africa, and Southeast Asia, and 15-30 per cent overall.³
- Forest degradation and deforestation is responsible for up to 17% of greenhouse gas emissions, making efforts to stop illegal logging one of the fastest, most effective and least controversial means to fight climate change.⁴
- The economic value of the trade in illegal timber is estimated to be between US\$30 and US\$100 billion, or 10-30 per cent of global wood trade.⁵
- The international trade in illegal timber has damaging economic, social and environmental impacts and has been estimated to decrease the price of legally harvested timber by 7-16%.⁶
- In 2011 13% of the EU-25's solid timber product imports were tropical hardwood. But the proportion of timber imports coming from China has risen dramatically to 18% in 2011. Much of these imports are processed wood products.⁷ China is a well known route for the global illegal timber trade, including from Africa.⁸
- Timber producing countries can be classed as having a high or low risk of illegal logging according to their ranking on general corruption and governance indicators. The Member States importing most timber or wood products from high risk countries are, in descending order: the UK, Germany, France, Italy, Netherlands and Belgium (as illustrated in the chart below).⁹

² For more information see: <http://www.globalwitness.org/campaigns/environment/forests/illegal-logging/madagascar>

³ *Green Carbon, Black Trade: Illegal Logging, Tax Fraud and Laundering in the World's Tropical Forests*, Nellemann, C., INTERPOL Environmental Crime Programme (eds). 2012, p13.

⁴ Ibid

⁵ Ibid

⁶ *Illegal logging: Background and Issues*, Congressional Research Service report, March 2007.

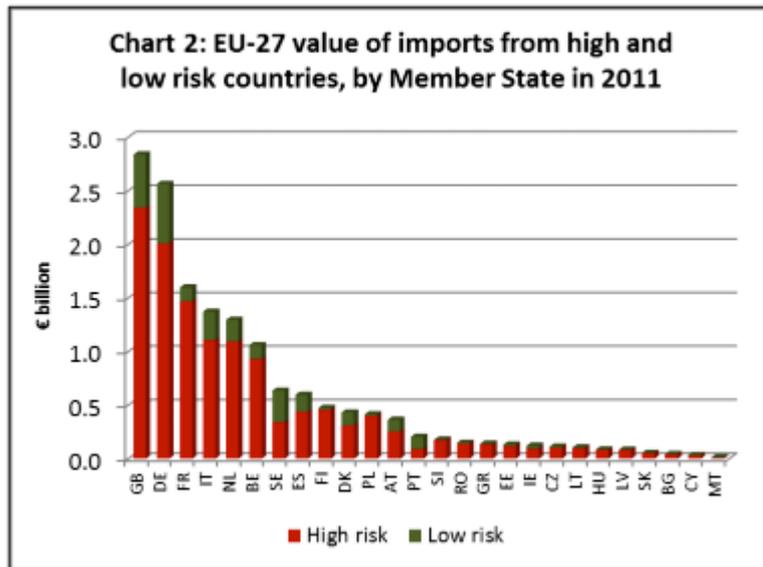
⁷ *2011 Statistics – EU totals. Timber trade monitoring in support of effective, efficient and equitable operation of the EU Timber Regulation*, European Timber Trade Federation, 2013, p5.

http://www.ettf.info/sites/default/files/ettf_2011-statistics_eu-totals.pdf

⁸ *Illegal Logging and Related Trade: Indicators of the Global Response*, Sam Lawson and Larry MacFaul, July 2010

http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/0710pr_illegallogging.pdf

⁹ *European Trade Flows and Risk*, Forest Trends and Forest Industries Intelligence Limited, January 2013, pp. 9-10.



Source: “European Trade Flows and Risk”, Forest Trends and Forest Industries Intelligence Limited, January 2013

2. New requirements and sanctions imposed on companies under the EU Timber Regulations

- Each Member State must impose sanctions on companies that fall foul of the EUTR. In the UK and Germany, criminal penalties are being put in place, which could result in the imprisonment of company directors failing to comply (up to two years in the UK; up to one year in Germany).
- The EUTR not only prohibits companies from importing illegal timber or timber products, it also requires companies to “exercise due diligence” to assess the risk that the timber or wood products have been illegally harvested. This includes a requirement to know where the timber came from (including country of origin and, where there could be risks, the region and concession of harvest) and what species it is. Risk assessment and risk mitigation are fundamental elements of due diligence. The risk must be identified and measures taken to bring it down to a negligible threshold in each case, meaning that no cause for concern can be discerned. The country of origin's corruption level, business risk indices or other governance indicators should be considered as part of risk assessment. Independent reports on illegality, for example by NGOs, can also be taken into account.
- No single piece of paper can provide proof of legal compliance under the EUTR. Certification schemes do not remove liability, and importers must take into account the overall risk of illegal logging in the country when considering certification as part of their due diligence.
- There are high risks of illegality in most if not all forest-rich tropical countries, according to a multitude of independent reports.¹⁰

¹⁰ See for example: in Liberia: [Special Independent Investigative Body Report on the Issuance of Private Use Permits \(PUPs\), December 2012](#); in Central Africa: [reports of the Independent Forest Monitor](#) in Cameroon, Republic of Congo and Democratic Republic of Congo; in Malaysia: [report on illegal logging by Samling Global](#) published by the Council of Ethics of the Norwegian Pension Fund Global; in Papua New Guinea: [synthesis report](#) by Forest Trends of independent forest sector reviews; in Indonesia, Madagascar, Peru, Honduras, Burma, Cambodia, Laos, Vietnam and many others: see reports on the websites of [Global Witness](#) and [Environmental Investigation Agency](#)

- European companies placing timber products on the EU market have sole responsibility for carrying out due diligence in accordance with the requirements of the EUTR. European companies cannot contract out of their due diligence obligation by imposing this on their supplier.

3. Illegal logging in Liberia feeding the global timber trade

- Investigation by Global Witness and two Liberian NGOs in 2012 revealed evidence of widespread corruption and illegality in the allocation of logging licences called Private Use Permits.¹¹ Over the last three years, about 40% of Liberia's rainforests were signed away to logging companies under these permits, which are virtually unregulated.
- Despite an August 2012 ban on logging and exports of timber cut under Private Use Permits, put in place by President Ellen Johnson Sirleaf, since August 54,295 m³ of Private Use Permit timber has been exported from Liberia. In December 2012 an independent investigative body set up by the President concluded that all Private Use Permits were issued in violation of Liberian law and should be cancelled.¹²
- Over half (137,195 m³) of Liberia's total timber exports in 2012 (259,214 m³) came from Private Use Permits. 17,602 m³ of the total was exported to France, of which at least 4,052 m³ was from Private Use Permits.
- Global Witness has traced illegal timber from Private Use Permits to ports all over the world, including China, France, India, Turkey and UAE. Most significantly, we recently found Private Use Permit timber in the port of Nantes, France. This timber had been bought by a German company. Although these imports happened before the EUTR came into force, under the new law companies importing such timber into the EU could face criminal penalties.
- There was public information available throughout 2012 that would have alerted responsible purchasers about the risks associated with timber cut under Private Use Permits in Liberia.¹³ The EUTR requires that companies carry out due diligence to identify the risks of illegality and take measures to ensure that illegal timber is not imported into the EU in violation of the law.
- Liberian government action in 2012 to address the abuse of Private Use Permits:
 - In February 2012 the Board of Directors of Liberia's forest authority issued a recall of nearly all Private Use Permits until further regulations and guidelines were developed.
 - On August 2012 Liberian President Ellen Johnson Sirleaf reconfirmed the Board's moratorium on logging and extended it to exports of timber cut under Private Use Permits. The President initiated an independent investigation into what had gone wrong.
 - The Liberian Supreme Court stayed the President's moratorium on 3 September until it could review a complaint filed by the logging industry, but on 22 October 2012 the Court upheld the ban on logging and exports.

¹¹ *Signing Their Lives Away: Liberia's Private Use Permits and the Destruction of Community-Owned Rainforest*, Global Witness, Save My Future Foundation (SAMFU) and Sustainable Development Institute (SDI), 4 September 2012. <http://www.globalwitness.org/library/signing-their-lives-away-liberia%E2%80%99s-private-use-permits-and-destruction-community-owned>

¹² *Special Independent Investigative Body Report on the Issuance of Private Use Permits (PUPs)*, presented to the President on 19 December 2012. <http://loggingoff.info/document/special-independent-investigating-body-report-pups>

¹³ See, for example, Guardian, *Liberia's hasty forest sell-off risks more conflict*, 5 July 2012 <http://www.guardian.co.uk/global-development/2012/jul/05/liberia-forest-sell-off-risks-conflict>; BBC, *Liberia rainforest: '60% handed to logging companies'*, 4 September 2012 <http://www.bbc.co.uk/news/world-africa-19469571>

- On 19 December 2012 the Special Independent Investigating Body appointed by the President to look into the abuse of Private Use Permits released a report documenting legal violations and fraud in the issuance of Private Use Permits and concluded that all of these permits were issued illegally and should be cancelled.¹⁴
- On 21 December 2012 Global Witness published information showing that the logging company Atlantic Resources, which is backed by notorious Malaysian logging giant Samling, had shipped millions of dollars worth of illegal timber from Liberia in breach of the President's August order to halt timber exports.¹⁵
- President Johnson Sirleaf issued an Executive Order on 4 January 2013 expanding the moratorium on Private Use Permits to include all logging operations by any company or individual involved in the Permit scandal.¹⁶
- The Executive Order also sets out that those responsible for violating the law will be subject to criminal prosecution, and the President has announced that logs cut under Private Use Permits may be confiscated and sold and that a Special Prosecution Team will be set up within the Ministry of Justice.¹⁷

¹⁴ *Special Independent Investigative Body Report on the Issuance of Private Use Permits (PUPs)*, December 2012. <http://loggingoff.info/document/special-independent-investigating-body-report-pups>

¹⁵ *Logging company flouts Liberian President's timber export ban and drives breakdown in rule of law*, Global Witness, 21 December 2012 <https://www.globalwitness.org/library/logging-company-flouts-liberian-president%E2%80%99s-timber-export-ban-and-drives-breakdown-rule-law>

¹⁶ *Executive Order No. 44: Protecting Liberian Forests By A Temporary Moratorium On Private Use Permits*, President of Liberia, 4 January 2013 http://emansion.gov.lr/doc/Executive%20Order%20_44%20-%20Moratorium%20on%20Private%20Use%20Permits.pdf

¹⁷ *Liberian President Issues Executive Order No. 44, Declaring Moratorium On Private Use Permits to Protect Nation's Forests*, Executive Mansion statement, 4 January 2013 http://emansion.gov.lr/2press.php?news_id=2472&related=7&pg=sp