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Issue 188 December 2013

EU Timber Regulation put to the test

In a move that could set an important precedent for enforcement of the EU Timber Regulation (EUTR), German authorities seized two batches of illegal timber from the Democratic Republic of Congo (DRC). This seizure represents a positive step in enforcement of the EUTR, nine months after it entered into force. The German authorities are conducting further inquiries; if illegality is confirmed, it is hoped that sanctions will be imposed on the companies involved, sending a clear signal to all timber operators and serving as an example for competent authorities within the Member States.

The EUTR prohibits placing illegally harvested timber on the EU market; it requires EU traders to exercise due diligence and to take steps to mitigate the risk of illegal timber. In this case, Lebanese-owned Bakri Bois Corporation (BBC; FW185) logged the seized timber under an illegal concession contract, according to a report by Resource Extraction Monitoring (REM), acting as the independent forest monitor in DRC. A joint field mission by Greenpeace Africa, Global Witness and local NGOs further confirmed illegal logging activities by BBC, yet the logs were placed on the EU market by three German timber companies. The extent of the companies' due diligence is unclear. Greenpeace tipped the German authorities about the illegal timber

The German case is encouraging, given earlier disappointments where illegal timber entered the EU after the entry into force of the EUTR. In April, Belgian authorities blocked Afrormosia timber from DRC in Antwerp,² but later released it despite lack of clear proof of legal origin (FW182). Also, Okoume logs with altered markings concerning the place of origin had entered France without difficulty.³ The current case highlights the importance of closer collaboration between traders, independent monitors, NGOs and competent authorities to give the EUTR the teeth it needs.

1. www.greenpeace.org/eu-unit/en/News/2013/Germany-seizes-Congolese-wood-in-strongest-EU-action-yet-against-illegal-timber-trade/

2. www.greenpeace.org/belgium/Global/belgium/report/2013/GP_%282013_06%29_fact-sheet_Importing-wood-from-the-DRC_Final-1.pdf

3. www.bbc.co.uk/news/world-africa-23358055

4. Formally recognised independent monitor of the Voluntary Partnership Agreement in Congo.

Warsaw COP19: So much distraction, so little real action

Although no progress was made toward a new global climate treaty at the 19th Conference of the Parties (COP19) to the UN Framework Convention on Climate Change (UNFCCC) in November in Warsaw, decisions were made concerning reducing emissions from deforestation and forest degradation (REDD+).

Negotiators reached agreements on technical issues such as monitoring, reporting and verifying emissions from deforestation and how to report on safeguards. Although there was no agreement to finance REDD+, the REDD decision refers to the Green Climate Fund as a possible source of funding. The Fund's accounts are presently empty.

The UK, Norway and the USA, have pledged to recycle existing climate aid money to establish the *BioCarbon Fund Initiative for Sustainable Forest*

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Landscapes, managed by the World Bank.¹ The fund will target commodity supply chains and is seeking private sector involvement to open the door to trading forest carbon offsets.

Payments for REDD+ are to be performance based: money would be transacted only once tropical forested countries could prove the number of tonnes of CO₂ saved per year. This is problematic due to the difficulty and expense of measuring carbon in forests, and the REDD decision made no progress toward defining additional indicators to assess whether countries are on a sustainable path to reduce deforestation.

Although REDD+, as defined in COP19, does not permit developed countries to use REDD+ carbon credits as offsets, negotiators stopped short of banning REDD+ offsets. This means there is a risk that developed countries will use REDD+ to weaken their reduction targets, thus exacerbating climate change. Without an agreement to address climate change, most forests stand little chance of surviving.² If the UNFCCC wishes to save forests, more attention must be focused on reducing fossil fuel emissions in the first place.³ For further discussion about COP19 decisions, see www.redd-monitor.org/tag/cop19-warsaw/

1. <http://tinyurl.com/nt248uk>

2. www.fao.org/docrep/011/i0670e/i0670e10.htm

Is Malaysian timber legal?

Malaysian NGOs and Indigenous Peoples Organisations (IPOs) have issued a position paper explaining why much of the timber originating from Malaysia is of questionable legality.¹

In recent decades, indigenous peoples have used Malaysian courts to claim the rights to their ancestral lands denied them by the government, and been largely successful. The courts accept indigenous customary land rights as a form of proprietary interest in the land, protected under the Federal Constitution. This goes beyond the right to use and benefit from resources found on their land. Yet to date Malaysian Federal and State governments have refused to reform relevant policy and law in conformity with the Constitution and jurisprudence. One result is that current timber licenses issued under nonconforming legislation are of uncertain legality.

In addition, given high levels of corruption, lack of transparency in the chain of custody, and the highest rates of deforestation in the world,² the situation raises broad doubts about the legality of current Malaysian timber imports. It is also unlikely that Malaysian timber meets the EUTR requirement for operators to ensure that companies have the right to harvest and that third parties are not harmed. The current reality casts a shadow on Malaysian negotiations towards a VPA with the EU, ongoing since 2006; there is a long way to go before an agreement can be concluded.

1. <http://loggingoff.info/countries/malaysia>

2. <http://www.bbc.co.uk/news/science-environment-24934790>

Biomass: Burning forests

Drax, an energy company that supplies seven per cent of the UK's electricity, is controversial as its claims of sustainability amount to running half of its power on biomass, rather than coal. According to Drax's chief executive, the biomass originates from debris from sustainably managed forests,¹ yet Enviva, one of Drax's US biomass suppliers, sources wood from the southern US's high biodiversity-value wetland forests. Pellet manufacturing in the southeast US actually relies heavily on whole trees,² and the cost of using whole trees and roundwood for energy is increased carbon emissions.³

In November, a group of US NGOs came to Brussels and the UK to alert policymakers to the devastating impact of EU biomass policy on US forests (FW185). The EU must urgently develop sustainability criteria and revise its energy policy to ensure that biomass delivers carbon reductions without negatively affecting other forest ecosystems.

1. www.ft.com/intl/cms/s/0/7e41292e-4f78-11e3-8e99-00144feabdc0.html#axzz2mWkdFdsF

2. www.fern.org/node/5675

3. http://iet.jrc.ec.europa.eu/bf-ca/sites/bf-ca/files/files/documents/eur25354en_online-final.pdf

Controversial land lease undermines

sustainability

Despite four years of illegal activities, including forest clearing (FW169, FW183), the New York-based Herakles Farms company was awarded, by the Cameroonian Government, a provisional land lease to develop a palm oil plantation on a forest area of 20,000 hectares in the southwest. For many years, local communities have fiercely opposed the project because of its destructive impacts on the forest and the people who depend on it.

On several occasions, the EU has expressed concern that this controversial project violates the VPA now being implemented. In early October 2013 the EU asked the Ministry of Forests to send a joint investigation mission to the Herakles Farms site; Cameroon rejected this request.

The Herakles Farms case raises grave questions about the EU-Cameroon VPA intended to improve forest governance. It also underscores the disturbing trend of establishing unsustainable large-scale industrial plantations in the Congo basin that clearly undermine global efforts to tackle drivers of deforestation.

NEWS IN BRIEF

Lest we forget the dangers and risks that individuals run when working on issues that touch on the interests of the powerful in Southeast Asia: 15 December is the anniversary of the **disappearance/abduction of Lao human rights activist Sombath Somphone** (<http://sombath.org>). Somphone founded the Participatory Development Training Centre PADETC in Laos in 1997. He is internationally respected for standing against authoritarianism, and had won the Ramon Magsaysay Award honoring greatness of spirit and transformative leadership, one of the most prestigious awards for human development in Asia. Somphone's condition and whereabouts remain unknown.

Thirty-three months after signing, the Liberian President has ratified Liberia's Voluntary Partnership Agreement (VPA) with the EU, which entered into force in December 2013. This is a good step forward as Liberian community representatives and NGOs have been pushing for ratification, including raising the issue at the Guardians of the Forest Seminar in October 2012 (<http://capacity4dev.ec.europa.eu/public-flegt/minisite/4-conference-guardians-forests-10-years-eu-flegt>). Implementation of the terms of the VPA remains long overdue.

A recent Global Witness report (www.globalwitness.org/library/90-drc-congo%E2%80%99s-logging-revenues-lost-tax-avoidance-2012) reveals that 90 per cent of the **Democratic Republic of Congo's (DRC) 2012 logging revenues were lost** to systematic tax avoidance and illegal financial arrangements. The plunder of one of DRC's most valuable assets is made possible by weak laws, lack of transparency and illegal deals that benefit companies and authorities; the 40 million people who depend on those forests lose both their livelihood and the public revenues they are due. Between 80 and 90 per cent of DRC's exported timber is sent to Europe. The VPA, under negotiation since 2010, should address the root causes of this situation effectively.

Fern works to achieve environmental and social justice with a focus on forests and forest peoples' rights in the policies and practices of the European Union.



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