



**Timber Regulation Enforcement Exchange
Compliance and Enforcement of the EU Timber Regulation
Live Q&A Summary
May 1, 2020**

Background: Since 2012, Forest Trends has worked to facilitate a series of information-sharing workshops that bring together key stakeholders and enforcement officials for the US Lacey Act, the EU Timber Regulation, and the Australian ILPA. This dialogue has recently expanded to the Asia Pacific region, where a number of countries have new or developing timber trade regulations. On April 27th the Ad-Hoc Working Group (AHWG) and other stakeholders received video presentations on the topic of compliance and enforcement of the EU Timber Regulation. The material was followed by a Live Q&A discussion on May 1. This note serves as a summary of that live discussion.

Note: Unless otherwise specified, each question is accredited to the AHWG. Questions from members of the AHWG were sent to presenters ahead of this discussion.

Section 1: Questions for Mr. Adrian Hawkes of the UK Office for Product Safety and Standards

Question 1: What are roles and structure of the Office of Product Safety and Standards (OPSS)?

Mr. Hawkes role of OPSS, which acts as the UK's enforcement agency for the EUTR. OPSS is responsible for the overall implementation of the regulation, including educating the private sector on its requirements. OPSS carries out risk-based enforcement, meaning that over a period of time, they will focus their enforcement efforts on a certain area of risk (teak from Myanmar, for example) and deal with operators who fall within that category. OPSS is responsible for assessing operator's due diligence systems (DDS), to ensure that they comply with the regulation. ¹

¹ Forest Trends has created a flow-chart to illustrate the roles and institutional structure of the EUTR in the UK. See page 10.

Question 2: What legislation was put in place to support the OPSS in implementing the European Union Timber Regulation (EUTR) in the UK?

Mr. Hawkes outlined the European development of the legislation and the critical role of the European Commission (EC) in establishing the requirements. However, he went on to note that the EU makes each European Member State responsible for its own implementation and enforcement. In the UK, the Department for Environment and Rural Affairs (DEFRA), 'owns' the policy and sets out EUTR implementation plans. DEFRA designated OPSS as the UK's enforcement agency, given the department's previous experience implementing other similar pieces of legislation.

The legislation put in place by DEFRA to implement the EUTR provides specific powers for enforcement officers when investigating breaches, and also sets out a series of sanctions for operators and traders who have not complied with the requirements of the regulation.

Mr. Hawkes concluded this question by highlighting some of the ways in which the OPSS engages directly with businesses, noting that the department has a responsibility to support all businesses in growing and being a productive part of the economy. To do this, they ensure that they are involved in awareness-raising campaigns, workshops, and other events informing businesses about the tools available to effectively comply with the regulation. When non-compliance is found, OPSS works directly with the business to become compliant, rather than taking a harsh penal approach. Mr. Hawkes noted, however, that it is important for the OPSS to be seen as taking a strong and consistent approach to enforcement, so that business know the costs of implementing robust Due Diligence Systems (DDS) are necessary and worth it.

Question 3: Who is responsible for the cost of testing?

Mr. Hawkes responded that the OPSS is responsible for the cost of testing, citing that the department does not seek to create additional financial burden on businesses. Taking on the cost themselves also maintains a good relationship between OPSS and the private sector and ensures the independence of test results.

Question 4: Where does the budget come from?

Mr. Hawkes responded to this question by noting that DEFRA provides the OPSS with a budget for testing each year.

Question 5: Ms. Panjit Tansom, Consultant to the Thai EU FLEGT Secretariat Office/ FAO, inquired about the volume of product testing conducted by the OPSS, specifically wondering if OPSS tests all of a business's products, or what the selection process is if not.

Mr. Hawkes noted that OPSS does not test a business's entire product range, nor do they test products from every operator in the UK. Rather, the OPSS will test products from businesses that are also subject to enforcement checks. They conduct testing only where results are likely

to be useful (high risk species, a risk of mixing in the supply chain, availability of testing reference material, etc.). Mr. Hawkes stated that OPSS aims to conduct product testing for 50-60 percent of businesses that are subject to enforcement activity.

Question 6: Ms. Kantinan Peawsa-ad, Director of the Forest Economic Bureau of the Royal Forest Department, wondered if this meant testing only occurs if OPSS finds inconsistency or fraudulence in a company's documentation.

Mr. Hawkes responded that sometimes this is the case, but not always. There are many uses for testing, and one of them is documentation authentication. Sometimes, even if all the documentation looks to be in order, OPSS will conduct product testing on high risk species, or on products coming from a high-risk location of harvest in order to check whether paper documents are legitimate.

Question 7: What are the requirements on Traders under the EUTR?

Mr. Hawkes stated that only Operators are required to conduct due diligence on their supply chains. Traders, subsequent actors in the supply chain, are required to maintain information on the operator (or other trader) from whom they have purchased their product and who they sold the product to. This allows OPSS and other EU Competent Authorities to trace any illegal product from retail back to its first point of entry onto the EU market.

Question 8: Do you conduct field auditing? If yes, what kinds of processes do you follow?

Mr. Hawkes responded that the OPSS does not conduct any kind of auditing at the forest level. They do, however, visit companies on-site when undertaking enforcement activity. By visiting companies, OPSS builds a better relationship with the private sector and expedites the enforcement process because issues can be addressed directly with the company as they arise.

Question 9: Why did the UK decide on a post-import control? What were some of the main factors that lead to this decision? Are there any weaknesses?

It was noted that the decision to undertake a post-import control was taken by the European institutions that developed the Regulation, and not the UK individually. However Mr. Hawkes stated that OPSS aims to catch any issues with imported goods as soon as they enter the UK's jurisdiction, or as soon as the product clears customs. In order to achieve this the OPSS relies on access to up-to-date customs data, and other technologies.

Question 10: Mr. Bruno Cammert, of the EU FAO FLEGT Program wondered about the process of defining applicable legislation.

It was noted that while the regulation clearly identifies five areas of law which should be included in applicable legislation, in practice demonstrating compliance with a number of these laws has been challenging, and there is some variation in what companies and enforcement

authorities have considered reasonable risk mitigation. The approach to this has also changed over time. The EUTR was enacted with a broad definition of legality so that, as compliance expectations matured, there was room for improvement. Some CAs look strictly at supply chain legality, considering it necessary to document only compliance with laws associated with harvest, transport, fees and taxes, phytosanitary concerns, and export; these are the core elements of legality on which everyone agrees. However some Member States consider that risks associated with failing to respect indigenous land rights, payment of social contracts, or other social concerns should be part of the legality picture as well.

Question 11: Do operators need to conduct due diligence on reclaimed timber? If so, is this different from due diligence on new timber products?

To begin, Mr. Hawkes specified that there are some reclaimed timber products that fall outside the scope of the EUTR. While recycled materials that are still within their life cycle fall within the scope, reclaimed material at the end of its lifecycle is outside of the scope. Mr. Hawkes provided the example of plywood, stating that even though some layers of plywood can be created from waste materials, it comes together to form a new product that is useable and beginning a new life cycle- so it would fall inside the scope of the EUTR. He also noted that if a product contains elements that are reclaimed, only those elements fall outside the scope of the regulation and a company would still have to conduct DDS on the rest of the product.

Mr. Hawkes also noted that companies must be able to prove that a product has been reclaimed, which still involves some elements of due diligence given that many products are made to look old/reclaimed, even though they are brand new. Appearance alone is not evidence that a product has been reclaimed. Critically it was noted that products remain in scope until an operator has proved that they are made from acceptable recycled material, rather than the other way around.

Section 2: Questions for Mr. Andrew Grundy from the Soil Association

Question 12: Are there any requirements regarding the number of Monitoring Organizations (MOs) each Member State must have?

Mr. Grundy responded that no, there are no such requirements. He also noted that one MO can operate in many different Member States.

Question 13: What are the qualifications of becoming an MO?

Mr. Grundy stated that the requirements of becoming an MO are set out in the EUTR, and that to become an MO an organization must:

- Have a robust DDS that member companies can use
- Verify member companies' use of that system (which the Soil Association does through an annual audit)

- Demonstrate expertise in auditing a DDS (the Soil Association is also a certification body so they have ample experience in auditing the timber industry)
- Show that your organization has systems in place to prevent any conflicts of interest

Mr. Grundy then spoke about the process of becoming an MO, stating that if an organization meets the criteria above, it can submit an application to the EC. If the EC approves the application, the organization will be formally authorized as an MO.

Question 14: Who is responsible for the cost of running an MO?

Mr. Grundy responded that each company which contracts the services of an MO pays for the right to use that MO's DDS. The Soil Association, specifically, also audits the UK Timber Trade Federation's Responsible Purchasing Policy, for which they are also paid. Ultimately, any MO is responsible for its own cost and it is up to them how they generate their own revenue.

Question 15: Director Kantinan Peawsa-ad sought clarification on conflicts of interest, wondering how the Soil Association is able to have a commercial relationship with companies whilst also supplying information to the government.

Mr. Grundy responded that, while any commercial auditing relationship comes with some degree of conflict of interest, the Soil Association scrutinizes its own processes both internally and externally. Auditors must declare any work they have conducted with companies, and the Competent Authorities audit this work as well. Mr. Grundy also highlighted that MOs do not need to report every act of non-compliance to the government, only consistent and repeated non-compliance.

Question 16: Ms. Piyathip Eawpanich, Advisor to the Thai Timber Association, inquired about how often companies must pay for the use of an MO. Specifically wondering if fees are paid annually, or per shipment.

Mr. Grundy noted that companies pay an annual fee, which covers the cost of one audit of their DDS per year.

Question 17: Who enters the information into the supply chain map²? Is this information verified, and by who?

Mr. Grundy began by noting that this map is a tool provided to companies by the Soil Association, and that completing it is not a requirement of the EUTR. The map should be filled out by the operator, and they may work with others in their supply chain to gather the relevant information. Company staff will then verify this information according to their own risk assessment, seeking additional information in order to mitigate risk and verify legality where necessary.

² In the video presentation by Mr. Grundy, use of a supply chain map was demonstrated.

Question 18: How does the Soil Association determine which person or organization is authorized to issue any given document?

Mr. Grundy responded that the first step is to identify whether there are any inherent risks of a document being fraudulent. To do so, it is necessary to take into account the risk of corruption within the country in which the document was issued. Where there is a corruption and fraud risk, companies should approach issuing authorities directly and inquire about who is authorized to issue each document. Ultimately, it is the job of the operator to communicate with issuing authorities to gather whatever information necessary to verify the authenticity of each document and if they cannot do so, they should not consider the product's risk as negligible.

Question 19: Director Kantinan Peawsa-ad sought further clarification to this response, wondering specifically how companies should coordinate with each authority; specifically, should companies ask the CAs or their MO to approach the issuing authority, or should they do it themselves?

Mr. Grundy noted that as an MO, the Soil Association would expect that companies approach the issuing authorities directly. Ms. Saunders noted here that there have been some cases where the CAs have approached producer country authorities to determine the legality of specific shipments and documentation also.

Question 20: How does an MO access government databases?

Director Kantinan Peawsa-ad gave further clarification to this question. She stated that the AHWG wondered specifically where it is possible to access the names of individuals within issuing authorities, given that information like this can be protected in some producer countries.

Ms. Saunders stated that there are some countries that do have publicly available digital databases of forest control documents, such as Brazil. However, many countries do not make such information available. This should be taken into account during the risk assessment and companies would have to consider other ways to obtain this information or decide to source in more transparent countries.

Mr. Grundy also highlighted that the Soil Association's status as MO does not grant them access to non-public information or non-public databases.

Question 21: What is the scale of companies working with MOs?

Mr. Grundy noted that, for the Soil Association, most of their customers are Small-Medium-Enterprises (SMEs) who may not have the budget to create their own DDS, or to hire compliance experts. MOs work well with SMEs by providing support and expertise, without the need to hire additional full-time staff.

Question 22: When the MOs and CAs have differing opinions as to what constitutes robust DDS, who gets the final say?

Mr. Grundy responded that while MOs work extensively to ensure their systems match the expectations of the CAs, the decision of compliance vs. non-compliance ultimately rests with the CAs.

Section 3: Questions for Mr. Frank Miller of Track Record Global (TRG)

Question 23: How does TRG access exporter and supplier information? Do you have an internal agreement with certain stakeholders?

Mr. Miller responded to this question by noting that TRG is a commercial company that works on behalf of many large retailers and plywood importers in the UK. They ensure access to critical information through the use of commercial leverage. This means that their clients will ask exporters to release critical information to TRG, and if they do not do this, the product will not be purchased or paid for. Mr. Miller noted that it is important that this exchange happens prior to purchase, because exporters and suppliers have no incentive to give you this information once you have already paid for their services.

Mr. Miller also noted that TRG supports this process by running a joint communication strategy alongside their clients. The client will inform all their suppliers that TRG will be requesting certain information, and if suppliers refuse to release that information, they will not be making any purchases from them. Only when TRG confirms the risk associated with each product is negligible, will the client make a purchase.

Question 24: Director Kantinan Peawsa-ad inquired as to whether TRG verifies documents on behalf of the company, or if they provide the companies with tools to do this themselves.

Mr. Miller clarified that yes, TRG verifies the documents on behalf of their clients, as they provide a different service to MOs.

Question 25: Do you have agreements with third-party certification systems to access information like tax payments?

Mr. Miller responded that no, TRG does not have any specific agreements with any third party to access non-public information. Any information TRG receives has been requested directly or is accessed through public databases such as the FSC certificate database, or the Chinese VAT database. Mr. Miller noted that one of the strengths of the TRG system is their own internal database, built up over many years. This internal database allows TRG to cross-reference new

documents against old documentation they have already received to check for duplication and fraud.

Question 26: What is TRG's strategy when sourcing from countries with a high Corruption Perception Index (CPI) Score?

Mr. Miller noted that the volume of evidence required to mitigate risk is directly correlated (in part) to a country's CPI score. A country with high levels of corruption requires more evidence of legality than a country with low levels. Mr. Miller noted, however, that it's critical to take the same level of care when verifying documentation from low-risk countries, as it's still important to show that you have verified its authenticity regardless of corruption levels. For very high-risk countries, TRG will not identify the risk as negligible without certification or third-party auditing.

Question 27: Here, Director Kantinan Peawsa-ad inquired as to whether TRG contacts Certification Bodies directly.

Mr. Miller noted that TRG will only contact a Certification Body when there is a need to clarify something. Providing an example, Mr. Miller noted a recent case where one of TRG's clients imported material from South East Asia, which came with a certificate that had been withdrawn two years previous. The exporter claimed that the material had been harvested before the certification had been withdrawn, and TRG contacted the relevant certification body to see if this was likely to be the case.

Question 28: Do you have customers in Asia? Are you interested in establishing a branch in Thailand?

Mr. Miller noted that TRG works with over 340 suppliers, 6000 different products, and 2000 supply chains- 1500 of which operate in South East Asia. So TRG is very familiar with the Asian market and is always interested in new opportunities in the region.

Section 4: Questions for Mr. Christian Sloth of NEPCon

Question 29: How do you manage the conflict of interest acting as both a Certification Body and a Monitoring Organization?

Mr. Sloth noted that when you enter a commercial relationship, there will likely always be a conflict of interest- highlighting it is necessary to manage that conflict, rather than it being realistic to eradicate it. Between a Certification Body and an MO, however, there is not a large conflict given that their operations are very similar. NEPCon is accredited by the EC and is also ISO certified, and they monitor any conflicting interests very closely.

Question 30: How do you assess risk? Is there a scoring criterion, or do you use your own discretion?

Mr. Sloth responded that NEPCon has worked for years on creating the Sourcing Hub, which is their own platform for housing all their risk assessments. The Sourcing Hub contains timber legality risk assessments for 65 different countries, including Thailand.

To create these risk assessments, NEPCon looks at each country's legality framework as it applies to the right to harvest, environmental requirements, and other areas of legality. Assessments are based on interviews with governments, NGOs, and discussion with industry-giving an overall evaluation of the risk of non-compliance.

Question 31: Director Kantinan Peawsa-ad referenced a previous point in the Soil Association's presentation, regarding NEPCon's risk framework flow chart. She wondered how that framework was developed, and if it had been approved by the EC.

Mr. Sloth noted that the flow chart is simply a tool to aid due diligence, and completing it is not a requirement of the EUTR. The chart references the five categories of risk within the EUTR, each broken down into sub-categories and provides a way for companies to visualize the risk within their supply chains. The chart itself has not been formally approved by the EC (given that there is no avenue to do so), but NEPCon has been formally accredited as an MO, so can say with confidence that the chart aids robust due diligence.

Question 32: Is joining an MO voluntary? Or is it a requirement of the EUTR?

Mr. Sloth responded that yes, joining an MO is voluntary and it is not a requirement of complying with the EUTR. MOs provide additional tools to aid robust due diligence, available to companies who wish to use them. Many CAs and companies like TRG use NEPCon's risk assessment tools when conducting due diligence and enforcement activities, and consistently recommend including them as part of the robust due diligence.

Question 33: A participant inquired as to how Thailand could improve their NEPCon risk assessment score.

Mr. Sloth responded that NEPCon is working on a new project, funded by "EU Life". Part of this work would be an update to the Sourcing Hub functionality, which would allow producer country governments and industry to submit evidence of improvements to their forest legality systems. This information would then be reviewed and verified by NEPCon, and added to the sourcing hub – allowing for a more real-time picture of forest legality in any given producer country.

EUTR Institutional Hierarchy and Import Procedure Chart
(chart produced by Forest Trends)

