

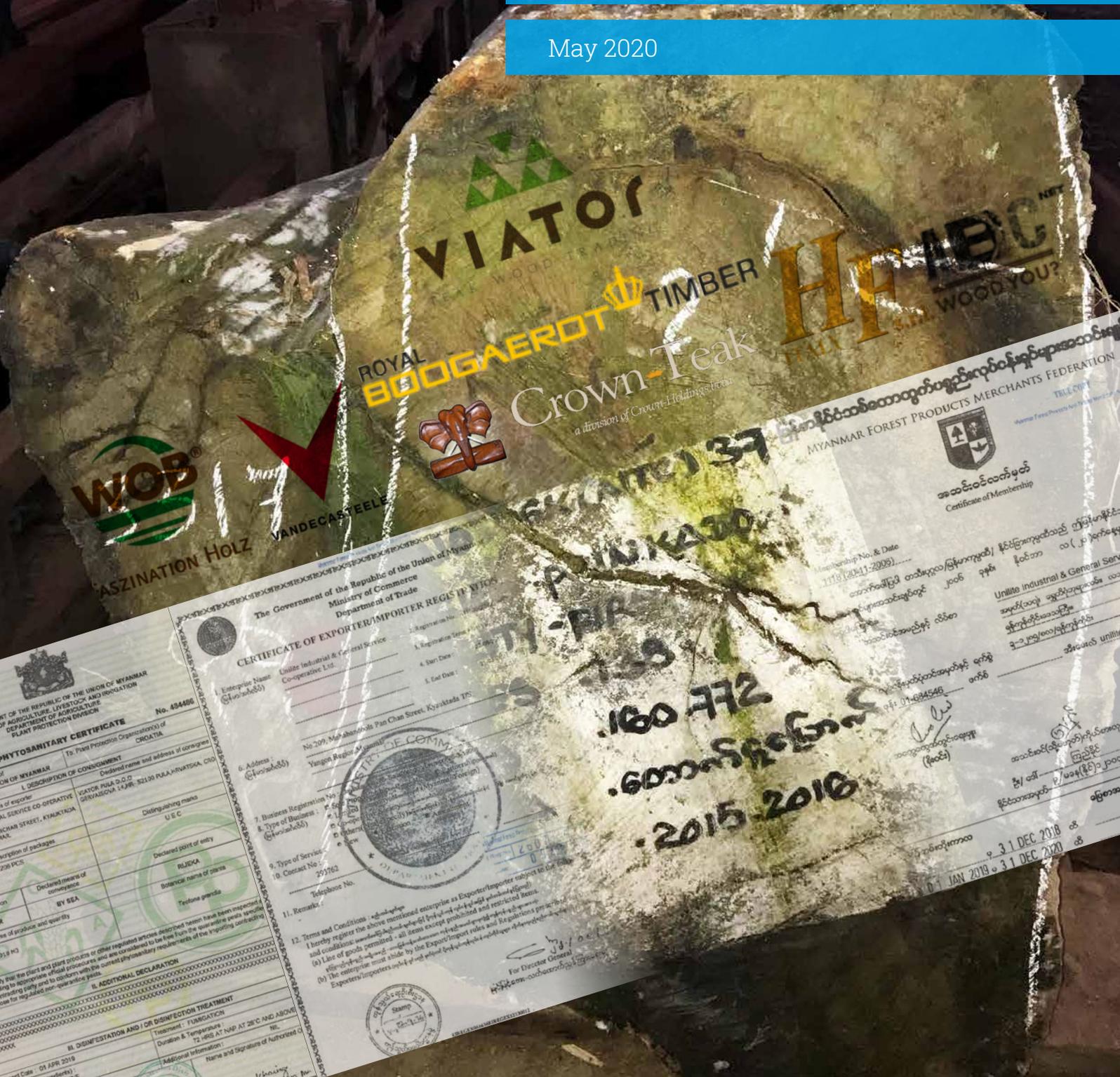


**ENVIRONMENTAL
INVESTIGATION
AGENCY**

The Croatian Connection Exposed

Importing illicit Myanmar teak through Europe's back door

May 2020





Introduction

An investigation by the Environmental Investigation Agency (EIA) has uncovered European timber traders evading EU laws to place their products from Myanmar onto the market.

The investigation shows the extent to which companies will go to avoid EU law in place to protect the European market from illegally sourced timber and wood products.

Myanmar's forests are being destroyed at an almost unprecedented rate – an area larger than the size of Belgium was lost during the period 2001-18.¹ This is having a devastating impact on people's livelihoods, driving climate change through deforestation and destroying the country's abundant biodiversity.

Myanmar's forests host some of the most valuable teak on Earth. The demand for luxury products such as decking for superyachts is driving both illegal logging and the smuggling of teak from Myanmar to international markets.

In an attempt to tackle forest crime, Myanmar has reduced its annual timber harvests, introduced a log export ban and attempted to work with China to combat illegal trade across the land border between the two countries.

In an effort to curtail the demand for illicit timber, the EU introduced the EU Timber Regulation (EUTR), which came into force in 2013. The EUTR is designed to stop illegal timber entering the region's market. It is enforced in each country by a designated "competent authority" which is responsible for conducting checks and imposing penalties for violations.

An important component of the EUTR is that it places obligations on timber operators (i.e. those placing the timber in the EU market) to conduct due diligence to establish that the timber acquired is from a legal source. If a timber operator places timber on the market without adequate due diligence, it has violated the EUTR. There is broad consensus among EU enforcement bodies that



Above: Seized illegal timber in Kachin State, Myanmar in May 2020.

it is not possible to show with confidence that Myanmar teak is able to comply with the EUTR. In December 2019, the European Commission’s Forest Law Enforcement, Governance and Trade (FLEGT) and EUTR Expert Group stated: “it is still not possible to come to a negligible risk of illegally harvested timber from MM [Myanmar]”.² This has become known as the “common position” on Myanmar teak in Europe.³

However, these efforts to tackle forest crime and the trade in high-risk timber are being undermined by some companies in Europe.⁴

Through a Freedom of Information request, EIA has obtained documents from the Croatian Ministry of Agriculture⁵ that reveal a group of European companies have been paying a Croatian company to land teak from Myanmar in Croatia in an attempt to avoid the EUTR. Information obtained by EIA shows many of the companies are doing this despite previous warnings – in other words, knowing that the law is being broken.

EIA has contacted the companies named in this briefing and provided them with a right to reply. We have summarised their responses herein.



EIA's information

At the end of March 2020, EIA received more than 1,000 pages of documents from the Croatian Ministry of Agriculture for 10 shipments of Myanmar teak. These revealed a scheme to use a Croatian company to supply teak to companies throughout Europe, avoiding EUTR enforcement in a range of countries where direct trade in teak had been stopped.

The documents showed that the Croatian company, Viator Pula, was acting as the focal point for a scheme to circumvent the EUTR. Effectively, companies throughout Europe were paying Viator to break the law in order to continue trading in Myanmar teak.

The documents EIA obtained showed that the 10 shipments of timber products arrived in Rijeka starting in 2017, with the most recent shipment arriving in 2019. The total amount of Myanmar teak in the shipments was 144 tonnes. Invoices accompanying the timber pieces place their total value at nearly \$1 million, although it is likely that when supplied for the yacht building industry the value would be substantially higher. All the shipments filed customs declarations at the Port of Rijeka in Croatia.

Viator Pula's sole director and shareholder is a man named Igor Popovič. He and the company maintain a low profile. When EIA contacted Mr Popovič, he said that Viator had a buyer's warehouse in Slovenia and had been importing timber for 12 years. He also stated that "because of EUTR regulations, it is quite [an] advantage of importing through Croatia".

The EUTR, being a European-wide regulation, provides exactly the same requirements in Croatia as it does in the rest of the EU. There should be no advantage to trading through the country. Mr Popovič's statement suggests he is making business out of the perception that Croatian authorities would not properly enforce the EUTR.

One shipment, from 2017, did not specify a final destination; the other nine were all destined for companies in other parts of the EU. The following companies are named as recipients of the timber:

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

Right: Invoice issued by Viator to Houthandel Boogaardt showing that Viator acted as its supplier

Five of these companies – ABC Net, Crown Holdings, Houthandel Boogaardt, Vandecasteele Houtimport and WOB Timber – are based in countries where there have been crackdowns on the trade in Myanmar teak and EIA knows that three of them (Crown, Boogaardt and Vandecasteele) have themselves been found trading Myanmar teak which did not comply with the EUTR.

On 14 February 2020, the Croatian Ministry of Agriculture conducted a check on Viator Pula's due diligence system for four shipments, including the shipment delivered to Vandecasteele and one shipment destined for Boogaardt. The Ministry found the due diligence system inadequate and as a result was in breach of the EUTR and issued an order to Viator to come into compliance with the law by improving its due diligence. If Viator does not come into compliance, it could be subject to further penalties.

EIA has reviewed the due diligence documentation for all 10 shipments and it is clear that in all cases the documentation is inadequate to meet the requirements of the EUTR. This, combined with the clear stance that Myanmar teak cannot comply with the EUTR, makes it evident that all 10 shipments will have been placed on the market in contravention of the law.

This is a case of continuing to trade despite knowing doing so was illegal in an attempt to undermine European law and with little regard for the people and environment in Myanmar, while undermining attempts to reform its timber sector.

R.A.	Naštr artikla - valjaga/product or service name	Kol / quan. /Ton	CIJENA/price in EUR per Ton	CIJENA/ price in USD per Ton	IZNOS u EUR /amount in EUR
01.	Teak Mini Decking	12,0213	55,527,39	8,390,00	667,511,47
	8mm x 41 mm x 900 ~ 1300 mm (10%)				
	8mm x 41 mm x 1400 ~ 2300 mm (60%)				
	8mm x 41 mm x 2400 ~ 2700 mm (20%)				
	8mm x 41 mm x 2800 ~ 4000 mm (10%)				
According to article 4 of Law on Value added tax, the delivery is not subject of taxation Isporuka nije predmet oporezivanja prema Čl. 4 Zakona o PDV-u.					
Paritet: FCA RIJEKA		12,0213			
Sveukupni iznos daje protuvrijednost USD 100.858,71 po srednjem teč. HNB na dan 08.04.2019 - 6,618283			UKUPNO:	\$ 100.858,71	667.511,47
			PDV 25%:		0,00
			SVEUKUPNO:	\$ 100.858,71	667.511,47
Datum i mjesto izdavanja: U Puli, 08.04.2019.					



Changing EUTR supply routes showing circumvention and previous enforcement action

This individual action has occurred among a change in trade patterns by companies attempting to import Myanmar teak into the EU, seeking to circumvent EUTR enforcement.

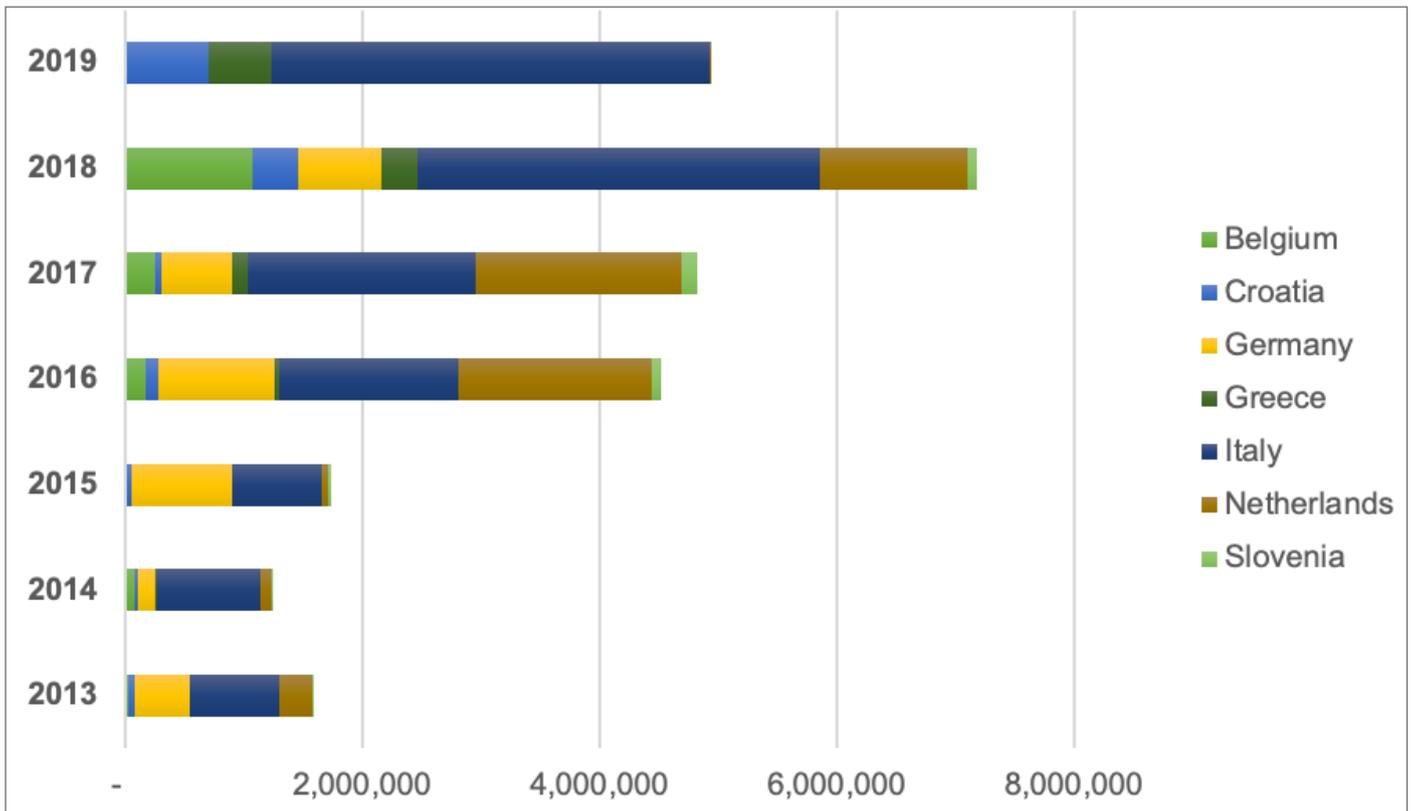
The common position and enforcement against teak operators caused a change in the trade in Myanmar teak into Europe. Analysis of trade data shows that since the beginning of 2019, there has been no direct trade in timber from Myanmar into Belgium, Germany and the Netherlands, a significant reduction from before.⁶ However, imports of timber from Myanmar have substantially increased in many other EU member states – especially Croatia, Greece and Italy (See graph overleaf).

The surge in imports of timber from Myanmar into Croatia coincides with warnings issued in Germany and Belgium. Although there was a slight increase, imports into Croatia in the first half of 2018 were not particularly large, with no imports at all recorded in March and June.

In August 2018, the month after a warning in Germany was issued and the same month as a warning in Belgium, 65.2 tonnes of timber were imported – more than in the entirety of 2017 and triple the amount imported in July 2018.⁷ In November 2018, 123.1 tonnes of timber were imported into Croatia and numbers have stayed high since then.

The timing and extent of the change in trade led EIA to suspect that European teak traders, rather than stop trading in high risk timber or improve their due diligence systems, were exploiting loopholes in EUTR enforcement to continue profiting from the trade in high-risk Myanmar teak.

Above: Aerial view of Pula, the home of Viator's offices. Has this become Europe's backdoor to high-risk timber?



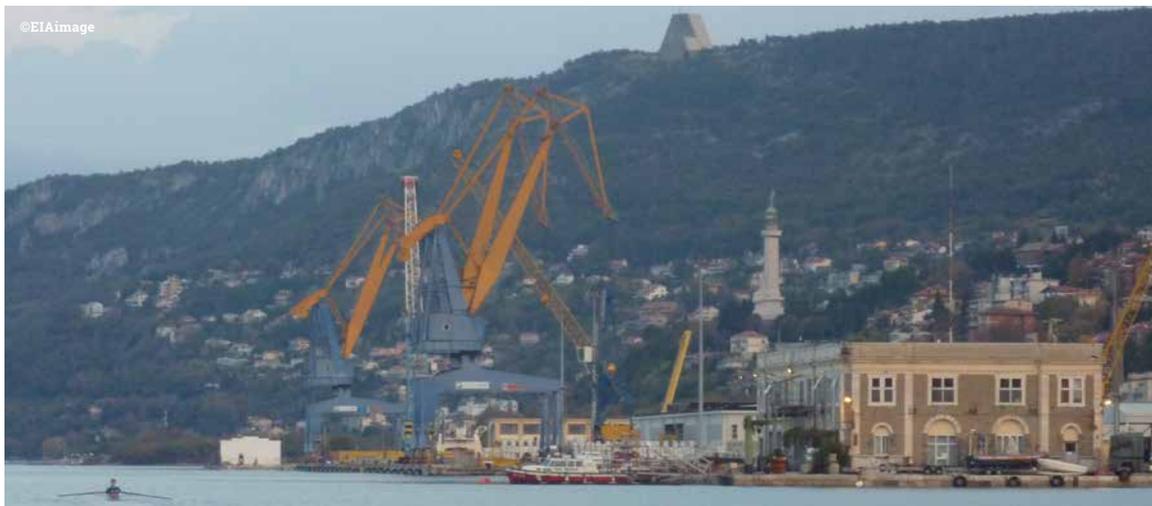
Graph 1: Imports of Myanmar teak to seven EU countries (kg)

The loophole being exploited has two elements. The first is in the EUTR itself. Only the “operator” – the person or company first placing timber on the European market – has to conduct due diligence to ensure any non-negligible risks that the timber is illegal are mitigated. If the operator then provides the timber to someone else, that individual only has to be able to say who they received the timber from, not conduct due diligence of their own. So if a company in Germany paid another company in Croatia to import the timber, the German company could avoid having to conduct due diligence.

The second element of the loophole is finding a country in Europe with weak EUTR enforcement so that an operator with inadequate due diligence might still get away with bringing timber into Europe. In that case, a company in the country with weak enforcement could bring timber into the European market and sell it on to any other part of Europe without the buyers having to

worry whether the timber was from a legal source. It appears some companies had decided to target Croatia as a country they thought would have weak EUTR enforcement, although this has proven not to be the case.

Two previous enforcement actions, in 2018 and 2019, showed that companies were indeed trying to use these loopholes to avoid EUTR enforcement. In late 2018, EIA learnt of shipments of timber being directed through Trieste, Italy to be supplied onward to Belgium and Germany. This led to the Italian military police (Carabinieri) seizing a shipment of timber and launching a prosecution.⁸ In late 2019, Dutch authorities launched an investigation into teak being routed through the Czech Republic on the way to the Netherlands which resulted in seizures of large quantities of timber.⁹ However, despite the increases in imports into Croatia, until this year EIA was not aware of any specific instances of EUTR circumvention there.



Left: Trieste Port, where a shipment of teak was seized in 2018 after a tip off from EIA

EIA's Myanmar investigations

Since the EUTR came into force in 2013, EIA has been using its investigations to advocate for the law to be used to support reform in Myanmar.

EIA issued a warning to the European timber industry in 2013 that Myanmar timber would be in violation of the EUTR¹⁰ and has followed it up with substantiated concerns detailing breaches by companies in Europe in 2016, 2017 and 2019.

EIA has released two major reports on illegal logging in Myanmar: *Organised Chaos* in 2015 and *State of Corruption* in 2019. It has also released briefings on illegal imports of timber into the EU and the implications for the EUTR and the trade into the US: *Overdue Diligence* in 2016 and *A Tale of Two Laws* in 2018.

Our intervention has been matched by results. Nine substantiated concerns were followed by actions against the companies in question. Belgium, Denmark, Germany and Sweden have issued warnings to teak importers about EUTR compliance. The Netherlands has placed injunctions on individual operators. The Dutch, German and Italian authorities have seized or confiscated timber shipments. After EIA presented its *State of Corruption* report to the FLEGT and EUTR Experts' Group in April 2019, the Group escalated its position on Myanmar teak to instruct operators not to place it on the EU market. Trade in Myanmar timber has substantially declined into several countries. At the same time, there have been substantial reform efforts in Myanmar.

However, companies need more than to just be told about the problems with Myanmar teak – they need a disincentive to continue trying to trade in it. There have been no substantial fines or punitive penalties against companies violating the EUTR and, as a result, there is little disincentive for them to continue pushing the law as far as it will go.



©EIAimage

Top left: Our 2015 *Organised Chaos* report

Top right: Our 2019 *State of Corruption* report

Middle: Teak log being sawn at Kui Jay Corporation, Taiwan, 2017

Right: Part of a huge line of timber trucks waiting at the China/Myanmar border



©EIAimage



Repeat offenders: The companies told they cannot comply with the EUTR

Four companies uncovered in EIA's investigation are from countries which have seen large declines in imports of Myanmar teak: Crown Holdings, Vandecasteele Houtimport, WOB Timber and Houthandel Boogaerdt.

Crown Holdings and Vandecasteele, both based in Belgium, were the subjects of EIA substantiated concerns in 2017. In the same year, the Belgian competent authority (CA) conducted checks on both companies and found them in violation of the due diligence requirements of the EUTR.

In August 2018, the Belgian CA issued a letter to the timber industry warning: "Wood imported from Myanmar still does not meet EUTR requirements", a position that has not changed since.¹¹

Both Crown and Vandecasteele acquired their timber through Croatia after being found to have violated the EUTR and after the Belgian CA had warned the entire industry. The teak Viator supplied to Crown Holdings was declared on entering the EU in September 2018 and

the teak for Vandecasteele was declared in April 2019. In both of these months, no sawn timber arrived in Belgium directly from Myanmar at all.

In July 2018, the German CA, the Federal Office for Agriculture and Food, issued an almost identical warning to operators in Germany stating: "Presently, EUTR-compliant teakwood imports from Myanmar are impossible".¹² Timber destined for WOB Timber in Germany landed in Croatia in January 2019.

Houthandel Boogaerdt, based in the Netherlands, is a repeat offender when it comes to the EUTR. In 2017, after it could not provide adequate due diligence for Myanmar teak, Boogaerdt was handed a year-long administrative order preventing it from importing teak into the Netherlands. Boogaerdt chose to contest this order in the Dutch courts, ultimately losing in a decision that confirmed it did not have adequate due diligence and that the order made against it was appropriate.¹³ At the same time the decision was issued, Boogaerdt was subject to an investigation by the Dutch Public Prosecutor due to its continued trade in Myanmar teak.¹⁴



for ABC Net cleared Croatian customs in August 2018 and April 2019. It seems likely ABC has gone through Viator to circumvent Slovenian enforcement.

According to the order, Viator has until August 2020 to ensure the compliance of its due diligence system. Not all shipments EIA has viewed were subject to the check: the report mentions only four sets of documents. However, Viator's name appears as recipient on the Myanmar and Croatian customs documents for the other timber shipments, indicating it has been the operator for all of the shipments. However, if it was not the operator for some shipments, one of the other companies would have been the operator and therefore would have been responsible under the EUTR.

The companies involved should not be allowed to import any shipments with inadequate due diligence. If Viator was the operator on all shipments, then the Croatian authority should conduct checks and follow up enforcement on all of them. If the companies in other countries were acting as operators for any shipments, then the competent authorities in these countries need to check the timber sourced through Viator.

Both Viator and the companies it supplied not only would have known about the risks of importing teak into the EU, they appear to have begun trading with one another precisely because it had become illegal to trade this timber into Belgium, Germany and the Netherlands on the basis that compliance with the EUTR was impossible. However, instead of stopping trade in high-risk timber that they could not prove was legal, they opted to target Croatia as a country of import, likely on the basis they expected there would be no EUTR enforcement there.

Although the legal responsibility under the EUTR largely falls only on the operator, companies further down the supply chain should not ignore the risks that they are using illegal timber. Vandecasteele Houtimport has been a major supplier to UK yacht companies for some time; major yacht companies Princess and Sunseeker have been on record as receiving timber from Vandecasteele in the past¹⁵ and EIA understands Vandecasteele continues to supply large quantities of teak into the UK. Vandecasteele's actions in attempting to circumvent EUTR enforcement call into question the validity of the source of this timber.

Although this exposes a scheme using a Croatian company to circumvent the EUTR, it is not the whole story. The invoices identify 128 tonnes of timber coming through Croatia in 2018-19. However, according to publicly available trade data, roughly 1,000 tonnes of timber from Myanmar actually landed in Croatia across those two years. This leaves large quantities of high-risk Myanmar timber still unaccounted for – timber contravening the EUTR. There may be other companies in Croatia facilitating the trade and other companies throughout Europe using Croatia as a landing point for the timber. The Croatian authorities should ensure action is taken against all Croatian operators trading in high risk timber.

Above left: Illegal logging has devastated Myanmar's forests during the past decade

Above: Myanmar teak is a highly sought after wood for the marine industry, particularly for decking of luxury yachts

According to the documents, Boogaerdt has sourced two shipments of timber through Viator, which were declared in Rijeka Port in March and April 2019. This is well after Boogaerdt was found non-compliant with the EUTR in the Netherlands and after it had been subject to an administrative order preventing it from placing teak on the Dutch market. It seems clear Boogaerdt knows it cannot meet the requirements of the EUTR itself and its attitude has been to use complex supply routes to source timber instead of ceasing trading until it can confirm EUTR compliance.

Slovenia, home of ABC Net, has taken a different path to Belgium, Germany and the Netherlands regarding imports of Myanmar timber. It saw a surge in 2017, then a rapid decline in 2018, with all imports of Myanmar timber abruptly ceasing after September 2018 and none imported since. When EIA contacted the Slovenian Forestry and Hunting Directorate, the authority responsible for enforcing the EUTR, it stated it had conducted checks on ABC Net between May and October of 2018, found due diligence to be inadequate and issued a warning in April 2019. The shipments sourced by Viator

POZ: NCTS

MEĐUNARODNI TOVARNI LIST
LETTRE DE VOITURE
INTERNATIONALE (CMR) | 3817

CO. VIATOR, d.o.o. RIJEKA
PULA D.O.O.
SOVA 14
HRVATSKA

MEĐUNARODNI TOVARNI LIST
LETTRE DE VOITURE
INTERNATIONALE (CMR) | 3817

CO. VIATOR, d.o.o. RIJEKA
PULA D.O.O.
SOVA 14
HRVATSKA

MEĐUNARODNI TOVARNI LIST
LETTRE DE VOITURE
INTERNATIONALE (CMR) | 3817

CO. VIATOR, d.o.o. RIJEKA
PULA D.O.O.
SOVA 14
HRVATSKA

Traceability Booklet

The contents of this booklet are subject to independent third party verification by (Austria) W&L Tracking Technologies Pte Ltd (W&L) Ltd.

Docket Reference Number: TX1025 - C3 024
Issue date: 25 April 2019

Container Information
Container No.: 4631111111
Bill of lading no.: 123456789
Vessel name: CMA CGM
Tape number: 123456789
Weight (kg): 10000

Supply Chain Information
Product: Teak
Origin: Myanmar
Harvested: 2018
Exported: 2019
Importer: Viator Pula d.o.o.

Product Verification Statement
This document is available on request to support the information for every shipment accompanied by a valid traceability document.

Forest Department

Sawn Timber and Finished Products

ထုတ်ခွင့်ပေးသည့်စာရွက်စာတမ်း
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Removal Pass (From MTE Depot to Factory)

ပြည်ထောင်စုသမ္မတမြန်မာနိုင်ငံတော်အစိုးရ
သစ်တောဦးစီးဌာန

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သစ်တောဦးစီးဌာန

EUROPSKA ZAJEDNICA

8 2 Podjela/Division Br: ---

WIN TIMBER PTE LTD
782B WOODLANDS CRESCENT 05-113
732782, SINGAPORE, SG
Indikator AEO: O - NE

3 Primatelj Br: HR06255646975

VIATOR PULA d.o.o.
Germolova 14
52100, Pula, HR
Indikator AEO: O - NE

14 Declarant/Zastupnik Br: HR53158459171

(2) MASTER ŠPED d. o. o.
Petra Jurčića 6
52100, Pula, HR
Indikator AEO: 1 - DA

16 Identitet i nacionalnost prijavnog sredstva u dolasku

MVAPCALIFORNIA 1 KTR

21 Identitet i nacionalnost aktivnog prijavnog sredstva koja prelazi granicu

MT USD 97.132,10 6.53902500 1 1

25 Vrsta sr. na gr. 26 Vrsta pr. u unut. 27 Mjesto istovara

1 1

28 Carinska ublata 30 Mjesto robe

HR060178 KT BRAJIDICA

31 Pakiranje i opća roba

32 Br. 33 Tarifna oznaka

34 Šif. zem. podr. 35 Bruto masa (kg) 36 Trajanje

1 1 14.100,000

Spec.no	သစ်မျိုး	အမျိုးအစား	လုံး/စတုရန်း	တန်
RLU-1554/17-18	ကျွန်းသစ်လုံး	SG-7	70 လုံး	46.212
RLU-1553/17-18	I	SG-7	75 လုံး	54.460
RLU-1552/17-18	I	SG-6	51 လုံး	48.200
RLU-1319/17-18	I	SG-6	50 လုံး	39.170
TRLU-334/18	I	SG-6	2 လုံး	1.496
TRLU-364/18	I	SG-7	36 လုံး	20.628
			284 လုံး	210.166

Due diligence: room for improvement

The EU's efforts, through the EUTR, to halt illegal timber entering the region includes ensuring that companies wishing to import timber demonstrate they have made reasonable efforts to determine its legality. This means the company, or operator, needs to:

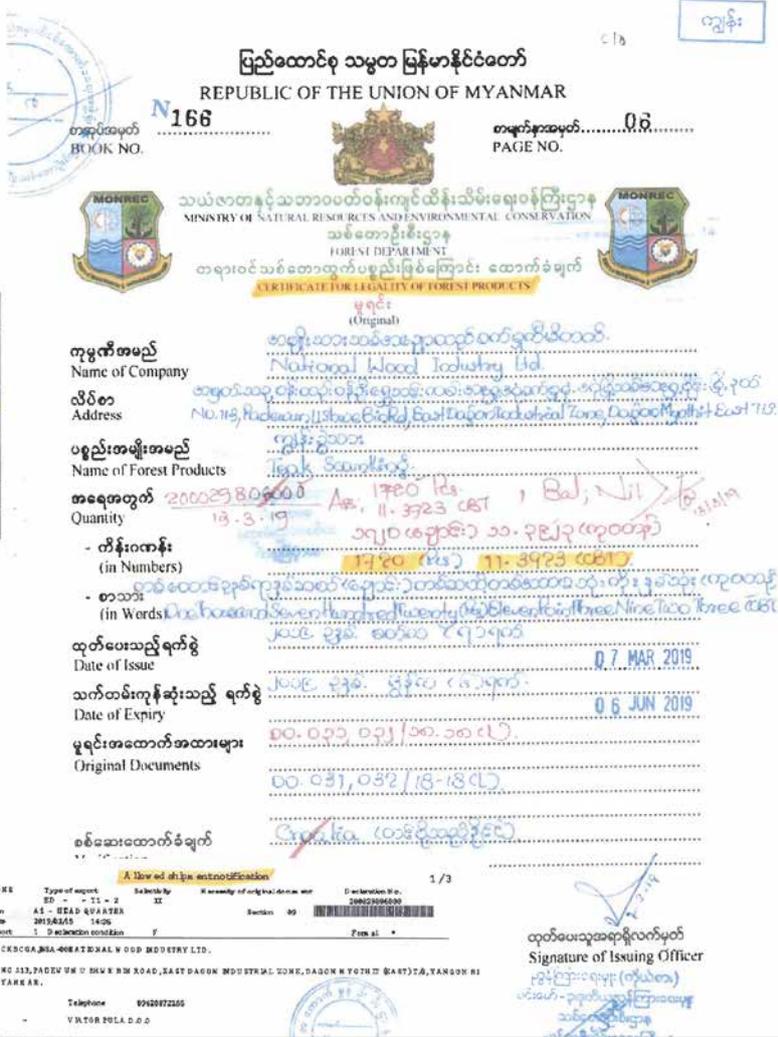
- ensure it has access to information about the timber products and its supply chain;
- evaluate the risk of illegal timber entering the chain;
- adequately mitigate any risk identified so that the risk the timber is illegal is no more than negligible;
- ensure their due diligence system and performance is evaluated on a regular basis.

The challenge in Myanmar, as summarised by the decisions of the FLEGT and EUTR Experts' Group, is that it is not possible for companies to conduct adequate due diligence at present due to poor governance in the country and the insurmountable challenges in proving that timber moving along a supply chain from forest to port is legal. Nevertheless, the companies are trying to get around this.

The documents for all 10 shipments shared by Viator to the Ministry fail to come close to meeting due diligence requirements. Even if it were legally possible for these

companies to import timber, not one of the 10 shipments has the paperwork demonstrating due diligence. The common issues that cut across the 10 shipments include:

- failure to provide documents allowing the Competent Authority to verify legality of the timber (and its products) from forest (e.g. felling permits) to the port (e.g. export licences). In many cases, when documents are provided they are often incomplete (in other words, only one page of a two- or three-page document). This often means that important information is missing, including official seals/stamps and signatures. The failures are compounded by the fact that, in a few cases, the Forest Department reference numbers have been redacted, making it harder to follow the supply chain and verify legality;
- if a company is trying to demonstrate that it has met all requirements of the EUTR, it would not only need to provide all relevant documents but also provide them in a language the Competent Authority can easily understand. Consider the challenges facing the Competent Authority when it is faced with pages of documents in Burmese with no translation. For example, documents provided for one of the shipments total 138 pages, 77 of which are in Burmese with no translation whatsoever. The failure of the companies to support the Competent Authority to do their work is also reflected in the minimal effort to provide clear documentation. It is difficult for the Competent Authority when trying to



was harvesting more than legally permitted and this timber, effectively illegal, was entering the supply chain.

In many cases, the shipments' documentation has been certified by Double Helix, a Singapore-based company. It is not clear what Double Helix's services provide in the case of these shipments as they do not resolve problems of failure to prove chain of custody or legality in the documents. However, Double Helix does present itself as verifying legality; its certificates on the documentation state: "The timber has been harvested from identified forest agencies by Myanmar Timber Enterprise or an authorised contractor. The timber has been legally purchased, processed and exported through the Port of Yangon according to Myanmar regulatory requirements".

In its risk assessments of the companies supplying timber to Viator, Double Helix has recorded the risk of each supplier's timber traceability system as "none". This is despite the reliance of the suppliers on Myanmar Timber Enterprise's own documentation – documentation Double Helix calls into question in other parts of the very same risk assessment.

Double Helix is not acting as the operator for the timber under the EUTR and therefore is not responsible for conducting due diligence for the shipments. That responsibility falls to Viator and it cannot use a verification company to claim it has completed due diligence where the underlying documentation cannot verify legality or a chain of custody. It cannot rely on Double Helix's statements for compliance with the EUTR.

Some European companies are therefore driving illegal logging and the destruction of Myanmar's forests. It is, however, unclear if the fault lies only with them or also with the South-East Asian companies that initially bought the timber from MTE. Some of these South-East Asian companies – namely Cheung Hing & Co, Pacific Timber Enterprise Ltd and Thai Sawat – have come up in previous EIA's investigations into the trade of illicit timber from Myanmar.¹⁶

Additionally, the fault could also lie with Double Helix. It claims, when providing independent third-party verification, that all the shipments meet all the requirements of the EUTR. According to the FLEGT/EUTR Expert Group, the situation for the Myanmar timber trade is exacerbated by "highly paid consultants offering 'traceability docketts' and 'independent third-party verification' for containers with teak, give the exporters the impressions that these docketts are sufficient for their EU clients ... to exercise due diligence properly".¹⁷ Double Helix provided traceability docketts for eight of the shipments and signed off on the other two.

Double Helix is not necessarily the only one giving the wrong impression. Houthandel Boogaardt recently issued a statement in response to the investigation being conducted by the Dutch authorities, claiming it "spares no effort to obtain and process teak from Myanmar only legally and even to provide it with a sustainable PEFC [Programme for the Endorsement of Forest Certification] certificate".¹⁸ This statement would be questionable in any circumstances, as PEFC certification is not available for teak from Myanmar.¹⁹

Above: Some of the documents shared by the Croatian Ministry of Agriculture to EIA

guess at the text hidden by paper folds or trying to decipher the unclear handwritten text. This returns us to the statement made by the Experts' Group regarding the

inability of the importer to access information to apply their due diligence system in accordance with the EUTR and lack of opportunity to verify the authenticity of the documents and legality of the timber;

- there are questions regarding the change in value of the timber products from the customs check in Yangon port to customs in Rijeka. In one case, the change in value is more than 300 per cent.
- anomalies were also found in some of the shipments regarding the actual contents. All international shipments use 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. In many of the shipments, the HS codes changed, as with the value, between the customs check in Myanmar (HS Code 4418) and customs in Rijeka (HS Code 4407);
- an additional concern that cuts across the shipments is when the trees were harvested. According to the documents seen by EIA, many of the teak trees were felled before the logging ban of 2016-17. This is significant for various reasons, the most notable being that in many of the years preceding Myanmar's logging ban, the State-owned Myanmar Timber Enterprise (MTE)



Above: Warehouse owned by Pacific Timber (2018) which supplied teak to HF Italy

EIA has now seen the certification used by Boogaardt for two shipments sourced through Viator; both contain the flaws mentioned above, meaning they do not adequately verify legality. Neither shipment includes any PEFC documentation.

In addition to the EUTR, within the Netherlands the Dutch Advertising Code prohibits statements or suggestions that may mislead consumers concerning environmental aspects of products.²⁰ If the documentation presented by Viator is a good example of the kind of documents relied on by Boogaardt, then its statements as to having legal Myanmar teak and sustainable certification appear to be misleading.

Crown Teak states on its website that: "Through a permanent presence and by participating in the monthly bidding process of the teak parcels auctioned by the government and the national forest authorities, we play a decisive role in the teak-wood business."²¹

Vandecasteele Houtimport has its own Corporate Sustainability Charter in which it claims it "will carry out risk assessment of all suppliers and supplies of wood to evaluate the risk that the material or products being sourced originate from an illegal source or have been illegally traded" and that "we will carry out appropriate risk mitigating actions to avoid any potential risk."

These claims about extensive risk assessment and heavy involvement in sourcing timber appear to be contradicted by the companies' actions relying on Viator Pula to act as the operator under the EUTR.

EIA has contacted the European timber companies named in this briefing and given them the opportunity to respond to the allegations.

Igor Popović, of Viator Pula, responded that it was inspected by the Croatian competent authority three years ago and no missing documents were found. He acknowledged the inspection in February 2020 and that the firm "got a so-called corrective action request" and wrote that when it has addressed it "our CA can come to no other conclusion than that that we acted in conformity with the EUTR."

Boogaardt, Vandecasteele Houtimport and HF Italy stated they were not acting as operators under the EUTR and so its due diligence obligations did not apply to them. Vandecasteele stated that the shipment it received was not questioned by the Croatian authorities.

WOB Timber stated that it "strongly reject[s]" EIA's allegations, while Boogaardt and Vandecasteele rejected allegations that they were circumventing the EUTR by sourcing timber through Viator.

Boogaardt further stated: "Boogaardt is the only company in Europe that is spending quite some efforts and money to development [sic] a solid (controlled sources) certification system together with PEFC for Teak from Myanmar".

Crown acknowledged receipt of EIA's letter but did not respond to the allegations "due to the current chaos created by the Coronavirus".



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Going forward

The EUTR relies upon Member States enforcing the law where operators within their jurisdiction are not complying. This means the most important action that could be taken in this case is by the Croatian Ministry of Agriculture in enforcing the law against Viator Pula. In conducting the check on 14 February and issuing an order to Viator to come into compliance with the EUTR, the Croatian CA has made a crucial first step in enforcement.

On 20 August 2020, Viator will reach a deadline for correcting its due diligence system for four of the shipments. Given the repeated Europe-wide findings that it is not possible to have an adequate due diligence system for Myanmar teak, EIA expects Viator will not be able to show adequate due diligence for its timber. According to the Croatian implementing legislation, this will enable the CA to refer the company to the Ministry of Customs for interim measures to be taken, which can include seizures of timber or prohibitions on marketing of timber or timber products.²²

It would be consistent with actions taken by other countries for there to be confiscations of timber or orders preventing future placements of teak on the market in Croatia.²³

Although the enforcement action by the Croatian authority is a welcome step, this EUTR circumvention scheme highlights problems within the regulatory framework and the need for improvements. The Croatian implementing legislation, as recently amended, does not allow the authority to fine companies violating the EUTR's due diligence provisions,²⁴ meaning that Viator and Mr Popović will be allowed to keep all the profits from their role enabling the scheme.

In addition, as the other companies involved did not act as operators, they are not subject to the EUTR and therefore cannot be penalised. This does not have to be the case – many criminal offences can also include other participants who have aided or incited an offence or who participate as part of a conspiracy. In some countries, EUTR implementing laws provide for these other participants to be culpable as well as the operator.²⁵ However, many countries, including Croatia, do not. As operators try to shift supply chains to avoid EUTR enforcement, penalties for EUTR breaches may need to change to capture this behaviour. This would require changes to implementing legislation to ensure these “participant offences” are included.

The action taken by the authority in Croatia should prove it is not a country with weak enforcement and prevent it being targeted as a landing point for high-risk timber. However, other countries will probably continue to be targeted. Significant quantities of Myanmar timber still appear to be landing in Greece and Italy.²⁶ And competent authorities in those countries need to ensure they are enforcing the EUTR against operators with inadequate due diligence systems.

If the EU fails to strengthen the enforcement of the EUTR, the efforts in countries such as Myanmar will continue to be undermined by European companies, their facilitators in South-East Asia and the owners of luxury yachts.

Top: The Croatian Ministry of Agriculture is responsible for enforcing the EUTR in Croatia

Recommendations

To timber traders in Europe:

- Ensure that all suppliers in Myanmar are fully aware of what is required under the EUTR, including the due diligence regime. Full compliance with the EUTR should be confirmed, regardless of whether they are acting as operators for the timber or not.

To European competent authorities:

- Continue to enforce against all operators placing Myanmar teak on the European market
- Ensure attention is also focused on other countries supply of high risk timber
- Where possible, enforce against companies participating in schemes to circumvent the EUTR and impose penalties that are effective, proportional and dissuasive to ensure operators are properly disincentivised from continuing to break the law
- Amend implementing legislation to capture participants in schemes to breach the EUTR, including those inciting, aiding or conspiring in breaches.

To the Government of Myanmar:

- With support from consuming countries, work toward reform in the forests, building a national coalition which defines legality. This must include civil society, indigenous communities and communities relying upon forests for their livelihoods
- Create a more transparent system of enforcement results. This should include information on species seized.

ACKNOWLEDGEMENTS

This report was written and edited by the Environmental Investigation Agency (EIA). This document has been produced with the financial assistance of the Norwegian Agency for Development Cooperation (NORAD) and the Department for International Development (DFID) (UKAid). The contents are the sole responsibility of EIA.

EIA expresses its gratitude to the individuals who have contributed to this report and who for many reasons must remain anonymous.

ABOUT EIA

We investigate and campaign against environmental crime and abuse.

Our undercover investigations expose transnational wildlife crime, with a focus on elephants and tigers, 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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4. In coordination with some companies in Myanmar.
5. The Ministry of Agriculture is the designated "competent authority" for the EUTR in Croatia.
6. Data obtained from Eurostat Comex.
7. A total of 115.9 tonnes of timber were imported from Myanmar into Croatia from January to July 2018, more than in any previous year since 2013 (when the EUTR came into force) but less than in the single month of November 2018.
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18. <https://www.boogaerdthout.nl/bericht/statement-onderzoek-teak/> (translated from Dutch). PEFC is a scheme that aims to provide certification for sustainable timber.
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20. https://www.reclamecode.nl/wp-content/uploads/2018/10/SRCNRCENboekje_oktober2017.pdf
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22. As set out in Article 10 of the EUTR.
23. These steps were taken in Germany and the Netherlands, for example.
24. <https://www.zakon.hr/z/1011/Zakon-o-provedbi-uredbi-Europske-unije-o-prometu-drva-i-proizvoda-od-drva>
25. For example, under Belgian law if a party causes a breach of the EUTR by "gifts or promises" they are also responsible for the breach.
26. According to data from Eurostat Comex, 634.4 tonnes of timber from Myanmar landed in Italy in January 2020, while in the same month 55.7 tonnes of timber from Myanmar landed in Greece.

