

Enforcement (Wood Trade Protection Act of 11.07.2011, Federal Law Gazette I 2011, p. 1345, as amended by Article 1 of the Law of May 3, 2013, Federal Law Gazette I 2013, p. 1104) and Regulation (EU) (EC) No 995/2010 of the European Parliament and of the Council of 20 October 2010 on the obligations on operators placing timber and timber products on the market (ABI. L 295, 12.11.2010, p.23)

Az.: 222-04.10-822
Bonn, 21.03.2017
Seite 1 von 4

Servicezeiten:
Montag bis Donnerstag:
9 Uhr bis 12 Uhr und 13 Uhr bis 16 Uhr,
Freitag: 9 Uhr bis 14 Uhr

Order

The order is being issued for all future supplies of timber or timber products from **Myanmar**, which are covered by the scope of Regulation (EU) No 995/2010, with regard to the risk assessment procedure pursuant to Article 6 (1) (b) and the risk mitigation procedure pursuant to Article 6 (1) (c) of Regulation (EU) No 995/2010 as parts of the due diligence system according to Article 6 of Regulation (EU) No 995/2010 to follow the undermentioned procedure:

- In addition to the usual federal documents of Myanmar Timber Enterprises, MTE, you also have to provide proofs for the import of wood and timber products from Myanmar, which prove the region of harvest. These proofs can be made, for example, by means of hammer markings and transport documents, which prove the transport of the logs from the harvesting region to the auction site (logyard).
- In addition, certification or verification by third parties are required, in order to reduce the risk of the material being illegally logged.
- In cases where the conclusion of a non-negligible risk after having carried out a proper risk assessment according to Article 6 (1) (b) of Regulation (EC) No 995/2010 is found, appropriate risk-mitigating measures shall be taken, according to Article 6 (1) (c) of that regulation.

Justification:

I.

According to the information available to the Federal Institute for Agriculture and Food (herein after "Bundesanstalt" or "BLE"), you have imported products of wood or timber

Anträge oder Rechtsbehelfe müssen auf dem Postweg, per Telefax, über info@ble.de versehen mit einer qualifizierten elektronischen Signatur oder über info@ble.de-mail.de durch De-Mail in der Sendevariante mit bestätigter sicherer Anmeldung übermittelt werden.

Andere E-Mail-Adressen stehen nur für die allgemeine Kommunikation zur Verfügung, über sie ist kein elektronischer Rechtsverkehr möglich.

products from Myanmar in 2015 (the customs evaluation for the year 2016 is not yet available to the BLE).

In particular, imports of virgin forest teak have long been in the discussion related to corruption, illegal logging, deforestation and the need for reforms. Since the entry into force of the European Timber Trade Regulation (Regulation (EU) No 995/2010 = EUTR) in March 2013, importing operators must demonstrate in the framework of a due diligence system that the risk, the timber could originate from illegal logging, is negligible when importing timber or timber products from outside the EU.

Depending on the country of origin of the wood and respectively the corruption index of the country of origin, the risk assessment to be carried out by the operator must meet correspondingly high demands.

BLE has used information, studies and reports to examine imports from Myanmar against the background of the requirements of the EUTR. In the context of tests on several imports of teak wood, it was found that no import has so far fully complied with the requirements of Article 6 of the EUTR.

Despite the documents presented by the importers, some of which are very extensive, on the basis of documents, in particular from MOECAAF, MTE, MFPMF and MTMA, we have found that all deliveries and the according documentation only begin with a purchase contract with the MTE, which is the place of the auction.

Importers have not yet been able to produce documents which would allow the tree trunks to be connected to the harvesting region. There were, in particular, no transport documents covering the transport from the logging area and no list of the logging marks (hammer markings) by means of which the imported delivery could be assigned to a specific impact region.

Pursuant to Article 6 (1) (a) (2) (i) EUTR, the due diligence procedure is the knowledge of the country of harvest. In accordance with Article 3 (3) of Regulation (EU) No 607/2012 on the detailed provisions on the due diligence system and the frequency and type of checks carried out by the monitoring organizations, pursuant to Regulation (EU) No 995/2010, it is to provide the region of the country where the wood has been felled, if the risk of illegal harvesting differs in the regions of a country.

As reported by different sources (eg. Nepcon, EIA or the "Illegal Logging Info" portal), the risk of illegal wood harvests within the regions of Myanmar is assessed as differently high. As a result, the existing state documents, which certify that the wood is legal, are not sufficient to prove legal harvest. The documents proving that the wood has been transported from the auction site to the processor under the supervision of MTE are neither sufficient.

In order to fulfill the due diligence, the importer is required to provide proof of the provenance of a specific region or region of harvest. This can be done, in particular, by means of corresponding transport documents, which document the transport of the logs from the harvest region, as well as by means of evidence of existing hammer markings on the tree trunks or trunks.

If such proofs can not be submitted for imports of wood or wood products, this must be regarded as an infringement of Article 6 (1) (a) (2) (i) EUTR which may be punished by BLE in accordance with the provisions of the German Wood Trade Protection Act.

Due to the high risk of corruption in Myanmar, there is a not inconsiderable risk that government agencies issue documents against the granting of an advantage, without their content being in accordance with actual circumstances.

In the context of the due diligence, the corruption index (for example in the form of the CPI of Transparency International) must also be taken into account when assessing the credibility of documents. For the risk assessment to be carried out within the framework

of the due diligence system, the conclusion must be drawn that the presence of exclusively governmental documents is not sufficient to prove the legality of the origin of wood or timber products.

Therefore, further evidence such as e.g. the additional presence of certification or verification by third parties is necessary.

II.

The legal basis for the order is the provisions of Sections 2 (1), 1 (1) HolzSiG in connection with Article 10 (5) of Regulation (EU) No 995/2010.

Pursuant to Section 2 (1) of the HolzSiG, the BLE takes the necessary directives and measures to establish infringements of the legal acts referred to in § 1 (1) HolzSiG, the removal of identified violations or the prevention of future violations.

The legal acts listed in § 1 para. 1 HolzSiG are Regulation (EU) No. 995/2010 as well as the supplementary and implementing provisions adopted for this purpose by the Council and the European Commission.

Pursuant to Article 10 (1) of Regulation (EU) No 995/2010, the competent authorities shall carry out inspections to verify that market participants comply with the requirements laid down in Articles 4 and 6 of the abovementioned Regulation. Pursuant to Article 10 (3) of Regulation (EU) No 995/2010, the checks referred to in paragraph 1 may include, inter alia, an examination of the due diligence procedure, including risk assessment and risk mitigation procedures, an examination of records and records with which the proper functioning of the due diligence system is demonstrated and procedures and sampling, including on-the-spot checks.

Pursuant to Article 10 (5) of Regulation (EU) No 995/2010, the competent authority may order measures to be taken if deficiencies have been discovered in the inspections. BLE is the competent authority in accordance with Section 1 (2) HolzSiG. Pursuant to Article 4 (2) of Regulation (EU) No 995/2010, operators shall exercise due diligence when placing timber or timber products on the market. To this end, they shall apply a system of procedures and measures ("due diligence"), which is detailed in Article 6 of Regulation (EU) No 995/2010. According to Article 6 (1) (b) of Regulation (EU) No 995/2010, the due diligence system referred to in Article 4 (2) of Regulation (EU) No 995/2010 contains risk assessment procedures, that allow the operators to analyze the risk whether wood or timber products that derive from illegal logging are or will be marketed. These pro

cedures shall take into account the information referred to in Article 6 (1) (a) of Regulation (EU) No 995/2010 as well as relevant risk assessment criteria such as:

- assurance of compliance with applicable legislation, for example through certification or other arrangements audited by third parties which include compliance with applicable legislation,
- the frequency of illegal logging for specific species,
- the frequency of illegal logging or illegal practices in the field of logging in the country and / or in the region of the country where the timber was harvested, including the frequency of armed conflicts,
- Penalties imposed by the United Nations Security Council or by the Council of the European Union for the importation or exportation of wood,
- Complexity of the supply chain of wood and timber products.

Under Article 6 (1) (c) of Regulation (EU) No 995/2010, except where the risks identified in the risk assessment procedures referred to in point (b) are negligible, risk mitigation procedures are appropriate in the form of a package of measures and procedures to limit such risks as far as possible in an effective manner. Additional information or documents and / or a review by third parties may be required.

Pursuant to Article 5 (1) and (2) of Implementing Regulation (EU) No 607/2012 (OJ L 177, 07.07.2012, p. 16), information on deliveries by market participants pursuant to Article 6 (1)) of Regulation (EU) No 995/2010 and the application of risk mitigation procedures by means of appropriate records are to be kept for five years and made available to the competent authority for control purposes.

Market participants must be able to demonstrate how the information gathered in the application of their due diligence system is based on the risk criteria in accordance with Art. Article 6 (1) (b) of Regulation (EU) No 995/2010, a decision on risk mitigation measures has been taken and how the market participant has determined the extent of the risk.

The adoption of the order and the selection of the necessary measures are at the discretion of the BLE. Pursuant to Sections 2 para. 1, 1 para. 1 HolzSiG along with Article 10 (5) of Regulation (EU) No 995/2010 provides that the BLE may take such measures as it deems necessary in its absolute discretion. The arrangement is necessary in the public interest. It is necessary to ensure implementation of the provisions of Regulation (EU) No 995/2010 on the application of a due diligence system by the company as a market participant.

For effectively combating illegal logging it is required that operators take appropriate measures to ensure that illegally harvested timber is not placed on the market; For this purpose, they must apply due diligence. In order to enforce the provisions of the HolzSiG and Regulation (EU) No 995/2010, the measures ordered constitute a proportionate measure.

The adoption of this order is necessary in the present case in order to take account of the special circumstances relating to the importation of timber and timber products from Myanmar.

The implementation of this arrangement will be checked in the course of an examination by the BLE in due course.

Legal appeal

An appeal may be lodged with the Bundesanstalt für Landwirtschaft und Ernährung within one month after notification. The following options are available:

1. written [...]
2. electronically [...]

Im Auftrag

Jörg Appel