

Timber Legality Risk Assessments

Exploring the results and lessons



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Introduction

There are laws in place in Europe, Australia and the US that require companies who buy timber to know their supply chain, and to take steps to avoid buying timber that may have been illegally logged. This process is called 'due diligence'.

'Due diligence' means taking reasonable care to avoid a negative outcome. For timber, this means minimising the risk that you are placing timber on the market that was harvested, transported or traded illegally in its country of harvest.

Over the past four years, we've conducted a detailed analysis of the risks associated with sourcing illegal timber from over 60 countries and published our findings on the [NEPCon Sourcing Hub](#). The *Timber Legality Risk Assessments*, and other tools found on the Sourcing Hub, are designed to help companies to carry out due diligence.

From this process we've learnt that – whilst each individual risk assessment is unique to the local context – there are many similarities and

patterns, along with a few interesting outliers. This article highlights some of the key findings from our analysis of this body of work.

What are the risk assessments?

The *Timber Legality Risk Assessments* analyse the risks associated with five categories and 21 sub-categories of laws that relate to the question of legal/illegal timber. Below (Figure A) is a brief overview of this legality framework. These 21 sub-categories cover the scope of the definitions for legal/illegal timber contained in the EU [Timber Regulation](#), the US [Lacey Act](#) and the Australian [Illegal Logging Prohibition Act](#).

For each sub-category, we analyse the risk that the law is either not complied with or not enforced. We designate the sub-category as *low risk* in countries or regions in which the law is generally complied with and enforced; or *specified risk* where the law is either not complied with or not enforced, or when we believe that risk is not negligible. For countries without laws for a particular sub-category, the indicator is considered non-applicable.



Figure A: An overview of the Timber Legality Risk Assessment framework

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Overview of key findings

Our risk assessments cover 89% of global timber export by value¹ and 84% of the global forest area². Whilst there is a fairly even split between the number of indicators evaluated as low versus those considered specified (excluding non-applicable indicators (see Figure B)), this distribution is, unsurprisingly, not mirrored when looking at countries (see Figure C).

Figure B. Percentage of low vs specified risk indicators across all countries assessed (excluding the non-applicable indicators)

Figure C. Percentage of low risk countries vs countries with at least one specified risk (to be considered as low risk a country shall be evaluated as low risk across all applicable indicators)

Of the 61³ countries assessed, 17 countries were evaluated as low risk for all indicators – meaning that we consider that the risk of sourcing

illegal timber from these countries is low. While these countries account for 43% of the world's trade in timber by value¹, they account for only 12% of global forest area².

For the remaining 44 countries, we found at least one area of risk, i.e. for at least one indicator or sub-category, we determined that a law is either not complied with or not enforced and concluded specified risk. These countries account for a similar proportion of the world's trade as the low risk countries, at 46% of the world's trade in timber by value, but a much higher proportion of the global forest area, at 71%.

The 30 highest risk countries account for approximately 18% of global trade by value¹ and for 53% of global forest area².

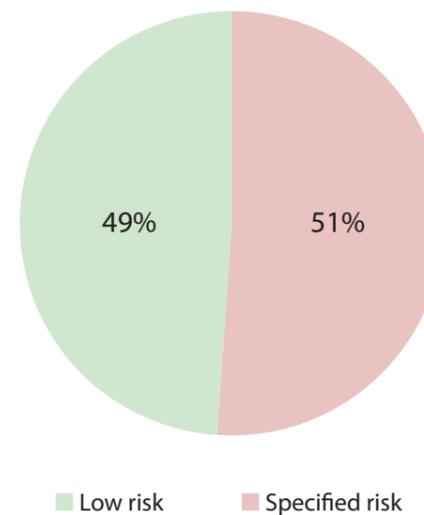


Figure B. Percentage of low vs specified risk indicators across all countries assessed (excluding the non-applicable indicators)

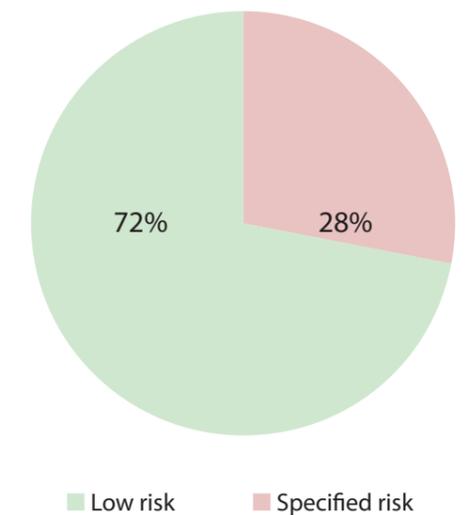


Figure C. Percentage of low risk countries vs countries with at least one specified risk (to be considered as low risk a country shall be evaluated as low risk across all applicable indicators)

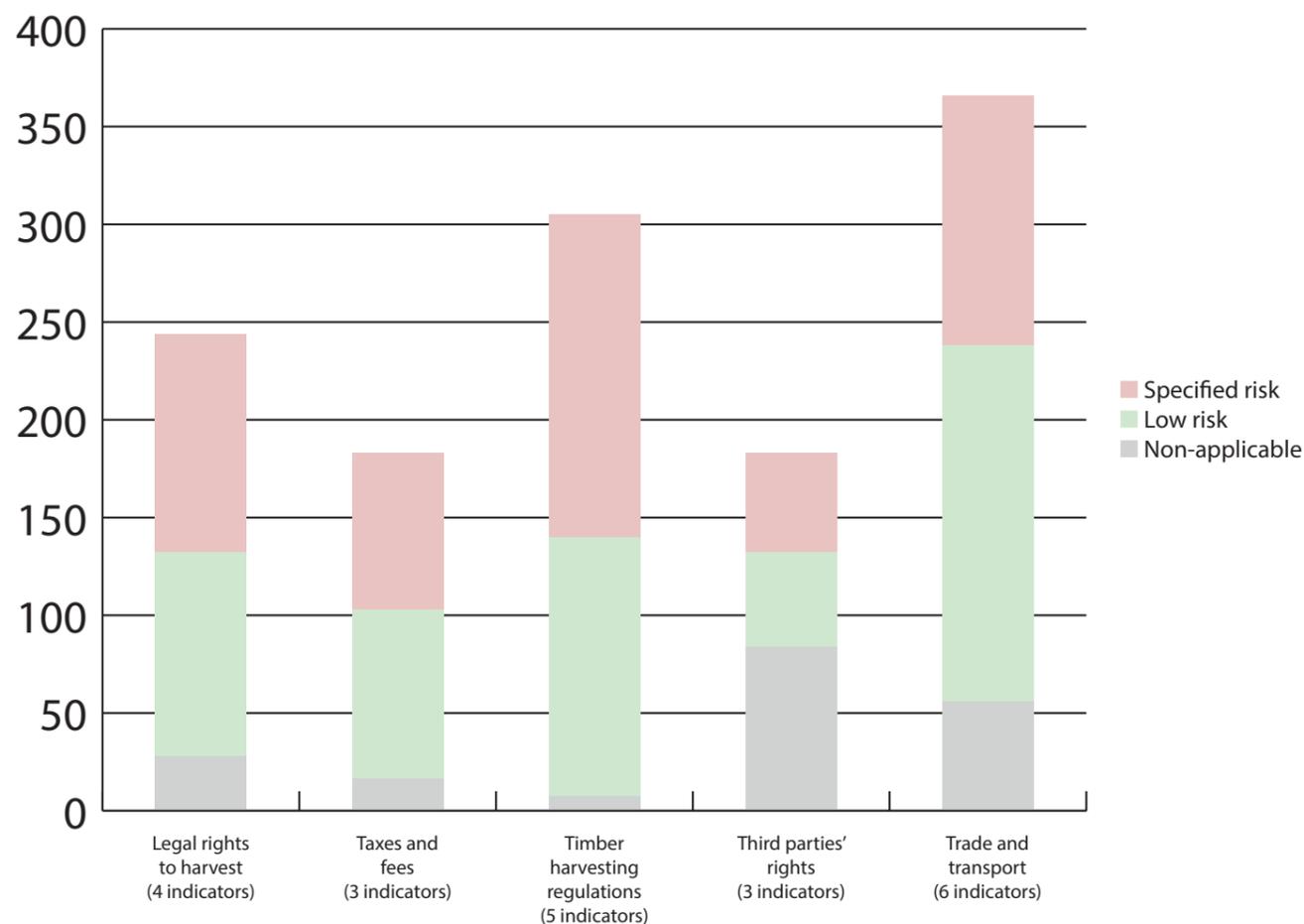


Figure D: Distribution of risks across the five categories and 21 sub-categories (indicators)

2.1 Good compliance with CITES

The above chart (Figure D) shows how the risks are distributed across the sub-categories: for example, CITES (Trade and transport) is most commonly determined as low risk; indigenous peoples' rights (Third parties' rights) are most commonly classified as non-applicable; and health and safety (within the Timber harvesting regulations category) is commonly determined as specified risk.

According to our analysis, the indicator most consistently determined as low risk across all 61 countries is indicator 1.20 CITES (also known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora).

CITES is an international agreement that specifies how or if rare and endangered species of plants and animals can be traded internationally. It's a system that works via permits. Some species are not allowed to be traded commercially at all, whereas others can be traded if they have the relevant permit. You can learn more about CITES in our article [A practical guide to CITES for EU timber traders](#).

This indicator falls under the Trade and transport category. It reflects the risk of the laws regulating the trade of CITES-listed species being broken, or not being effectively monitored and enforced. Forty countries were determined as low risk for this indicator.

What are the common risks?

We identified 21 countries where there is a risk of violation of the CITES trade regulations. Technically timber species with a CITES permit are exempt from the due diligence requirements of the EUTR but, for these countries, we recommend a precautionary approach.

The two most common risks associated with CITES are:

- Misclassification/ species substitution: CITES-listed species may sometimes be passed off as a related, similar-looking but non-CITES-listed species. For example, CITES-listed African teak (*Pericopsis elata*) is sometimes intentionally mislabelled as iroko (*Milicia excels*).⁴ This risk was specifically noted in our risk assessments for Argentina, Gabon, Honduras, Peru and Central African Republic, but has also been encountered elsewhere. Read [our article on use of laboratory techniques](#) to help determine the species (and geographical origin) of timber;
- Illegal harvesting of CITES-listed species which are ultimately traded without the required permits. This risk was specifically noted in our risk assessments for Colombia, Laos, Malaysia, Mexico and Myanmar. You can request that CITES permits are provided by suppliers to check that these documents are not forged. [Cites and Timber \(RBG, Kew\)](#)⁵ will help you check if a permit has been completed correctly, whilst our article on [Fake documents](#) may help you detect a fake.

2.2 Risks for indigenous people: Where legislation exists, it's at risk of non-compliance

Based on our analysis, the indicator most consistently assessed as specified risk is related to indigenous peoples' rights (1.15). Within the group of 28 countries that has applicable legislation, 18 (about 64%) were determined as specified risk. The indicator here refers to legislation that regulates and/or recognises the

rights of indigenous and/or traditional people in relation to forestry activities; and, among possible aspects to consider, are land tenure, and the right to use certain forest-related resources or practice traditional activities that may involve forest lands. We concluded ten countries as low risk while 33 countries had no legal requirements relating to indigenous and third parties' rights.

Mostly, the risks are related to indigenous peoples losing access to the forests they have traditionally used for hunting, fishing, gathering non-timber forests products or for spiritual reasons when forest concessions are allocated. In many cases, the loggers move in before the people realise the area has even been leased to a company. This is common in Latin America and Asia.

However, this is also one of the indicators applicable in the fewest countries (second after indicator 1.14, free, prior and informed consent) with 33 countries having no legal requirements relating to indigenous peoples' rights.

While the high levels of risk relating to indigenous peoples' rights is interesting in and of itself, it is also interesting to consider the 33 countries where there are no requirements in place to protect indigenous peoples' rights. We compared the list of 33 countries without legal protections for indigenous people, with the list of nations where (according to the International Work Group for Indigenous Affairs) indigenous people are present. Five countries – Laos, Cameroon, Chile, Vietnam, and South Africa – in which indigenous people are recognised as residing, do not currently have laws in place to explicitly protect the rights of those indigenous people.

For risks related to indigenous peoples' rights, the risk mitigation actions almost always require consultation with people in the country, including but not limited to, indigenous associations, governments or local communities, says NEPCon Responsible Sourcing Specialist, Leticia Calvo Vialettes. "In many cases, it is necessary to check if an agreement or contract exists between the indigenous community and other parties."

Responsible Sourcing Specialist, Ditte Steffensen notes that there is a lot of information about the legal requirements concerning indigenous communities as well as violations against them. "This is due to the existence of many interest groups for third parties' rights." Knowledge of these requirements is essential for compliance with the EUTR, but it needn't be daunting, the key information has been summarised on the Sourcing Hub.

2.3 Flouting safety laws: A widespread practice

When considering the more widely applicable areas of law, we found that indicator 1.11, which is related to health and safety within timber harvesting activities, is most frequently at risk of being violated. For this sub-category, we concluded 37 countries as specified risk and 24 as low risk.

The most common problem is the lack of use of Personal Protective Equipment (PPE) by forest workers. Either workers are not provided with it at all, or are provided with sub-standard PPE, and/or they are not trained how to use it. In many cases, the workers have the equipment but just do not use it. This problem is noted across the globe, occurring in every continent. "A lot of risks are similar in many countries and the violation of PPE requirement is a good example of this," says Steffensen.

You can take measures to mitigate the risks. Here are some potential mitigation measures:

- Obtain and verify health and safety-related documents. Although these documents may vary by country, they commonly include health and safety procedures, training and accident records and, in some cases, official inspection reports or certificates. The response to a request for relevant documentation will be a reflection of what is happening on the ground: if the documents are complete, recent, and free from ambiguities, it is more likely that things are taken seriously on the ground, too. Since the documents may differ from country to country, details on the relevant country page on [NEPCon's Sourcing Hub may be helpful](#). Our article on [Fake documents](#) can help you to detect forged documents;
- Consult all relevant stakeholders to verify that workers were provided with PPE as well as appropriate training to ensure its proper use;

- Conduct on-site inspections to confirm that PPE is used during harvesting operations. Through on-site visits, including observing practices and consulting workers, you can verify whether the documentation reflects reality.

It is impossible to know whether workers used PPE whilst cutting down a particular tree, but reasonable steps can be taken to ascertain whether the responsible organisation is committed to complying with health and safety legislation.

It is worthy of note that some larger companies are incorporating such checks into their annual supplier visits whilst smaller companies are turning to certification. Compliance with health and safety laws is covered by the two global forest certification schemes, FSC and PEFC. For more information on certification and due diligence see our webpage <https://www.nepcon.org/sourcinghub/info/certification-and-due-diligence>.

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In a nutshell: Lessons learned

Initially, risk assessment may seem like a complex process as there are multiple factors to take into consideration, says NEPCon Deputy Director of Responsible Sourcing, David Hadley Garcia. "However, it becomes more straightforward, the more familiar you are with your supply chains and the countries through which they pass. You become more adept at pin pointing what the risks are and what could mitigate them.

"There's almost always a solution to tackle the risks when a company makes a commitment to do so. Often, the most interesting – and cost-effective – ones only become clear when the risk is fully understood.

"In my view, although many countries have well-written laws and regulations, they may lack the infrastructure or proper resources to implement and enforce them," he says.

On a separate note, Steffensen says there's a need for greater transparency in some countries. "A problem encountered with many of the countries that have multiple risks is the lack of information. Often, the only publicly available information is reports from NGOs which focus on large-scale timber theft and corruption. Many of these countries do have legally operating concessions too, yet their governments publish very little about them and there's almost no information about their monitoring, enforcement and other related activities that is publicly accessible.

"In cases where such information is lacking, we need to take a precautionary approach.

"A common example we see is with environmental legislation, where reports of violations are often vague. When you can't specify what the risk is, such as, *loggers*

disregarding buffer zones, then the mitigating action become general too and companies conducting due diligence will have to ensure all relevant environmental legislation is complied with."

Calvo Vialettes says she learned the importance of law and how challenging interpretation of law can be. "I found that many of the same or similar problems were detected across many countries. For me, transparency of the governments in their efforts to improve the management of natural resources is crucial.

"It's also interesting to learn the impact that small changes to laws can have on supply chains. I also learned that stakeholder power is important, and through this process, I was happy to be involved and to consult with stakeholders that provided us with different points of view."

For NEPCon Sourcing Hub Programme Manager, Alexandra Banks, the biggest lesson is the importance of conducting open, unhurried and thorough stakeholder consultation.

"We have used different approaches to engage with stakeholders across the 61 countries assessed, to elicit their input to be included in our reports. Some of the most successful stakeholder consultations took place in countries for which we had the resources to travel, as we have had the time to talk to different people and listen to their experiences and thoughts on the issues in question.

"Moving forward, I am confident we can take these lessons learned to our next phase of development and revision of the risk assessments. I am grateful for the opportunity to have met with and learned from many experts around the world."

Banks also believes that reliable information is the foundation on which to build a good due diligence system, and the strength of a due diligence system is its ability to incorporate and use information that will change from time to time.

“We developed the Timber Legality Risk Assessments to create a volume of credible risk information, which people could use to build their due diligence systems. We are aware of our responsibility to manage the risk assessment data in the future, and to ensure that it is up-to-date. That is a challenge, but we are tackling it with the use of innovative technology and relationships with stakeholders globally.

“We would do things differently at the beginning of this project if we were aware of what we now know. For example, we would create a more agile mechanism for storing our risk data. Nevertheless, I am proud of the work we have done and it’s a great privilege to be involved in this project.”

¹ FAO STAT, Forestry Production and Trade Data, 2016, <http://www.fao.org/faostat/en/#data/FO>

² The World Bank, Forest Area, 2015, <https://data.worldbank.org/indicator/AG.LND.FRST.K2>

³ NEPCON has conducted evaluations for 62 countries. We have not published the risk assessment for Indonesia as there are no due diligence requirements for timber exports from Indonesia to Europe under the FLEGT VPA.

⁴ Deklerck V, Finch K, Gasson P, et al. Comparison of species classification models of mass spectrometry data: Kernel Discriminant Analysis vs Random Forest; A case study of *Afrormosia* (*Pericopsis elata* (Harms) Meeuwen). *Rapid Commun Mass Spectrom*. 2017; 31:1582–1588. <https://doi.org/10.1002/rcm.7939>

⁵ The Royal Botanic Gardens, Kew, CITES and timber: a guide to CITES-listed tree species, 2016, https://www.kew.org/sites/default/files/Cites_and_Timber_ed2016_16Dec2016_1.pdf

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About Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint initiative run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint initiative is funded by the LIFE Programme of the European Union and UK Aid from the UK Government.



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