



The EU-Japan Free Trade Deal: a threat to the fight against illegal timber?

“

The deal is likely to increase threats to the world's forests, while sabotaging the EU's own attempts to combat them.

Introduction

For many, the free trade deal the European Union agreed with Japan on July 17, 2018 marked the return of stability to a fractured world.

“Politically, it’s a light in the increasing darkness of international politics,” said Donald Tusk, European Council President. “We are sending a clear message that you can count on us. We are [...] predictable and responsible and will come to the defence of a world order based on rules, freedom and transparency.”

The message couldn’t have been clearer: at a time of Brexit and Trump – of protectionism, emerging trade wars and demagoguery – the world’s largest bilateral trade deal was a step away from the chaos threatening the international order.

With the EU also in the throes of negotiating a raft of other free trade agreements, including with Indonesia, Singapore, Mexico, New Zealand, and the Mercosur bloc – Argentina, Brazil, Paraguay and Uruguay – the deal was interpreted as a sign of “a more assertive Europe” whose leaders are voicing “ever more confident rhetoric” in favour of free trade.

Participation of Jean-Claude Juncker, European Commission President at the EU-Japan Leaders’ Summit.

Photo: Etienne Ansotte



Action against Illegal Timber on the cargo ship Byisk, which is transporting logs (suspected to be illegally logged) from Russia to Japan.
Photo: Vadim Kantor / Greenpeace



Yet while moves towards genuine international cooperation in the current climate are surely welcome, the EU's new free trade deals – and the areas where they are likely to cause damage – must be scrutinised and challenged.

In the case of the EU-Japan Free Trade Agreement, which will eliminate nearly all tariffs between the partners, the deal's impact on efforts to halt illegal logging and the trade in illegal timber remains an area of deep concern. Tariffs on all wood products will be removed, with most dropped immediately.^{1,2}

Early warning

Serious misgivings about the deal were widely aired in June 2017, when 205 pages of previously undisclosed chapters of the draft deal were leaked to Greenpeace Netherlands.

They revealed, as Greenpeace showed, the failure of the European Commission and European governments to stick to either their own commitments on transparency, or to promote high environmental standards through trade

¹ “Tariffs on more than 90% of the EU's exports to Japan will be eliminated at entry into force of the economic partnership. Once the agreement is fully implemented, Japan will have scrapped customs duties on 97% of goods imported from the EU (in tariff lines), with the remaining tariff lines being subject to partial liberalisation through tariff rate quotas or tariff reductions. This, in turn, will save EU exporters around €1 billion in customs duties per year.” See: http://europa.eu/rapid/press-release_MEMO-18-3326_en.htm

² “Tariffs on all wood products will be fully eliminated, with seven year staging for the most important priorities. Most tariffs on wood products will be dropped immediately, with some less important tariff lines being scrapped after ten years.” See: http://europa.eu/rapid/press-release_MEMO-18-3326_en.htm

policy.³ The provisions on timber particularly alarmed Japanese and European NGOs.⁴

The central problem was the lack of robust or enforceable commitments to stop the cross-border trade in illegally logged timber.⁵

The draft text said that the parties should “contribute to combatting illegal logging and related trade”. However, it placed Japan's feeble voluntary measures on par with the mandatory EU Timber Regulation (EUTR), by encouraging the trade in timber and timber products “in accordance with the laws and regulations in the country of harvest”.⁶ Implied within the draft text was that the EUTR and the Clean Wood

³ Research gathered under Freedom of Information laws by Corporate Europe Observatory show that between January 2014 and January 2017, the European Commission's trade department (DG Trade) had 213 closed-door meetings with lobbyists to discuss the negotiations. 190 of those meetings (89%) were with business lobbyists while only nine (4%) were with public interest groups like NGOs, farmers' unions and consumer groups. See: <https://corporateeurope.org/international-trade/2018/05/jefta-exclusive-trade-between-eu-negotiators-and-big-business>

⁴ See also for instance: WASABI: Analysis of selected texts [as of 5 April 2017].

⁵ The types of illegality involved vary from country to country, but fall into two broad categories: illegalities in licensing, and illegalities in operations. For more information, see Lawson S, Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations, Forest Trends, September 2014.

⁶ Article 7 of chapter 11 (Trade and Sustainable Development) of the draft text addresses the trade in timber and sustainable forests, and states: “The Parties recognise the importance of ensuring the conservation and sustainable management of forests. To this end, the Parties shall: (a) encourage conservation and sustainable management of forests, and trade in timber and timber products harvested in accordance with the laws and regulations of the country of harvest. (b) contribute to combatting illegal logging and related trade, including as appropriate with respect to the trade with third countries. (c) exchange information and share experiences at bilateral and global levels with a view to promoting the conservation and sustainable management of forests and trade in legally harvested timber and timber products, as well as to combatting illegal logging.”

The MV Ardhianto off-loads Plywood in Japan, logged from one of the world's most threatened rainforests, the Paradise Forests of Asia Pacific.
Photo: Masaya Noda / Greenpeace



Act are equal – although they are clearly not. Under the EUTR, it is illegal to place illegal timber on the market and there is an obligation on operators to exercise due diligence. Meanwhile under the Clean Wood Act, there is a requirement to exercise due diligence only on those operators who choose to register.

The upshot, as the Environmental Investigation Agency (EIA) observed, was that without significant revision, the provisions “would likely result in increased illegal logging and timber smuggling” – derailing the global fight against illegal timber.

EU Trade commissioner Cecilia Malström nevertheless assured critics that concerns around illegal logging would be addressed in the final agreement, and that EU and Japanese civil society representatives would have “opportunities to help shape implementation of the agreement”.⁷

More than a year on, the deal has been agreed. Before entering into force, it needs to be ratified by the European Parliament.

But as this briefing shows, the free trade agreement’s timber provisions have not been significantly changed. The deal itself is therefore likely to increase threats to the world’s forests, while sabotaging the EU’s own attempts to combat them.

Japan and timber: a brief history of illegality

Japan is the world’s fourth largest importer of wood products and the third largest importer of wooden furniture.⁸

⁷ Letter to EIA 19.07.17

⁸ In 2015, Japan imported US\$10,050 million worth of wood and wood products (HS44) and US\$2,140 million worth of wooden furniture (HS94 wooden only). Data from Comtrade.

These imports come – to a significant degree – from places where illegal logging is rife:

- To supply its vast construction and housing sectors, Japan imports more plywood from tropical forests than any other country, half of which comes from the rainforests of the Malaysian state of **Sarawak**, on the island of Borneo. Overall, Japan is the largest buyer of timber products from Sarawak, where rainforests are disappearing faster than anywhere else. According to Friends of the Earth Malaysia: “the bulk of the logging concession areas in Sarawak tends to encroach upon territories where the indigenous customary land rights are exercised, despite there being clear recognition of these rights under the law”. This is driven – as Global Witness has shown – “by a timber industry riddled with corruption and illegality”.^{9,10} Japan also imports significant volumes of high-risk timber products from Russia, including logs, sawnwood and veneer. Illegally harvested Russian timber is also imported to Japan indirectly via China as processed products, including structural lumber for housing construction.¹¹

- **China** is the leading global manufacturer of most major categories of wood products, including plywood, furniture and flooring, and Japan is one of its key export

⁹ Between 2000 and 2012 alone, Sarawak lost 15 per cent of its natural forest cover. Source: Global Forest Watch.

¹⁰ For further information on Sarawak’s deforestation rates, see Global Witness: Sarawak’s forests: myths and reality.

¹¹ Environmental Investigation Agency (EIA) investigations revealed that one of the largest Chinese importers of Russian timber, San Xia Economic and Trade Company, knowingly purchased illegally harvested Russian pine deep inside Russia, and transformed this timber into finished products for export largely to the Japanese market. See: EIA, The Open Door: Japan’s Continuing Failure to Prevent Imports of Illegal Russian Timber.

Illegal logging in the Carpathians fuelled by Japanese companies.

Photo: Organized Crime and Corruption Reporting Project (OCCRP) documentary



markets. China is also the world's largest importer of illegal timber – and as such a major supplier of high-risk wood-based products to Japan.¹²

- Links between illegal logging in **Indonesia** and paper-sector exports to Japan have also been established by the Japanese NGO Japan Tropical Forest Action Network (JATAN) and Rainforest Action Network.
- In 2016 EIA documented how “the indiscriminate sourcing practices” of Japanese companies fuelled illegal logging in Europe’s last remaining virgin forests, in **Romania** and **Ukraine**.¹³ Gabriel Paun of Romanian NGO Agent Green, which works to protect Romania’s forests and has done much to expose their illegal destruction, says that corruption and a lack of transparency mean Romania is at a “high level of risk” for illegal logging, and that the country is a “paradise” for those intent on carrying it out.

Toothless Laws

Despite this extensive evidence of its timber imports being tainted by illegality, Japan still encourages rather than requires the use of legal timber. The EUTR, by contrast, makes it illegal to place timber on the EU market that has been logged in violation of the laws in the country of origin. It engages economic operators throughout the supply chain, and obliges those operators who first place timber on the

¹² It's been estimated that in 2013 China accounted for one-fifth of Japan's imports of likely wood-based products by Roundwood equivalent (RWE) volume and about one-third by import value. See: Trade in Illegal Timber: The Response in Japan, Chatham House (2014) by Mari Momii

¹³ EIA's 2016 report Built on Lies: New Homes in Japan Destroy Old Forests in Europe, showed that nearly 50 per cent of all exports from the Romanian sawmills of the Austrian company Holzindustrie Schweighofer were shipped to Japan for use mostly in housing construction. Schweighofer's role in illegal logging in Romania is well-documented.

EU market to take active steps to assess and mitigate the risk that the timber they sell has been logged illegally.¹⁴

The European Commission's own 2016 Trade Sustainability Impact Assessment (TSIA) into the EU-Japan Free Trade Agreement noted, the country “has no formal regulation on controlling imports of illegal wood and wood-based products”. It was an issue, the TSIA stressed, that “should be of a high priority for further collaborative action [with the EU]”.¹⁵

Yet to date, Japan has no laws controlling imports of illegally sourced timber. Its government's standards are laid out in the Green Procurement Law (which came into effect in 2001) and the Clean Wood Act (implemented in May 2017).¹⁶

The former is a public procurement law that – as Hana Heineken, senior campaigner with Rainforest Action Network (Japan) points out – has been widely criticised for its failure to mandate due diligence and its vague definition of legality, as well as its focus on best efforts and a lack of enforcement. As Fern highlighted in its report on public procurement policies, the main challenge is to ensure that government buyers understand the criteria for legal and sustainable timber.¹⁷

¹⁴ Here is an overview of the EUTR.

¹⁵ Trade Sustainability Impact Assessment of the Free Trade Agreement between the European Union and Japan (Final Report), 2016. See also: Trade in Illegal Timber: The Response in Japan, Chatham House (2014) by Mari Momii

¹⁶ On May 20, 2017, the Government of Japan implemented the Act. The purpose of the Act is to provide assurance that the wood available in Japan was harvested legally. It recognises legality based on the policies of the government of the country that is the source of the wood, rather than on a standard set by the Government of Japan. The Ministry of Agriculture, Forestry and Fisheries (MAFF) Forestry Agency (FA) reviewed the legislation of other markets, such as the U.S. Lacey Act, and held public hearings to collect the views of industry and NGOs in preparation for drafting the Act. The Act requires registered operators to maintain verification documentation for five years. However, compliance is voluntary except for government-funded construction projects.

¹⁷ The Power of Public Purchasing: making EU public procurement policy work for people and forests (2015)

The new text on forests and timber in the EU-Japan Free Trade Agreement

ARTICLE 16.7 Sustainable management of forests and trade in timber and timber products

1. The Parties recognise the importance and the role of trade and investment in ensuring the conservation and sustainable management of forests.
2. In that context, the Parties shall:
 - (a) encourage conservation and sustainable management of forests, and trade in timber and timber products harvested in accordance with the laws and regulations of the country of harvest;
 - (b) contribute to combating illegal logging and related trade including, as appropriate, the trade with third countries; and
 - (c) exchange information and share experiences at bilateral and multilateral levels with a view to promoting the conservation and sustainable management of forests and trade in legally harvested timber and timber products, as well as to combating illegal logging.

Japan's more recent Clean Wood Act does not prohibit either the import or sale of illegal wood, nor does it apply to all companies. It's an opt-in system, so only registered companies are required to have systems in place to ensure they can supply legal wood.¹⁸

Analysis

From the much-criticised draft text on forests and timber (see footnote 5) to the current version (above), only 12 words have changed – and none of them are substantive.

The key requirements for both parties remain identical, as does their weakness: they contain no enforceable measures preventing the trade in illegal timber. Mirroring Japan's current laws, provisions (a) and (b) of Article 16.7 of the agreement merely "encourage" rather than "require" the use of legal timber.¹⁹

The absence of explicit provisions prohibiting illegal timber imports and requiring traders who place timber products on the market to exercise 'due diligence' – including

implementing specific measures which are equivalent to the EUTR or similar laws in the US or Australia – remains a significant failing. It lowers the bar on efforts to combat the illegal timber trade internationally, essentially discouraging other nations from initiating tough laws against it. From G7 nations, this is clearly unacceptable.

These weak provisions on the sustainable management of forests increase the risk of:

- Giving Japanese companies an unfair competitive advantage over EU counterparts by allowing them to trade in illegally-sourced wood with impunity.
- Undermining the EU's attempts to mobilise countries to tackle illegal logging through national legislation, in particular its Voluntary Partnership Agreement trade deals with timber-producing countries.²⁰
- A rise in illegal timber imports to Japan from countries where forest protection is weak and unsustainable practices widespread. Increased economic activity will intensify the incentives for illegal or unsustainable

¹⁸ Here is an English translation of the Clean Wood Act, and here is a comparison of it with the EUTR.
¹⁹ In its press release on the key elements of the free trade deal (18.04.18), the European Commission specifically addressed the issue of illegal logging: "The EU and Japan share a common commitment to combat illegal logging and related trade and this will be reflected in the text of the agreement. The EU has a very clear legislation on illegal logging, just like Japan. Both partners have surveillance and certification systems in place to prevent the import of illegal timber. The two partners also work closely with third countries to support them in setting up efficient mechanisms to address the problem."

²⁰ The TSIA also found that Japan is undermining the EU's own efforts to establish a Voluntary Partnership Agreement (VPA) with Malaysia, due to Japan's extensive sourcing of high-risk timber from Malaysia's Sarawak province: "Japan's failure so far to effectively control its imports of illegal timber has arguably had an inhibiting effect on the negotiations between the EU and Malaysia on a VPA." The TSIA further notes that Malaysian companies exporting to Japan "see no reason to place potential restrictions on their own trade when their major export market requires no such controls. Any expansion of Japan's timber imports due to the FTA could exacerbate this situation."

practices in the country of origin, as the Commission's Trade Sustainability Impact Assessment of the deal pointed out in 2016.²¹

This, in turn, will damage the health, carbon stocks and biodiversity of the forests where timber products are sourced, as well as harming the lives of forest communities.

To prevent this:

- The European Parliament must partially suspend the ratification of the EU-Japan Free Trade Agreement until the current vague and inadequate provisions on forests

²¹ The TSIA also said that the Free Trade Agreement provided an opportunity for the two sides to increase their co-operation to tackle the problem, and added: "The EU has, however, put in place a number of policies and measures designed to exclude illegal and, to a lesser extent, unsustainable timber from its market; in contrast, Japan has done very little, though it has the opportunity to do much more."

and timber are revised to match EU commitments to protect forests and create a level playing field between companies operating in Japan and in the EU.

- The EU should always include in its trade and sustainable development (TSD) chapters binding and enforceable provisions to halt illegal logging, deforestation, forest degradation and land grabbing, and other human rights violations. They should also be subject to suitable and effective dispute settlement mechanisms.
- The Commission should report regularly to Parliament on the progress made in implementing TSD chapters, and in particular on how the aforementioned issues have been, and will be addressed.

Carpathian mountains

Photo: Viktor Palstsiuk Flickr.com/CC



Sahabat Alam Malaysia

Towards Environmental Justice



Fern UK, 1C Fosseyway Business Centre,
Stratford Road, Moreton in Marsh, GL56 9NQ, UK
Fern Brussels, Rue d'Edimbourg 26, 1050 Brussels
www.fern.org

This publication has been produced with the assistance of the European Union, and the UK Department for International Development. The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the funders.

