

# Forests

## Acts of Defiance

How US traders are ignoring sanctions to import conflict teak from Myanmar

December 2022



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**Front cover:** the port of Baltimore, a known entry point for Myanmar teak coming into the United States

**Above:** polished teak bears an eerie resemblance to the deforested landscapes seen all too much in Myanmar

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# Introduction

In February 2021, Myanmar's democratically elected ruling party, the National League for Democracy, was overthrown by the Myanmar military in a coup d'état.

In the months since the coup, the people of Myanmar (formerly Burma) have been subjected to a continued escalation of conflict and brutal human rights atrocities. To maintain its illegal regime and crush dissent, the military is dependent on a continual flow of hard currency. As for the previous regimes, natural resources provide a source of profit for the military, whereby the forests of Myanmar are defined by their monetary value and have been part of the military and economic elites' profits and, in some cases, survival for decades.

As a consequence, the military is devastating the few remaining teak forests of Myanmar to profit from the booming demand for Burmese teak for decking in the yacht-building industry, flooring and other furniture sectors.

For many people in Myanmar, the forests act as their first line of defence, providing shelter and protection. Further, Myanmar forests are the bedrock of a healthy ecosystem within the region. Losing these forests will deprive many communities of their homes and livelihoods and could tip the ecological scales to cause irreparable damage. Yet imports of teak into the US have not subsided since the coup. Instead, they have increased.

This briefing provides an overview of how the imports of teak into the US have escalated since the coup to provide desperately needed hard currency for the regime and its cronies and carried out in defiance of US sanctions.

We provide a rebuttal to the 'stockpile narrative' used by US teak traders to justify teak imports from Myanmar into the US in light of US sanctions. We also highlight how these teak imports contravene the US Lacey Act, which is in place to combat the consumption of illegal timber.

To conclude, we provide recommendations to ensure the implementation of the current laws in place.

**Right:** huge quantities of Myanmar's illicit teak continues to be sold despite US sanctions, the Lacey Act and the EUTR





## Myanmar teak stockpile narrative and Executive Order No. 14014 “Blocking Property With Respect to the situation in Burma”<sup>1</sup>

On 21 April 2021, the State-owned entity Myanmar Timber Enterprise (MTE) was designated as a listed entity pursuant to Executive Order No. 14014 (US sanctions).

MTE is wholly controlled by the State Administrative Council (SAC), which the military junta created on 2 February 2021, the day after the coup. Only MTE can legally harvest and sell timber for export.<sup>2</sup> Consequently, all revenue generated by MTE through the sale of teak is directly held by the junta and used to support the regime.

Now that MTE is listed under US sanctions, any transfer of funds by a US person to MTE, or any payment made in US dollars to MTE, is prohibited.<sup>3</sup> The designation of MTE under US sanctions therefore effectively prohibited teak imports from Myanmar into the US.

Teak is typically purchased by Myanmar teak traders at MTE auctions using US dollars for payment, since traders are required to pay in US dollars to participate

in these auctions.<sup>4</sup> The teak is then sold for export by the Myanmar teak traders to US teak traders to predominately be used for decking in the yacht-building industry, thus creating financial flows of US dollars from US teak traders to MTE.

The Myanmar teak traders effectively act as brokers, facilitating the generation of indirect revenue for MTE. Any US dollar payments are ultimately transferred to the Myanmar Foreign Trade Bank (MFTB), the State-owned bank that facilitates exchange-related transactions for the Myanmar Government.<sup>5</sup>

Since the coup, MFTB is wholly controlled by the military. Nevertheless, no US dollar accounts are held within Myanmar. Instead, MFTB holds US dollar accounts

with foreign banks abroad, such as the Singaporean banks United Overseas Bank, Oversea-Chinese Banking Corporation, DBS Bank and Bangkok Bank.<sup>6</sup>

Independent economists for Myanmar have predicted that placing sanctions on MFTB “would cut off roughly \$2 billion per year in financing for the military”.<sup>7</sup> For any payments for teak in US dollars, these transactions will not be transferred directly to Myanmar and will instead be held in foreign accounts, typically based in Singapore, before being transferred to MFTB.

Nonetheless, for any teak purchased by a US trader, or non-US trader using US dollars, from MTE after the 21 April 2021, either directly or indirectly,<sup>8</sup> it is EIA’s position that there is a strong presumption this will breach US sanctions.

Almost as if to signify its defiance towards its designation under the US sanctions, in May 2022 the MTE amped-up its focus on publicising teak for auction, signalling its intent to ensure a steady stream of profits from teak sales capitalising on much-needed hard currency. It published a tentative programme for monthly auctions of teak running from May 2022 until March 2023 (although tender announcements have been published monthly since January 2022) in conjunction with the terms and conditions for the monthly auctions in which it reiterates teak can be purchased using US dollars.<sup>9</sup>

**Table 1:** Tentative programme for Open Tender sales, May 2022 - March 2023 of teak/hard wood (logs and conversions)

| SR | Month     | Date         | Open Tender                   |
|----|-----------|--------------|-------------------------------|
| 1  | May       | 12 May 2022  | Open Tender (Yangon, Ex-Site) |
| 2  | June      | 29 Jun 2022  | Open Tender (Yangon, Ex-Site) |
| 3  | July      | 29 July 2022 | Open Tender (Yangon, Ex-Site) |
| 4  | August    | 30 Aug 2022  | Open Tender (Yangon, Ex-Site) |
| 5  | September | 29 Sept 2022 | Open Tender (Yangon, Ex-Site) |
| 6  | October   | 28 Oct 2022  | Open Tender (Yangon, Ex-Site) |
| 7  | November  | 29 Nov 2022  | Open Tender (Yangon, Ex-Site) |
| 8  | December  | 29 Dec 2022  | Open Tender (Yangon, Ex-Site) |
| 9  | January   | 31 Jan 2023  | Open Tender (Yangon, Ex-Site) |
| 10 | February  | 28 Feb 2023  | Open Tender (Yangon, Ex-Site) |
| 11 | March     | 29 Mar 2023  | Open Tender (Yangon, Ex-Site) |

For the January to October 2022 period,<sup>10</sup> almost 6,500 tonnes of teak logs and almost 4,000m<sup>3</sup> of teak conversions were listed as available to buy at the auctions.<sup>11</sup> To put this into perspective, for the total 2020-21 period, MTE planned to harvest an estimated 4,000 tonnes of teak for auction.<sup>12</sup>

The international markets responded in a similar trend. An alarming number of teak shipments have been imported into the US since the coup and the numbers continue to rise. Between 1 February 2021 and 10 November 2022, a total of 2,561 tonnes of teak were imported directly from Myanmar into the US.<sup>13</sup> In October 2022 alone, 263.70 tonnes of teak were imported into the US via 14 shipments.<sup>14</sup>

The recent influx of teak imports can partly be attributed to the terms and conditions for the 2022-23 monthly auctions, which place an export ban for sawn teak from 1 January 2023 onwards.<sup>15</sup>

This is assumed to be a plan from the previous transitional government in an attempt to control Myanmar’s over-harvested supply of raw material and has no signs of changing under the SAC.

EIA, however, believes this ban is another attempt by the MTE to boost teak sales by signalling to US teak importers to buy as much as they can before the ban. Moreover, the tentative teak programme shows that the monthly auctions will continue until March 2023.

**Opposite page and below:** stockpiles of teak at an MTE log yard

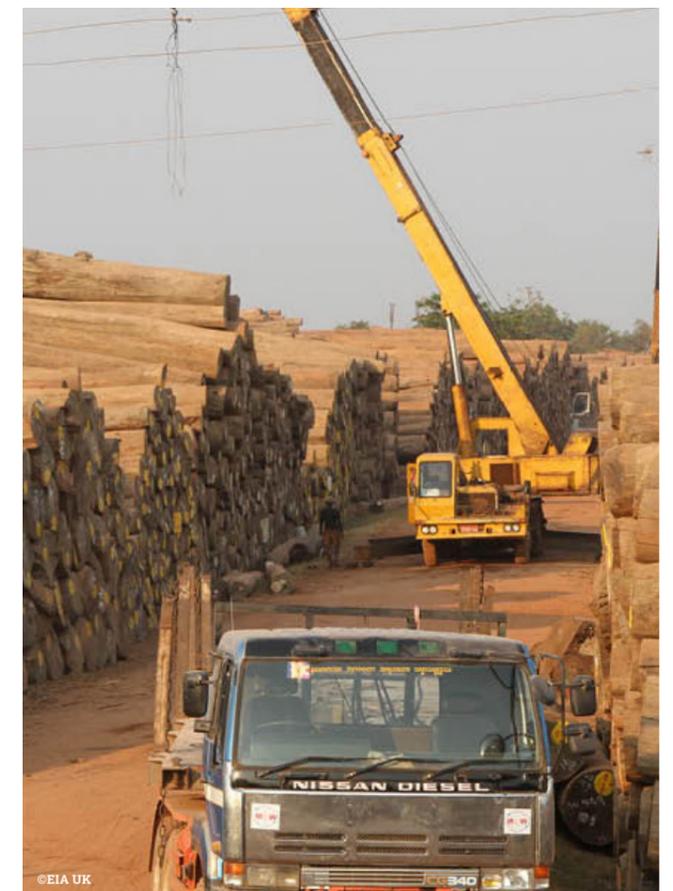
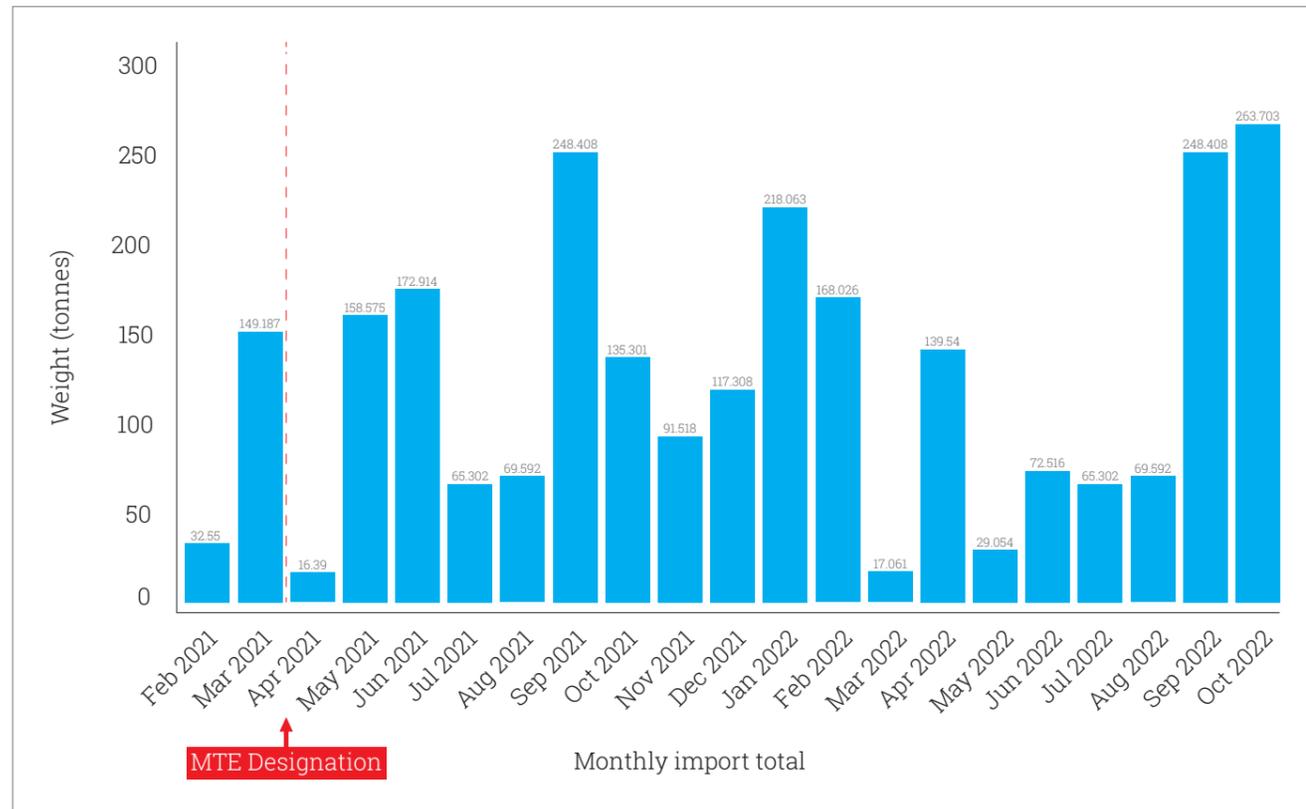


Figure 1: Imports of Teak from Myanmar into US Since 1 February 2021 coup



Following the coup, EIA has received information and understands that a narrative has emerged among US teak traders to justify their imports in light of the implementation of US sanctions – they state their teak had been purchased from Myanmar stockpiles and paid for prior to the designation of MTE on 21 April 2021.

Teak traders have continued to use this narrative as a means of circumventing sanctions by effectively stating that no funds were transferred to MTE after 21 April 2021. Whether the teak sold at auction was sourced from Myanmar stockpiles or freshly cut, no US dollar payments can be transferred to MTE after the 21 April 2021.

Applying the stockpiling narrative more than 18 months after the designation of MTE can no longer be deemed a plausible excuse by US teak traders to avoid contravening US sanctions. US teak traders who have continued to import at similar rates post-designation of MTE would have had to predict the designation of MTE and place orders large enough to cover shipments that are still being imported in October 2022.

The trade database Panjiva also shows that four Myanmar teak traders each exported teak to the US for the first time in 2022.<sup>16</sup> Again, it cannot be credible to suggest that a US trader purchased the teak before 21 April 2021 and then waited more than a year to import it from Myanmar.

Right: protests against the violent military coup continue in Myanmar



## Myanmar teak stockpiles and timber certification

In conjunction with EIA's position that there is a strong presumption of breach of US sanctions for any import of teak into the US after 21 April 2021, it is important to outline the other illegalities of Myanmar teak stockpiles and thus the dangers for US traders of relying on this stockpiling narrative.

Stockpiles of illegally harvested teak have been a longstanding issue within Myanmar. They are a product of illegal overharvesting and enduring corruption – up to and including the time of the coup, illegally harvested teak was seized and subsequently stockpiled.

In 2020, it was estimated that MTE held stockpiles of about 180,270m<sup>3</sup>, which significantly exceeded the legally allotted amount of teak for harvest by the Annual

Allowable Cut determined by the Forest Department, thus showing the pervasiveness of illegal logging within Myanmar.<sup>17</sup> Additionally, many of the teak forests are located within ethnic lands and, in some cases, access to areas controlled by non-State actors is not always possible.

Above: the vast majority of teak imported into the US is roughly sawn teak to be further processed

The likelihood of timber originating outside of legal concessions is very high, as is the risk of timber entering the supply chain from those areas. In 2019, EIA estimated there were 100,000-200,000 tonnes of stockpiled teak in Myanmar.<sup>18</sup> These stockpiles are now in the control of MTE and are being sold at auction.<sup>19</sup>

Under Myanmar law, it is prohibited to sell seized teak for export.<sup>20</sup> However, owing to widespread corruption within the country's timber sector, there is a high risk that illegally harvested teak is mixed into stockpiles. The corruption is so enduring and deeply rooted, it is possible that teak logs found in current stockpiles were illegally harvested during the previous military regime.<sup>21</sup>

Further, teak sold at auction is bundled based on its quality and not on origin,<sup>22</sup> which further obfuscates the ability to verify the origin of teak. Prior to 2017-18, origin documents did not exist and were only introduced by the Forest Department's Chain of Custody Dossier in 2018.<sup>23</sup>

The Myanmar Forest Certification Committee (MFCC) governs the issuing of timber certification<sup>24</sup> and, notably, is currently chaired by U Khin Maung Yi, who is listed under the US sanctions.<sup>25</sup>

The European Commission has determined Myanmar timber certificates to be incapable of validating the origin for Myanmar teak due to the inability to cover the whole supply chain or provide enough information on origin.<sup>26</sup> The US teak traders who seek to rely on third-

party verification or traceability dockets for Myanmar teak origins and legality, whose providers have been endorsed by MFCC, cannot be deemed to have provided risk mitigating evidence.

As the EU Commission concludes, these third-party verification bodies claiming to be able to verify the harvest through obtaining DNA samples from tree stumps to acquisition of the timber fail to verify compliance with all legal requirements and are unable to overcome the issues of corruption and illegalities outlined above.<sup>27</sup>

There is not enough of a reference for DNA sampling within Myanmar and it is likely that for sampling access to harvesting locations, permission would have had to be granted by MTE or the Forest Department, given that all Myanmar forests are owned by the Government.

Moreover, these third-party verification bodies cannot issue certificates unless they have sought permission and met the minimum policy requirements of MFCC.<sup>28</sup>

Without a credible traceability system in place to verify whether timber is sold from stockpiles or freshly cut, and no means of independent verification, it is impossible to verify the origin and therefore legality of Myanmar teak sold onto the international market.

**Below:** teak being held in a warehouse ready for export



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## The Lacey Act<sup>29</sup>

The Lacey Act was enacted to tackle trafficking in illegally taken plants (as well as wildlife and fish).

Regarding the import of Burmese teak into the US, the Lacey Act prohibits the import of teak that has been taken, possessed, transported or sold in violation of any law of the US or in violation of any foreign law that protects or regulates plant-related activities.<sup>30</sup>

In this instance, the Myanmar Forest Law 2018 and Forest Policy 1995 regulate sustainable harvesting of timber and aim to protect against illegal logging within Myanmar. Further, the Lacey Act prohibits the import of Burmese teak that has been "taken, possessed, transported or sold without the payment of appropriate royalties, taxes or stumpage fees".<sup>31</sup>

The Lacey Act also implements the "due care" requirement for timber imports, which requires US importers to determine that the teak has not been "taken, possessed, transported, or sold in violation of" any US or foreign laws. The due care requirement has been defined as "the degree of care which a reasonably prudent person would exercise under the same or similar circumstance".<sup>32</sup> Consequently, teak importers are required to conduct an analysis of how the teak is sourced, taking into consideration the facts on the ground, to determine that the product had been sourced legally.

As outlined below, EIA believes it is not currently possible to import teak into the US without violating the Lacey Act.

### Teak taken, possessed, transported and sold in violation of any US or foreign laws

As previously stated, EIA believes that for any teak imported into the US after 21 April 2021, there is a strong presumption that there will be a violation of US sanctions. On that basis, it is EIA's position that this would also constitute a violation of the Lacey Act, namely by importing teak which violates US law, i.e. US sanctions.

Further, as the previous analysis highlights, under Myanmar law it is prohibited to export teak that has been seized. Nevertheless, it is a common occurrence for seized teak to be bundled into stockpiles alongside illegally harvested teak. The stockpile narrative used by US traders to justify teak imports is therefore contrary to the requirements of the Lacey Act, in that it is highly likely the teak will have been obtained illegally pursuant to the Forest Act 2018.<sup>33</sup>

EIA has previously established in the report *A Tale of Two Laws: Using existing EU and US laws to strengthen action on illegal timber trade* that a breach of the EU Timber Regulation (EUTR) will likely constitute a predicate offence under the Lacey Act. This is on the basis that it is prohibited under the Lacey Act to import

timber in violation of foreign laws to protect plants or regulate the theft, taking of plants from protected areas or without required authorisation.<sup>34</sup>

In recent years, the European Commission has consistently stated that it is illegal to import teak from Myanmar due to the impossibility of determining whether there is a negligible risk that timber harvested in Myanmar has been harvested illegally, thus rendering it impossible to meet the due diligence requirements of the EUTR since it is impossible to mitigate the risk of importing illegally harvested teak, and further due to the provision of funds to MTE being prohibited under EU sanctions.<sup>35</sup>

Therefore, since teak is illegal under EU law, there is a strong presumption that teak imports into the US will also violate the Lacey Act.

### Teak taken, possessed, transported or sold without the payment of appropriate royalties, taxes or stumpage fees

EIA has previously reported in *Taxing Questions: Evidence of tax evasion in teak exports from Myanmar* that Myanmar applies a Specific Goods Tax (SGT) on exports of wood logs and wood cuttings, including sawn wood, but not on more processed timber products.<sup>36</sup>

Additionally, the Myanmar Customs Tariff (MCT) has a higher rate for export of less-processed timber products compared to those that are value-added.<sup>37</sup> EIA obtained invoices for teak imports into the EU that showed mis-invoicing by mis-declaring the processing degree of teak imports. In doing so, traders skimmed off by reverting back to the original HS code, either to launder money or make larger profits.

In essence, these traders defrauded the state of Myanmar of SGT and MCT. EIA believes private companies exporting timber purchased from MTE often engage with these illegal practices by overstating how processed their timber is in order to avoid paying the SGT and to pay a reduced MCT, specifically in relation to shipments of teak board.

If a US import of teak was to have been implicated by these illegal practices, EIA believes it is highly likely that the teak imports will be in violation of the Lacey Act.<sup>38</sup>

### Due care

As highlighted previously, it is impossible to determine the origin of teak from Myanmar, therefore it is not possible to come to a conclusion as to whether Burmese teak is legally harvested pursuant to Myanmar laws.

Additionally, on 21 October, the Financial Action Task

Force (FATF) blacklisted Myanmar. The blacklisting calls upon FATF members to implement enhanced due diligence measures when executing transactions to and from Myanmar, signifying that transactions involving Myanmar businesses and individuals are at a high risk of being implicated by money laundering and terrorist financing.

EIA would therefore argue that a reasonably prudent person applying the due care requirement would determine that there is a high risk of the teak having been harvested illegally or being taken, possessed, transported or sold in violation of any laws.

#### Historic Lacey Act violations for timber imports

The Myanmar teak trade into the US in some instances mirrors other timber import cases found to be in violation of the Lacey Act.

In September 2021, Global Plywood and Lumber Trading LLC (Global Plywood) was sentenced to pay \$200,000 in restitution to the Ministry of Environment of Peru and fined \$5,000 for failure to exercise due care when it imported illegally sourced timber from the Peruvian Amazon into the US. Global Plywood had purchased about 1,135m<sup>3</sup> of hardwood and had failed to obtain or

investigate further the statements of suppliers on legality and harvest permits; nor had it cross-checked public records.<sup>39</sup>

In 2016, Lumber Liquidators, Inc (LL) was sentenced under the Lacey Act for importing illegally harvested and falsely labelled timber from China. LL had failed to take action on imports from "high risk countries" and imported from suppliers which did not "provide documentation of legal harvest".<sup>40</sup> LL was ordered to pay \$13.2 million in penalties.<sup>41</sup>

Evidently, US teak traders are operating on similar and potentially larger scales to timber traders found in breach of the Lacey Act. In light of the above, it is EIA's position that US traders importing teak into the US will likely violate the Lacey Act.

As the conflict escalates within Myanmar, and the military regime seeks desperately needed hard currency, and in response to the calls from many within Myanmar to cut the funds and resources for the junta, it is vital that US sanctions imposed on Myanmar are implemented to their full capacity.

**Below:** the yachting sector is a major driver for the continued import of Myanmar teak into the US



## Recommendations

#### US Government:

- Ensure the full implementation and the use of the US Lacey Act and US sanctions
- There must be an inverse of the burden of proof against US-based traders using the stockpiling narrative to justify teak imports from Myanmar into the US. This should include financial documentation showing that no money has been provided to the Myanmar Timber Enterprise in any form, either directly or indirectly via Myanmar teak traders, after 21 April 2021
- Designate the Myanmar Foreign Trade Bank (MFTB) pursuant to Executive Order No. 14014 to stem the flow of US dollars from returning to Myanmar. Financial institutions should conduct appropriate due diligence to ensure clients are not engaged in conducting business in contravention of sanctions in the US, EU and EU on trade in Burmese teak
- Third-party legality verification certificates should not automatically be accepted as risk-mitigating evidence for teak imports

#### Singaporean Government:

- Given the reliance on Singapore's banking system to facilitate transactions for the trade in teak, Singapore needs to rigorously investigate any flow of funds to and from Myanmar, in line with the FATF blacklisting recommendations
- Match the policy ambition of the US, EU, UK, Canada and Switzerland, and implement financial sanctions against MTE to create a prohibition on the illicit Myanmar teak trade and stop the flow of hard currency to the military from the sale of teak to international markets

#### Financial institutions:

- Ensure swift compliance with the recent blacklisting decision by FATF, which recommends enhanced due diligence for all transactions linked with Myanmar, to limit the ability for the military to access the global financial system





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