

***Commercial disputes, risks and
opportunities wooden pallet and
packaging industry***

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Executive Summary – What is this about?

The timber sector has historically been affected by international trade measures and disputes. The developments of the past three years have radically changed the timber international trade rulebook, requiring a new level of awareness by market operators



Outline

1. Trade measures and disputes historically affecting the lumber industry
2. A more complex regulatory scenario following the raw material crisis and Ukraine war
 - A. Risks arising from Russian sanctions
 - B. Towards a new EU regulatory framework for supply chains: overview of recent initiatives
3. Conclusions



Trade measures and disputes historically affecting the lumber industry (I)

EU Timber Regulation (2010)

- Due diligence + traceability systems
- It has generated a significant amount of enforcement across the EU

FLEGT Regulation

Myanmar sanctions (2018)

- Sanctioning of *Myanma Timber Enterprise* and *Forest Products Joint Venture Corporation Limited* in June 2021



Trade measures and disputes historically affecting the lumber industry (II)

Anti-dumping (AD) and anti-subsidy (AS) measures

- AD - practice to export products into the EU from third countries at a price lower than the normal value (price at which the product is sold domestically or cost of manufacturing + SG&A + profit)
- AS – industry specific or export subsidies providing an unfair advantage (benefit) to exporting companies
- Injury (or threat thereof) caused by imports to Union industry
- ⇒ Possibility for Union industry to complain (25%) => Investigation carried out by European Commission => imposition of additional duties if not clearly against Union interest.

Some history affecting the timber and packaging industry...

- Flat wood pallets from Poland (AD in 1997)
- Okoumé plywood from China PR (AD since 2004)
- Birch plywood from Russia (AD since 2021)



Trade measures and disputes historically affecting the lumber industry (III)

Focus on Birch Plywood Investigation

- Very significant participation by wood packaging industry
- On 8 November 2021, the European Commission imposed definitive anti-dumping duties on birch plywood originating from Russia.
- The anti-dumping duty ranged from 14.4% to 15.8%.
- Thanks to users' pressure measures almost got suspended....

AD and AS are an useful tool potentially available to the EU pallet and packaging industry to tackle competition from third countries' (non-EU) unfair imports



A more complex regulatory scenario

Raw materials crises

- Long history of export restrictions to critical raw materials and subsequent disputes
- COVID and post-COVID recovery affecting the availability of key raw materials and the price
 - Major capacity issues and price increases witnessed in 2021 in the wood packaging sector

Sanctions against Russia for invasion of Ukraine

- Timber sector majorly affected by EU sanctions

=> DEEP IMPACT ON SUPPLY CHAINS



Sanctions (I)

- Seven packages of sanctions against Russia and Belarus.
 - Regulation 833/2014 (Russia)
 - Regulation (EC) No 765/2006 (Belarus)
- Russian countermeasures: On 8 March 2022, Russia enacted a ban on the export of certain goods outside the territory of Russia to a list of countries including EU Member States. The ban covers four HS codes, 4401 21, 4401 22, 4403 and 4408. The ban will be in force until 31 December 2022 inclusive.



Sanctions (II)

Regulation 833/2014 (amended)

Article 3k

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods which could contribute in particular to the enhancement of Russian industrial capacities as listed in Annex XXIII, to any natural or legal person, entity or body in Russia or for use in Russia.

=> Several timber products covered (wood, plywood, flooring)



Sanctions (III)

Regulation 833/2014 (amended)

- It shall be prohibited to **purchase**, import, or transfer, directly or indirectly, goods which generate significant revenues for Russia thereby enabling its actions destabilising the situation in Ukraine, as listed in Annex XXI into the Union if they originate in Russia or are exported from Russia.

Article 3i, covers CN **chapter 44**, 4705, 4804, 9403 (Annex XXI)

=> Effectively an import ban (with some phasing out clauses)



Sanctions (IV)

Regulation 833/2014 (amended)

How does this potentially affect companies in the pallet and wood packaging industry?

- Sanctions obligations are deeper than EUTR ones => “purchase”
- Criminal sanctions, circumvention prohibitions
- Increase enforcement across the EU, in particular to tackle circumvention (need to exercise extra-caution on Central Asia + Turkey)
- **Need for companies to boost their compliance efforts => need to verify end user, extra caution on triangulations**
- Impact on supply chains



Raw material crises and impact on supply chains (I)

The currently available instruments to tackle raw material crises and preserve viability of supply chains might be not sufficient

Regulation (EU) 2015/479 on common rules for exports

- Essentially, some limited possibility for export restrictions in presence of critical shortage of essential products

=> Difficult system to activate



Raw material crises and impact on supply chains (II)

How is the EU rethinking its supply chain strategy in the wake of the raw materials and Russia crises?

- Measures to protect and preserve stability of supply chains
 - Critical Raw Material Act
 - Single Market Emergency Instrument (SMEI)
- Measures to make supply chains are more fit for the EU green agenda and sustainable development goals
 - Prohibition of products made by forced labour
 - Corporate sustainability due diligence
 - Deforestation regulation

=> New opportunities and obligations for market operators



Raw material crises and impact on supply chains (III)

Measures to protect and preserve stability of supply chains

- Critical Raw Material Act – FORTHCOMING LEGISLATIVE PROPOSAL
 - Increase EU strategic autonomy in products vital to low carbon economy, most likely to cover lithium and rare earths
 - **Need to widen the definition of critical raw material** - European Parliament resolution of 24 November 2021 on a European strategy for critical raw materials(2021/2011(INI))

“Conventionally, critical raw materials have been understood as materials coming mainly from mining sector. This is too narrow scope and limits the growth of green energies. Today, wood-based materials can be efficiently used in much wood more applications than in the past. From textiles to new lighter and more environmentally friendly battery technologies, this is an area that is advancing with great speed. Bioeconomy has the unique possibilities of adding resilience to the EU economy and geopolitical stability for our continent. Using renewable materials would simultaneously also help mitigate climate change as it allows keeping the fossil emissions in the ground, creating green resilience to fossil sectors’;”



Raw material crises and impact on supply chains (IV)

Measures to protect and preserve stability of supply chains

- Single Market Emergency Instrument (SMEI) – NEW LEGISLATIVE PROPOSAL
 - Set of crisis response measures for strategically important goods
 - Vigilance mode *“monitoring supply chains of identified, strategically important goods and services as well as on building up strategic reserves in these areas”*
 - Emergency mode *“free movement in the Single Market will be upheld through a blacklist of prohibited restrictions and, more generally, through reinforced and rapid scrutiny of unilateral restrictions”*. The Commission may ask operators to *“to accept priority rated orders for crisis-relevant products”*.

Source: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5443



Raw material crises and impact on supply chains (V)

Measures to make supply chains are more fit for the EU green agenda and sustainable development goals

- Prohibition of products made by forced labour – NEW LEGISLATIVE PROPOSAL

=> system to ensure that these kind of products are not placed on the market => investigations when there is suspicion that a product might be obtained via forced labour

=> same system in US generated significant enforcement



Raw material crises and impact on supply chains (VI)

Measures to make supply chains more fit for the EU green agenda and sustainable development goals

- Corporate sustainability due diligence – PENDING LEGISLATIVE PROPOSAL
 - It establishes a “corporate due diligence duty” => identification and prevention of negative human rights and environmental impacts in the company’s own operations and **their value chains**
 - Applies to large companies but also to smaller companies active in critical sectors such as forestry
 - Potentially big impact on SMEs which are part of the value chains of subject companies => need to comply with code of conduct => mitigation measures foreseen in legislation



Raw material crises and impact on supply chains (VII)

Deforestation regulation

- Will replace EUTR
- Mandatory due diligence rules for all operators and traders who place, make available or export i.a. timber
- Different obligations depending on risk level of third country



Conclusions

- AD/AS measures: Pallet and packaging industry adequately equipped to defend itself from unfair competition from abroad and to make its voice heard as user of investigated commodities
- In the new global scenario, companies need to boost internal compliance measures
 - The risk arising from Russian sanctions are major + additional obligations ahead
- Huge challenges ahead as the EU is changing the way it regulates supply chains
 - Possibility to create a new regulatory framework providing better access to raw materials
 - Need for a coherent and decisive advocacy strategy before EU Institutions and EU Member States



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