



## Response to the DEFRA Consultation: Due diligence on forest risk commodities

Question 1: Should the Government introduce legislation designed to make forest risk commodities more sustainable?

**Yes**

Question 2: Should it be illegal for businesses to use forest risk commodities in the UK that have not been produced in accordance with relevant laws?

**Yes**

Question 3: Should businesses in the UK be obliged to have a system of due diligence in place to ensure that the forest risk commodities they use have been produced in accordance with relevant laws?

**Yes**

Question 4: Should businesses be required to report publicly on their system of due diligence?

**Yes**

Question 5: Should the Government be able to levy fines against businesses that use forest risk commodities not produced in accordance with relevant laws?

**Yes**

Question 6: Should the legislation apply to larger businesses, over an employee number and turnover threshold, that use forest risk commodities in production or trade?

**Other**

In 2018 ~4300 Agriculture and Food SME's [imported](#) £6228 million worth of goods into the UK, roughly 29% of the total value. These SMEs will be subject to – and arguably more vulnerable to – the same risks of importing illegal (and legal) deforestation through forest risk commodities as large businesses.

The UK is already required to ensure that all businesses are addressing their environmental and human rights risks under the OECD Guidelines on Multinational Enterprises. In line with the OECD, as well as to streamline enforcement, avoid loopholes and ensure that the law is as effective as possible, all businesses, of all sizes in the supply chain should be included.



To avoid undue burdens on small and medium size enterprises (SMEs), regulators should be guided to focus enforcement efforts on high risk businesses, or those with greater exposure to deforestation, forest degradation and their linked harms.

**Question 8: Large businesses have existing obligations to report on climate and environment issues including in relation to net zero. To what extent are there opportunities to align the proposal set out in this consultation with businesses' reporting under existing international frameworks [e.g. the recommendations of the Taskforce on Climate- Related Financial Disclosures (TCFD)]?**

The TCFD's focus on reporting emissions from planned business activities may mean there is some overlap with reporting for legal deforestation – as this will be explicitly folded into a company's business strategy and could be captured. Illegal deforestation however results from fundamentally unsustainable business models, weak corporate governance, and failures of businesses and finances to conduct adequate due-diligence and risk management.

There is an additional need therefore for due diligence focused legislation, and as we argue in 'Any other comments' for this to cover both legal and illegal deforestation.

**Question 9: Do you have any further information or comments you would like us to be aware of?**

Feedback welcomes the government's intention to create a '[world leading](#)' due-diligence law to protect natural areas – a move reflecting the evidence that [voluntary initiatives have not and will not work](#). This law will be an important tool in ending the UK's complicity in the destruction of forests and other important natural areas.

Like others in the sector, we were cautiously welcoming of the Global Resource Initiative's (GRI) recommendations that the UK Government:

*"Urgently introduces a mandatory due diligence obligation for companies that place commodities and derived products that contribute to deforestation on the UK market and to take action to ensure similar principles are applied to the finance industry"*

However, the narrower definition of the proposed law and the scope of this consultation substantially dampens our optimism that the UK is willing to take the lead on deforestation. To be effective the legislation needs to ensure the UK does not enable, encourage, incentivise, or financially reward forest destruction and deforestation, or related abuses against forest peoples. The current proposal falls short.

This is a golden opportunity take a leading role in building sustainable supply chains, tackling climate breakdown, and devastating biodiversity loss. Across five recommendations below, we urge the UK Government to take it:



## 1. Go beyond local legality

By equating legality and sustainability, this law only addresses half of the problem. As the consultation document acknowledges, half of all commodity-driven deforestation is legal in the country of production. This approach is clearly inadequate for countries and regimes – like Brazil’s – where standards are weak or being weakened and deregulation is becoming the norm. By focusing on local legality, the law risks incentivising weaker local regulation to ensure UK market access.

Such an approach is also lagging behind business. UK businesses such as [Tesco](#) and [Sainsbury’s](#) already focus on stopping all deforestation, and the UK has committed to this approach through the [New York Declaration on forests](#) and the [Amsterdam Declaration Partnership](#). Indeed, the Consumer Goods Forum – which has failed through voluntary initiatives to tackle deforestation– has explicitly called for regulation to force action. As it is, the UK proposal could allow companies to lower their standards.

**The law should therefore outline what practices the UK views as harmful and will not support.**

This is consistent with the approach the UK already takes on issues such as bribery and corruption, wildlife protection and wildlife trafficking – where the UK has clearly defined and outlined what practices UK businesses will not engage in or encourage. A standard is easier for communities and business to understand and uphold and easier to regulate.

By limiting the UK’s approach to a potentially small set of local forest-related laws, the UK risks excluded vital issues such as indigenous land tenure. The UK should learn from the EU Timber Regulations (EUTR), where a relatively broad definition of ‘any applicable legislation’<sup>1</sup> has still only led to enforcement on narrow forest-loss grounds.

By focussing only on ‘legal’ deforestation and forest-related legislation, the UK risks allowing abusive labour practices, land grabbing and harm to environmental rights defenders – so often co-occurring with forest risk commodity extraction – to continue, and, potentially, be ‘laundered’ through the UK into the European Union as our neighbours’ [explore more ambitious legislation](#).

## 2. Extend obligations to financial institutions

UK financial institutions make substantial investments and provide significant credit to a wide range of ultra-high deforestation risk commodities. By way of example, as of April 2020, [Feedback research shows](#) that UK financial institutions hold over £180 million in bonds and shares in high deforestation risk beef, and £121 million in high-risk Brazilian soy – including companies such as JBS and SLC Agricola with well-publicised links to deforestation. For other forest-risk commodities such as palm oil, the [picture is similar](#) – with research showing the UK was the single largest finance provider to six of the worst-offender agribusiness companies between 2013-2019.

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<sup>1</sup> Article two of the EUTR states ‘any applicable regulation’ defined as “rights to harvest timber within legally gazetted boundaries, payments for harvest rights including any taxes or fees, any environmental or forestry regulation including biodiversity conservation where directly related to timber, third parties’ legal rights concerning land use and tenure, and any trade and customs laws where the forest sector is concerned”



As the GRI recommended, mandatory due diligence should therefore be extended to financial institutions. Excluding them risks undermining the UK's efforts to lead the world on green finance and differentiating responsibilities across the UK's largest companies and a flow of capital from UK financial institutions to riskier overseas users of forest-risk commodities. For the law to be effective, the message and priorities coming from both the UK government and financial institutions need to be aligned.

### 3. Make the penalties count

For most market impact and to shift business models away from environmental destruction, the penalty for failing to comply should be a sufficient deterrent – one that cannot be absorbed into the normal costs of doing business. Where companies fail to demonstrate they have met requirements this should include product seizures - which tend to be a far better deterrent to companies than fines – and for failures of due diligence options for harmed communities to seek redress, criminal charges, and civil liability would be welcome and effective.

### 4. Include requirements for Free, Prior and Informed Consent

Free, Prior and Informed Consent (FPIC) is a key mechanism for preventing environmental destruction – acknowledging prevention of harms in the first place is best. If indigenous peoples and local communities are informed, consent to and can meaningfully engage with forest and agriculture activities conducted by business, the likelihood of conflict, encroachment and environmental destruction is lower.

Such an approach is included within the World Bank's community accountability mechanism, the Roundtable on Sustainable Palm Oil and within the OECD Guidelines on Multinational Enterprises and well-articulated within international law.

### 5. Outline how this legislation fits with the bigger picture

Finally, we urge the UK Government to outline how this proposed legislation will fit within a broader ambitious framework for tackling commodity driven environmental destruction. Under the UK's commitment to the New York Declaration on forests, the UK Government committed to work to eliminate forest loss by 2030 and halve it by 2020.

We cannot do this without robustly tackling demand for deforestation risk, high emissions, and high environmental impact agricultural commodities. Without this, the legislation's impact will be significantly reduced.