

CONSERVATION
INTERNATIONAL

A path for the UK to address its global forest footprint

Due diligence on forest risk commodities

Conservation International (CI) welcomes the proposal of the United Kingdom (UK) government to present a due diligence law on forest risk commodities and the opportunity to contribute to it, and appreciates the effort to follow up effectively and timely on the recommendations laid out in the [Global Resource Initiative Taskforce report 2020](#).

With the COP 26 Presidency, the UK has a key role to play to steer further climate action, including through nature-based solutions. The proposal of a due diligence law on forest risk commodities is an important step to build up mobilization in the run up of the COP 26, as no other market in Europe and in the world has put in place regulations to address deforestation embedded in their imports of agricultural commodities. It is also a very positive signal sent as a member of the Amsterdam Declarations Partnership, to steer this group towards greater post-2020 ambition.

While being crucial for climate mitigation – representing at least 30% of the solution to meet the Paris agreement goal¹ - and being the main harbour for global terrestrial biodiversity, the world's forests are highly threatened, with an estimated 1.3 million square kilometres lost between 1990 and 2016.² The world also recently realised with the COVID-19 pandemic that human health was highly dependent on the health of forests.³

The main driver of global deforestation is agricultural expansion, associated to commodities like soy, beef, palm oil, coffee, cocoa and rubber. While voluntary zero-deforestation commitments made by companies have been foundational first steps, 40% of the most influential companies in forest-risk supply chains do not have any deforestation commitments.⁴

Putting in place a legislation is therefore critical to 'level the playing field' and drive sector-wide transformation. On the basis of the consultation document on "*Due diligence on forest risk commodities*" (August 2020), CI is pleased to provide key recommendations reflecting more than 30

¹ <https://www.pnas.org/content/114/44/11645>

² <https://blogs.worldbank.org/opendata/five-forest-figures-international-day-forests>

³ <https://science.sciencemag.org/content/369/6502/379>

⁴ https://forest500.org/sites/default/files/forest500_annualreport2019_final_0.pdf

years of experience in conservation programmes and sustainable development in tropical and subtropical countries.

Core proposal of law

CI supports the due diligence approach selected by the UK government – as an appropriate way to effectively tackle deforestation in agricultural supply chains, while ensuring the burden is fairly distributed between supply chain actors.

We also support the focus on commodities, as the proposed law would aim to address very specific issues associated with the production of key commodities imported and consumed in the UK.

Finally, we also welcome the fact that the proposal lays out an obligation for companies to report on their due diligence exercise publicly – this element will be critical to ensure a transparent implementation of the law, inform on potential gaps and needs, and contribute to potential revisions of the law.

Scope of the law

The scope of the law is a determining element to ensure its effectiveness. Striking the right balance between ambition and feasibility is crucial at the primary legislation stage. Specifically, we encourage the UK government to consider the following issues.

Improving the sustainability of forest risk commodities

One of the main issues raised in the consultation document is how to make sure that commodities are produced more sustainably. However, the proposal of law is focused on ensuring the commodities have been produced in accordance with the producer countries' relevant laws.

Legal compliance should indeed always be ensured as a first step, but as such it is not sufficient to transition to deforestation-free supply chains. While several countries have put in place appropriate laws to address forest conversion, and this effort should be recognized and supported, some legislations are still fragmented – or inexistent. Other concerns include the fact that some countries, despite ambitious commitments and regulations, still suffer from weak law enforcement, and that laws can always be downgraded or repealed, depending on shifting political contexts.⁵

Furthermore, most of the major companies that would have to implement the law already made commitments that go beyond legality and have been mobilising substantial resources to deliver on them. Initiatives like the [Accountability Framework](#) also provide some support to companies to formulate and deliver on commitments on the basis of definitions and criteria endorsed by a wide range of stakeholders.

For these reasons, we encourage the UK government to consider the inclusion of additional criteria to strengthen the proposal of law, making full use of the processes and initiatives already supported by companies and other stakeholders. Such a process should also be envisaged as an opportunity to increase the cooperation and dialogue with producer countries to work towards a common vision and deliver jointly on global environmental and development goals.

⁵ <https://blog.globalforestwatch.org/data-and-research/global-tree-cover-loss-data-2019/>

Including human rights as an enabler to halt deforestation

The consultation document does not mention the issue of human rights, in particular indigenous peoples' and local communities' rights. Along with its environmental impacts, deforestation also has dramatic impacts on the rights and livelihoods of indigenous peoples and local communities, which can become a vicious circle where weak land tenure and community rights can further lead to deforestation.⁶

It has been widely documented that strengthening indigenous peoples' and local communities' rights, in particular related to land tenure, has a positive impact on the status of biodiversity⁷. However, they still face severe and unique challenges, such as discriminations and land grabbing. In recent years, there have been increased waves of violence against indigenous rights defenders, with many violent outbreaks taking place on the frontiers of global commodity production.⁸

As deforestation and human rights violations are interconnected, we believe these cannot be tackled separately. We therefore strongly recommend – in line with the GRI taskforce report – including human rights in a due diligence law on forest risk commodities. The law should at least ensure the compliance with international standards and obligations on human rights, including the rights of indigenous peoples and local communities, since these have allowed for cross-national definitions and are recognized by partner countries.

Expanding the reach of the law

The consultation document indicates that only the larger businesses would be covered by the law. Considering that the proposal of law is focusing at this stage on legality, we strongly recommend following the recommendation of the GRI taskforce report “promote mass market business engagement”, by expanding the scope to all relevant businesses, irrespective of their turnover/number of employees. This is all the more important since the proposed law focuses on legality: legal compliance should not be optional – it is an elementary requirement that all companies should comply with.

The UK government should consider a broad scope of operators to be covered by the law, and balance this scope depending on which requirements are incorporated in the law. The less stringent the requirements, the broader should be the scope of operators covered by the law. The criteria to define which businesses fall in the scope of the law should be carefully set, as some companies may have a limited number of employees and/or turnover, but a substantial impact in terms of deforestation.

Finally, we would also recommend the UK government to follow the recommendation of the GRI taskforce report, to consider the inclusion of the finance sector. While many private investors finance activities that drive deforestation, very few of them have zero deforestation policies.⁹ To put in place instruments that effectively tackle deforestation in agricultural supply chains, it is crucial not to leave key sectors off the hook.

⁶ <https://www.jstor.org/stable/j.ctt183pbn5>

⁷ <https://ipbes.net/news/Media-Release-Global-Assessment>

⁸ <https://search.informit.com.au/fullText;dn=128355297033202;res=IELHSS>

⁹ <https://www.globalwitness.org/en/campaigns/forests/why-eu-action-tackle-deforestation-should-not-let-finance-hook/>
https://forest500.org/sites/default/files/forest500_annualreport2019_final_0.pdf

Ensuring continuous improvement

We are providing below a set of recommendations on key features that we consider should be included in a due diligence law on forest risk commodities, at the primary legislation stage.

Designing a flexible and future-proof instrument

We support the requirement to regularly review the law's effectiveness, as laid out in the consultation document. We recommend including the right mechanisms in the primary legislation to make sure the law can adapt easily to new developments, such as changing production and consumption patterns. This applies in particular to the scope: the law should provide opportunities to expand its scope in terms of criteria, commodities and operators covered by the law. Including regular review clauses and "ratchet" mechanisms can contribute to strengthening the law and maintaining its relevance.

Future risks should also be integrated in the assessment to establish the list of commodities falling into the scope of the law, to make sure it effectively prevents further deforestation. For example, some commodities like coffee might currently present a lesser threat to forests or be rather undetected compared with other commodities, but anticipated increase in global demand as well as the impact of climate change is likely to drive further expansion of production on forested areas¹⁰.

Setting up a penalty regime that makes a difference

The consultation document mentions that the proposed law would enable the Government to levy fines and other civil sanctions against businesses that continue to use forest risk commodities that have not been produced legally and/or that do not have a robust system of due diligence in place. The primary legislation should include sanctions that are truly effective, deterrent and proportionate to the severity of the violations of the law, to ensure a level playing field and secure the enforcement of the law. As mentioned in the consultation document, the UK government should indeed explore other types of sanctions, especially as the proposal of law focuses at this stage on major businesses

The law should also provide the opportunity for third parties to submit substantiated complaints, with facilitated access for third parties from producer countries.

Beyond the law – a "smart mix" of measures to drive transformation

Even if the consultation focuses on primary legislation, we would like to highlight the need to include the due diligence law in a broader package of complementary measures, as presented in the recommendations of the GRI taskforce report. Recognising the resources and actions already mobilised by the UK government to halt global deforestation, we recommend paying particular attention to improving the traceability of supply chains and partnering with producer countries, as these two elements are critical to support the implementation and impact of the due diligence law.

Improving supply chain mapping and traceability

In order to effectively conduct due diligence, companies need to be able to identify the suppliers and sourcing regions of the commodities they import/use, but this still remains a challenge. Companies participating in a pilot project to implement the OECD-FAO Guidance for Responsible Agricultural Supply Chains in 2018-2019 identified supply chain mapping as one of the biggest challenges for identifying, assessing, and prioritising risks, regardless of the company's position within the supply chain, both in

¹⁰ <https://www.conservation.org/docs/default-source/publication-pdfs/ci-coffee-report.pdf>

terms of product traceability and accessing information from suppliers.¹¹ Scattered data and missing information representing a risk in themselves in a due diligence process, this issue is likely to trigger disproportionate mitigation measures from companies, such as ending relationships with suppliers.

The UK government should increase the collaboration with relevant partners and dedicate specific resources to ensure the availability and access to quality data, in particular sub national data, to support the risk identification and assessment by companies.

Partnering with producer countries

The proposed law should be an opportunity to reinforce the dialogue and partnerships with producer countries. Dedicated technical and financial support should be secured to support producer countries in addressing the drivers of deforestation and delivering on their environmental and development goals. Particular efforts should be focused on improving governance and law enforcement, as current proposal of law focuses on legality, and on improving the livelihoods of smallholders – who produce an important share of forest risk commodities (e.g. 40% of total global palm oil production¹², 90% of global cocoa production¹³ and 80% of global rubber production¹⁴).

Developing long term incentives for producer countries, such as payment for results and support to jurisdictional approaches, will be a decisive element to maximise the impact of demand-side measures.

¹¹ <http://mneguidelines.oecd.org/Pilot-project-on-the-implementation-of-the-OECD-FAO-Guidance-for-Responsible-Agricultural-Supply-Chains-FINAL-REPORT.pdf>

¹² <https://rspo.org/smallholders>

¹³ <https://www.icco.org/fag/57-cocoa-production/123-how-many-smallholders-are-there-worldwide-producing-cocoa-what-proportion-of-cocoa-worldwide-is-produced-by-smallholders.html>

¹⁴ <https://www.cirad.fr/en/news/all-news-items/articles/2019/science/rubber-hevea-genomic-selection>



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