

Response ID ANON-X5E1-ARTR-V

Submitted to **Due diligence on forest risk commodities**

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About you

1 What is your name?

Name:

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3 What country are you based in?

Country:

United Kingdom

4 Would you like your response to be treated as confidential?

No

If you selected 'Yes' please provide your reason::

5 Are you responding:

On behalf of an organisation

About your organisation

1 What type of organisation are you responding on behalf of?

Non-governmental organisation

2 Please provide your organisation's name.

Insert organisation name:

Fauna & Flora International

About the proposal

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

Yes

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

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

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

Yes

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

Yes

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

7 If you responded 'Other' to Question 6, please expand.

Other:

FFI believes that due diligence standards and principles should ideally apply to all companies, determined by their links to deforestation rather than the size of the company. In particular, if the requirement will be so limited as to only require local legal compliance, de facto all companies should be doing that anyway, so this proposal does not stretch best practice, and it doesn't seem necessary to limit the law to large companies. If the scope can be more ambitious and sustainable (see question 9 below), then FFI has no objection in principle to targeting larger businesses initially, although we believe an additional factor (as well as pure company size) should be deforestation footprint, and there should be extension over time to smaller businesses.

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)]?

Extent to which there are opportunities to align the proposal set out in this consultation with businesses' reporting under existing frameworks:

As set out in some more detail in question 9 below, FFI believes that the components of an ambitious deforestation due diligence law should be scaleable or "modular", i.e. enabling expansion to other risks and harms. This could well include climate change issues as well as human rights, and other environmental impacts.

A critical aspect of the current deforestation due diligence proposal is that it should go beyond mere reporting and require companies to take steps to stop deforestation in their supply chains. In particular if the law is crafted in the way we suggest in question 9 below, it would be quite straightforward to add other risks and issues into the same framework.

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

Please provide any further information or comments in relation to this consultation:

FFI welcomes the proposal to legislate to require businesses to consider and mitigate their global deforestation footprint.

We believe that a due diligence law should be:

- ambitious for the environment – encouraging UK businesses to operate to the highest standards on avoided deforestation and forest degradation, wherever around the world they work
- fair for business – setting a level playing field for UK businesses, not just a de minimis threshold
- scaleable – enabling additional commodities or harms, particularly those related to extractives and development infrastructure, to be added to the due diligence framework, thus enabling the development over time of a coherent, navigable set of obligations for businesses

However, by basing the law on host country illegality, a number of these opportunities are missed.

Critically, the purpose of a due diligence law must be to hold companies to the standard to which we in the UK aspire, not host country standards which may be weak, fluctuating over time, or even non-existent. It is normal in these situations, such as modern slavery due diligence or anti-money laundering laws, for UK law to define the standard that businesses must attain, irrespective of where they are operating and what the local legal position is. Deforestation should not be treated differently.

We do agree that, because the proposed law would make it illegal to market a specific product on the basis of origin, the test needs to be very clear and actionable. However, it is not clear to us that the only way this can work is by setting the standard as local law: on the contrary, this may make it much more difficult to unpick the question of legality, if the underlying local law is uncertain, subject to litigation, or changing over time. A more straightforward "deforestation-free" requirement may actually be clearer.

The proposal will do nothing to encourage high standards of environmental protection in countries around the world – on the contrary, it risks rewarding countries with lax legal protection, as they may be able to offer their goods to UK businesses more cheaply or in greater quantities than other countries, incentivising UK companies to source products from places with the weakest protection. It may even encourage countries to drop their standards to a lowest common denominator, as they try to compete for market share with other countries with lower standards.

As you say in the consultation, this threshold will not set the bar high enough for businesses that aspire towards deforestation-free operations. It will therefore perpetuate a system where some businesses work to significantly higher standards than others. Many of the UK businesses which are asking for a due diligence law are doing so in order to level the playing field, and this proposal does not achieve that.

If government believes (contrary to the above) that local legality is the only threshold that is workable for a law which prohibits marketing of non-compliant products, the alternative would be to craft the law not as a prohibition on marketing specific goods, but as "risk-based due diligence" – requiring businesses to assess the deforestation risks in their supply chains, to report on them, and (critically) to continually act to eliminate or mitigate them. This approach is taken in (for example) the new EU conflict minerals diligence law, (to a lesser extent) the UK Modern Slavery Act, and the French duty of vigilance law. This formulation enables government to set higher required standards (i.e. setting the goal of diligence as being deforestation-free operations), the requirement on the company to mitigate or eliminate takes it beyond merely a reporting obligation, and it would be a familiar type of exercise for businesses (who are well accustomed to undertaking risk assessment and mitigation in their operations). It also has the advantage of encouraging businesses to engage with suppliers and improve standards, rather than simply switch host country or supplier. Finally, the risk-based due diligence approach has the attraction of being highly modular, in that new commodities or areas could be included in the scope of the obligation quite simply.

Modularity may seem like a secondary concern, but as businesses are faced with an ever-increasing regulatory and reporting burden, it must make sense to put in place a single set of rules or processes that can be applied (over time) to other areas, for example other specific or general environmental harms, climate change, and human rights. It may be possible and simple to focus on local legality for deforestation, but that is less tenable when looking at other standards, such as human rights.

FFI also believes it would be appropriate and desirable to define the scope of the obligation as the global footprint of UK businesses – so not just related to what they import into and market within the UK, but what UK-headquartered businesses do overseas. This would strengthen the validity and application of existing corporate risk analysis practice and existing legal reporting requirements (financial and non-financial) which are based on the worldwide activities of the corporate group, not simply those activities that take place in the UK. It is important to assess the impact of UK business activity, meaning its impact on and risk to the environmental and social receptors, and not to conflate this with risk to the business.

FFI also believes that the proposed law should also apply to the finance sector, ensuring the sector is cast broadly enough to encompass the activities of those who provide debt or other finance to the operating companies in question (whether domestically or internationally).