

## Response ID ANON-X5E1-AR52-W

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

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### About you

#### 1 What is your name?

**Name:**

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#### 2 What is your email address?

**Email:**

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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:**

Fern

### 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?

Don't know

#### 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?

Don't know

#### 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?

Don't know

## **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:**

The legislation should apply to "all" businesses. Size is often not determinate of the amount of imported deforestation for which a business is responsible. There are smaller businesses with large amounts of imported deforestation, such as Brazilian meat supplier JBS, that would not fall into the current scope of the proposal as written.

Some countries have imposed mandatory obligations on businesses of a certain size. This means only a small number of businesses have to comply and that those companies remain complicit in deforestation.

Moreover, Fern has analysed such countries' obligations such as the French Devoir de Vigilance law and has found that when a legislation does not apply to all sizes of business it is hard for the government to regularly assess business size in order to identify which businesses come into scope. It also makes it hard for the businesses themselves to understand if they come into scope, and even harder for enforcement agencies and investigators to understand which businesses to hold account. It is clearer and more transparent to enforce a standard that applies to all businesses.

If the scope is limited to larger businesses, it will also create a loophole, which could be circumvented by businesses setting up smaller sister companies. Furthermore, the UK is a member of the Organisation for Economic Cooperation and Development (OECD) and under OECD due diligence guidelines for responsible business conduct, all businesses should be included under the scope. The UK has already taken the approach of covering all businesses with regulations such as the European Union Timber Regulation (EUTR) which is now replicated in UK law as the UK Timber Regulation. This approach creates a level playing field and ensures all businesses are treated equally.

## **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:**

While the UK can learn lessons from the TCFD, Global Resource Initiative discussions already identified that frameworks such as the Taskforce on Climate-related Financial Disclosures (TCFD), that use net environment and climate reporting, do not work to mitigate deforestation. Most of the time, companies linked to deforestation do so on an ad hoc basis and do not initially plan to deforest. This results in the companies' actions not being identified by TCFD reporting. Voluntary frameworks are not enough to halt deforestation. This rationale led to the Global Resource Initiative's recommendation that all businesses including the finance industry must be included in a UK wide mandatory due diligence proposal. The proposal should be adjusted to take this recommendation from the Global Resource Initiative final report in account.

It should also be noted that the Organisation for Economic Cooperation and Development (OECD) guidance, stresses that such legislation should apply to all businesses, which would include the financial industry.

## **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:**

Fern welcomes DEFRA's proposal on due diligence for forest-risk commodities. This is a positive first step and shows that the UK wants to take action on deforestation. However, the proposal and future consultation processes need to be more ambitious and inclusive in order to reduce the harm the UK inflicts on forest peoples and its complicity in deforestation when it imports products linked to forest risk commodities. We would appreciate if you consider our concerns around the proposal and the consultation process. Our main concerns are the:

- Lack of a do-no harm, deforestation and forest degradation free approach
- Lack of inclusion of human rights and especially tenure and women's rights
- Over reliance on certification
- Timeline foreseen to advance on legislation and therefore reduce deforestation
- Need to have a UK wide legislation
- Need to include forest degradation and ecosystems other than forests
- Reliance on a fine-based approach for enforcement
- Need for a review mechanism

If the proposal put forward becomes primary legislation, it would not stop the UK's complicity in deforestation. The UK has already signed up to numerous international statements that show its commitment beyond legality. Therefore, this legislation would not be consistent with current UK international statements. Moreover, the UK already has an approach which asks businesses to go beyond definitions set in countries and regions outside of the UK. With the Ivory Ban, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as well as the Anti-Bribery and Wildlife Acts, the UK sets out the harms the legislation is intended to avoid and does not rely solely on definitions of legality in countries outside of the UK. This proposal should build on that approach and do the same.

Like the Anti-Bribery Act, the UK should have a do no harm approach, rather than allowing deforestation to continue to be imported throughout the UK. The best way to reduce harm and to avoid complicity is to have a deforestation, forest degradation free standard.

Furthermore, a substantial portion of deforestation occurs legally. Fern hosted a series of webinars to get views about the UK's proposal on due diligence from civil society organisations in producer countries. Over 100 participants attended, and it was rightly noted that in Brazil for instance, stakeholders can legally deforest and convert 88 million hectares (which is roughly four times the size of the UK and equivalent to 50 years of the UK's 2019 emissions). In many countries, especially highly forested countries, national and local laws are too weak, legally allowing rampant deforestation. If the UK proposal were to become law, the UK would then allow products linked to deforestation onto the UK market and continue to be complicit in deforestation worldwide.

In addition, there is active environmental deregulation in many countries from where the UK imports forest-risk commodities, such as Brazil and Indonesia. The amount of deforestation imported into the UK would likely increase after the legislation comes into place, as those countries continue to deregulate. Moreover, it would become very difficult for UK businesses and the government to constantly assess and establish what is legal in other countries. In Brazil, there are dozens of environmental laws that are being challenged in this year alone. Moreover, in many countries it is harder to assess if a product is produced legally than whether

it contributes to deforestation (which satellite data is making easier to determine). Therefore, a deforestation and forest degradation free approach would not only help end the UK's complicity in deforestation and forest degradation worldwide, it would also make it easier for businesses to comply with the legislation and for government to then enforce it (this is the reason why Fern answered 'don't know' to multiple choice questions 2, 3, and 5 - because the focus on laws from producer countries are not enough to meaningfully address deforestation, forest degradation and violations of human rights and there is no option to address this concern using the multiple choice options available).

Regarding human rights and specifically Indigenous Peoples, tenure and women's rights, the UK has already signed up to numerous pledges and statements such as the United Nations Declaration on the Rights of Indigenous Peoples and more recently the Leaders Pledge, which outline its commitment to Indigenous Peoples. Moreover, since 2018, the UK government has also increased its safeguarding requirements for UK aid, in order to ensure that vulnerable people are not harmed in projects funded by the UK government. We must ensure this proposal is consistent with the approach already taken by the UK government. Moreover, it is impractical and near impossible to divorce environmental and human rights due diligence when 85% of forests are inhabited by forest peoples. UK laws must not disadvantage Indigenous Peoples and forest communities. The UK government can reduce harm by ensuring that issues such as free prior and informed consent as well as other human rights and tenure rights are included in this proposal.

Fern is also concerned about the proposal's over-reliance on certification. Most NGOs in the UK and the EU do not advocate for additional labelling and certification processes. Labels and certification schemes put the burden on consumers instead of raising the bar for all and creating a level playing field which should be then respected by all private sector actors. Our partners also fear that a reliance on certification would overlook many elements of human rights and environmental protection.

During the webinars we hosted on this consultation, our partners worried about the amount of time this legislation would take to come into force. If the implementation has a commodity by commodity approach, we fear that the full effect of the proposal could take a decade to be fully realised, even though most of the world's deforestation will likely happen in this period.

Moreover, we would stress that this legislation needs to apply to the entire UK and not just to England. We are concerned because we know that certain elements of the Environment Bill may only apply to England and this legislation may be rolled into that Bill. In order to ensure the UK reduces the harm to forests and forest peoples, it needs to apply to the entire UK. In addition, the current proposal outlines that mandatory due diligence would apply to forests but does not concretely outline whether forest degradation is included and what other ecosystems may be included. Fern recommends that forest degradation and that other ecosystems, such as grasslands, are included within the scope of this legislation. There are many reasons to include the above. For instance, tropical forest degradation releases around 14% of global carbon emissions. Secondly, many important ecosystems such as the Cerrado, which is the world's most biodiverse savannah, stores 13.7 billion tons of carbon dioxide, and has to date lost 50% of its area, would only come into scope if this proposal was extended to include grasslands. Fern would like to stress that adequate law enforcement and monitoring are essential for any new regulation. The UK needs to ensure that the prospective legislation is robust and informed by other existing instruments such as the EU Timber Regulation (EUTR), the UKTR, and the Illegal, unreported and unregulated fishing (IUU) carding system. Fern will publish a discussion paper about enforcement challenges and possible options for enforcement, based on lessons learnt from the EUTR and other legal tools. It is hoped this paper will contribute to further this discussion in the UK. Based on lessons learnt from the EUTR, Fern suggests that instead of fines, other penalties may be more effective for enforcement. Another lesson from the EUTR process is that having sufficient funding and mechanisms to support monitoring and enforcement is key. The UK also needs to support stakeholders from producer countries, to ensure that there are robust traceability systems that can determine whether a product has been linked to forest deforestation, forest degradation or human rights.

We would also like to raise some concerns about the consultation process itself. There were not many questions in which civil society could provide sufficient input. Many of the multiple-choice questions do not allow for open answers and most of the questions in the consultation were relevant for businesses and not civil society. It would be helpful to have more space for civil society to provide their views.

If there is a second consultation, there needs to be more support and guidance for small and medium sized enterprises (SMEs) and small-holders from producer countries to enable them to respond to consultation. The consultation was only available in English and responses were only permitted in English. We would suggest that the UK uses a similar process as the EU, to enable translations of documents and submissions of responses in other languages. Since SMEs and small-holders in producer countries will be key to the successful implementation of this proposal, it is critical that their voices are heard (many of whom English is not their first language). The UK can develop processes to get direct input from these stakeholders because they often do not have access or capacity to engage in these high-level technical consultations. One way to do so is by engaging with producer forest forums and other roundtables. Development cooperation could also support technical assistance to small-holders and SMEs to build their capacities. All of these actions will help ensure more meaningful engagement of civil society moving forward.

Finally, Fern would also suggest that any piece of legislation that the UK moves forward on builds in a statutory review mechanism. As with any piece of legislation, this will ensure there is a proper review of efficacy and will be instrumental to ensure the legislation prevents UK businesses from importing deforestation.

We hope these comments are useful and we remain on hand to answer any questions or issues of clarifications you may have.