

Response ID ANON-X5E1-AR11-R

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

Submitted on **2020-10-05 15:26:02**

About you

1 What is your name?

Name:

[REDACTED]

2 What is your email address?

Email:

[REDACTED]

3 What country are you based in?

Country:

Brazil

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:

Instituto Centro de Vida - ICV

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:

The proposal should apply to all businesses of all sizes, consistent with the OECD approach. Guidance should then be provided to regulators to focus their enforcement efforts on businesses that have the highest level of risk, exposure or contribution to ecosystems destruction and related harms. We disagree that employee number and turnover are appropriate criteria to select the businesses the legislation should apply to. This selection should follow a risk-based approach: companies first placing commodities/products on the UK market should assess the risk of having commodities/products in their supply chain that are linked to deforestation/ecosystem conversion and human rights abuse and take measures to ensure that their risk is reduced to a minimum/negligent level. In alignment with this risk-based approach, the volume and value of forest risk commodities/products companies place in the UK market (more than employee number and total turnover) is of higher importance when considering which companies the legislation should apply to. A company with a high turnover and number of staff for example could import only a small amount of rubber, with a smaller company, producing tyres for example, importing a much higher volume. Application of the law to larger companies only risks shifting the importation of illegal products to smaller companies. It would also not 'level the playing field', applying a mandatory requirement only to larger businesses, who are most likely to already be acting due to the reputational risk of being associated with products causing deforestation/conversion, whilst driving limited change in the practices of smaller business.

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 existing frameworks reporting on ESG provide some guidance to corporate and financial institutions, voluntary frameworks have not been sufficient to curb the rate of deforestation/conversion⁵. As implementation has been low, existing voluntary mechanisms therefore have not developed consistent, comparable metrics and standards needed to achieve an objective like eliminating deforestation/conversion from supply chains and financing. This is true of the Task Force on Climate Related Financial Disclosures (TCFD), which were developed to identify material financial risks to the company, not illegality or company impact. Thresholds or "comply or explain" standards would also ultimately need to be removed in order to be effective. However, current frameworks (e.g. the Accountability Framework⁶, UN Guiding Principles and OECD Guidelines for Multi-National Enterprises) should be a starting point, and lessons can be learned from due diligence legislature such as the French Duty of Vigilance when developing such legislation to include financial sector and corporate actors, as well as Modern Slavery Act, the EU Timber Regulation, anti-bribery act and anti-money laundering act.

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:

We would welcome the integration of a mandatory due diligence obligation in the Environment Bill, and agree that this obligation should be focused initially on those commodities that present the highest risk when it comes to deforestation (as well as conversion of other natural ecosystems). However, we believe this obligation needs to include the additional elements outlined below.

1) Expand scope from conversion of natural forests only (deforestation) to conversion of all natural ecosystems This due diligence obligation should systematically include both deforestation and conversion of other natural ecosystems – such as grasslands, savannas, wetlands and peatland – and irrespectively of whether they are protected by law in producer countries (see below). As UK imports have historically had a substantial footprint on savannas and natural grasslands in addition to forests, we urge UK government to focus on the broader concept of conversion as defined by the Accountability Framework: "change of a natural ecosystem to another land use or profound change in a natural ecosystem's species composition, structure or function". This would ensure that any restriction to imported products linked to deforestation does not cause any increase of destruction of other natural ecosystems, from the same drivers (leakage). Deforestation is but one form of conversion (conversion of natural forests). Residual natural vegetation conversion for indigenous peoples', local communities' and smallholders' livelihoods should be accepted in cases it is limited to small areas and when there is no other choice for these groups. Nevertheless, for industrial production the New York Declaration on Forest's second goal must be kept as a reference: "Support and help meet the private-sector goal of eliminating deforestation from the production of agricultural commodities such as palm oil, soy, paper, and beef products by no later than 2020, recognizing that many companies have even more ambitious targets".

2) Go beyond legality, encompassing all legal and illegal ecosystems destruction.

It is critical to also address legal conversion in this due diligence obligation, and not to restrict its scope to illegal conversion only. Currently in Brazil, approximately 88 million hectares⁷, the same as nearly 4 times the size of the UK, could be cleared legally on private properties under Brazilian forest law. This area of native vegetation has the potential to emit approximately 18 Gt of CO₂ equivalent. This could lead to the release of the equivalent of 50 years of UK net CO₂e emissions, further impact indigenous communities and wildlife populations, and it could even threaten the future productivity of areas currently under production. The problem that needs to be addressed is deforestation and conversion of other natural ecosystems (for instance through the lever of UK supply chains and UK-headquartered financiers), and not compliance with national laws in producing countries. A legality only approach would lock in business as usual behaviours and make it challenging to introduce more comprehensive due diligence measures within an appropriate timeframe given the urgency of the nature and climate crises. Whether land has been converted legally or illegally, this has the same effect on nature. The impacts incurred by land conversion are in most cases largely

irreversible (secondary ecosystems never really recover the richness and value of the primary ones) and where it causes the expulsion, exclusion and replacement of indigenous peoples and other local communities, can lead to the disappearance of unique cultures.

The few existing protecting rules and policies in regions at high risk of conversion are often under pressure. Evidence shows that environment legal framework, protected areas and other key protection mechanisms are being dismantled⁹. A UK legal mechanism may not be able to require that companies maintain a higher level of stringency in these cases, without in fact creating risks of accusations of interfering in the sovereignty of producing countries.

In implementing a due diligence law based on legality only, it may become complex to define what legality means and how to verify it accurately. In high deforestation and conversion areas, conflicts may be extreme and governance low.

These areas may have higher levels of violence, corruption and threats on vulnerable populations, sometimes masked or even supported by a bureaucracy. A due diligence on legal compliance will have to rely on documental evidence, formalizing a “pro-forma legal enforcement”, potentially reinforcing and covering up abuses and violations. This may in fact, create a huge risk to these populations and an uncontrollable liability to the companies themselves.

For all of the above and clear ethical reasons, a due diligence law must aim at eliminating the destruction of natural habitats and human rights abuses linked to UK imports, irrespective of their being formally addressed by countries' laws. Tools to detect impacts and measure progress exist, and can be strengthened and more widely adopted; so does a strong reference framework: the Accountability Framework.

Due diligence mechanisms to verify the absence of deforestation and conversion from supply chains (which might include certification, jurisdictional approaches, collective commitments, moratoriums or biome-wide solutions such as the Amazon Soy Moratorium and the Cerrado Funding Coalition) would likely be safer, easier and less costly to implement across geographies than systems to ensure production is compliant with relevant local laws, as the latter will greatly vary in their stringency and level of enforcement, as well as laws may be dramatically changed in some countries (such as the Brazil case) due to political ideology modifications once a new government is elected.

Moreover, in most producing countries, a lack of transparent data makes it difficult for companies to develop systems to control, trace and verify whether forest- and ecosystem-risk commodities have been produced legally. There are significant grey zones where legality may not be ensured, or even precisely and unambiguously defined. Land encroachment and other illegalities may gain passive and even active support from authorities. The safest, most consistent and verifiable way to avoid illegal deforestation/conversion and human rights abuses in commodity supply chains is to avoid all deforestation/conversion, by setting up a deforestation/conversion cut-off date pertaining to all conversion (legal and illegal) through country-wide, biome-wide or landscape-wide approaches, such as the Amazon Soy Moratorium.

3) Inclusion of human rights

This due diligence law should also ensure no human rights violations in the supply chains of products placed on the UK market. Human rights violations include a wide array of possible violations including land-use rights, or workers' rights amongst others. For this legislation, the focus should be on and land use based human rights (respect of customary rights, free prior and informed consent (FPIC), conflicts with communities, benefit sharing, workers' rights, etc.).

4) Including the finance sector and institutions financing commodities

Institutions that finance commodities should from the outset, be included in the mandatory due diligence obligation. For due diligence to be effective, it must cover the entire supply chain, which includes those financing actors involved in deforestation risk commodities. Financing institutions should also have due diligence processes to ensure that their financing and business relationships are not profiting from legal or illegal deforestation, conversion and human rights abuses. Financial institutions should be required to comply with the same rules as their clients, to maintain market coherence; this is reflected in a wide range of international standards, including UN Guiding Principles and OECD Guidelines for Multi-National Enterprises and French Duty of Vigilance. Agribusiness firms also often provide credit or third-party financial services to farmers, and this part of the business should not be exempt from due diligence standards. This is important not only for consistency but also to ensure that the UK maintains its reputation and credibility as one of the largest green financial centres in the world.

5) Scope of application

We disagree that employee number and turnover are appropriate criteria to select the businesses the legislation should apply to. This selection should follow a risk-based approach: companies first placing commodities/products on the UK market should assess the risk of having commodities/products in their supply chain that are linked to deforestation/ecosystem conversion and take measures to ensure that their risk is reduced to a minimum/negligent level.

In alignment with this risk-based approach, the volume and value of forest risk commodities/products companies place in the UK market (more than employee number and total turnover) is of higher importance when considering which companies the legislation should apply to.

Application of the law to larger companies only risks shifting the importation of illegal products to smaller companies.

It would also not 'level the playing field', applying a mandatory requirement only to larger businesses, who are most likely to already be acting due to the reputational risk of being associated with products causing deforestation, whilst driving limited change in the practices of smaller business.

6) A time-bound statutory review process

We welcome the proposal to include a requirement that 'government regularly review the law's effectiveness'. It is critical that this obligation include a time-bound statutory review process on its effectiveness. The process should include a specified timeframe and requirements (including an assessment of the effectiveness of the measure) and be

fully transparent (e.g. the government should prepare a report into the review which must be laid in Parliament). The review should include public consultation and should seek advice from independent experts. The government should be required to tell Parliament what steps it intends to take in response to the review, and there should be a duty on ministers to set out how (in response to the review) they will ensure the progressive realisation of lawful, sustainable and transparent UK supply chains.

7) One part of a package of measures

A strong and effective mandatory due diligence obligation should be included in the Government's 'landmark' Environment Bill as it is critical to fulfil government's ambitions for this legislation to be part of the UK's recovery and to help 'build a fairer, greener, more resilient future'. It should be noted that due diligence should form one part of a package of measures by which UK Government take action on deforestation/conversion and on reducing its global environmental footprint, as set out in the GRI Taskforce's recommendations¹⁰. This should also include for example government funding and support for improved governance via bilateral or multilateral agreements and international collaboration to support producer countries towards a transition to sustainable production and to restore native vegetation where possible.