

## Response ID ANON-X5E1-ARSE-E

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

Submitted on **2020-10-05 18:02:36**

### About you

#### 1 What is your name?

**Name:**

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#### 3 What country are you based in?

**Country:**

Netherlands

#### 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:**

Solidaridad

### 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:**

A broad approach: The obligation to conduct due diligence should cover all business enterprises including multinationals and SMEs, the public sector institutions, as well as the financial sector.

For example, government agencies should make sure that they only procure goods from business enterprises that have conducted proper due diligence. The financial sector should conduct due diligence to avoid causing or contributing to adverse impacts on human rights of producers and the environment through its business relationships. This includes avoiding lending or investing funds in projects and activities that can harm producers and natural ecosystems in the Global South and being vigilant throughout the entire life cycle of the clients' relationship and exercising its leverage.

The regulatory obligation to conduct human rights and environmental due diligence should apply to a business enterprises' entire supply chain. This includes a company's corporate structure, all controlled business enterprises, and its direct and indirect business relationships with other parties, including direct and indirect suppliers at all levels of their supply chain down to the first producer level (farming, raw material extraction).

Although the size of an enterprise can affect the nature and extent of due diligence, due diligence must be commensurate with the risk and not with the size of the enterprise. For some arguments on the full inclusion of SMEs see: West F, (2019) ■SMEs and the Corporate Responsibility to Respect Human Rights, Busting the Myth that Bigger is Always Better.

**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:**

**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:**

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

Due diligence legislation for business enterprises is an important element of a regulatory framework, but definitely not the only element in the smart mix of measures that is needed to tackle the complex and systemic challenges in international supply chains.

Action should be taken in three key areas that can jointly form an effective and comprehensive regulatory framework:

Long-term partnerships with sustainability goals between the UK and producing countries as well as between the UK and other importing countries.

Long term partnerships between the UK and producing countries to support the development of national laws that foster sustainability and the implementation of international human rights and environmental agreements in production landscapes. This is particularly relevant given the scope of the proposed system of due diligence of this UK initiative that aims at ensuring that the forest risk commodities have been produced in accordance with relevant local laws.

These partnerships should include all actors in supply chains, including producers - especially smallholder farmers, workers and miners in the Global South who are typically under-represented in multi-stakeholder platforms- as well as companies, the financial sector, civil society organisations and trade unions. Focus issues should be the realisation of fundamental rights and addressing systemic issues such as living income, living wage, deforestation, land tenure, etc.

Resources, capacity building, and knowledge sharing are key to foster long-term changes in value chains and should be the backbone of such partnerships. The already existing Voluntary Partnership Agreements (VPAs) can serve as a starting point for the design of such instruments, building-up on learned experiences.

The UK should also partner with other major importing countries to jointly tackle unsustainable practices, human rights abuses and major deforestation issues in global value chains. Neglecting the importance of this kind of partnership elevates the risks of simply shifting unsustainable products or services to other major markets such as the US, China, Japan, Canada, India, etc while leaving human right abuses and deforestation in supply chains unchecked.

Implement complementary measures designed to mainstream sustainable production and support governments and key actors in producing countries in the Global South, including civil society. Complementary measures should include the provision of incentives to responsible private sector developments such as favourable tax regimes, export credits, low-interest loans and mandatory sustainable public procurement criteria.

Mandatory due diligence that must be complemented with sector specific guidance providing tailored-specific measures for specific commodities.

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?

There is no doubt that products that are obtained or produced in contravention of national local laws should not be traded freely without any consequences. However, conducting due diligence, to solely "ensure" that forest risk commodities have been produced in accordance with the relevant local laws restricts the notion and scope of a thorough due diligence process. Especially if this is done in isolation and not combined with other measures that support the development

of national laws that foster sustainability and the implementation of international human rights and environmental agreements in production landscapes

The focus should be on introducing an obligation for all companies to conduct human rights and environmental due diligence legislation as a process of ongoing engagement and continuous step by step improvements that aim at actually transforming supply chains.

The law should provide for all companies to conduct due diligence in order to identify, prevent, and mitigate all kinds of adverse impacts on human rights and the environment. This approach includes the use of national laws of the producing countries but also the use of international human rights, environmental instruments and authoritative guidelines and frameworks.

National legislation is indeed a good starting point. However, a great part of deforestation is legal deforestation and legislation can also embrace discriminatory practices. For example, the formal legal system in many countries has laws that discriminate against women preventing them to have equal access to land. An effective due diligence process can not overlook this and other realities that translate into human rights violations and environmental damages. Moreover, there is a risk that this approach incentivizes processes of deregulation in producing countries in order to facilitate the entrance of commodities to the UK. Especially if due diligence is not combined with additional long term partnerships with producing countries and other complementary measures that contribute and support sustainability efforts on the ground.

Moreover, the ultimate goal of the regulation is to drive measurable positive impacts in producing landscapes in the Global South. Thus the focus should be on improving the livelihoods and conditions for producers in value chains and on restoring degraded landscapes and preventing the further destruction of natural ecosystems in the Global South. This also means taking careful consideration of potential unintended consequences that could further aggravate the situation of those already marginalized in global supply chains.

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, however is important to take into consideration the reasoning presented in question number 2.

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

Yes, however, the risk that business enterprises focus only on reporting and not in driving changes on the ground should be avoided. A strong focus on compliance may easily be translated into "box-ticking" exercises, which have no or little real impact.

Reporting on due diligence should provide for mandatory disclosure of a companies' due diligence strategy that includes the risk mapping process and the methodology behind it.

Public communication about how a company is implementing due diligence in their organization and in their supply chain should allow stakeholders to understand how the company carried out the different due diligence steps. This public reporting should describe:

- the company's policy and management system,
- their risk identification and prioritization approach,
- the risk mitigation and prevention plans,
- information about the implementation and results of these plans, and,
- information on the remedy of adverse impacts.

Stakeholder participation and consultation in this phase is also key to mitigate the risk of under-reporting potential or existing impacts and jointly construct more effective risk mitigation strategies.

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

Legislation should include a robust enforcement regime that at least includes:

Effective, proportionate, and dissuasive sanctions for companies that fail to establish, and implement a complete and integral due diligence process. The system of sanctions can be progressive and not limited to fines. It could also include permanent seizure of covered commodities and derived products concerned.

Legal avenues to effectively bring business enterprises into compliance if they fail to fulfil the obligations provided in the law.

Civil liability for damages that a company could have avoided by conducting an effective, credible and thorough due diligence process. Simply conducting due diligence should not absolve a company from liability. It is also important to add provisions that reverse the burden of proof for affected individuals and communities as well as including remedies that go beyond monetary compensation to victims.