

DEFRA CONSULTATION: DUE DILIGENCE ON FOREST RISK COMMODITIES

ABOUT TRIBES ALIVE/INDIGENOUS PEOPLE'S CULTURAL SUPPORT TRUST

We are an English registered charity founded in 1995 which works with indigenous tribal communities in the river catchments of the Xingu and Araguaia Rivers in the Brazilian States of Pará and Mato Grosso.

The communities we work with are in the front line of the fight against deforestation, forest degradation and land conversion. They occupy forested indigenous reserves, most of which are fully demarcated, which only ten years ago were surrounded almost entirely by forest. Today agricultural activity, principally cattle ranching, soya and maize agriculture, reaches right up to the boundaries of their territory. The forest has been destroyed right up to the edge of their land. The green of their territories stands in sharp contrast to the stark deforestation which surrounds them on all sides, clearly visible in satellite imagery.

My comments below relate solely to Brazil because that is the country where I have in-depth knowledge and experience. They are no less valid for that, because Brazil is the country with by far the highest rate of deforestation, and also exports substantial amounts of raw materials, meat, leather and agricultural products to the UK. It is therefore the most important country covered by the proposed law.

ABOUT THIS CONSULTATION

Britain is at a turning point in its commitment to remove unacceptable environmental impacts from the goods and raw materials it imports. The proposed law is just one of the mechanisms it can use to achieve this, but potentially an important one.

The proposal envisages a law with only a very limited reach, and with very restricted criteria. If it is to satisfy its objective to be:

“a new law designed to prevent forests and other important natural areas from being illegally converted in to agricultural land”

it needs to be more ambitious. If it is restricted to the criteria detailed in the consultation document its impact will be at best only marginal. It will certainly fail in its stated objective.

In particular:

- a) Restricting the scope to just a few large businesses in the UK means that Brazilian producers will simply route their exports through a series of 'small' businesses, either pre-existing or established for the specific purpose of undermining the objectives of the new law

- b) Brazilian businesses will reserve 'clean' products for those markets which insist on due diligence and simply export products which are contaminated by deforestation to markets which make lesser demands, for example China and Hong Kong – the two largest export markets for Brazilian beef
- c) Restricting the requirement for due diligence to embrace only compliance with local (Brazilian) laws will result in a flood of products with counterfeit certification of compliance, or with compliance documents issued by corrupt officials
- d) Brazilian law is insufficiently rigorous in its reach on environmental issues, and has been weakened substantially under the government of President Bolsonaro. There exist many conflicts within Brazilian law; compliance with one law does not exclude transgression of another, but such a paradox may be cheerfully ignored by the agency issuing the statement of compliance or certification, meaning that goods which are certified compliant in one respect may in fact be non-compliant in another. But their exporters will lay claim to having carried out Due Diligence.
- e) Nominal compliance with Brazilian law is inadequate to ensure the stated goal of "prevent[ing] forests and other important natural areas from being illegally converted in to agricultural land" because the laws governing agriculture and deforestation are riddled with contradictions and inconsistencies and are inadequate in scope. Brazilian agencies lack both the resources and the will to ensure enforcement of the law, even within these limitations.

There is a real danger that those UK businesses within the scope of the law will use their compliance with the letter of the law to market their products as 'deforestation free', when in reality many of those products will be anything but deforestation free. Given the weakness of Brazilian legislation and enforcement, and the widespread corruption within Brazilian government agencies, mere certification of compliance with Brazilian law in no way means that those products are deforestation free.

Furthermore the proposed law would present the Brazilian government, which has scant interest in environmental concerns, with a perverse incentive to further weaken the country's environment laws, in order to bring more of its exports into 'compliance' with the requirements of the law. By legalising additional categories of deforestation – a process which has already been carried out several times under the present government – Brazil can bring additional forest-destruction contaminated goods within the letter of compliance with Brazilian law, while failing to reduce by one hectare the level of deforestation. In fact the result would be the exact opposite; deforestation would be not only accepted, but further incentivised.

SHOULD THE PROPOSED LAW BE LIMITED TO DEFORESTATION?

At first glance it seems sensible to restrict the law to deforestation, but deforestation cannot sensibly be isolated in commerce and the law.

For example, deforestation in Brazil is intimately tied to land tenure. One of the easiest ways to sidestep deforestation laws is to muddy the ownership of the land being deforested, which in the Brazilian Amazon is easy because only a small percentage of the land is registered, and most of that is self-certified. There are so many ways to falsify claims to land ownership that there is a term for it: 'Grilagem'. This comes from the practice of falsifying documents which are then put in a box with crickets – '*grilos*' – the secretions of which 'age' the documents to make them appear authentic. Thus a

'historic' property is established to enable deforestation on that property to be effectively pushed back in time, enabling a recent 'purchaser' to claim that the deforestation was legal – or has been made legal under one of the several amnesties in Brazil which have legalised illegal deforestation after the event. As time has passed, criminals intent on deforesting the Amazon have become more sophisticated and the corruption has become more pervasive, to the point that official approval of a business as being compliant is essentially meaningless. These practices are not restricted to small businesses; the corruption reaches to even the largest agribusinesses. Some of the principal meat businesses have a long record of fines for environmental crimes, and those are just the tip of an iceberg, the extent of whose below-the-surface subversion of Brazilian environment law may never be known.

The place of indigenous people in this cannot be ignored. Time and again their importance as guardians of the forests has been proved in academic studies, yet they are amongst the worst impacted by the illegal activities of farmers and ranchers.

Along the 2,500-km length of the Xingu River there are several instances where parts of indigenous territories are illegally occupied by agricultural farms and cattle ranches, and every year indigenous communities suffer from fires set by neighbouring farmers which – often intentionally, sometimes unintentionally – spread across the boundary and consume the forests on which the indigenous people depend, and which they protect for the benefit of us all. They also suffer from the impact of illegal logging and illegal mining, which both continue at scale within their territories. While these clearly fall outside of the remit of this law it is imperative that the UK also examines these areas of trade.

Brazilian government agencies – the Indian agency FUNAI, the environment agency IBAMA and the Federal Police – either fail to respond to reports of these illegal activities which are documented by indigenous communities, or respond in a completely inadequate manner. In one case – the Parakaná territory of Apyterewa – illegal occupation of indigenous territory has continued for decades, even after a Supreme Court judgement which mandated the removal of illegal occupiers. Deforestation within the territory, which is expressly prohibited under Brazilian law, continues to the present, and has intensified substantially in the last two years. It has been proved that cattle from farms which include land within the indigenous territory have entered the export food chain, with Brazilian meat processor Marfrig being cited as having purchased livestock from farms which lie partly within the demarcated Apyterewa Indigenous Territory.

The situation on other land which is supposedly protected – known in Brazil as 'Conservation Units' (national and state forests, biodiversity reserves and a host of other categories) is even worse. Land can fall simultaneously within several categories identified by different ministries or government agencies which demonstrate clear inherent conflicts, but there is no coordination and apparently little will to resolve those conflicts. Legal cases over land classification or ownership continue unresolved for decades while deforestation continues unchecked, the trees burn and species are lost.

IS IT ADEQUATE TO INSIST MERELY ON COMPLIANCE WITH LOCAL LAWS?

In this chaotic mess of administration and governance there is little to be gained by insisting on compliance with the local law. If the proposed law is to have any impact at all, the requirement for due diligence must be measured against either a detailed set of requirements enshrined in the UK law, or against an internationally-recognised set of criteria. It cannot be limited to mere compliance with local Brazilian laws, because if it is

the proposed law will achieve nothing, and may even perversely act as an incentive to further intensify the rapidly rising level of deforestation in the Brazilian Amazon.

There are already moves which are backed by the Brazilian government to reduce the size of demarcated indigenous territories. The above cited case of the Apyterewa Indigenous Territory is one of these. Can it be right that cattle and soya grown on land which has been in effect stolen from its indigenous owners by the Brazilian state should ever be approved for consumption in the British market, certified as having been subject to Due Diligence, merely because the 'owners' of the disputed land on which they have been grown have been granted a highly dubious title by the same government which had previously granted 'inalienable and indisposable' rights to that same land to its traditional indigenous occupiers under the 1988 Brazilian Constitution?

IS IT REALISTIC TO EXPECT IMPORTERS TO CARRY OUT DUE DILIGENCE?

Brazil is a commercially and technologically advanced country. It has the infrastructure to carry out proper supply chain monitoring; it only requires scaling-up existing systems to manage the increased capacity. Already, in many parts of the country, cattle are monitored and tracked individually from birth to slaughterhouse and into the commercial meat supply chain. The systems exist and can be expanded to accommodate the capacity required. What is preventing this is the vested interests of businesses involved in the trade in animals raised on land which is illegally held or which has been illegally deforested.

Similarly, systems are in place for monitoring the source and supply chain for soya, with many companies implementing supply-chain monitoring systems to satisfy the requirements of the 2006 Soya Moratorium. All that is needed is to move this outstandingly successful co-operation between environmental organisations and commercial soya exporters within the scope of British law, making it a requirement rather than a voluntary scheme – which is currently under threat. Again, the systems exist and are capable of being scaled up to fulfil the requirements of the proposed law.

Most of the businesses which export meat and agricultural products from Brazil are huge and wealthy; in many cases they are multinational corporations. They have the resources to implement systems to properly monitor supply chains, and the costs of doing so would be small in comparison to the enormous profitability of these businesses so there is no commercial reason why they should not be required to comply.

Lacking direct jurisdiction over these mega-businesses, the British government can nonetheless ensure that these 'good practice' systems are implemented in producer countries by placing requirements on British businesses to ensure that their supply chains are properly monitored. British import businesses will then have no alternative but to insist that their suppliers in turn adopt adequate measures.

PROPOSED CHANGES TO THE STRUCTURE OF THE PROPOSED LAW

1. The law must require adherence to a universal set of criteria, not to local laws.

Mere adherence to local laws will not eliminate deforestation from the UK's supply chain. It will result in a failure to provide importers with a level playing field, and will disadvantage businesses importing from countries with high environmental standards and incentivise imports from countries – like Brazil – whose governments are prepared

to compromise their environmental laws in favour of businesses involved in deforestation.

2. The scope of the law should be extended to include the majority of importers instead of being restricted to only the larger businesses.

In practice, the requirements for Due Diligence will require the producers and exporters in the originating countries to implement the systems necessary to demonstrate compliance. Since a small number of businesses are responsible for the majority of the goods exported to all importers, large and small, the requirement for Due Diligence would not impose unreasonable extra costs on smaller importers, so these should fall within the scope of the law. It would be sensible to implement a tiered approach, with large importers being put under more stringent requirements than smaller ones, and perhaps a phased implementation could be considered, with the large importers required to demonstrate Due Diligence immediately while smaller businesses would fall within scope only after a sensible period of time. But the scope of the law must cover the majority of importers if it is to be effective.

3. The law must specifically require that importers demonstrate that the goods they import do not originate from land which is or has been recognised as indigenous territory.

Indigenous peoples are the guardians of 80% of the world's biodiversity, and they are custodians of much of the remaining forest carbon store. They deserve this minimal protection under British law, and adding this requirement will act as a disincentive to the removal of land from demarcated indigenous reserves by the Brazilian government, and will protect the livelihoods and cultures of these people who are traditionally and practically reliant on the forests for their spiritual and physical well-being.

They protect the world's biodiversity and climate systems, and they can be the greatest agents of reforestation if they receive our support. They have the potential to create new carbon-capture capacity at minimal cost, which would contribute significantly to global efforts to reduce carbon emissions. All they need is the tenure of larger, not smaller, areas of land. This has the potential to be the most cost effective and practical way for mankind to increase the Earth's capacity to capture and store carbon.

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