

## **Greenpeace response to the Defra due diligence on forest risk commodities consultation October 2020**

Greenpeace is an international environmental campaigning organisation with presence in around 50 countries around the world. It has been campaigning to tackle deforestation for at least a quarter of a century.

### **Government priorities when it comes to tackling deforestation and the destruction of terrestrial ecosystems globally**

Despite government promises and corporate pledges to halt deforestation, the world continues to lose priceless natural habitats. According to the FAO, deforestation averaged 10 million hectares per year between 2015 and 2020. This is equal to about 1 football pitch every 2 seconds. This destruction is further accelerating biodiversity loss and climate change, and is often associated with human rights violations against Indigenous Peoples and local communities.

In order to support the scale of nature restoration required on land to tackle the climate emergency, avoid further devastating species extinction, and protect the livelihoods of millions of people who depend on our natural world, deforestation and ecosystem destruction needs to stop, and significant areas of land also need to be given back to nature. The UN New York Declaration on Forests in 2015 (backed by governments, companies and civil society actors including Indigenous Peoples' organizations) committed to restoring an area of forests and croplands larger than the size of India by 2030.<sup>1</sup>

Delivering these goals requires three critical interventions, which the UK Government should show leadership in:

- 1) **Significantly reduce global meat and dairy consumption to give large areas of existing agricultural land back to nature.** Accounting for the UK's current consumption levels, which are significantly higher than the global average, this means around a 70% reduction in UK meat and dairy consumption over the next decade.
- 2) **End the use of crop-based biofuels to prevent further land conversion away from high quality natural ecosystems.** Within the UK, this means adjusting the existing regulatory target for liquid transport fuel from 12.4% by 2032 down to zero as quickly as possible. The purpose of the bioenergy industry is to reduce greenhouse gas emissions by replacing fossil fuels. However, increasing demand for commodities to support biofuels fundamentally undermines this through increased land pressure. Increasing demand for feedstocks such as palm oil, soya and low-grade animal fats leads to pressure to increase production of these commodities, and/or increased demand for replacement commodities as other markets (such as animal feed) shift to cheaper feedstocks. In both cases, new land conversion for commodity production is likely to result. The effect on ecosystems and emissions often cannot be directly attributed to a specific production, only broadly assigned to the industry.

---

<sup>1</sup> <https://unfccc.int/news/new-york-declaration-on-forests>

- 3) **Legislate to clean up global supply chains to eliminate deforestation, the destruction or degradation of other land-based ecosystems with biodiversity and carbon stock value (eg peatland/ grassland etc), and human rights abuses,** particularly in relation to the commodities and related products of soy, beef (including leather), palm oil, cocoa, coffee, nuts, rubber, timber and maize.

As per priority 3, establishing a robust legal framework to tackle deforestation and wider ecosystem destruction and human rights abuses through supply chains is an important piece of the puzzle. The Government is right to recognise this. However, as set out below, there are serious weaknesses with the current proposal meaning its impact stands to be questionable without major improvements. In addition, even with the most watertight legislative framework in place to deliver this, it is critical to appreciate that this measure alone will not be enough to restore nature on the scale required, globally. The Government must put as much attention towards delivering the other two priorities as any time and effort that is put towards delivering a due diligence framework to eliminate deforestation and other ecosystem destruction. Ambitious measures must be introduced in all three of these areas by the Government, without delay.

### **The Government's proposal**

The current proposal is seriously flawed. It both risks not delivering on the Government's objective of zero deforestation, as well as giving the false impression that companies under the scheme will have been required to do as much as they can to tackle the problem - therefore unhelpfully letting them off the hook, after over a decade of corporate failure on this issue. Nothing less than the most stringent legislative approach must be applied to companies on this issue, for the following reasons:

- In 2010, the Consumer Goods Forum (comprising leading suppliers and consumer brands) committed to eliminating deforestation from supply chains of key commodities (soy, palm oil, cattle and pulp/paper) by 2020.
- We're now in 2020 and those voluntary commitments have failed. Greenpeace analysis suggests that some 50 million hectares of forest - an area the size of Spain - are likely to have been destroyed for production since the original commitments were made in 2010.<sup>2</sup>
- In early 2019, Greenpeace challenged over 50 traders, retailers, producers and consumer goods companies to demonstrate their progress towards ending deforestation by disclosing suppliers for key commodities. Not a single company was able to demonstrate meaningful efforts to eradicate deforestation. Data from the handful of companies which disclosed their suppliers indicated they all source from traders or producer groups involved in forest destruction.<sup>3</sup>

---

<sup>2</sup>

<https://www.greenpeace.org.uk/news/50-million-hectares-destroyed-companies-disregard-zero-deforestation-pledge/>

<sup>3</sup> Ibid.

**Greenpeace's main issues with the Government's proposal are as follows:**

- 1) **Scope and definitions:** The scope of the proposed due diligence requirement relates to protecting natural forests and other natural ecosystems from being converted into agricultural land. This is too limited in three areas:
  - In addition to conversion of land, this should also extend to degradation.
  - The definition of "other natural ecosystems" should also be clarified to ensure that it includes ecosystems with biodiversity and carbon stock value (including but not limited to peatland, mangrove forest systems, wetlands and savannas, such as the Brazilian Cerrado).
  - The scope should also extend to ensuring there are no human rights abuses at any point through the supply chain. The harvesting, production or extraction of forest and ecosystem risk commodities must respect at the minimum indigenous communities and tenure rights as protected by international obligations and customary international law; be consistent with the free prior and informed consent principle (FPIC); and not have resulted in the displacement of indigenous and local communities.
- 2) **Commodities:** The named scope of commodities to which the proposed regulation will apply appear to be: beef and leather, cocoa, palm oil, pulp and paper, timber, rubber and soya. To this starting list, coffee, nuts, and maize should be added, given the relatively high embodied deforestation associated with many of their products. The Government must ensure the option also remains open to add other commodities at a later stage, if evidence emerges of their detrimental impacts on the environment and human rights.
- 3) **Company form, size and turnover:** The proposed legal requirement only applies to large companies, meaning many companies placing forest and ecosystem risk commodities (FERCs) or related products onto the UK market would be exempt. This could also create perverse incentives for larger companies to establish smaller subsidiaries in order to be exempt from the legislative requirement. The legislation should be applicable to the following undertakings, irrespective of their legal form, size or turnover:
  - Operators, defined as any natural or legal person placing FERCs, or products derived from or containing FERCs, on the UK market for the first time.
  - Traders, defined as any natural or legal person who, in the course of a commercial activity, sells or buys FERCs and related products already on the UK market.
- 4) **Definition of deforestation:** The proposal to define unacceptable deforestation and natural ecosystem conversion only on the basis of whether it is illegal in producer countries is highly problematic. While the Government understandably has a wider objective of respecting and reinforcing legal and governance frameworks in other countries, this mustn't be at the expense of showing bold global leadership in responding to the political realities in many countries.

As just one example, President Bolsonaro in Brazil has repeatedly championed the expansion of agriculture at the expense of the Amazon rainforest. Since taking office in January 2019, the Bolsonaro Government has systematically attacked and undermined the agencies responsible for monitoring and implementing environmental safeguards. At the same time, the Brazilian Government's inflammatory rhetoric has given new licence to those seeking to clear forests for industries such as agribusiness, and imperiled indigenous and local communities. President Bolsonaro and his Government have shown repeatedly that they will not, of their own accord, protect the Amazon and other crucial forests. Nor will they respect Indigenous and human rights. By way of example:

- Environmental governance bodies have been dismantled and weakened. For instance, the Climate Change and Forests Office and the Inter-Ministerial Committee on Climate Change have been closed, which has impacted policies and deforestation prevention and control plans for the Amazon and the Cerrado biomes, as well as resourcing.
- The Environment Minister, Salles, slashed the budget and staffing of the environmental regulatory agency, Ibama. Highly trained units have reportedly been grounded, and the value of fines imposed for environmental offences has dropped by 43%.
- Earlier this year, the Brazilian Congress attempted to pass a new law, originally proposed by Bolsonaro in a presidential decree. The so-called 'Landgrabbing Law' would have given landgrabbers the right to legal deeds for the land they had taken, encouraging and enabling further deforestation. Currently the legislation is on hold following domestic and global outcry.
- Bolsonaro Government rhetoric has targeted indigenous and community groups standing against the forest destruction. The President has said '[indigenous reserves] are an obstacle to agribusiness' and spoken of 'exterminating' indigenous people. In a congressional election, Salles used a campaign poster with images of ammunition and arrows pointing to groups wanting to protect their communities.

On the basis of this example alone, it is clear that the UK Government must take more of an active approach to avoid effectively allowing deforestation to continue on its watch. All deforestation and ecosystem destruction, not just that deemed 'illegal' within the region the commodity is sourced from, should be ruled out. With the UK hosting COP26 next year, it is important that we use the market power the UK has globally to help protect the Amazon, other biodiverse and carbon-rich ecosystems around the world, and their peoples, to demonstrate the UK's role as a positive force for good, post-Brexit.

- 5) **Enforcement:** The proposed sanctions of "fines and other civil sanctions" for companies that do not comply are far too weak and vague. There is no clarity on the level of fine proposed, and it is reasonable to assume that even quite substantial fines, if they are simply applied on their own, could be absorbed into the operational costs of companies in order for them to continue with business as usual. Provisions should be made to ensure that proportionate, effective and dissuasive penalties are used if violations of the due diligence obligation occur. While monetary sanctions could play a role in some contexts of minor violations to the due diligence obligation, these should not be used as the only enforcement mechanism, and should be used alongside:

- Suspension of the authorisation to trade: Instead of placing the burden on Government and civil society to have to check whether company claims to be deforestation-free through their supply chains are actually correct, the burden should be shifted onto the companies to have to transparently and publicly prove, traceable back to source, that their FERCs and products containing FERCs are completely free from deforestation, forest and natural ecosystem degradation and conversion, and human rights abuses - and that the risk of breaching these criteria are, at most negligible. This should be a condition for being able to operate and trade on the UK market. If FERC-related products or commodities cannot be proved to be free from these things throughout the supply chain then they should be banned from entering the UK market. Robust public scrutiny and enforcement mechanisms should be put in place to deliver this.
  - The permanent seizure of commodities and derived products concerned.
  - Criminal sanctions against individuals and, where allowed, legal entities, for the case of the most serious offenses.
  - In addition (and without prejudice) to penalties, the enforcement of the regulation should envisage:
    - The possibility of adopting measures (including provisional ones) to prevent the further circulation in the UK market of products and commodities not complying with the regulation's requirements.
    - The possibility to issue orders towards operators to bring their due diligence system, and application thereof, in compliance with the regulation.
- 6) **Finance:** The proposal does not intend to extend the due diligence obligation to financial institutions that are authorised to operate in the UK. The obligation should be imposed on such institutions, requiring them also to identify, prevent, and mitigate environmental, social and human rights impacts. These rules should ensure that the UK finance and banking sectors, including through their business relationships, are not directly linked to nor cause or contribute to deforestation, forest degradation, conversion or degradation of natural ecosystems and human rights violations. Ensuring that financial sector institutions are bound by the same due diligence principles as their clients or investee companies is key to coherent and unambiguous business practices and legal compliance. It is also vital that these due diligence measures reflect the reality of the activities of financial institutions authorised to operate in the UK, which typically draw on general financial products and services that are not tied to specific activities, and address their impact on forests, ecosystems and the related human rights. The UK should establish that financial institutions providing financial services to, or facilitating investments in, businesses which have a due diligence obligation described under this regulation are themselves required to undertake adequate due diligence. Should a financial institution either fail in its duty to conduct due diligence or contribute to harms caused, it should be subject to penalties and exposed to liability.

Further details on Greenpeace's view of what a robust due diligence framework should involve are set out in this briefing. The briefing is written for application in the EU, but it can and should be made applicable to the UK too:

<https://storage.googleapis.com/planet4-eu-unit-stateless/2020/09/20200904-a-new-EU-regulation-protect-worlds-forests-ecosystems.pdf>

Contact: Rebecca Newsom, Head of Politics, Greenpeace UK

[rebecca.newsom@greenpeace.org](mailto:rebecca.newsom@greenpeace.org)