

Response ID ANON-X5E1-AR5K-P

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?

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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:

Earthstight

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:

Given what is known of the problem, exempting smaller and medium sized businesses would fail to address large parts of it. In addition, in certain circumstances such an exemption might allow even larger businesses to avoid the controls by using smaller middlemen. Other methods can be used to avoid placing an undue burden on SMEs. Studies have also shown that UK investment and finance helps drive deforestation overseas for these commodities. Therefore legislation must extend not only to businesses using forest risk commodities in production or trade, but also companies involved in the financing thereof.

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:

Any reporting obligations included under a due diligence law on deforestation should be additional to and go beyond pre-existing obligations on climate change or other issues. It is essential also that any due diligence law is not limited to reporting obligations, and does not replicate limitations in existing parallel reporting requirements such as the voluntary TCFD ones and others like the Modern Slavery Act, which for example are restricted to firms of a certain size.

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:

To have legislation apply only to illegal deforestation would be a backward step, out of line with the voluntary direction taken already by businesses in the relevant sectors and the path being followed by other major consuming markets like the EU, and out of line with the government's stated aim and international commitments to tackle climate change. It is essential that the UK remain a leader on these issues. It is likely that a focus only on illegal deforestation will also make implementation and enforcement more difficult. It may also encourage producer countries to weaken environmental protections. It is therefore essential that the law as a whole applies to all deforestation, though it is possible some elements or the strictest penalties could be reserved for cases involving illegal deforestation.

If the law, or parts of the law, were to only apply to illegal deforestation, the nature of the problem shows that the definition currently proposed must be broadened if it is to capture the majority of the kinds of important illegalities seen in the production of these commodities. For example, key areas of illegality known to occur with these commodities include breaches of anti-corruption and land rights legislation, which often do not also involve breaches of 'laws relating to the protection of forests'. They also often include breaches of international obligations like Free Prior Informed Consent, which might not even be formalised in local laws.

The definition of deforestation used is also crucial; for the law to be credible it must not use discredited definitions such as that of the FAO.

The scope of commodities included needs to be made as broad as possible, and definitions designed in a manner which is flexible so that new threats which may emerge in future can be quickly incorporated without the need for amendments to primary legislation

It is essential that any legislation has a proportionate and dissuasive enforcement regime, and non-compliance cannot simply be absorbed as a cost of doing business. This means meaningful penalties, including the option for seizure of non-compliant goods and the potential for criminal charges for the most egregious offences, including penalties applying to individual company officers, not just corporate entities. Legislation must also require that future governments provide sufficient funding and powers to enforcement bodies to meaningfully apply the law.

Compliance with the legislation must not be allowed to rely, whether de jure or de facto, on private commodity certification schemes, which have been repeatedly shown to be fundamentally flawed.

Given the climate emergency, with UN experts telling us we have less than 12 years to prevent the worst impacts, legislation needs to be brought into effect quickly. Ideally the entire law should take effect immediately, but failing that then any delay to its coming into effect should apply only to the most onerous requirements (and perhaps only for SMEs), and all such requirements must be in effect no later than 2023.

Further comments are included in a blog published by Earthsight and available at the following link -

<https://www.earthsight.org.uk/news/analysis-eight-reasons-uk-due-diligence-law-wont-stop-consumption-driving-global-deforestation>