

# Due diligence on forest risk commodities Consultation

## Introduction

### Section A: About you

#### Questions 1-3: Name, email address, country –

Lucy Lee

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United Kingdom

#### Question 4: Would you like your response to be treated as confidential?

-  No

#### Question 5: Are you responding:

-  On behalf of an organisation

### Section B: About your organisation

#### Questions 1-2: Type of organisation and organisation name

Non-Government Organisation

WWF-UK

### Section C: About your business

#### Questions 1-8: Your business' sector, headquarters location, employee numbers in the UK and globally and annual turnover in the UK and globally

Business Sector: Non-profit, Environment

Headquarters location: Living Planet Centre, Rufford House, Brewery Road, Woking, GU21 4LL

#### Question 9: Which of the following forest risk commodities do you use in in production or trade in the UK? Please tick all that apply.

None of the above

#### Question 10: Please list any other forest risk commodities you use in production or trade in the UK.

N/A

**Question 11: Do you currently have a system in place to ensure that any of the following forest risk commodities have been produced legally? Please tick all that apply.**

- beef
- cocoa
- leather
- palm oil
- rubber
- soya
- none of the above

**Question 12: Please list any other forest risk commodities where you have a system in place to ensure they have been produced legally.**

WWF is not a business and can therefore not directly respond from a business perspective. However, as we work closely with business and have teams on the ground in producer countries who are working to halt deforestation and conversion, we would like to offer some thoughts.

We welcome the intention for the due diligence obligation to focus at this stage on the forest risk commodities in Question 11. We very much support 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, for example to ensure that other commodities and products causing deforestation and conversion can be brought into scope.

For example, one of the major causes of deforestation that is not addressed by the current due diligence proposal is land clearance for open-pit and large-scale mining. Mining potentially influences 50 million km<sup>2</sup> of Earth’s land surface, with 8% coinciding with Protected Areas, 7% with Key Biodiversity Areas, and 16% with Remaining Wilderness.

Examples of the deforestation caused by mining include:

- Mining was responsible for roughly 10% of all Amazon rainforest deforestation between 2005 and 2015<sup>1</sup>. Notably, forest losses go as far as 70 km beyond the actual mining lease boundaries. Forests are not only cut to make room for the mine itself, but also for other related activities, such as the production of charcoal fuelling processing plants.
- Vale’s mining activities in its Carajás mine in Brazil include the almost total destruction of the rainforest along the 80 m-wide, 890 km-long railway line transporting the ore to the Atlantic Ocean. A recent study found that indirect mining-related deforestation is 12 times greater than deforestation that occurs on land leased for mining alone.
- In Suriname, mining is responsible for 73 percent of total deforestation, with the majority attributed to Artisanal and Small-Scale Mining (ASM) for gold<sup>2</sup>.
- In some areas of the world, e.g. in the Peruvian Madre de Dios, ASGM (Artisanal and Small-Scale Gold Mining) plays a larger role in deforestation than agriculture or forestry<sup>3</sup>.

The UK has a large mining footprint in Brazil due to gold imports, most of which is imported for gold reserves of UK financial institutions and comes from mining activities in the Amazon and the Cerrado<sup>4</sup>. Continuous and increasing pressure on protected areas and indigenous lands due to mining activities has been seen in the Amazon in recent years, posing threats not only to the forest but also to the rights of indigenous and traditional populations<sup>5</sup>.

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<sup>1</sup> <https://www.nature.com/articles/s41467-017-00557-w>

<sup>2</sup> <https://www.iisd.org/publications/igf-mining-policy-framework-assessment-suriname>

<sup>3</sup> <https://www.pnas.org/content/110/46/18454>

<sup>4</sup> <https://www.geoscan.com.br/blog/ouro-no-brasil/>

<sup>5</sup> <https://news.mongabay.com/2020/05/the-mining-map-whos-eyeing-the-gold-on-brazils-indigenous-lands/>

As supply chains are dynamic such a review would also enable crops that in future may have a greater deforestation or conversion footprint to be included. For example, a recent study<sup>6</sup> has shown that sugarcane may become the newest direct threat to the Amazon and Pantanal given the Bolsonaro's decree from November 2019 revoking the prohibition of cultivating sugarcane in these biomes for 10 years.

**Question 13: If you have a system in place to ensure that any forest risk commodity has been produced legally, please describe it.**

WWF is not a business and can therefore not directly respond from a business perspective. However, as we work closely with business and have teams on the ground in producer countries who are working to halt deforestation and conversion, we would like to offer the following thoughts.

In most producing countries a lack of data on law compliance or detailed data at the farm level makes it difficult for companies to develop systems to control, trace and verify whether forest risk commodities have been produced legally. There are significant grey zones where legality may not be ensured or is not precisely and unambiguously defined. Land encroachment and other illegalities may gain passive and even active support from authorities.

**A legally binding deforestation cut-off date**

The safest, most consistent and verifiable way to avoid illegal deforestation and conversion and human rights abuses in commodity supply chains is to avoid all deforestation and conversion, by setting up a deforestation and conversion cut-off date pertaining to all deforestation and conversion (legal and illegal).

WWF defines the cut-off date as the date from which no more deforestation or conversion is permissible. Clearance of land after the cut-off date renders the affected area or production unit, and the commodity produced there, as non-compliant with the no-deforestation/no-conversion commitment. This date should not be set in the future to avoid fuelling further deforestation and conversion.

Several legislations establish a cut-off date which should continue to be followed. However, many others don't. Thus, for regions that do not have a legally binding cut-off date, this should be the date agreed by voluntary commitments or standards valid for the sector. In the case that there aren't any well-established standards to use as a guide, the cut-off date should be the end of 2020 (or date of royal assent of the Environment Bill).

**A robust monitoring and reporting system**

Following a legally binding cut-off date being set a robust monitoring and reporting system is needed to assess changes in land use after the cut-off date. It is critical to gather information across the entire supply chain (e.g. geolocation of farms, receipts, chain of custody) as well as to ensure usage of tools that allow the verification of deforestation and conversion-free claims (e.g. satellite data, chain of custody certification).

One of the most effective examples of a market system to control deforestation and conversion and compliance with relevant local laws (as defined in this consultation) is the Amazon Soy Moratorium (ASM). Through satellite monitoring and aerial surveying, 76 municipalities responsible for 98% of the soy produced in the Amazon region are monitored. Farmers who violate the ASM's zero deforestation/conversion cut-off date (22<sup>nd</sup> July 2008) can be easily identified and therefore can be suspended from accessing the market until the farmer commits to recovering the converted area. The ASM system and the auditing protocol were co-created with support from the whole industry and relevant NGOs, such as WWF and Greenpeace, and ensures annual verification, consistent implementation and annual public progress reporting by industry actors. It should be noted that the Moratorium has only been successful because of freely available spatial data to monitor and verify made available by the Brazilian Government. This data analysis is made available by programmes (PRODES, DETER) led by the Brazilian Institute of Spatial Research (INPE).

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<sup>6</sup> <https://www.sciencedirect.com/science/article/pii/S2530064420300262>

## The role of certification

We recognise that certification schemes are likely to be frequently cited by businesses in this section, as certification has been a key instrument used by businesses over the past decades to improve the sustainability performance of their own supply chains. WWF supports business use of certification schemes which are aligned with [ISEAL Alliance's Principles for Credible and Effective Sustainability](#) and that over time evolve in line with the Accountability Framework initiative (AFi)'s guidelines and definitions so that they can support effective risk assessment and to some extent mitigation of the risks and remediation of the impacts identified.

However, government must assess in further detail what the role of certification should be in the context of this mandatory due diligence obligation. WWF advocate for this role to be limited, for the reasons outlined below.

While important mechanisms to assure better management practices at the unit of certification, the past decade has shown that focusing on remediating individual supply chains through certification alone will not suffice to drive transformation at scale. Global, industry-wide, systemic change is needed; certification alone cannot achieve this.

Certification systems can support risk assessment and mitigation but should not be the sole mechanism for due diligence, as the quality of systems and controls vary across certification schemes. Depending on the certification scheme and their criteria, certified commodities can still be tainted with deforestation and other impacts, e.g. RSPO mass balance is a mix of certified and non-certified commodity which does not assure that a certified volume is deforestation-free. Most certification schemes available today pertain to an individual unit of management (a single farm/plantation) and so do not account for environmental impacts relevant at a landscape or regional scale like deforestation and conversion. Certification is an important tool to assure good management at site level but can lead to islands of good performance within a poor performing area.

In addition, companies should not have the option to outsource their responsibility for having sustainable supply chains to third parties (as is possible under the EUTR), as the question of liability for non-compliance with the law might not easily be addressed.

### WWF-UK's online shop

WWF-UK is currently trialling the sale of [Pacari chocolate](#), containing cocoa, via our online shop. This is the only product listed in Question 11 that the WWF-UK shop stocks. Pacari are working with our teams in the UK, Ecuador and the US to ensure that their chocolate does not cause deforestation or conversion. WWF assess the environmental policies, commitments and actions of all the businesses that we partner with, or whose products we stock in our shop. Companies are required to complete an eco-questionnaire which covers the systems they have in place to ensure their products are being produced sustainably. Pacari are FSC Certified and conform with the MADE-BY and World Fair Trade Organisation Ethical Standards.

*\*As explained in Section D, Question 9 below, this due diligence obligation should include both deforestation and conversion of other natural ecosystems – such as grasslands, savannas, wetlands and peatland.*

### **Question 14: Please use this box to share any further information about the systems you use to better understand how forest risk commodities in your supply chains are produced.**

WWF is not a business and can therefore not directly respond from a business perspective. However, as we work closely with business and have teams on the ground in producer countries who are working to halt deforestation and conversion, we would like to offer some thoughts.

a) it should be a pre-requisite for businesses that are trading and profiteering from use, trade and sale of forest-risk commodities, to know how much they use, where they come from and the risks and impacts associated.

b) there are several tools and mechanisms already available (for example certification and chain of custody systems) and many that are emerging (including block chain and satellite traceability systems) that should be deployed. Further information on the tools and approaches that WWF are involved with are provided in the Annex under the Response to Question 9.

c) Companies can also set out clear supplier policies and ask questions of suppliers to ascertain this data.

d) The fact there isn't a one size fits all should not be an excuse for inaction.

The systems already in place that enable companies to map their supply chain and therefore identify deforestation and conversion risks and impacts are only being used by a small percentage of companies currently. This limited application means that where risks are identified the lack of a level playing field (and often weak producer country legislation and enforcement) means that companies are not able to effectively address the risks/impacts identified.

## Section D: About the proposal

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

- Yes

**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?**

- Yes

**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

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

- Yes

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

- Yes

**Question 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

**Question 7: If you responded 'Other' to Question 6, please expand.**

We disagree that employee number and turnover are appropriate criteria to select the businesses to which the legislation should apply.

### **The risks of application to larger companies only**

Application of the due diligence legislation to larger companies only risks shifting the importation of illegal products to smaller companies. In addition, these larger companies are most likely to already be acting due to the reputational risk of being associated with products causing deforestation. A company size threshold would not help to level the playing field and drive action by smaller businesses.

The European Timber Regulation (EUTR) applies to any company placing timber and timber products on the UK market. This sends a clear signal that the UK market is closed to illegally produced timber and helps facilitate due diligence through the supply chain as any company, large or small, is required to maintain appropriate systems and

records. Applying the EUTR only to larger businesses would have created a significant loophole in the efforts to tackle illegal logging and so undermined the intent of the regulation.

### **A risk-based approach to the selection of companies**

This selection should follow a risk-based approach requiring UK headquartered companies that trade or finance forest risk commodities, or use them in production, to:

- assess the risk of these commodities/products (including financial products and services) being linked to deforestation/ecosystem conversion and human rights abuse;
- take measures to ensure that their risk is reduced to a minimum/negligible level.

### **A threshold based on volume and value of forest risks commodities used or traded**

In alignment with the risk-based approach, the volume and value of forest risk commodities/products companies trade or use in production is of higher importance when considering which companies, the legislation should apply to than employee number and total turnover.

There are significant differences in the volumes of materials that are used and the UK actors responsible for their importation. In many cases you may have a smaller business importing/using a low value material – such as rubber – at much greater volumes than by larger companies. The most efficient response is to ensure that companies that import, use or trade forest risk commodities over a certain volume, rather than purely by company size, are included in scope, and that no UK-based company can use offshore manufacturing to avoid the new requirements.

### **The need for the law to apply to financial institutions**

In addition, the inclusion of those providing financial services to companies that trade or produce forest risk commodities was a key recommendation of the Recommendations of the Task force to the Global Resources Initiative. UK Financial institutions have been implicated in the financing of agribusiness traders in a number of global reports and databases, *inter alia* Global Witness's Report, [Money to Burn](#), and the [Forests and Finance Database, and others](#)<sup>7</sup>. Global Witness showed that the UK's financial contributions to forest risk agribusinesses were estimated to be circa 5 billion GBP since 2014. In a similar way that small or medium companies may have disproportionate risks relating to their product supply chains, so financial sector actors may lend or invest disproportionately to specific sectors of the market, including soft commodities. By establishing a threshold based on size and not proportionality, specialist entities or non-financial sector actors who provide financial support may not be liable to report on their risks or undertake due diligence.

Inclusion of the finance sector is important for market cohesion and this is reflected in existing EU Regulations, such as the French Duty of Vigilance law, and existing international guidelines on due diligence (see Question 8).

As the UK intends to be a leading centre of Green Finance, it is essential that the role of financial actors is not overlooked. It is also important to ensure uniform protection of end-investors and make it easier for them to manage sustainability risks in their investment decision making. All financial market participants that may have disproportionately high risks (regardless of their size or industry) should therefore provide necessary information that enables informed investment decisions, including risk of deforestation and human rights abuses.

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<sup>7</sup> [ChainReaction](#), 2017; Amazon Watch, [Complicity in Destruction II](#) (2019); [Greenpeace](#), Dirty Bankers Report, 2017; [Fern](#), Financing land grabs and deforestation, the role of EU banks and investors, 2016; [Friends of the Earth: Are you investing in exploitation?](#), 2016.

**Question 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)]?**

Reporting is one step in the due diligence process, but in itself will not be sufficient to ensure UK supply chains are deforestation and conversion free, as there is no obligation on companies to take any action other than to publish reports on their exposure to the products or activities in question. Due Diligence on the other hand requires action to address the impact concerned.

As the government notes, there is a proliferation of reporting and due diligence obligations both international and domestic covering a broad range of different issues. Every opportunity should therefore be taken to align different reporting and due diligence obligations. Businesses are crying out for these obligations to be consolidated and integrated. It is important therefore that the components of an ambitious deforestation due diligence law should be scalable, or modular, enabling expansion to other risks and harms, including climate change issues as well as other environmental impacts.

**The Task Force for Climate Related Financial Disclosures (TCFD)**

The Recommendations of the Task Force for Climate Related Financial Disclosures (TCFD) provide a useful framework for disclosing climate risks for businesses, to inform investor understanding of their risks from climate change. However, it has several shortcomings. Firstly, TCFD does not adequately cover deforestation or nature-related risks or impacts of business activities on the wider economy as it focuses on climate exposure from documented/planned activities. Exposure to deforestation is not planned or regulated, as the GRI identified that most deforestation is illegal<sup>6</sup>. Although TCFD asks companies to measure their carbon footprint, lack of data on scope 3 ("investment "or "product") emissions in supply chains means that deforestation risk is unlikely to be accounted for and that the methodology is not yet fit for purpose. However, should the TCFD recommendations be strengthened, and applied to measure a business's core impacts on nature, the TCFD may provide an adequate framework for integrating material risks into the financial reporting of a company.

Several other approaches have been published to help organisations carry out sustainability and human rights due diligence in the finance sector. These include:

- EU Action Plan for Sustainable Finance, including Technical Expert Group's Taxonomy;
- Current Approaches and Practices: Environmental and Social Risk Due Diligence in the Financial Sector – published as part of the OECD Working Party on Responsible Business Conduct;
- OECD Guidelines for Multinational Enterprises;
- Equator Principles for responsible project finance.

While these existing frameworks reporting on Environmental and Social Governance (ESG) provide some guidance to corporate and financial institutions, it should be noted that voluntary frameworks have not been sufficient to curb the rate of deforestation ([ClientEarth, 2020](#)). 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 from supply chains and financing. This is true of the Task Force on Climate Related Financial Disclosures (TCFD), which is still voluntary for most companies where product-level emissions impacts and investments-emissions apply.

While UK companies have existing obligations related to climate and ESG disclosures, for example, through the UK Companies Act (2006), and others in relation to net zero, these provisions have very little overlap with the proposed due diligence law in their current form. Existing frameworks (e.g. the [Accountability Framework](#) and those approaches listed above) can provide a better starting point and many are already aligned with finance sector due diligence processes, provide standardised definitions and best practice guidance.

## Question 9: Do you have any further information or comments you would like us to be aware of?

WWF-UK welcomes the UK Governments proposed legislation on due diligence. We support the need for due diligence legislation to halt the loss of deforestation and land conversion due to agriculture for the purpose of UK consumption of commodities, and the need for a business level playing field.

We have concerns, however, with the limited scope of the consultation and that the UK proposal currently fall short of their intended objective of creating 'world-leading' environmental legislation ahead of hosting the UNFCCC COP26 climate talks in Glasgow next year and to support the building of a fairer, greener, more resilient future. The current framing of the consultation does also not go far enough for the UK to uphold its existing commitments under the Amsterdam Declarations Partnership, the New York Declaration on Forests, the Sustainable Development Goals nor the 25 Year Environment Plan.

To ensure that UK supply chains are not complicit in causing deforestation and conversion in producer countries the following are required:

1. For the scope to be expanded from conversion of natural forests only (deforestation) to conversion of all-natural ecosystems;
2. Inclusion of a cut-off and target date for ending deforestation and conversion;
3. A model that goes beyond legality;
4. For human rights to be included;
5. For the finance sector and institutions financing commodities to be in scope;
6. For thresholds to be based on volumes or value of imports rather than company size;
7. Commitment to a time-bound statutory review process;
8. Ensuring due diligence is part of a wider package of measures.

Further information on each of the above is provided below, along with potential legal drafting (in italics)

### **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). This is because of the vital importance of these other natural ecosystems to climate and biodiversity – their conversion could have the same or even greater impacts on environment and climate as the loss of forests, as they hold considerable portion of the world's biodiversity, trap about 15% of carbon and provide valuable ecosystem services (e.g. nutrient cycling)<sup>8</sup>. They are usually highly exploited for extensive agricultural purposes, as the case of the Cerrado in Brazil, a critical important biome composed of a shifting mosaic of habitats including savannah-like ecosystems, grasslands and strips of closed canopy gallery forest. For instance, the UK imports large volumes of soy that is produced in this region, as per our recent findings in Riskier Business and another recent report from Trase. As reported by Trase, 42% of all soy imported into the UK in 2018 came from the Cerrado. The Cerrado also represented a disproportionately high proportion of the total deforestation risk associated with UK imports of soy from Brazil, amounting to 61% of this risk. Wetlands are also at high risk from agriculture and food trade, including those in countries such as Spain, Kenya and South Africa which are key to UK supply chains. WWF's Risk to Resilience study (2015) showed that over 80% by value of the products the UK imports are exposed to at least 'moderate' level of water-related risks, linked to pollution, increasing water scarcity and more frequent or intense floods and droughts. Such threats are also driving losses of wetland habitats at 2-3 times the rate of forest loss (Davidson NC. 2014. How much wetland has the world lost? Long-term and recent trends in global wetland area. *Marine and Freshwater Research* 65: 934–941). The implications of these risks for UK supply chains and businesses and freshwater biodiversity are profound.

Therefore 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

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<sup>8</sup> <https://blogs.royalsociety.org/publishing/qa-tropical-grassy-biomes/>



deforestation<sup>9</sup> does not cause any increase of destruction of other natural ecosystems, from the same drivers (leakage). Change to natural ecosystems that meet this definition should be considered as conversion and included in this due diligence obligation, regardless of whether or not it is legal.

It is also worth noting that almost 98% of this total soy deforestation risk linked to UK imports (171.4 hectares) was related to only 3 soy traders and first importers into the UK: Cargill, Glencore and ADM.

#### Suggested primary legislative drafting

*“natural ecosystem” means an area of land in which no development has occurred, or the composition, structure or function of species in the area taken as a whole has not been significantly affected by development, whether as a result of steps taken to restore the area or otherwise.*

## **2. Cut-off and target date**

The legislation should be clear on dates by which zero deforestation and conversion should be achieved and company compliance ensured:

- **Cut-off date** The date from which no more deforestation or conversion is permissible. Clearance of land after the cut-off date renders the affected area or production unit, and the commodity produced there, as non-compliant with the no-deforestation commitment. This date should not be set in the future to avoid fuelling further deforestation. Many legislations establish a cut-off date which should be followed. However, many others don't. Thus, for regions that do not have a legally binding cut-off date, this should be those well agreed by voluntary commitments or standards valid for the sector. In the case that there aren't any well-established standards to guide from, this should be the end of 2020 (or date of royal assent of the Environment Bill).
- **Target date (2023)** The date by which companies will have to be able to demonstrate that they have excluded products associated with deforestation/conversion from their supply chains.

#### Suggested primary legislative drafting

##### **Cut-off date**

- (1) *The Secretary of State must by regulations specify the date (“cut-off date”) after which forest commodities which are produced or transported in breach of the relevant conditions shall be considered unsustainable for the purposes of section [1].*
- (2) *The Secretary of State may specify different cut-off dates in respect of different forest commodities.*
- (3) *Subject to subsection (4), the regulations must specify that forest commodities shall be considered unsustainable for the purposes of section 1 where –*
  - (a) the production or transportation of the commodities occurred on or after 1 January 2021, and*
  - (b) the production or transportation breached any of the relevant conditions.*
- (4) *Where the Secretary of State is satisfied that a cut-off date has been agreed in relation to a forest commodity, the cut-off date specified in accordance with subsection (3) shall be –*
  - (a) 1 January 2021, or*
  - (b) no later than the agreed cut-off date*

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<sup>9</sup> Deforestation is but one form of conversion (conversion of natural forests). Conversion includes severe degradation or the introduction of management practices that result in substantial and sustained change in the ecosystem's former species composition, structure, or function.

*whichever is the earlier.*

(5) *For the purposes of subsection (4), a cut-off date is an agreed cut-off date where the Secretary of State is satisfied that a significant number of persons engaged in the production [or transportation] of the commodity has agreed that a certain date is the cut-off date for the purposes of production [and transportation] of that commodity.*

(6) *For the purposes of this section -*

*the “relevant conditions” means –*

*(a) the nature condition*

*(b) the legality condition, and*

*(c) the sustainability condition.*

### **3. Go beyond legality**

As a global network, this response reflects insights from WWF experts in Brazil and Indonesia in particular, on why a legality approach will not deliver deforestation and conversion-free UK supply chains. We applaud the UK government’s intention to tackle global deforestation as set out in the consultation, however relying on legality as a first step to set a level playing field and a minimum legal floor does not bring sufficient urgency to this issue.

Whether land has been converted legally or illegally, this has the same effect on nature and our climate. What differentiates ecosystem conversion from the economic use and selective extraction of ecosystem products – including sustainable harvesting of timber – is that the latter can support ecosystem restoration and protection when effectively regulated.

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.

UK law has already defined its own standard on issues such as bribery, corruption and wildlife trafficking. This ensures that UK businesses are not supporting these harmful practices - irrespective of what local rules may allow. For deforestation, this standard-setting could draw on existing measures and benchmarks such as those articulated under the internationally-recognised voluntary [Accountability Framework Initiative](#) and the UK government could also consider the establishment of a science-based panel to advise on the development of standards specific to different agricultural and forest commodities.

Challenges with the legality model include:

#### **1) Failure to ensure zero deforestation and habitat conversion**

It is critical to address legal conversion (see definition above) in this due diligence obligation, and not to restrict its scope to illegal conversion only. Currently in Brazil, approximately 88 million hectares<sup>10</sup>, 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 CO<sub>2</sub> equivalent (equivalent of 50 years of UK net CO<sub>2</sub> emissions). The clearance of this land would further impact indigenous communities and wildlife populations and 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

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<sup>10</sup> Soares-Filho B. et al. (2014), *Cracking Brazil’s Forest Code*, Science 25 Apr 2014, Vol 344, Issue 6182, pp. 363-364. Available at <https://science.sciencemag.org/content/344/6182/363#:~:text=Brazil's%20controversial%20new%20Forest%20Code,new%20mechanisms%20for%20forest%20conservation.>

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.

As the host of COP26 the UK has an opportunity to demonstrate global leadership and catalyse action globally. A due diligence obligation based on producer country legality risks undermining levels of ambition internationally and the UK's own commitments under the New York and Amsterdam Declarations.

## **2) The risk of producer country deregulation**

The few existing protecting rules and policies in regions at high risk of conversion are often [under pressure](#). Evidence shows that protected areas and other key protection mechanisms are being [dismantled](#). 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. While sovereignty is a critical topic, the UK should be willing to demonstrate that it will act to halt large-scale environmental destruction and human rights abuses in UK commodity supply chains – in the same way it has acted to prevent UK complicity in bribery, corruption and modern slavery worldwide.

## **3) A model based on zero deforestation and conversion would be simpler and less costly for business to implement**

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 (it is likely to be much easier and less costly to verify that land is 'conversion-free', following AFi definitions). 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 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 relevant 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](#).

## **4. Undermining voluntary commitments made by business and the Government**

The narrow focus on illegal deforestation is also lagging behind the approach taken by industry for the last decade - industry standards, company policies and global initiatives such as the New York Declaration on Forests all address deforestation as a whole rather than focusing only on illegal deforestation.

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.

### Suggested primary legislative drafting

#### ***Placing commodities on the market***

- (1) Carrying out regulated activities in relation to unsustainable commodities in Great Britain after 31 December 2023 (the "relevant date") shall be prohibited.*
- (2) For the purposes of this Part, the regulated activities are -*
  - (a) importing*
  - (b) manufacturing*

- (c) *processing*
- (d) *transporting*
- (e) *selling.*
- (3) *A person who contravenes subsection (1) shall be guilty of an offence and liable to an unlimited fine.*
- (4) *[The Secretary of State “S” may by regulations specify such further sanctions for breach of subsection (1) as S thinks fit.]*
- (5) *The Secretary of State must specify by regulations the commodities to which this section applies.*
- (6) *The specified commodities must include –*
  - (a) *beef, coffee, cocoa, leather, palm oil, paper, pulp, rubber, soy and timber in any form*
  - (b) *goods in which the commodities specified in sub-paragraph (a) are embedded, and*
  - (c) *such other commodities or goods as the Secretary of State considers may fail to meet –*
    - (i) *the nature condition*
    - (ii) *the legality condition, or*
    - (iii) *the sustainability condition.*
- (7) *Specified commodities shall only be considered sustainable for the purposes of this [Part] where the production and transportation of the commodities meet –*
  - (a) *the nature condition*
  - (b) *the legality condition, and*
  - (c) *the sustainability condition*
- (8) *for the purposes of this section it is irrelevant where the production or transportation of the commodities occurred.*
- (9) *The Secretary of State must publish guidance which sets out the sustainability standards which comprise the sustainability condition.*
- (10) *The guidance may include reference to –*
  - (a) *the Accountability Framework Initiative, and*
  - (b) *the Guidelines for Multi-National Enterprises issued by the Organisation for Economic Cooperation and Development.*

(10) *For the purposes of this Part -*

*“nature condition” means that the commodities have not contributed to –*

- (a) *deforestation of natural forests, or*
- (b) *conversion or degradation of other natural ecosystems*

*“legality condition” means compliance with -*

- (i) *the applicable law in the country of production [in force at the time of the passing of this Act], and*
- (ii) *internationally recognised human rights norms;*

*“specified commodities” means commodities specified in accordance with subsection (5);*

*“sustainability condition” means the sustainability standards set out in guidance in accordance with subsection (9).*

### **Due diligence in relation to commodities**

- (1) *Where the conditions in subsection (2) are met, a regulated person “P” must undertake due diligence in accordance with this section.*
- (2) *The conditions are –*
  - (a) *P intends to undertake regulated activities*
  - (b) *in relation to specified commodities*
  - (c) *in Great Britain*
  - (d) *after 31 December 2023.*

- (3) *Section [3] makes further provision concerning regulated persons.*
- (4) *The due diligence must be undertaken by P with the objective of determining whether the production and transportation of the specified commodities meets -*
  - (a) *the nature condition*
  - (b) *the legality condition, and*
  - (c) *the sustainability condition.*
- (5) *The due diligence must be undertaken in relation to P’s entire supply chain so far as the supply chain relates to the specified commodities in respect of which P intends to carry on regulated activities.*
- (6) *The Secretary of State must by regulations specify the steps required to be taken by way of due diligence.*
- (7) *The regulations must include a requirement that P shall -*
  - (a) *undertake a risk assessment in relation to the commodities*
  - (b) *put in place the measures necessary to ensure that the risks identified are eliminated, alternatively rendered negligible*
  - (c) *ensure effective redress in the event of failure to comply with the plan, and*
  - (d) *set out –*
    - (i) *the risk assessment*
    - (ii) *the measures taken, and*
    - (iii) *the proposed mechanism to ensure redress**in a due diligence plan, and*
  - (e) *publish the plan.*
- (8) *P must undertake the due diligence before -*
  - (a) *the regulated activities are carried out, or*
  - (b) *the financial services are provided.*

#### ***Due diligence – further provision***

- (1) *P shall not be required to adopt measures pursuant to section [2](7)(b) which exceed those which are proportionate taking account of the risks identified pursuant to the risk assessment.*
- (2) *Where the due diligence is required to be carried out by a financier “F”, F must set out in the due diligence plan the steps which F will take to establish whether a regulated person to whom F intends to provide financial services has fulfilled its obligations in accordance with this Part.*
- (3) *The Secretary of State must by regulations make provision for effective and dissuasive sanctions in the event that P fails to undertake due diligence in accordance with this section.*

#### **5. Inclusion of human rights**

As highlighted in a recent blog from [Global Witness](#), forest destruction – whether legal or illegal – often relies on ignoring or intimidating the indigenous peoples and forest communities who raise the alarm. Local communities and defenders are on the frontline of fighting to protect the forests they have safeguarded for generations and they are often silenced by threats, violence, or even murder when they speak up against forest destruction and illegality, as [Global Witness has shown](#). In the case of the Amazon, more than 300 environmentalists have been killed in the past decade due to land conflicts which are perpetuated due to impunity and continued relaxation of law enforcement and disregard of policies to fight deforestation<sup>11</sup>.

Crop expansion and deforestation/conversion may cause severe impacts on local people, violent land conflicts and forced eviction of traditional populations from their ancestral areas. Stopping present and future expansion on these territories will have huge human rights benefits, helping these populations to keep their lands, that they use sustainably and protect for centuries and gain legal recognition of their rights.

Human rights violations also include beyond land-use rights, access to clean water and other resources,

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<sup>11</sup> <https://www.hrw.org/report/2019/09/17/rainforest-mafias/how-violence-and-impunity-fuel-deforestation-brazils-amazon>

protection from hazards and chemical contamination, previous consent, workers' rights amongst others.

This due diligence law should also therefore ensure no human rights violations in the supply chains of products placed on the UK market. The best proxy for ensuring supply chains are not impacting local people is to adopt a zero deforestation and conversion target.

The UN, leading [scientists](#), industry standards, company policies and affected communities themselves have all reiterated the importance of requiring Free, Prior and Informed Consent (FPIC) from indigenous peoples and local communities to overcome these issues. If indigenous peoples and forest communities are aware of, and consent to activities happening in their area and have a meaningful say in how they proceed, the likelihood of deforestation, corruption, violence and abuse is much lower.

The Accountability Framework provides a strong reference, with detailed criteria and guidance on all internationally recognised human rights, including the rights of indigenous peoples, local communities, workers, and all others who may be affected by company activities.

The UK government should build FPIC into the legislation, drawing on precedents in national and international law, industry guidance and standards, and cases filed under the Roundtable on Sustainable Palm Oil, the [OECD Guidelines on Multinational Enterprises](#) and the World Bank [accountability mechanism](#).

It will be difficult for government to sustain the argument that a legality-based approach must be adopted as regards production of the commodities (narrowly defined) but that human rights law (as it applies to production more broadly) is not required to be met. Fundamental human rights norms enjoy very wide international acceptance, bind the country of production as much as the United Kingdom and can be captured clearly and easily in legislation.

## **6. Inclusion of the finance sector and institutions financing commodities**

The GRI taskforce's Due Diligence recommendation recognises the need for the obligation to cover the finance industry:

'The government urgently introduces a mandatory due diligence obligation on companies that place commodities and derived products that contribute to deforestation on the UK market and to take action to ensure similar principles are applied to the finance industry'

The taskforce came to this conclusion after lengthy discussions on current practices in the sector, what is most likely to effect change and a stocktake of current finance and climate initiatives.

As Global Witness [reported](#) last year, UK-based financial institutions have been the single biggest source of international finance for six of the most harmful agribusiness companies involved in deforestation in the climate-critical forests of Brazil, the Congo Basin and Papua New Guinea, providing a staggering £5 billion over the last six years. This is primarily to large-scale agribusinesses, and excludes financing from smaller, specialist institutions who provide trade finance and risk management services to companies that may be exposed to deforestation. This means that company size is not necessarily an adequate threshold for financiers either, although the largest financial institutions are more commonly referenced. 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.

Institutions that finance commodities should therefore, 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 be required to comply with the same rules as their clients and have their own due diligence processes to ensure that their financing and business relationships are not profiting from legal or illegal deforestation and human rights abuses. This will maintain market coherence as is reflected in a wide range of international standards, including UN Guiding Principles, OECD Guidelines for Multi-National Enterprises and French Duty of Vigilance. By ensuring that financial institutions are included, the UK will maintain its reputation and credibility as one of the largest green financial centres in the world.

The definitions of the Accountability Framework Initiative can provide a useful benchmark for finance to align priorities of government. Mandatory due diligence will be beneficial to the finance sector, both ensuring against potential illegal activities and to ensure protection of end-investors so that they can integrate sustainability risks into investment decision making. For this reason, all market players with disproportionate forest risk exposure should be subject to a due diligence obligation. Existing due diligence processes can be aligned between corporates and financial sector actors, using best practice guidance and standards mentioned above.

### Suggested primary legislative drafting

#### **Due diligence – regulated persons**

- (1) For the purposes of this Part, a regulated person means a person who –
  - (a) intends to undertake regulated activities, or
  - (b) intends to provide financial services to a person to whom sub-paragraph (a) applies (a “financier”),and the conditions in subsection (2) are met.
- (2) The conditions are –
  - (a) the regulated activities are to be undertaken in Great Britain
  - (b) after the relevant date
  - (c) in relation to a volume of commodities which exceeds the specified volume.
- (3) The Secretary of State must by regulations specify the volume of commodities for the purposes of subsection (2).
- (4) The volume of commodities specified must be the volume which the Secretary of State considers will ensure the elimination of the -
  - (a) import
  - (b) manufacture
  - (c) processing
  - (d) transportation, and
  - (e) saleof unsustainable commodities in Great Britain in accordance with section [1](1).
- (5) The Secretary of State may specify different volumes in respect of different commodities.
- (6) But a person is only a regulated person for the purposes of this section provided that they carry on business in Great Britain.

#### **7. 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 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/negligible level. There are significant differences in the volumes of materials that are used and the UK actors responsible for their importation. In many cases you may have a smaller business importing/using a low value material – such as rubber –at much greater volumes than by larger companies. The most efficient response is to ensure that companies that import, use or trade forest risk commodities over a certain volume, rather than purely by company size, are included in scope, and that no UK-based company can use offshore manufacturing to avoid the new requirements.

In alignment with this risk-based approach, the volume and value of forest risk commodities/products companies use in production or trade (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. In addition, we are aware of small UK-based subsidiaries of larger import/export companies which would not be captured by the legislation if a simple company size threshold was applied. 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.

## 8. 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).
- be fully transparent (e.g. the government should prepare a report into the review which must be laid in Parliament).
- 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.

The benefits of such a mandatory review include:

- **Meeting government environmental commitments** Enabling the government to assess the extent to which the due diligence obligation introduced is delivering on its environmental objectives, including for example the 25 Year Environment Plan ambition to leave a lighter global environmental footprint
- **Providing certainty to all stakeholders** A statutory review would allow for a properly planned review process, rather than one developed in response to external pressure which is likely with the significant public interest in this issue.
- **Making the most of the Brexit opportunity to 'do things differently'** Maximising the opportunity of exiting from the EU to allow us to do things differently and for this to lead to better environmental outcomes and better decisions. Implicit within this is the need to review and assess the effectiveness of measures to ensure that they are leading to better outcomes and the progressive enhancement of environmental protection. For example, rather than adding piecemeal legislation to ensure due diligence for different products/environmental impacts a consolidated, flexible corporate led due diligence obligation could be introduced that enables business to focus on the risks and impacts most material to them.

Such a review and consideration of the broadening of the due diligence obligation so that companies are mandated to assess and prevent or mitigate all environmental and human rights risks arising from their supply chain would deliver a number of benefits for the UK economy and individual businesses, including:

- **Reducing the projected economic losses as a result of the degradation of nature.** WWF's recently published Global Futures Report shows that the UK will suffer some of the biggest financial losses, taking an annual hit to its economy of at least £16 billion by 2050.
- **Reducing the significant costs that producer countries will bear** Eastern and Western Africa, Central Asia and parts of South America would be hit particularly hard as a result of the changes in price, trade and production levels (with annual GDP losses of up to 4%) compounding the risks faced by millions in already vulnerable economies.
- **Increasing the resilience of the UK's food system.** The global supply chain is only as strong as its weakest link. There is no use in turning a blind eye to high risk producer countries, as the consequences of future climate change, biodiversity loss and pandemics will greatly hinder said countries' ability to export to the UK. WWF-UK's new report '[A Blueprint for Responsible Global Business](#)' makes the business case for full corporate led due diligence, highlighting the environmental risks to business and the benefits of managing these proactively. This report will be submitted as supplementary evidence to the consultation along with



WWF's '[From Risks to Resilience](#)' report which sets out the water risks to UK business and provides a series of steps to enable business to assess and mitigate these risks.

- **The opportunity to broaden the scope to address additional drivers of deforestation and other environmental impacts/risks.** One of the major causes of deforestation that is not addressed by the current due diligence proposal is land clearance for open-pit and large-scale mining. Mining was responsible for roughly 10% of all Amazon rainforest deforestation between 2005 and 2015 (Sonter et al. 2017). Notably, forest losses go as far as 70 km beyond the actual mining lease boundaries. Forests are not only cut to make room for the mine itself, but also for other related activities, such as the production of charcoal fuelling processing plants. Adapting the scope could also enable measures to address other environmental impacts beyond deforestation. For instance, WWF's Risk to Resilience study showed that over 80% by value of the products the UK imports are exposed to at least 'moderate' level of water-related risks, linked to pollution, increasing water scarcity and more frequent or intense floods and droughts.
- **Helping to reduce the impact of Climate Change:** the loss of forests will exacerbate the severity and impacts of climate change across the globe with impacts felt for all, not just within companies supply chains.
- **Reducing the risks of future pandemics:** Large-scale conversion and degradation of ecosystems for agriculture, intensive agriculture and illegal wildlife trade are major factors that have led to the coronavirus pandemic which is likely to cost the global economy at least \$1 trillion<sup>7</sup>.

#### Suggested primary legislative drafting

##### **Review clause – commodities**

- (1) *The Secretary of State must review relevant law in accordance with this section.*
- (2) *The purpose of the review is to assess whether relevant law has ensured that the environmental impacts of the production and transportation of the commodities have been eliminated.*
- (3) *The first report of the Secretary of State under this section must be produced by 31 December 2024.*
- (4) *The second report must be produced within 2 years of the date specified in subsection (2).*
- (5) *Each subsequent report must be produced within 2 years of the date on which the previous report was required to be produced.*
- (6) *Where the report concludes that inadequate provision has been to -*
  - (a) *eliminate or*
  - (b) *mitigate to a level which is negligible*

*the environmental impact of business, the Secretary of State must, within the relevant period, propose such changes to policy and legislation as are necessary to ensure that the condition specified in subsection (8) is met.*
- (7) *The condition is that the carrying out of regulated activities in relation to commodities in Great Britain is eliminated as soon as reasonably practicable.*
- (8) *For the purposes of this section –*

*“relevant law” is the law relating to the environmental impacts of the production and transportation of commodities in respect of which regulated activities are being carried out in Great Britain;*

*“relevant period” means 3 months from the date on which the report was required to be laid.*

##### **Review clause – environmental impact of business**

- (1) *The Secretary of State must review the law relating to the environmental impact of the conduct of business in the United Kingdom.*
- (2) *The purpose of the review is to evaluate whether the law ensures that the environmental impact of the conduct of business in the United Kingdom is minimised.*
- (3) *The report required to be produced under this section shall be provided in accordance with the timetable specified in subsection (3) to (5) of section [5].*

- (4) *Where the report concludes that inadequate provision has been to minimise the environmental impact of the conduct of business, the Secretary of State must, within the relevant period, propose such changes to policy and legislation as are necessary to ensure that the condition specified in subsection (5) is met.*
- (5) *The condition is that the environmental impact of the carrying out of business in the United Kingdom is minimised as soon as reasonably practicable.*
- (6) *When specifying the changes necessary to policy and legislation in accordance with subsection (4), the Secretary of State must consider requiring business to undertake due diligence in relation to the environmental impacts of all its activities.*

## **9. Ensuring due diligence is part of a package of measures**

WWF welcome the GRI Taskforce's [Recommendations](#) which highlight 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. We look forward to the Government's response to the GRI Recommendations this autumn and further information on the funding and international collaboration to support producer countries to transition to more sustainable production and to restore native vegetation where possible.

### **The importance of urgent and ambitious action**

A strong and effective mandatory due diligence obligation should be included in the UK government's 'Environment Bill, as it is critical to address the UK's growing overseas footprint (as shown by WWF and RSPB's recent '[Riskier Business](#)' report) and fulfil government's ambitions to help 'build a fairer, greener, more resilient future' including helping to reduce the risk of future pandemics.

The evidence has shown that global deforestation, conversion and other land activities largely due to commodity production contribute nearly a quarter of global net anthropogenic greenhouse gas emissions<sup>12</sup>. Land use change is the main driver of biodiversity loss, followed by climate change, overexploitation leading to an average worldwide vertebrate species population decline by 68% between 1970-2016<sup>13</sup>. This is mainly driven by the expansion of agriculture— about 70% of biodiversity loss on land is driven by drivers associated with food production. A significant proportion of agricultural and forestry products are traded internationally, putting trade as an important driver of such impacts.

We cannot tackle the climate crisis or reverse biodiversity loss without addressing deforestation and other types of ecosystem conversion caused by agriculture and forestry. All the evidence demonstrates that tackling deforestation is urgent. We need ambitious, effective, and globally consistent prohibitions against forest and land conversion. This requires this government to take bold steps such as legislative provisions and ensure that these laws do not introduce perverse incentives leading to future environmental destruction not increased human rights abuse.

Recently, we have seen the international community wants to step up on this issue within the EU also consulting on a range of proposals and the significant announcement by China to become carbon neutral by 2030. The UK must step up with similar proposals that demonstrate its leadership and willingness to fulfil its commitments.

WWF is keen to work with government to ensure that new legal powers set out in primary legislation allow for the establishment of truly world leading legislation. We are pleased to see that the details of the legislative proposals will come forward later in secondary legislation and welcome confirmation that this secondary legislation will set out details on the step's businesses must complete, the enforcement process and associated sanctions for non-compliance.

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<sup>12</sup> Refers to AFOLU emissions (23%) from IPCC (2019) Special Report: Special Report on Climate Change and Land. <https://www.ipcc.ch/srccl/chapter/summary-for-policymakers/>

<sup>13</sup> WWF's 2020 Living Planet Index <https://livingplanet.panda.org/en-US/what-is-the-living-planet-index>

## Devolved

WWF supports jointly developed and agreed minimum standards across all parts of the UK that ensure a level playing field. Given how interconnected supply chains are across the UK it is important that any due diligence legislation applies UK wide. These common standards must prevent a race to the bottom when it comes to issues such as environmental protection and human rights, while enabling each of the governments of the UK to set higher standards where necessary for national or international obligations and ambitions to be met. Any environmental governance framework for Wales must align with the Wales's Wellbeing of Future Generations and Environment Acts, and Scotland's Continuity Bill and appropriate consultation must be carried out with key stakeholders.

Although many of the mechanisms to secure due diligence are reserved, engagement with the devolved governments in considering responses to this consultation and next steps is key. This is a complex issue and any preparations to develop the legislation, engage with businesses based in Scotland, Wales and Northern Ireland before enforcement etc, will need to be carried out as soon as possible. Support for the devolved nations to enforce this at the devolved level to ensure compliance is important. Devolved governments could also be encouraged to support businesses who emerge as leaders, though public procurement for example.

## Annex

The following provides further information on our position on the questions in Section B of the consultation.

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

- Yes

The UK's global overseas footprint in landscapes at risk of deforestation, conversion and human rights abuse has continued to grow over recent years. As shown by WWF and RSPB's recent '[Riskier Business](#)' report, the UK's demand for just seven agricultural commodities (beef & leather, cocoa, palm oil, pulp & paper, rubber, soy and timber) requires an overseas land area of 21.3 million hectares, equivalent to 88% of the UK's own land area. This represents an average increase of 15% between our 2011-15 and 2016-18 analyses.

The single biggest factor currently undermining the sustainability of forest risk commodities is the conversion of natural ecosystems to provide land for their production. Large-scale conversion and degradation of ecosystems for agriculture, intensive agriculture and illegal wildlife trade are major factors that have led to the coronavirus pandemic<sup>6</sup> which is likely to cost the global economy at least \$1 trillion<sup>7</sup>.

Now more than ever, ambitious action is needed to address the nature and climate emergency, as well as the Sustainable Development Goals, and all businesses should be held accountable to their role in this. For more information, see response to Question 9.

### **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?**

- Yes

It should be illegal for businesses to use forest risk commodities that have been produced by causing deforestation or conversion, may that be legally or illegally, or human rights abuses.

Legality should be a minimum threshold but will not bring at scale transformation towards ending deforestation and conversion, nor stop widespread human rights abuses linked to commodity production, because of insufficient, inappropriate or unenforced regulatory frameworks and a lack of data and transparency.

Legal compliance would also not be sufficient to enable companies to meet voluntary commitments that they have already set, either individually or through platforms (including the Consumer Goods Forum's Forest Positive Coalition or New York Declaration on Forests), and as part of their contributions to the Sustainable Development Goals. This is because many forest and environmental legislations in producer countries still allow for a significant amount of deforestation and conversion, minimizing our chances to stop deforestation, fight climate change and reduce other impacts. Given that the UK government has been a strong supporter of voluntary action by companies to address deforestation/ conversion risks (evidenced by its support for the Amsterdam Declarations and New York Declaration on Forests), it is vital that any new legislation supports and enhances the ability for companies to meet these voluntary commitments rather than risk undermining them.

Therefore, this due diligence obligation should be designed to prevent businesses from using forest risk commodities that have caused clearance of forests or other native vegetation, and human rights abuses, even if this is allowed by relevant laws in producing countries. This should be upheld and applied consistently across all relevant commodities and producer countries.

### **CASE STUDY: Legal system and enforcement in Brazil**

An area of forest nearly 4 times the size of the UK (88 million hectares) could be cleared legally under the Brazilian forest law<sup>14</sup>. If converted, this area of native vegetation has the potential to emit approximately 18 Gt of CO<sub>2</sub>e, which would be equivalent to over 50 years of UK net CO<sub>2</sub>e emissions (compared to a baseline of 2019). This clearance would further impact indigenous and other local communities and wildlife populations, and it could even threaten the future productivity of areas currently under production, due to impacts on hydrology (e.g. droughts) and soils (e.g. soil erosion).

A farm located in the Cerrado can deforest up to 80% of its area (in comparison in the Amazon 20% of the areas is legally allowed to become productive). Only about 8% of the Cerrado is protected in reserves and conservation units<sup>11</sup>. The expansion of agriculture over Cerrado native vegetation started in the 1960's. This development has happened at a significant environmental and social cost, given the region's unique biodiversity and ecosystem services. If the loss of ecosystem services in the Cerrado due to conversion and degradation continues at the same pace, there might be strong socio-environmental consequences, that would not only affect the biome itself but also the Brazilian agriculture and economy, populations living in this region, and other adjacent regions such as the Amazon<sup>12,13</sup>. Thus, by implementing a legality-only model, the UK would be reinforcing the pressure over the Cerrado and undermining market efforts on the way that push for reduction of conversion in this ecosystem<sup>15</sup>.

Efforts to enforce the Brazilian forest code have been hampered by substantial budget cuts and staff dismissals at Brazil's environment agency, IBAMA<sup>16</sup>. The Brazilian Institute for Space Research (INPE) - responsible for monitoring deforestation and conversion in main Brazilian biomes has been suffering with continuous budget cuts and dismissals of senior officials, often coinciding with deforestation data release dates<sup>17</sup>.

### Deregulation

The Brazilian Government has looked to [weaken the enforcement of the Forest Code](#). In February 2020, farmers who had irregularities in their land registry because of noncompliance with the forest code could access public finance – which before was a punishment to induce compliance to the legislation.

In addition, between March and May 2020, the Government of Jair Bolsonaro published 195 executive acts which critics say are an indirect means of dismantling Brazil's environmental laws and bypassing Congress. During the same

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<sup>14</sup> Soares-Filho B. et al. (2014), *Cracking Brazil's Forest Code*, Science 25 Apr 2014, Vol 344, Issue 6182, pp. 363-364. Available at

<https://science.sciencemag.org/content/344/6182/363#:~:text=Brazil's%20controversial%20new%20Forest%20Code,new%20mechanisms%20for%20forest%20conservation.>

<sup>15</sup> <https://theconversation.com/brazils-cerrado-forests-wont-be-saved-by-corporate-pledges-on-deforestation-87130>

<sup>16</sup> <https://edition.cnn.com/2020/08/07/americas/brazil-bolsonaro-amazon-fires-intl/index.html>

<sup>17</sup> <https://www.reuters.com/article/us-brazil-environment-idUSKCN24F025>

period in 2019, just 16 such acts were published. Since October 2019 fines for illegal logging in the Amazon in [Brazil](#) have been [effectively suspended](#).

### **CASE STUDY: Legal system and enforcement in Indonesia**

In the case of Indonesia, although there is a moratorium in place to protect primary forest and peatland:

- it only applies to a certain area (approximately 35% of the country and even this area is capable of being reduced);
- permits have been granted over the years allowing legal logging, mining and palm oil plantations in areas which fall within the original moratorium map;
- It does not apply to areas where permits were already granted before 2011 and permit terms are for either 55 years or 100 years;
- Concerns have been raised that illegally logged timber is being ‘laundered’ through certified sawmills and shipped abroad as a legal export.

Despite the map of palm oil plantations having been published by the government in December 2019 (showing coverage in 2018) there is still no policy or law enforcement to ensure there is no expansion of plantation within inside forest status area (where palm oil plantations are not permitted).

Additionally, in Indonesia, concerns arose following the signing of a regulation on sustainable palm oil production by Indonesia’s President Joko Widodo in March 2020. While improved regulation of the sustainability of the palm oil industry in Indonesia would be welcome, the new regulation contained no measures to protect primary natural forests or peat, or to respect human rights; and had no grievance mechanism or independent monitoring oversight.

### Deregulation

In March this year, the Indonesian Trade Ministry published a regulation which removed the requirement for timber exporters to secure a V-legal licence for exports of timber products, undermining the functioning of the SVLK legality assurance system and therefore undermining the terms of the EU-Indonesia Voluntary Partnership Agreement (VPA) on Forest Law Enforcement Governance and Trade (FLEGT) – which is a legally binding trade agreement despite the term ‘voluntary’. The justification provided for this was to boost timber exports given the challenging trade conditions created by the Covid-19 pandemic. Following outcry both within Indonesia and globally, the Ministry of Trade later suspended the new regulation. Whilst this suspension is welcome, it highlights the challenges for the UK to ensure it is not complicit in illegal or unsustainable production of forest-risk commodities when focusing solely on the legal framework of producer countries, which can be subject to rapid shifts.

Wider and non-commodity-specific rollback of legality and sustainability regulations is also a concern. A timely example of this is the recently announced omnibus bill in Indonesia, which is being discussed by members of the House of Representatives and other parts of the government. According to the [Indonesian Centre for Environmental Law](#) (ICEL), this law would roll back environmental regulations. For example, it would eliminate minimum requirements to retain at least 30% of forest within a drainage basin, an island, and/or a province. Another major issue is related to holding companies accountable for forest fires. Under the new bill, plantation permit holders would no longer be responsible for fires in their concessions. The mandate would only prevent and mitigate fires in the plantation’s working area.

<sup>[1]</sup> <https://www.icmbio.gov.br/portal/unidadesdeconservacao/biomas-brasileiros/cerrado>

<sup>[2]</sup> <https://doi.org/10.1016/j.biocon.2019.03.009>

<sup>[3]</sup> <https://doi.org/10.1111/gcb.13298>

For more information, see response to Question 3 below and Question 9 in Section D.

**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

It is critical that UK businesses have a system in place to assess whether the commodities they use have resulted from conversion of forests or other natural ecosystems or caused any human rights abuses. Whether land has been converted legally or illegally, this has the same effect on nature. Therefore, this obligation should include both legal and illegal conversion and associated human rights impacts.

Moreover, the feasibility and costs for businesses to implement a system of due diligence to ensure that the forest and ecosystem risk commodities they use have been produced in accordance with relevant laws in the producer country needs to be assessed against those of a system to monitor all deforestation and conversion in supply chains (which could consistently use satellite and other technologies). We believe it is likely to be easier, safer, more reliable and much less costly for companies to focus on the latter, as it could more easily be replicated across geographies (whilst regulatory frameworks will greatly vary across producing countries, and lack of transparency is likely to be a challenge in assessing compliance with local laws).

For more information, see response to Question 9 in Section D below.

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

- Yes

Undertaking due diligence will enable business to better understand their exposure to environmental and human rights risks across their operations and supply chains. Disclosure of business due diligence systems, the risks identified, and the action being taken to mitigate these risks will:

- Play a key role in levelling the playing field for business;
- Support full transparency allowing businesses to benchmark themselves against peers and assess progress across the entire industry/sector;
- Ensure businesses can easily learn from each other and drive rapid transformation at scale;
- Mobilise collective business action to proactively manage these risks, driving rapid transformation at scale and delivering a wide range of other benefits to businesses, including improved supply chain resilience, social license to operate and often reduced operational costs;
- Enable financial institutions to assess risk across their portfolios.

**It should be ensured that business is not to report that they have taken no action to mitigate risks identified, as is possible under the Modern Slavery Act. Question 5: Should the Government be able to levy fines against businesses that use forest risk commodities not produced in accordance with relevant laws?**

- Yes

This due diligence obligation should help level the playing field – businesses that do not comply with it should be sanctioned. This is crucial to rewarding (and not undercutting) the efforts of those that do invest time and resources in implementing due diligence systems. Without sanctions as part of enforcement, there is a risk that many businesses wouldn't make the necessary changes. But fines must be effective and dissuasive - that is capable of being levied at a sufficiently high level to dissuade future breach.

**Question 14: Please use this box to share any further information about the systems you use to better understand how forest risk commodities in your supply chains are produced.**

The following tools are already available or under development to enable companies to map their supply chains and identify deforestation/conversion risks and impacts.

- Trase <https://trase.earth/maps> supply chains for key commodities, providing freely available data on supply chains (including volumes, actors and the potential links to environmental and social risks) in some key commodity producer regions, showing where commodities are produced, how they are likely traded and consumed. Trase has very good coverage for a few countries, for example Brazil, with data on Indonesia, Paraguay and Argentina increasing. However, Trase does not yet provide a complete global database. In many cases, companies would have to use national databases, different for each country they operate in and/or create their own to obtain full transparency. Also, most of the data used by Trase as input in their models depends on the basic data that is disclosed by producers and traders alongside the supply chain. Some countries have systems that allows this data to become available (e.g. tax registration, legal structures, deforestation data) without which makes it difficult to model supply chains.
- Blockchain: a 'distributed ledger' technology of highly secure and transparent transactions. which allows anyone in the network to view and verify transactions logged within it, meaning that participants can map and check the flow of items from one party to another. This concept is currently being investigated by WWF in Fiji, New Zealand and Australia, using technology and capabilities provided by TraSeable and ConsenSys, and the boats of fishing company Sea Quest to improve the transparency of the Pacific tuna industry. The concept has been adapted for agricultural supply chains, such as soy and dairy, and there are currently several pilot projects underway including by large companies like Nestle and Louis Deyfrus<sup>18</sup>.
- Segregated or identity preserved chain of custody certification options. Chain of custody certification options for certification schemes (which are aligned with ISEAL Alliance principles) may provide evidence that certified commodities have not caused deforestation, conversion or human rights abuse in their production (see limitations below). A chain of custody option requires the certification model to identify the origin of a final product or product component and ensure a custodial sequence along the supply chain, therefore enabling a link between sustainability practices at a certain stage in the value chain with a product claim at the end of the chain. The link between sustainability practices in the supply chain and claims on the sustainability of the final product are only possible for segregated/identity preserved models. Such product claims cannot be made for chain of custody models based on equivalences (such as mass balance)

There are other tools available for companies that have been developed by other NGOs, such as:

- Global Forest Watch: it is a freely available, global monitoring system. It allows companies to monitor deforestation across their supply chains. The platform offers detailed information on deforestation due to palm oil, soy and timber. Data on geolocations of farms or municipalities where commodities are produced is important to allow a specific assessment of supply chains by companies, requiring a high level of traceability. Nevertheless, the platform allows for monitoring at many different levels and even provides maps of palm oil mills which can be cross referenced with the company's database.
- Moreover, EDF has produce a guidance describing traceability tools available to companies:

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[https://www.researchgate.net/publication/334805119\\_The\\_Rise\\_of\\_Blockchain\\_Technology\\_in\\_Agriculture\\_and\\_Food\\_Supply\\_Chains](https://www.researchgate.net/publication/334805119_The_Rise_of_Blockchain_Technology_in_Agriculture_and_Food_Supply_Chains)