

# Due diligence on forest risk commodities

## Consultation

### WWF draft business response

#### Introduction

This document is a partially pre-filled template of Defra's consultation on due diligence on forest risk commodities containing WWF perspectives and guidance on responding to specific sections of the consultation. It has been developed to support UK businesses in responding to the consultation.

Recommended responses are highlighted in yellow in some (but not all) of the questions in Sections A to D. Where relevant, WWF guidance is outlined in green boxes beneath these questions. This guidance may represent suggested responses or our rationale for our recommended response (for single/multiple choice questions).

Guidance provided is limited under Sections A-C, as most information in these sections will be specific to you and your organisation. We see section D as the main opportunity to provide detailed, qualitative perspectives on the type of due diligence obligation that would drive change at the pace and scale needed to eliminate deforestation and conversion of other natural ecosystems from UK supply chains.

WWF-UK welcomes this consultation: a strong and effective mandatory due diligence obligation should be included in the UK government's 'landmark' Environment Bill, as it is critical to address the UK's growing overseas footprint and fulfil government's ambitions to help 'build a fairer, greener, more resilient future'. This is an important first step, but the current framing of the consultation does not go far enough for the UK to uphold its existing commitments under the Amsterdam Declarations Partnership and as part of its pledge to bring all UK greenhouse gas emissions to net zero by 2050.

#### Section A: About you

**Questions 1-3: Name, email address, country** – specific to each respondent.

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

- Yes
- No

*WWF rationale:* We would recommend selecting 'No' so that the due diligence obligation you advocate upon can be shared as widely as possible/necessary. We would also be grateful if you could let us know if/when you have responded to the consultation, and if you have any objections, comments or questions about our suggested responses outlined in this document.

**Question 5: Are you responding:**

- On behalf of an organisation
- As an individual

## Section B: About your organisation

**Questions 1-2: Type of organisation and organisation name** – specific to each respondent.

## 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** – specific to each respondent.

**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.**

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

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

*WWF suggested response:* Please include here any other relevant commodities that can be linked to deforestation and conversion with other natural ecosystems (or that are expected to be an increasing driver of conversion in the future), such as (but not limited to): coffee, cotton, maize, sugarcane, nuts, canola, shrimp, gold and other metals and minerals. Please include these irrespective of where they are produced relevant to your supply chain. Timber and derived products should be mentioned as well (although the EU Timber Regulation (EUTR) will be transposed into UK law), so that EUTR provisions can be strengthened (from a legality only baseline) to include legal conversion and linked human rights abuses.

**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

*WWF comment:* In most cases, none of the above would apply (or only partially so – e.g. through certification schemes, or for soy in the Amazon, thanks to the Amazon Soy Moratorium, which is not a legal requirement but its wide-reaching acceptance and implementation has rendered it an effective voluntary mechanism for tackling soy-driven deforestation in the Brazilian Amazon). In most regions at high risk of ecosystem conversion, in Southeast Asia and Africa, clear legal restrictions to habitat conversion and degradation are limited to strictly protected areas (when these are effectively protected and laws enforced). Moreover, in most producing countries, a lack of transparent data makes it difficult for companies to develop systems to control, trace and verify whether forest- and ecosystem-risk\* commodities have been produced legally. There are significant grey zones where legality may not be ensured, or even precisely and unambiguously defined. Land encroachment and other illegalities may gain passive and even active support from authorities. The safest, most consistent and verifiable way to avoid illegal deforestation/conversion and human rights abuses in commodity supply chains is to avoid all

deforestation/conversion, by setting up a deforestation/conversion cut-off date pertaining to all conversion (legal and illegal) through country-wide, biome-wide or landscape-wide approaches, such as the Amazon Soy Moratorium.

Certification schemes used by your company can also be referenced here, if they are aligned with [ISEAL Alliance's Principles for Credible and Effective Sustainability](#), as the latter state that standards performance levels must comply at least with relevant national and international laws and conventions. While important mechanisms to assure better management practices at the unit of certification, the past decade however, 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. The role of certification systems in this due diligence obligation has yet to be clarified – they can support risk assessment and mitigation but should not be the sole mechanism for due diligence as quality of systems and controls vary across certifications.

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

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

*WWF suggested response:* In most producing countries, a lack of transparent data makes it difficult for companies to develop systems to control, trace and verify whether forest- and ecosystem-risk\* commodities have been produced legally. Companies will likely have supplier codes of conduct that require that raw materials have been produced in compliance with relevant laws but may lack the systems to verify that this has occurred.

One of the most effective examples of a market system to control deforestation/conversion and compliance with relevant local laws (as defined in this consultation) is the Amazon Soy Moratorium (ASM). Through satellite monitoring and aerial surveying, the moratorium monitors 76 municipalities responsible for 98% of the soy produced in the Amazon region. Farmers who violate the (ASM) zero deforestation/conversion cut-off date (2006) 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.

As presented in Question 11 above, certification schemes can also be mentioned here, as long as they are aligned with [ISEAL Alliance's Principles for Credible and Effective Sustainability](#), as the latter state that standards performance levels must comply at least with relevant national and international laws and conventions (see suggested response to Question 11 for more information on the limitations of certification schemes).

\*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 suggested response:* Please include here any further information about traceability systems your company uses, the percentage of traceability (to what level of traceability: national, sub-national, mill/other relevant processor, farm-level) you have achieved for your direct and indirect supply chains (as well as any future targets/plans to achieve this). Please consider describing to what extent these have enabled you to drive action on addressing deforestation and conversion and sustainability in your supply chains. Some examples might include: segregated/identity preserved chain of custody certification options, blockchain technologies, satellite monitoring systems etc.

## Section D: About the proposal

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

- Yes
- No
- Don't know

*WWF rationale:* 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. 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 below.

### 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
- No
- Don't know

*WWF rationale:* It should be illegal for businesses to use forest risk commodities that have been produced by causing deforestation, conversion or human rights abuses, may that be legally or illegally. Legality should be a minimum threshold but will not bring at scale transformation towards ending deforestation and conversion, nor widespread human rights abuses linked to commodity production, because of insufficient, inappropriate or unenforced regulatory frameworks and a lack of data and transparency. Nor would it 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), and as part of their contributions to the Sustainable Development Goals.

In addition, it is always possible for producing countries to weaken relevant laws due to political changes. Therefore, this due diligence obligation should be designed to prevent businesses from using forest and ecosystem 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 production countries.

As an example, Brazil has one of the most advanced forest laws and monitoring infrastructures in the world, and yet approximately 88 million hectares<sup>1</sup>, the same as nearly 4 times the size of the UK, could be cleared legally under the Brazilian forest law. This area of native vegetation has the potential to emit approximately 18 Gt of CO<sub>2</sub>e, which is equivalent to approximately 50 years of UK net CO<sub>2</sub>e emissions. 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 and soils.

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

<sup>1</sup> Soares-Filho B. et al. (2014), *Cracking Brazil's Forest Code*, Science 25 Apr 2014, Vol 344, Issue 6182, pp. 363-364. Available online at

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

**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
- No
- Don't know

*WWF rationale:* It is critical that UK businesses have a system in place to assess whether the commodities they use have required forests or other natural ecosystems to be cleared or degraded, 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, irrespective of potential compliance with relevant laws.

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 in enforcement is likely to be a challenge in assessing compliance with local laws). Compliance with local laws is conditional to interpretation and enforcement, and therefore constitutes a risk in implementation for companies.

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
- No
- Don't know

*WWF rationale:* We should ensure full transparency of due diligence systems to ensure businesses can easily learn from each other and drive rapid transformation at scale. This will also enable businesses to better understand their exposure to environmental and human rights risks across their operations and supply chain and proactively manage these risks. This would provide a wide range of benefits to businesses, including improved supply chain resilience, social license to operate and often reduced operational costs.

Such transparency would also allow businesses to benchmark themselves against peers and assess progress across the entire industry/sector, and it would prove invaluable in enabling financial institutions to assess risk across their portfolios.

**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
- No
- Don't know

*WWF rationale:* 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.

**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?**

- Yes
- No
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*WWF rationale:* Please select 'Other' to be provided with the option to submit a more detailed response in Question 7 (see suggested response under Question 7 below).

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

*WWF-UK suggested response:* 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 first placing commodities/products on the UK market should assess the risk of having commodities/products in their supply chain that are linked to deforestation/ecosystem conversion and human rights abuse and take measures to ensure that their risk is reduced to a minimum/negligent level.

In alignment with this risk-based approach, the **volume and value of forest risk commodities/products companies place in the UK market** (more than employee number and total turnover) is of higher importance when considering which companies the legislation should apply to. A company with a high turnover and number of staff for example could import only a small amount of rubber, with a smaller company, producing tyres for example, importing a much higher volume.

Application of the law to larger companies only risks shifting the importation of illegal products to smaller companies. 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.

**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)]?**

*WWF-UK Suggested response:* While existing frameworks reporting on ESG provide some guidance to corporate and financial institutions, 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 were developed to identify material financial risks to the company, not illegality or company impact. Thresholds or "comply or explain" standards would also ultimately need to be removed in order to be effective.

However, current frameworks (e.g. the [Accountability Framework](#), UN Guiding Principles and OECD Guidelines for Multi-National Enterprises) should be a starting point, and lessons can be learned from due diligence legislature such as the French Duty of Vigilance when developing such legislation to include financial sector and corporate actors, as well as Modern Slavery Act, the EU Timber Regulation, anti-bribery act and anti-money laundering act.

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

*WWF-UK Suggested response:*

We would welcome the integration of a mandatory due diligence obligation in the Environment Bill, and agree that this obligation should be focussed initially on those commodities that present the highest risk when it comes to deforestation (as well as conversion of other natural ecosystems see below). However, we believe this obligation needs to include the additional elements outlined below.

## 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). As UK imports have historically had a substantial footprint on savannas and natural grasslands in addition to forests, 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 deforestation does not cause any increase of destruction of other natural ecosystems, from the same drivers (leakage). 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. Change to natural ecosystems that meets this definition should be considered as conversion and included in this due diligence obligation, regardless of whether or not it is legal (see point below).

## 2) Go beyond legality

It is critical to also 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>2</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. This could lead to the release of the equivalent of 50 years of UK net CO<sub>2</sub>e emissions, further impact indigenous communities and wildlife populations, and it 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 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.

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

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.

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. 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.

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<sup>2</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.>

For all of 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](#).

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.

### 3) Inclusion of human rights

This due diligence law should also ensure no human rights violations in the supply chains of products placed on the UK market. Human rights violations include a wide array of possible violations including land-use rights, or workers' rights amongst others. For this legislation, the focus should be on and land use based human rights (respect of customary rights, free prior and informed consent (FPIC), conflicts with communities, benefit sharing, workers' rights, etc.).

### 4) Including the finance sector and institutions financing commodities

**Institutions that finance commodities** should 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 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. Financial institutions should be required to comply with the same rules as their clients, to maintain market coherence; this is reflected in a wide range of international standards, including UN Guiding Principles and OECD Guidelines for Multi-National Enterprises and French Duty of Vigilance. 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. This is important not only for consistency but also to ensure that the UK maintains its reputation and credibility as one of the largest green financial centres in the world.

### 5) 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 first placing commodities/products on the UK market 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/negligent level.

In alignment with this risk-based approach, the **volume and value of forest risk commodities/products companies place in the UK market** (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. 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.

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



### 7) One part of a package of measures

A strong and effective mandatory due diligence obligation should be **included in the Government's 'landmark' Environment Bill** as it is critical to fulfil government's ambitions for this legislation to be part of the UK's recovery and to help 'build a fairer, greener, more resilient future'.

It should be noted 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, as set out in the GRI Taskforce's recommendations. This should also include for example government funding and support for improved governance via bilateral or multilateral agreements and international collaboration to support producer countries towards a transition to sustainable production and to restore native vegetation where possible. See full [GRI Recommendations report](#) for more information.