

Department for Environment, Food and Rural Affairs (DEFRA) Consultation - Implementing due diligence on forest risk commodities

March 2022

Written evidence from ZSL (Zoological Society of London)

Question Topic: Implementing the due diligence requirements

Should we lay secondary legislation at the earliest opportunity? If you ticked no, please state why.

Yes

Given the very high rate of tropical forest loss currently being witnessed globally, a swift implementation is likely to accelerate companies transition towards compliance, in turn slowing down the rate of forest loss and resulting in real-world conservation of natural forests.

What should we take into account when considering how long businesses have to prepare for regulation before it comes into effect?

- Length and complexity of supply chains, and associated ease or difficulty in obtaining supply chain data.
- Interpretations and clarifications of scope likely to be needed throughout the implementation process, so although companies should begin actioning the new requirements as soon as possible, a grace period should be given.
- Whether or not there is a gap planned between regulation coming into effect, and enforcement/penalties for non-compliance.
- No placement on the market – Assume aligned with UKTR whereby a functional due diligence system (DDS) is needed before placing on the market, but given products are already on the market, companies should have opportunity to engage suppliers and work towards conformance, rather than requiring companies to drop suppliers straight away.
- Considerations of the 'industry norm' regarding current levels of traceability and transparency.
- Proportion of smallholders in producer tier of supply chains (typically the less corporate the producers, less data is available downstream).
- Deleterious impacts to UK trade – As soon as legislation is in place to eliminate illegal products from UK imported goods, buyers in the UK and outside will immediately seek evidence of the same. Therefore, delaying enforcement of the regulations may perversely impact UK businesses subject to the regulation. So a grace period should be short.
- The rate of biodiversity and forest loss – despite challenges to business, global deforestation rates and looming extinction crisis mean that the legislation should be passed and businesses regulated as soon as possible.

- The UK's international commitments to tackling the climate crisis and biodiversity loss made at COP26 and COP15 respectively.

Question topic: Forest risk commodities

Can you provide any further evidence on commodities that drive deforestation? Please provide detail here.

Unsustainable and illegal commodity production plays a significant role in biodiversity loss worldwide, with the expansion on agriculture into forested areas posing considerable threat to the world's few remaining Intact Forest Landscapes (IFLs). The nature of the commodities driving deforestation can rapidly change over time, accelerated during times of geopolitical and economic instability, environmental change and other factors. Given widespread forecasting of global shocks related to climate change and biodiversity loss, the legislation should be flexible enough to rapidly change the type of commodities targeted.

Although the legislation targets agri/soft commodities, it should be noted that other commodities pose significant threat to forests. Metal mining is a particularly high risk. Metals are a finite high-value commodity often found under tropical forests, and as the world transitions towards decarbonisation (and the associated growth in electric and battery powered technology), we face an enormous surge in demand. When drafting legislation that defines the assessment and conclusion of forest-risk commodities, it should be flexible enough to lay the groundwork for an expansion in scope to ALL commodities that drive deforestation.

Given the definition of forests in the Bill includes wetland forests, such as mangroves, it should be noted that commodity production is a major driver of mangrove loss, a key ecosystem, especially in South East Asia. Aquaculture is a dominant driver, but rice agriculture and palm oil production are also significant (Richards, D. R., Friess, D. A., (2015) Rates and drivers of mangrove deforestation in Southeast Asia, 2000–2012. PNAG.org). It has been estimated that 62% of global loss in mangroves between 2000 and 2016 resulted in land-use change, primarily through agriculture and aquaculture (Goldberg, L., Lagomasino, D., Thomas, N., Tatoyinbo, T. (2020) Global declines in human-driven mangrove loss. Global Change Biology 26).

ZSL's SPOTT program conducts research and assessment on palm oil, tropical forestry, and natural rubber companies. More information can be found here <https://www.spott.org/about/>

We have collected and published data annually on corporate disclosure for over 100 sector-specific Environmental, Social and Governance (ESG) indicators and benchmarked progress over time.. Below is a brief summary assessment results, demonstrating the current status of deforestation commitments from 100 Palm oil and 30 Natural Rubber companies, selected as those of the greatest interest and impact in their landscapes (given their operations and supply chain positions), among other factors.

Palm oil (November 2021 assessment)

Although the majority of companies assessed (69.6%) have a clear commitment to zero deforestation, with 53.3% disclosed strong evidence of monitoring deforestation, and only 22.0% report implementing a landscape or jurisdictional approach.

(46.9%) have a commitment to ethical conduct and prohibition of corruption that applies to all their suppliers. Specifically, regarding conversion cut off dates (an important factor of legality) a very low proportion (12.7%) commit to restore non-compliant deforestation/conversion, and specify a cut-off date beyond which deforestation or conversion would not be accepted.

Natural rubber (March 2022 assessment)

The natural rubber sector has seen less pressure to move to more sustainable practices than other sectors such as palm oil, timber, and pulp.

The recent Natural Rubber SPOTT assessment results show that 61.1% have a clear commitment to zero deforestation but only 16.7% provide strong evidence of monitoring deforestation, and 20.0% report to be implementing a landscape or jurisdictional approach. Although an estimated 85% of natural rubber sourced globally is from smallholder producers, only 13.8% of assessed companies report a clear process for assessing and engaging smallholder suppliers on compliance with company's policy and/or legal requirements, and a mere 6.9% report the number or percentage of smallholder suppliers engaged on compliance with company's policy and/or legal requirements.

These results demonstrate a clear lack of corporate commitments around deforestation and legality within their production areas and supply chains. Such commitments are currently voluntary, and it is essentially the UK has a legal mandate to require companies to remove deforestation from their sourcing sheds.

Which of the following factors do you think should be considered to determine legislative sequencing? Please tick all that apply and state your reasons.

- **the commodity's impact on global deforestation**

Yes, although this can vary over time and the current global footprint should not be only factor considered.

- **the UK's role in this global deforestation**

Yes, the UK is a significant importer of forest-risk commodities and has a global footprint. The UK Government commitments at UN Climate Change Conference (COP26) and UN Biodiversity Conference (COP 15) means it is essential to proactively tackle the UK's role in global deforestation.

- ability to deliver effective regulation

No, any commodities which present specific challenges to implementing effective regulation should not be subject to delays. Where gaps are identified, resources should be allocated for capacity building; strengthening the framework around which the legislation is implemented, and support for companies to transition towards compliance.

- other (please specify)

- **Expected future deforestation:** Commodity specific trends, for example identifying areas of rapid expansion. This may justify prioritisation even if current volumes (or land footprint) are low. Over five million hectares of tropical forest have been cleared for rubber plantations in Southeast Asia and sub-Saharan Africa between 2003 to 2017 (Wang, M.M.H., Carrasco, L.R., Edwards, D.P., 2020. Reconciling Rubber Expansion with Biodiversity Conservation. *Current Biology* 30). Furthermore, studies have shown that an additional 4.3–8.5 million hectares of land will be required to meet the projected growing global demand by 2024 leading to rainforest conversion to rubber plantations with subsequent consequences to biodiversity (Warren-Thomas, E., Dolman, P. M., Edwards, D. P., 2015. Increasing Demand for Natural Rubber Necessitates a Robust Sustainability Initiative to Mitigate Impacts on Tropical Biodiversity Conservation Letters, *Journal of the Society for Conservation Biology*)

Impact on biodiversity loss and forest-dependent communities: Focus on biodiversity hotspots in forest ecosystems where avoided deforestation will have most impact on biodiversity conservation, not just forest area. Also consider commodity production in forest ecosystems where local and indigenous communities are most reliant on forest resources to meet their basic needs.

Data on biodiversity loss and drivers in different parts of the world can be found in ZSL's Living Planet Report (2020) <https://www.zsl.org/global-biodiversity-monitoring/indicators-and-assessments-unit/living-planet-index>

What data sources or information should be used to consider the proposed factors?

Geospatial datasets that give information about forest protection and occurrence (e.g. Protected Planet, Global Forest Watch), as well as datasets linking commodity trade with deforestation (e.g. TRASE)

Do you have any further comments regarding the order in which we introduce key forest risk commodities?

To give context to the industry's readiness for regulation, see below for statistics taken from the last round of SPOTT assessment results (for details of SPOTT, see comments in Q in 23). The first section covers current traceability disclosures, and the second relates to legality disclosures.

For palm oil, of the 100 assessed companies, only 34.7% report a clear process to prioritise, assess and/or engage suppliers on compliance with company policy or legal requirements.

A very low number, 16.5%, report having a programme to support own and third-party high-risk mills to become compliant with their sourcing policies, and give examples of the types of support provided. A more significant number, 71.0%, have commitments to both ethical conduct and prohibition of corruption but only 46.9% apply this commitment to all their suppliers.

Traceability is an important element of a company's, or an industry's readiness for DDSs. If traceability upstream is poor, it creates significant challenges to downstream companies who are seeking visibility on their supply chains. Of the assessed companies, only 30.9% that source from third-party supplying mills can trace 100% of their raw materials to the mill of origin. 50.0% do not report any traceability figures for the percentage of FFB supply traceable to plantation from the company's own mills, while 22.1% can trace some of their supply from third party mills to plantation level, and 42.9% publish some traceability data at the refinery level.

For natural rubber, of the 30 assessed companies, only 22.2% publicly list the countries they are sourcing from, with 0.0% publicly listing the jurisdictions where sourcing from smallholders and 0.0% publishing the names and locations of all third party supplying processing. Visibility on compliance is also very low, with only 13.8% reporting a clear process for assessing and engaging smallholder suppliers on compliance with company's policy and/or legal requirements, and 6.9% report the number or percentage of smallholder suppliers engaged on compliance with company's policy and/or legal requirements.

These findings show lack of transparency and disclosure in relation to traceability and efforts to monitor compliance. This is likely to create an obstacle for companies implementing effective DDS systems and may need support in seeking solutions.

Which option for the first round of secondary legislation do you recommend? Please state your reasons.

Option 1: introduce 2 commodities in the first round of secondary legislation Officials estimate this would take 18 to 24 months to come into effect, including a minimum period of 6 months for businesses to prepare for regulation.⁹ During that time, we would continue to work on how other commodities can be introduced in subsequent rounds, which could follow swiftly.

Option 2: introduce 3 to 4 commodities in the first round of secondary legislation Officials estimate this would take 3 to 4 years to come into effect, including a minimum period of six months for businesses to prepare for regulation. As with Option 1, we would continue exploring how to introduce other commodities in subsequent rounds.

Option 3: introduce 5 to 7 commodities in the first round of secondary legislation Officials estimate this would take 4 to 5 years to come into effect, including a minimum period of six months for businesses to prepare for regulation. We could then start work to assess other forest risk commodities for inclusion in scope, including those which may become key drivers of deforestation in the next five years

Option 3 is preferable. Given the fast changing nature of deforestation patterns, it does not make sense to focus all efforts on the smallest number of commodities.

There may be many issues to resolve once the secondary legislation is implemented (interpretations, clarifications, revisions etc). Other commodities should not be held up while the first ones are perfected, as this could take many years.

In most of these commodities, there are key bottle neck companies in every supply chain which would be able to be targeted and therefore tackle a huge portion of the potential illegality in those supply chains, whether that is crushers & refiners in palm oil, or tyre manufacturers in rubber. There is a case for broader inclusion because there will be a lot of voluntary compliance as soon as legislation is in place, even if this is not enforced. And there will also be a lot of civil society "enforcement" of the regulations through calling out companies with no or bad due diligence.

Question Topic: Regulating UK based businesses that have operations in the UK

Should we use UK turnover as the metric to capture UK based businesses?

- Yes
- No
- Do not know

No, global turnover should be considered.

Question Topic: Regulating non-UK based businesses that have operations in the UK

Which of the following metrics should be used to regulate the UK operations of businesses that are based outside of the UK under due diligence legislation? Please state your reasons.

For the purposes of this question, we are asking about businesses whose headquarters are not in the UK, but which have commercial activities in the UK. This could be either without a UK-registered business, or through a small or medium sized UK-registered business.

- option 1: turnover related to UK activity
- option 2: global turnover

Other:

Other. All businesses trading forest risk commodities should be regulated.

A large non-UK company with any size of UK operations should be required to submit to requirements. Including global turnover will ensure large companies are in scope. Larger companies may a) have more resource available for DDS and b) have a larger land-footprint, therefore by including in scope the impact of the legislation is maximised.

An important factor that should be considered when defining criteria for scope is that of 'bottleneck companies', whereby a relatively largest proportion of product passes through the ownership or possession or a relatively small number of companies. These bottlenecks tend to occur in different parts of different commodity supply chains. For example, in the natural rubber industry, the bottleneck is thought to be around the tyre manufacturers (i.e. quite far downstream). In palm oil by comparison, the bottlenecks is thought to be closer to source; the crushers and refineries. See SPOTT analytical reports for more information

The criteria for defining scope of inclusion should ensure that the most influential companies are included, as this will have the biggest impact on industry standards of compliance, in the shortest period. These companies may not have headquarters in the UK.

- other (please specify)

Question 31. Can you provide any data or information that will help identify potential businesses in scope based outside the UK? Please provide details for your answer.

No

Question Topic: Turnover threshold level

Which of the following factors should be considered when setting the turnover threshold level? Please tick all that apply and state your reasons.

- **policy impact**

Yes, policy needs to capture large multi-national companies where forest-risk commodities may constitute only 0.5% of their sourcing, but due to the size of operations this may constitute a huge volume and value of global trade.

- **burden on business**

Yes. The burden on businesses will be significant, especially those that have more than one commodity in scope. However, the valuation of soft commodities does not accurately capture the environmental and social cost of illegal and unsustainable practices. Robust due diligence to ensure products imported to the UK should be considered an integral part of pricing for legally produced commodities. Therefore, 'burden on business' should not be over emphasised as a reason to limit effective regulation.

- **deliverability**

Yes.

- **other (please specify)**

Threshold could come down over time, whereby only larger businesses have responsibility initially, and after a period of review the threshold could come down to increase the number of businesses in scope.

For each of the following commodities, please tick where the turnover threshold for inclusion of UK based businesses should be set.

For the purposes of this question, we are seeking views on beef (including dairy and other derived products) and leather separately, as opposed to 'cattle'. Whilst both are linked to cattle, the products and businesses operating in these supply chains are different, and so we would like to gather views on both. Further data on the number of businesses captured by each turnover threshold is available in the consultation impact assessment.

Beef:

- £50 million

Cocoa:

- £50 million

Coffee:

- £50 million

Leather:

- £50 million

Maize:

- £50 million

Palm oil: • £50 million
• £50 million

Soy:

Rubber: • £50 million

Do you have any further comments regarding businesses in scope?

- It may be challenging to separate out turnover by commodity if this information isn't routinely gathered by the business.
- Where products are made from more than one in-scope commodity (example, chocolate bar containing palm oil and cocoa), clarification is needed to specify whether the turnover related to the product is counted separately under each commodity bracket.
- Volume could be an alternative to turnover, or used as an additional metric (i.e. where turnover is low, but volume is high, volume could take precedent)
- Finally, where the commodity is used in a product that has significant value added (for example, rubber tyres in automobiles) clarification is needed whether the turnover relates to the whole product, or the commodity specific component.

Question 45. Should businesses in scope be required through secondary legislation to 'eliminate risk or reduce risk to as low as reasonably practicable'? Please state your reasons.

- Yes
- No

Yes. This is aligned with UKTR to introduce the requirement to only trade materials mitigated to 'low risk' or 'negligible risk'. It is practically impossible to 'eliminate' risk, so we recommend that this wording is omitted. Even with supply chain mapping, stable isotope origin verification, on-site auditing and community engagement, a company can still never be assured of zero legality risk, as the product in the batch they are sourcing will have been harvested months or years previously where illegal activities may have occurred and since been remedied. Therefore, eliminating risk is an impossibility.

Question Topic: Guidance on the due diligence system

Which of the following should we provide information on in guidance to support businesses to establish effective due diligence systems? Please tick all that apply and state your reasons.

- what is required of eligible business to comply with regulations

Yes, many businesses may be new to this form of compliance and requirements need to be clear and defined. However, not so prescriptive as to prevent robust due diligence through a range of methods.

It is key to provide a clear definition of 'land-use and land ownership' so that businesses understand the scope of due diligence required regarding legislation in the country of harvest. The definition should include categories of legislation a regulated company is expected to assess as part of a robust assessment of legal compliance. For example, land tenure rights, plantation registration and management rights, payment of taxes and fees, legal employment conditions, minimum wage payment, health and safety, chemical use, waste disposal, soil and peat conservation, land conversion/ deforestation regulations, etc.

The current term of 'land-use and land ownership' seems to indicate that due diligence will be required only to the farm gate. And risk of illegal trade and transport (e.g. haulage permits, export permits, payment of tariffs, etc) is not required to be assessed. If this is the case, this should also be made clear to businesses so they know where to limit their due diligence.

- **examples of best practice to support businesses in improving their systems**

Yes, examples should be extensive and based on real-life methods used by companies, including, where possible, example costs.

- **metrics and indicators to help assess where there are low, medium, or high risks of illegal land use and ownership**

Yes. In addition, a checklist of key considerations could also be provided regarding how to conduct a risk assessment. This may include factors such as perceived corruption in the geographic sourcing regions (for example, using CPI), sanctions, conflict, controversies reported in the media or by NGOs, etc.

- **methods that businesses may use to assess and mitigate risk**

Yes, and it would be beneficial if guidance to support businesses clearly linked specified risk to specified mitigation measures. For example, some measures may mitigate risk of mixing in a supply chain, and some measures may mitigate risk at origin, and it is important to understand which is which.

Businesses may benefit from support on conducting supplier information requests (what to ask for, how, when, etc). This can include information-gathering about disputes, complaints, court cases etc, as well as standard supply chain data (suppliers, transaction information, etc).

- **available resources to help understand legal frameworks in producer countries**

Yes, this is essential. In addition, resources/guidance on how to demonstrate compliance to the aforementioned laws, so that businesses know what to look for and can scrutinise information/evidence passed onto them by their suppliers (for example, which authority is responsible for providing what permit/licence etc. What tax documents should a compliant producer be able to supply, and so on)

- **other (please specify)**

Businesses may benefit from templates/example data management systems/ example due diligence systems. To effectively operate a DDS, businesses will need to collect data on their supply chains, and conduct supply chain mapping. They will need to gather documentary evidence to validate the supply chain maps, and need to track purchased commodities/products, to enable reporting. In addition, they need to conduct risk assessments, and apply mitigation measures. The methodology typically used by companies to comply with EU/UKTR requirements, whereby a company conducts initial risk assessment, implements mitigation measures where applicable, and then conducts a 'secondary' risk assessment, should be mirrored for this legislation.

To conduct a risk assessment, a checklist of key considerations could also be provided, which may include factors such as perceived corruption in the geographic sourcing regions (for example, using CPI), sanctions, controversies reported in the media or by NGOs, etc

Question Topic: Certification schemes and standards

Should we set out in guidance how businesses may use existing certifications and standards to help meet the due diligence requirement? Please state your reasons.

- Yes
- No
- Do not know

Yes, certification may be very useful to companies in meeting due diligence requirements, but guidance will be needed to avoid misunderstanding about 'green lanes' for certified product, as well the relationship between transparency and chain-of-custody based schemes (i.e. certification may only provide transparency to tier 1 suppliers, and additional information will be needed to trace to source, necessary to conduct risk assessment). Guidance will be needed to support companies in scrutinising claims, for example where schemes provide a range of claims varying from fully certified to partially certified. Finally, 'certified at source' may provide little assurance if the supply chain itself is not certified and at high risk of mixing (due to product type and/or geographic regions of supply chain actors)– in this instance the company will need to evidence

the link from certified source to downstream purchases, in order to place any value on the certification status at origin.

A clear categorisation of types of law included under the umbrella term of 'land-use and land ownership' will help companies assess which certification schemes fully or partially address legality requirements in the country of harvest. As has been seen in the timber sector, certification schemes may not necessarily or explicitly include a focus on compliance with all legislation at the farm level. And it should not be assumed to be the case in other commodity sectors. Business should be required, or the enforcement authority should benchmark certification schemes against the legality

"definition" used under the FRC due diligence regulation.

Which of the following criteria should we set out in guidance to support the use of existing certification schemes and standards? Please tick all that apply and state your reasons.

- **proof of legality**

Yes, preferably making explicit reference to types of local, national and international laws expected to be included under the legality "definition". See comments under section 46.

- **chain of custody**

Yes, guidance will be needed on distinguishing between certified origin, and certified product at point of sale. Guidance should also be given on broken chain of custody, where the company has bought uncertified product but chain of custody may have 'followed' the product out of an area of high risk and into an area of low risk. There is likely nuance around if/how/when this partial certification can be used for risk assessment or risk mitigation.

- **robustness**

Yes. In addition to 3rd party auditing, there should be a system to identify certified products and/or certified sales (e.g. certification status of product must be indicated on a sales document for a selling to pass on a valid claim).

- **transparency**

Yes. Clarity is needed to show that a company may have a certificate but sell an uncertified product. Scheme needs a public database, and guidance should be given to ensure businesses understand the need to cross-check certification information provided by suppliers with certification information held by the scheme owners.

- **other (please specify)**

Clarification on mix claims (e.g. RSPO Mass Balance, or FSC Mix)

Clarification on non-conformance (criteria by which certification can be revoked, and/or possibility that a company may hold a certificate but be facing complaints/corrective action requests, or possibility of certificate being revoked. In other words, certificate holders may non-conforming at any given time)

FPIC is a key process by which legality is monitored by certification bodies. Robust certification schemes should include requirements to conduct FPIC or equivalent community consultation.

Question Topic: Further evidence to inform due diligence system requirements

Please provide any relevant evidence on current business practices, methods, and metrics available to assess and mitigate risk.

Corruption is a fundamental indicator of risk of illegal land use and ownership.

Businesses may rely on knowledge and expertise of business partners in situ (local context, language, etc), however it must be ensured that businesses understand responsibility still lies with them and cannot be 'outsourced' further upstream.

Resources available to understand legal frameworks and risks in producer countries include

- Preferred by Nature's Sourcing Hub;
- Transparency international's Corruption Perception Index,
- World Resource Institute's Open Timber Portal
- Armed conflict: <https://www.cfr.org/global-conflict-tracker/?category=us>
- FLEGT VPA legality grids, where common legislation occurs across land types used for forestry and agricultural production, social and labour issues and tax regulations, etc.

Can you provide any evidence on the cost of carrying out due diligence? Please provide details including how this relates to business size.

- Stable isotope (origin) testing £450 – 750 per sample
- Factory audit (traceability/ chain of custody): £1000 – 10,000
- Farm level audit (1 week on site): £7500 – 40,000 depending on number of sites, level of community engagement and interviews, location etc.
- Satellite monitoring: £10 – 100k depending on frequency and image resolution.

Can you provide any evidence on the cost of carrying out due diligence for specific commodities? Please provide details about your answer.

No

Can you provide any evidence on the benefits to businesses of conducting due diligence for specific commodities? Please provide details about your answer.

Examples of benefits for a company:

- Protecting reputation
- Strengthening business relationships with suppliers
- Prioritising resources to areas of highest risk – due diligence gives framework for assessment
- Increased visibility on own supply chains, helpful in identifying opportunities and risks
- Preferential treatment from customers who may have their own transparency/traceability/compliance/due diligence requirements
- Ensuring sustainability of supply, reducing risk of stranded assets or disruption to supply chain by unknown/unforeseen compliance crackdowns at source that can impact pricing and product availability.

If you answered Question 52, can these benefits be quantified? Please provide details about your answer.

No

Can you provide any evidence on the costs to consumers of businesses conducting due diligence? Please provide details about your answer.

No

Question Topic: Annual reporting

What should businesses be required to report on to enable a regulator to identify areas for further scrutiny?

Volumes, country of origin, tier 1 suppliers

Should non-commercially sensitive information about businesses' due diligence exercises be made public to increase sector transparency and accountability?

- Yes
- No

Yes, although there is likely to be significant push-back from the private sector in relation to this. The natural rubber sector, for example, has very low levels of public disclosure and public reporting at present.

What information should be made public about businesses' due diligence exercises to support accountability and decision making?

No answer given

Question Topic: Enforcement

Designating an enforcement authority

Which criteria should the enforcement authority fulfil? Please tick all that apply and state your reasons.

- UK-wide remit

Yes

- capacity to regulate

Yes

- capability and experience to deliver

Yes

- other (please specify)

Capability to provide education and capacity building, sharing of information related to regulation and expectations on business, capacity to disseminate information on best practice, capability to collaborate with trade bodies.

Question Topic: Overview of enforcement regime

Should the maximum variable monetary penalty be £250,000?

- Yes
- No
- Do not know

No answer given

Do you have any further comments on the enforcement regime?

No