

Global Canopy response to DEFRA public consultation on Implementing due diligence on forest risk commodities (in relation to provisions in Schedule 1 of the Environment Act) March 2022

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Global Canopy is a data-driven not for profit that targets the market forces destroying nature. We do this by providing innovative open-access data, clear metrics, and actionable insights to leading companies, financial institutions, governments and campaigning organisations worldwide.

This document lays out our response to the [DEFRA public consultation](#) on Implementing due diligence on forest risk commodities (in relation to provisions in Schedule 1 of the Environment Act) in March 2022.

Global Canopy welcomes the introduction of this legislation, which has the potential to support deforestation-free supply chains, but believe it must increase its level of ambition, particularly with regard to:

- The levels of ambition for the scope of commodities included and the speed of the entry into force (legislative sequencing)
- The proposed inclusion of only large businesses (business turnover thresholds)

Our full response to the consultation is below (questions aimed at business or about Global Canopy have been excluded).

Scope and sequencing of commodities

Question 21. Should we lay secondary legislation at the earliest opportunity?

Yes

Question 22. What should we take into account when considering how long businesses have to prepare for regulation before it comes into effect?

Secondary legislation should come into effect at the earliest possible opportunity and no later than 12 months after adoption, in recognition of the urgent nature of addressing the UK's deforestation footprint. This would be in line with similar legislative proposals being



taken forward in the European Union (deforestation-free products regulation) and the US (Forest Act).

The UK government has played a valuable leadership role in the Glasgow Leaders Declaration on Forests and Land Use, promoting the importance of ending tropical deforestation as part of efforts to address climate change. We cannot meet the goals of the Paris Agreement without addressing tropical deforestation - and it is critical that the commitments made at COP26 are translated into meaningful actions both at home and across the world.

The UK Government has supported voluntary corporate commitments on zero deforestation over the past decade including funding for the Forest Footprint Disclosure initiative (now CDP Forests), the New York Declaration of Forests and the Amsterdam Declaration Partnership (ADP) and related UK Roundtables on Sustainable Palm Oil and Soya.

The legislation as framed will only apply to large businesses that will already have due diligence processes in place and have the resources to rapidly mobilise to extend this to forest-risk commodities. Many businesses (not just large businesses) have been aware of this issue for many years, and many are engaged in voluntary measures. Companies are geared up to act, but need a requirement across the sector to level the playing field - with clear expectations on the necessary due diligence and disclosure requirements. Without the level playing field, there is less incentive to act. A regulatory cliff edge is required to achieve this as evidenced by the failed progress of voluntary commitments (see Forest 500 latest report).

Many have already engaged in voluntary measures, both in the UK and across Europe, and some are looking to be more ambitious than the current legislation as seen by the UK Soy Manifesto (<https://www.uksoymanifesto.uk/>) . Therefore, we would encourage regulation to come into effect as soon as practically possible. This legislation is being prepared alongside comparable legislation in the EU and by EU member states, and there is a not-to-be missed opportunity to “raise the floor” on standards and “level the playing field” in as unified and coordinated a way as possible. Doing so will reduce the cost burden, especially for companies operating across multiple markets, while also ensuring that compliant actors do not suffer any unfair competitive disadvantage.

Question 23. Can you provide any further evidence on commodities that drive deforestation? Please provide detail here.

There is good evidence for the role of commodities and international trade in driving deforestation. For example, in 2018 international trade was associated with 1.1 million

hectares of tropical deforestation (Pendrill, 2022). The commodities with the largest associated tropical deforestation risk are oil palm (33%), cattle (26%), soy (20%), coffee (5%), rubber (3%), maize (3%), cocoa (2%). See: <https://zenodo.org/record/5886600#.YiXHqVjP23I>. These commodities and their derivatives are imported into the UK and consumed in a wide range of products, from food and fashion, cosmetics and furniture. These commodities represent 65% of the UK's tropical deforestation footprint (www.commodityfootprints.earth).

2017 tropical deforestation risk associated with UK consumption of key commodities (JNCC)

Cattle	Palm oil	Soy	Maize	Coffee	Cocoa	Rubber
7,372 ha	5,496 ha	3,084 ha	1,809 ha	1,401 ha	679 ha	483 ha

It is important that the legislation does not just consider current deforestation rates, but also historical levels and potential future commodity expansion, as well as the current threat status of the ecosystems where they are produced. For example, trends in beef production suggest an increasing impact on tropical forests, while coffee, which currently has a low deforestation impact, is likely to become more of a problem as production shifts due to climate change. Coffee, and also cocoa, are produced in particularly vulnerable regions, where the impacts of deforestation on biodiversity are particularly high.

There are also links between commodities in some cases and challenges in allocating deforestation to one specific commodity that ignores indirect effects. For example in South America, deforestation for cattle pasture is often the first stage, with the pasture later converted for soy and maize that are often inter-cropped. Focusing on soy, while ignoring beef and maize, risks missing the inter-related drivers.

These dynamics support the need for the inclusion of a broad range of commodities to most effectively address the UK's deforestation footprint.

Question 24. 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

- the UK's role in this global deforestation
- ability to deliver effective regulation
- other (please specify)

Please state your reasons:

The impact on global deforestation and the UK's role in this are crucial considerations, but it is also critical that the regulation is effective. This means clear and enforceable requirements for due diligence, with a properly resourced enforcement regime.

It may also be important to determine the percentage of supply that is direct to the UK and/or is through markets that can support the provision of information to enable implementation (for example the EU).

Question 25. What data sources or information should be used to consider the proposed factors?

The work of e.g. Pendrill et al. 2022, Trase, and the JNCC/SEI UK Indicator, along with other studies referenced in the consultation documentation, all provide effective datasets to indicate the commodity impact on tropical and sub-tropical deforestation.

- Pendrill 2022 <https://zenodo.org/record/5886600#.YiXHqVjP23I>
- JNCC/SEI www.commodityfootprints.earth
- Trase www.trase.earth

Question 26. Do you have any further comments regarding the order in which we introduce key forest risk commodities?

The JNCC study and data indicates that the seven commodities in scope represent 65% of the UK's tropical deforestation footprint (20,324 of 31,125 ha). As per Question 22, given the urgent need to end tropical deforestation and the UK's long standing global commitments to end deforestation (including the New York Declaration on Forests and the Amsterdam Declarations) all of these commodities need to be in scope for this regulation to effectively reduce the UK's footprint. Our recommendation is for a substantially expedited version of Option 3 to be actively pursued if the objectives of the legislation are to be met, with a proposal of entry into force within 12 months (see our answer to question 27).

If the decision is made to introduce certain commodities first (noting that we don't support this approach), as a minimum cattle, palm oil and soy should be prioritised as together they represent half of the UK's tropical deforestation footprint. Furthermore, these commodities have had significant attention in terms of voluntary corporate

deforestation commitments including the Consumer Goods Forum commodity roadmaps, and trader commitments (Soft Commodities Forum, G4 Cattle Agreement).

The UK is a signatory to the Amsterdam Declaration Partnership (ADP) (originally in 2015 and then renewed in 2020 as the deadline of achieving zero deforestation supply chains was missed) which prioritises soy, palm and cocoa as core commodities. The Partnership has worked to support the private sector to advance and monitor zero deforestation commitments for these commodities, including via the UK Roundtable on Palm Oil, the UK Roundtable on Sustainable Soya and the Cocoa Forests Initiative. UK businesses should therefore be well placed to comply with due diligence requirements for these commodities.

Question 27. 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.)

None of the above - see our answer to question 26.

The options do not reflect the urgency needed and also appear to suggest that it is not possible to include more than two commodities in the first phase. We strongly feel that the evidence which supports the core assumption in this proposed schedule, i.e. that *the inclusion of multiple commodities would require a longer implementation period because the requirements will need to be tailored to the supply chain of each regulated commodity* is not clearly presented and is not supported, especially given the scope is legality.

Firstly, as set out in our response to question 45, the due diligence requirements for information gathering and risk assessment are essentially the same across different commodities - indicating the efficiency of regulating across multiple commodities. At a basic level, this includes: (1) information on the location the commodity was

produced/raised (2) an assessment if its production was legal (see question 45 for details).

Identifying the geolocation of origin - while more or less complex depending on the commodity (e.g. size of smallholder supply base and/or the prevalence of indirect sourcing) - essentially requires similar processes and data including per shipment trade data, farm level data, crop maps, and credible processes for suppliers to provide data on traceability. The challenges of addressing indirect suppliers or smallholders applies across commodities. As such it is unclear why there would be any need to tailor the regulation to individual commodities.

Assessing legality is in many cases also commodity agnostic - requiring information on land conversion processes for the sourcing region (e.g. the Forest Code in Brazil). Many commodities are produced in the same landscape, e.g. beef, soy, maize in South America, creating efficiencies in assessing legality risks across these commodities.

Secondly, the levels of existing readiness - both in terms of limiting the scope to large companies that will have existing due diligence processes (for example on food safety and modern slavery) are being ignored. The proposal that it will take 18 - 24 months for two commodities to come into force seems questionable given that many of the businesses involved have been engaged in voluntary measures for a long time, including under the UK Roundtables on Soy and Palm Oil. The EU and US draft legislative proposals both see entry into force after 12 months for all commodities covered.

Thirdly, the proposals do not recognise the potential opportunities for efficiencies in increasing the number of commodities. Specifically, we challenge the assumption that it would take three to four years to apply the Schedule 17 framework to more than two commodities. The consultation documents suggest 18-24 months for implementation for two commodities, but an additional 18-24 months for the implementation of a further two commodities. This reasoning behind this assumption is not evidenced and it seems very unlikely that the inclusion of one to two additional commodities would require the same implementation-period as the initial two, given efficiencies in the process (including investments in common information systems that are required for any commodity laid out above) that would be achieved in any 'first round'.

Finally, we consider the stated benefit of 'ability to learn lessons' is unsubstantiated in this context. The longer legislation is delayed, the more deforestation is likely to occur, the fewer experiences there will be of implementation in practice. Adopting regulation across multiple commodities, and undertaking monitoring, evaluation and learning across the commodity landscape as a whole, will be a much more informative process for policy improvement (and will increase levels of transparency; allowing more effective ongoing

risk assessment), rather than delaying implementation in the hope that lessons will be learnt from a selected group of commodities.

Business turnover and thresholds

Question 28. Should businesses fall in scope of the requirements if they exceed the turnover threshold in the previous financial year?

Yes

Question 29. Should we use UK turnover as the metric to capture UK based businesses?

No

Question 30. 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.*

Other

If a turnover threshold is required for these companies, global turnover should be considered. But it is worth noting the drawbacks of relying on company turnover as a threshold (see answer to Question 29).

Please state your reasons:

The primary legislation does not require the obligation to only apply to 'large companies', it only requires that the Secretary of State consult before adopting any turnover threshold. There is no turnover threshold in similar existing or proposed laws. The UK Timber Regulation applies to all companies placing products on the market and doesn't make a distinction re: whether they are large or small. Similarly, the proposed EU measures do not distinguish between large and small companies. There is no requirement in the legislation to include a turnover threshold - and no requirement to only apply the legislation to large companies.

The suggested turnover threshold would mean that many small importers would be exempt from the requirements and would continue to provide a market for goods linked

to deforestation. If a threshold is included, it should reflect global operations - to avoid the risk of loopholes - and should be based on a far lower threshold designed to include the small traders directly involved in deforestation supply chains. While the Companies Act sets a threshold of £36 million, this is still too high to cover many of the companies involved in this trade.

It will also be more efficient if the requirements apply to small businesses as they will be required to supply due diligence information for the benefit of their customers - and so it makes sense to set clear standards on what information they are required to provide.

If there is to be a threshold (which we do not agree with), this could be to exclude small businesses with a turnover of less than £10.2 million (e.g. small retailers and manufacturers).

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.

Information on the size and operations of businesses in scope is available via various commercial databases, including:

- FactSet
- Refinitiv (owned by LSEG),
- Bloomberg,
- Amadeus (EU companies),
- Compustat,
- NYSE,
- S&P,
- Moody's
- Dun and Bradstreet

Private companies are not currently required to disclose this information.

Data on legal hierarchy may be needed to confirm whether a UK subsidiary is part of a larger entity that meets a global threshold. Relevant data sources include

- Factset
- Open Corporates
- Refinitiv PermId
- GLEIF
- Company Annual reports, financial statements & news stories
- National Companies House registries (where not indexed already in the above)
- Trase Finance (that uses the above focused on traders only)

Question 32. 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 and other

The urgency of the problem means that the policy impact should be the primary driver in determining whether or not to set a threshold.

Burden on business should not be a consideration, particularly given that the impact assessment concludes that the costs of implementation to businesses are negligible, estimated at 0.074% of revenue for SMEs and 0.017% for large companies.

The ambition should be to include the majority of companies linked to this trade, particularly at the import stage, regardless of turnover. Bringing all / most businesses handling these commodities into scope would facilitate efficient implementation and cooperation across the entire industry. Ultimately, the more companies that are included in the regulation, the more impact the regulation will have, given that turnover is anyway likely to be an imperfect proxy for the volume of material being handled.

Other = Risk assessment: Any exemption thresholds should be conducted on the basis of risk assessment. A more robust approach would be to base exemption thresholds on a risk assessment as different products are associated with different risks of deforestation per unit of production (including via different yields) and per sourcing location. Where a product is sourced from is the biggest indicator of deforestation risk, with the biodiversity and level of intact forest in the sourcing region key indicators. For example, Trase data shows deforestation is highly concentrated, with more than 50% of deforestation risk in less than 5% of subnational jurisdictions.

Question 33. For each of the following commodities, please tick where the turnover threshold for inclusion of UK based businesses should be set.

For each commodity options are:

- £50 million
- £100 million
- £200 million
- Do not know

No option selected

Question 34. Do you have any further comments regarding businesses in scope?

See answers to 29 and 32. We do not think there should be a turnover threshold

Question 35. Should we set a single exemption threshold for each regulated forest risk commodity, combining raw commodity use with derived commodity use?

No

Question 36. Should businesses be able to use conversion factors to estimate the volumes of commodities used in the supply chain to understand whether they can be exempt from due diligence requirements? Please state your reasons.

Businesses should be able to use conversion factors to estimate the volumes of commodities used, but these must be set by the government, not by the businesses involved. It is also important that a precautionary approach is taken, given uncertainties in the calculations, to avoid underestimates of exposure.

Question 37. Should we use the proposed approach for businesses to understand whether they could be exempt? Please state your reasons.

No

The proposed approach would not provide a level playing field for business. Companies should be given a clear methodology for showing why they should be exempt from the requirements.

Question 38. Which of the following factors should be considered when setting the exemption threshold level? Please tick all that apply and state your reasons

Other (please specify)

The exemption threshold should be determined by the level of deforestation risk - determined by the place of origin and level of forest cover and biodiversity and the scale of operations.

Question 39. For each of the following commodities, please tick the scale at which the exemption threshold level should be set.

For each commodity options are:

- 1 tonne
- 10 tonnes
- 100 tonnes

- 1000 tonnes
- Do not know

No option selected

As stated above, exemptions should be based on the level of deforestation risk - with a lower threshold applied to areas of high risk.

Any threshold greater than 10 tonnes would fail to capture a large proportion of the imported beef to the UK - even though UK beef imports have the largest deforestation footprint. This is because many of the imports are processed ingredients and some of the companies involved are small.

Analysis by Earthsight finds that of the 17 companies known to have imported beef from Brazil into the UK in 2021, none would be covered by the legislation if the biggest exemption thresholds were applied (t/o >£200m; only UK operations counted; >10,000 tonnes).

Question 40. Please provide reasons for the scale selected for each commodity in Question 39.

As suggested above, the scale selected for each commodity should be determined by the level of deforestation risk - determined by the place of origin and level of forest cover and biodiversity and the scale of operations. Beef imported from region X will have a far higher deforestation risk than beef imported from region Y, and so a simple reliance on scale does not reflect the impact on forests.

Question 41. Do you have any further comments on the exemption?

No

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 - although the current requirement to **reduce risk to as low as reasonably practicable** is weak and very open to interpretation. Clearer and stronger language would be to reduce risks to **a negligible level** as is the case in the UK Timber Regulation.

In helping both businesses and the enforcement agency effectively implement Schedule 17 the secondary legislation needs to clearly lay out the requirements for undertaking due

diligence. Schedule 17 Paragraph 3 (3) on the Due diligence system states that The Secretary of State may by regulations make further provision about the matters in subparagraph (2)(a) to (c), including in particular - (a) the information that should be obtained; (b) the criteria to be used in assessing risk; (c) the ways in which risk may be mitigated.

This clarity in the requirements is needed to provide businesses and the enforcement agency with clear expectations.

(a) the information that should be obtained:

- Description of the commodity, trade name and relevant HS code
- The quantity (expressed in net mass, volume, or number of units) of the relevant commodity. Note that for derived products this should also include volume in raw commodity equivalent using prescribed conversion factors and methods (see question 36).
- The country of origin (where grown/raised)
- The geolocation of property of land where commodity was produced or raised - this could be the full knowable supply base rather than exact plots. The use of a robust sub-national risk analysis system could tailor these requirements based on the level of risk without compromising the integrity of the law, for example low risk regions could only require traceability to the sub-national region whereas higher risk regions would require plot-level locations.
- The time period when commodity was grown/raised and harvested
- The legal and trading names, registered address and contact details of the entity from which has supplied them and, if different, the entity which first placed the relevant commodity or product on the UK market;
- The legal and trading names, registered address and contact details of the entity from they have supplied;
- Details of the import of the relevant commodity or product into the UK, including the date of arrival, date of customs clearance, vessel of shipment, port of arrival, and port of origin of the relevant consignment, shipment or supply and the legal and trading names of the importer;
- Adequate and verifiable information demonstrating relevant local laws were complied with including environmental protection, land use rights, including any arrangement conferring the right to use the land to grow, raise or cultivate the commodity, and third parties' rights, in particular any registered or unregistered claims of tenure rights in relation to the land, including claims on the basis of custom, tradition or a special attachment to the land and rights of free, prior and informed consent or subject to any dispute regarding its use or ownership.

Method(s) and data source(s) used for all of the information collected above.

(b) the criteria to be used in assessing risk;

- the presence of forests in the country and area of production of the relevant commodity or product;
- The prevalence and rate of deforestation or forest degradation in the country, region and area of production of the relevant commodity or product;
- The prevalence and rate of commodity specific deforestation or forest degradation in the country, region and area of production of the relevant commodity or product;
- the source, reliability, validity and links to other available documentation of the information collected above
- concerns in relation to the country of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the European Union
- the complexity of the relevant supply chain, in particular difficulties in connecting commodities and/or products to the plot of land where they were produced
- the risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring
- substantiated concerns submitted by third parties on non-compliance with relevant local laws
- concerns related to specific suppliers compliance with relevant local laws

(c) the ways in which risk may be mitigated.

Businesses need to be able to demonstrate how the information gathered was checked against the risk assessment criteria, how they determined the degree of risk, how a decision on risk mitigation measures was taken, and how the degree of risk has been reduced to negligible by the risk mitigation measures.

Businesses need to publicly document their policies, controls and procedures to undertake the effective risk assessment (b) and mitigation (c). This should include

- Risk management practices
- Record keeping
- Internal controls and compliance including an independent audit function
- Grievance mechanisms

Question 46. 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
 - examples of best practice to support businesses in improving their systems
 - metrics and indicators to help assess where there are low, medium, or high risks of illegal land use and ownership
 - methods that businesses may use to assess and mitigate risk
 - available resources to help understand legal frameworks in producer countries
 - other (please specify)
-
- All of above

Other:

- As set out in the answer to question 45, this information needs to be laid out in the secondary legislation rather than in subsequent guidance (that would be additional) but a checklist may be helpful.
- Metrics, indicators and data to help businesses identify low, medium and high risks of deforestation at subnational scale.
- Existing guidance that can build from (see our answer to question 49).

Question 47. 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

No

But any guidance needs to be clear that businesses are ultimately responsible for their own due diligence and compliance with Schedule 17 and that they cannot outsource this responsibility to third parties. Schedule 17 does not impose any limitation on the information or services which businesses can use in completing their due diligence. As such, businesses will remain at liberty to use third party certification and assurance schemes to support their due diligence. However, guidance should emphasise that businesses should not unduly rely on third party certification or verification schemes, not least because no such schemes are designed or intended to verify compliance with “relevant local laws”.

Any such guidance must be clear on the limits of certification, and should highlight the strengths and weaknesses of certification.

Certification schemes for forest risk commodities vary in their criteria. Some such as ISCC for soy or Leather Working Group for leather do not have principles on forest protection and therefore certified commodities under these schemes are not guaranteed deforestation-free. Global Canopy's Forest 500 assessment of company action on deforestation only considers schemes credible where they have requirements of deforestation-free or conversion-free production or sourcing and they are governed by a multi-stakeholder group.

Even schemes with more robust criteria face challenges in ensuring those criteria are implemented, and therefore certification under these strong schemes should not be seen as fulfilling due diligence obligations. Companies need to know where certified commodities are sourced from, and whether this is an area with a high or low deforestation risk. Where certified commodities are sourced from high risk regions, further due diligence is needed to understand whether the certification scheme is effectively implemented in that region.

Where certification schemes use credit or mass balance schemes, they do not require suppliers to address issues around deforestation and do not allow buyers to know where they are sourcing from, and so companies would need to carry out further due diligence measures.

Question 48. 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.

None selected

Question 49. Please provide any relevant evidence on current business practices, methods, and metrics available to assess and mitigate risk.

In particular, we are interested in further evidence on:

- what indicators or metrics can be used to help assess the risk of illegal land use and ownership at the national and sub-national level
- what methods are in use or development to help assess whether commodities have been produced on land legally owned and used, including any challenges associated with particular methods
- what resources are currently available to help understand legal frameworks in producer countries
- how long would it take to shift to legally assured supply chains for the commodities and derivatives you use

Indicators or metrics to assess the risk of illegal land

Defra is already aware of the UK indicator work and Trase platform that provide effective mechanisms for conducting risk assessments across scales. It is recommended also that Defra follows developments in new and existing initiatives such as the Accountability Framework Initiative - especially, Consumer Goods Forum Forest Positive Coalition, Soft Commodities Forum, and UK Soy Manifesto, that are all at various stages of developing monitoring, reporting and verification systems for deforestation-risk commodities.

The Trase team is developing a 'relative risk threshold' based methodology for assessing sub-national locations of high deforestation risk in general (not just illegal deforestation). This has been initiated in conversations/collaboration with AFi, CGF, SCF, ProForest, the UK Soy Manifesto and French SNDI platform. We would be happy to share approaches and look at further improvements with Defra at an appropriate juncture.

Data sources on illegal deforestation will depend on the laws in the country/region of production. Key datasets include protected areas, licences e.g. land clearing permits in Brazil or concession licences in Indonesia, mandatory reserves in private property e.g. protection of riparian areas and/or minimum percentage conservation of native vegetation such as under the Forest Code in Brazil.

In the context of Brazil resources include:

- Rajão B R et al 2020 The rotten apples of Brazil's agribusiness Science 369 246–48
- Reis, T. et al 2021 Trading deforestation—why the legality of forest-risk commodities is insufficient <https://iopscience.iop.org/article/10.1088/1748-9326/ac358d>
- Trase Brief: Illegal deforestation and Brazilian soy exports: the case of Mato Grosso
https://resources.trase.earth/documents/issuebriefs/TraseIssueBrief4_EN.pdf

Wider indicators include the risk of corruption relating to the provision of fraudulent or forged documentation on legality. There are a number of country indices relating to corruption that could be used e.g. Corruption Perceptions Index (CPI), Global Integrity Index (GII), World Justice Project Rule of Law Index, World Bank Ease of Doing Business, Worldwide Governance Indicators.

Current business practices

The Accountability Framework Initiative has developed principles and guidance for companies to carry out risk assessment for forest risk commodity supply chains.

The Principle is available here: <https://accountability-framework.org/core-principles/5-supply-chain-assessment-and-traceability/>

The Operational guidance is available here: <https://accountability-framework.org/operational-guidance/supply-chain-management/>

Key to this is the inclusion of stakeholder input, inclusion of a grievance mechanism to allow stakeholders to report issues, and metrics should be related to those that they report on (see section below)

Risk assessment and mitigation

See answer to question 45.

Question 50. Can you provide any evidence on the cost of carrying out due diligence? Please provide details including how this relates to business size

No

Question 51. Can you provide any evidence on the cost of carrying out due diligence for specific commodities? Please provide details about your answer

No

Question 52. Can you provide any evidence on the benefits to businesses of conducting due diligence for specific commodities? Please provide details about your answer.

No

Question 53. If you answered Question 52, can these benefits be quantified? Please provide details about your answer.

NA

Question 54. Can you provide any evidence on the costs to consumers of businesses conducting due diligence? Please provide details about your answer.

No

Question 55. What should businesses be required to report on to enable a regulator to identify areas for further scrutiny?

Businesses need to collect information requirements as outlined in question 45. Businesses should be able to provide all of this information to the regulator on request - both the information collected and their risk management and mitigation procedures.

Beyond this and depending on the definition of “negligible risk” or “as low as reasonably practicable” (see question 45 for our view on this) and in providing an assessment of overall risk exposure in addition to reporting on risk assessment and mitigation measures as laid out in question 45 we would also request reporting on:

Risk exposure:

- For each commodity: the proportion of a company’s total annual revenue that depends on the regulated commodities
- For each commodity: The annual volume of a regulated commodity used by a company, broken down by:
 - Volume (and the percentage of company’s supply chain volume that this represents) that is considered to be negligible risk.
 - Volume (and the percentage of company’s supply chain volume that this represents) that is sourced from countries and sub-national areas with a risk of illegal production including any volume of unknown origin and the processes in place to improve supply chain traceability and control for these volumes.
- For volumes in category b. (above, volumes from areas with more than negligible risk, or unknown sourcing areas), companies should calculate and report deforestation (including attributed deforestation) in the known supply base and/or sourcing area;
- Business should be required to report on any concerns raised of threats or harms to human rights defenders, or other community members or workers - linked to companies or areas in its supply chain. Human rights abuses are often a precursor to harmful and/or illegal environmental practices and illegitimate land acquisitions. This also notes the increasing threat of criminalisation of those peacefully speaking out on land and environmental issues.
- Business should also be required to report on its response to concerns raised regarding threats or harms to human rights defenders, or other community members or workers - linked to companies or areas in its supply chain.

Ensure alignment with other requirements:

- Reporting under the due diligence legislation should be aligned with existing standards and best practice to reduce the reporting burden
- The suggested reporting requirements set out above are aligned with the expectations on what information businesses should collect and report under the EU proposal for a Regulation on deforestation-free products. The current secondary legislation under consultation should also be aligned accordingly.
- This information does not need to be included in an annual report, but still needs to be public and linked to from the annual report.

Question 56. Should non-commercially sensitive information about businesses' due diligence exercises be made public to increase sector transparency and accountability? • Yes • No

Yes

Question 57. What information should be made public about businesses' due diligence exercises to support accountability and decision making?

Businesses should be required to make all of the required information publicly available. This allows third parties to support the monitoring of companies - competent authority unlike to monitor and verify all reports, public disclosure increases pressure for accurate reporting and increases accountability.

Such data will also be valuable to the finance sector in addressing their exposure to deforestation. Key data points from our engagement with financial institutions include (aligned with the above requirements):

- Volume of commodity used, traceability info and deforestation risk/attribution (as above)
- Proportion of revenue relying on the commodity
- Processes in place to address traceability/verification issues and mitigate risks

Question 58. Which criteria should the enforcement authority fulfil? Please tick all that apply and state your reasons.

- UK-wide remit
- capacity to regulate
- capability and experience to deliver

- other (please specify)

All of above

Question 59. Should the maximum variable monetary penalty be £250,000?

No

Penalties should be dissuasive and set at a level which is proportionate to the offence and reflective of the environmental damage and financial benefit potentially arising from an offence. The maximum variable penalty under the Ivory Act has little, if any bearing on what an effective, dissuasive and proportionate penalty in the context of illegal deforestation and the forest risk commodity industry.

Many companies involved in the UK supply chain will have very high financial turnover and handle large volumes of commodities-in-scope and as such £250,000 is likely to be a very small penalty.

For the penalties to be dissuasive and effective in holding companies to account for breaching their obligations, the maximum penalty level should either be unlimited (as under the UK Timber Regulation) or set at a level which appropriately reflects the financial gain that could be derived from a serious breach of the regulations and provides an effective deterrent to the larger companies in scope.

For that reason, we recommend stating that the maximum penalty is unlimited and should be at least 4% of annual turnover. In this regard, we note that the Data Protection Act has provision for fines of maximum £17.5Million or 4% annual global turnover, whichever is greater, and the proposed EU deforestation-free products regulation proposes maximum penalties of at least 4% of annual turnover in addition to powers to confiscate relevant products and revenue, and to exclude actors from public procurement processes.

Question 60. Do you have any further comments on the enforcement regime?

The enforcement regime needs to be robust and well-resourced to ensure proper enforcement of the regulations and to hold companies that breach the law to account.

Paragraph 8 of Schedule 17 grants the Secretary of State a general power to make provision in secondary legislation about the enforcement of requirements imposed by or under Part 1. The secondary legislation should establish an enforcement framework based on a well-resourced regulator with sufficient expertise and powers, facilitated by strong information-sharing obligations on companies as well as mechanisms for input and complaints by third parties. This enforcement system should require transparency and the public disclosure of compliance and enforcement information to support regulatory



functions. The enforcement authority needs to be transparent and publish details of their approach to enforcement and any enforcement action taken.