

Deforestation law – Fairtrade positioning

*The proposed deforestation law announced by the government is a welcome step in the right direction towards tackling environmental damage in our supply chains. We are keen to see the adoption of robust due diligence legislation that is **producer focused, ensuring smallholder farmers and workers do not lose out**, and that is effective in ensuring compliance with meaningful impact.*

1. What does the law propose?

- The current proposed deforestation law is in response to the independent report by the Global Resource Initiative (GRI) on how the UK can 'green' its international supply chains, which recommends that the government introduce mandatory due diligence legislation.
- The proposals seek to tackle illegal deforestation by mandating larger businesses to ensure that forest risk commodities are produced in accordance with relevant local laws, and they would need to take steps - undertake due diligence - to show that they have taken proportionate action to ensure this is the case.
- The law would only apply to large companies operating out of the UK, with the government to define the threshold for qualification.
- The government is proposing that it would introduce fines for companies that failed to undertake due diligence, although further details are yet to be set out.
- The government has launched an online consultation, which closes on 5th October.

2. Fairtrade principles for effective due diligence legislation

- Fairtrade calls for proportionate binding legislation and treaties at national, regional and global levels that define the responsibility of companies clearly and unambiguously, guiding companies to use and build their leverage to address adverse human rights and environmental impacts in their operations and value chains. The positive contribution of business towards the Sustainable Development Goals (SDGs) can only be fully realised if all companies fulfil their responsibility to respect human and environmental rights.
- While companies remain responsible for undertaking their own human rights and environmental due diligence (HREDD), **Fairtrade certification and programmes can be a means for retailers and manufacturers to mitigate many human and environmental rights violations in some of their supply chains.** We can also offer expert inputs to other steps of the HREDD process. Where certified actors breach Fairtrade Standards and human rights, we use our full leverage to enable effective corrective measures and remediation for impacted persons. We acknowledge that voluntary standards are not sufficient on their own and support calls for the introduction of mandatory legislation that would ensure a level playing field for those businesses already taking progressive steps in this area, many of whom Fairtrade works with. We believe that **certifications can be mutually complementary to state regulation** in the area, and also offer business **expert partnerships** to support the delivery of their duties to a high quality.
- We support the introduction of due diligence policies that:

- push companies to address salient human rights and environmental issues rather than abandon or avoid high-risk sourcing areas;
- promote the meaningful engagement of rightsholders (especially communities in producing countries) at each step of the HERDD process, as well as dialogue with civil society and producing country governments;
- do not encourage “risk dumping” by buyers onto primary producers
- initiate action to achieve living income and living wages, which are prerequisite for decent livelihoods;
- cover trading and pricing practices;
- promote robust remediation mechanisms;
- apply to all companies regardless of their size (but with appropriate support and proportionate implementation requirements) for small and medium-sized enterprises (SMEs).

3. Fairtrade’s response to the current proposals

The Fairtrade Foundation welcomes the steps taken by the government to introduce due diligence legislation to protect against illegal deforestation in international food supply chains. Deforestation is the second biggest contributor to climate change, after fossil fuels, and accounts for 11% of global greenhouse gas emissions¹. **The climate crisis is already having a negative impact on farmers and workers in developing countries, many of whom are already living close to the poverty line**². Tackling deforestation is therefore vital not only to ensure the UK meets its commitments under the Paris Agreement, but, in supporting sustainable production with smallholder farmers and worker who produce much of the UK’s best known food products, contributes to long-term food security here in the UK.

While we welcome the consultation and intent, **we are keen to see the proposals made more robust in order to ensure effective impact on the ground**. In particular, we are concerned that businesses are only required to meet national level laws on deforestation, as such legislation is often insufficient. We would also like the legislation extended to a requirement for due diligence on human rights in supply chains and to apply to *all* businesses using at risk commodities in their supply chains.

I. The law must apply to *all* forms of deforestation

- The Fairtrade Foundation is concerned that the current proposals, which focus on illegal deforestation in sourcing countries, **sets an insufficiently high standard** to which companies should be held to account and would not be effective in ensuring deforestation-free supply chains. **It ought to be acknowledged that *legal* deforestation is also a cause of climate change**, leading to a situation where companies remain complicit in unacceptable levels of deforestation but are able to claim compliance with the law. In a worst-case scenario, **governments could even be incentivised to roll back existing laws and protections to “legalise” bad practice**. The approach taken by industry in recent years - including global initiatives such as the New York Declaration of Forests - has addressed deforestation in *all* forms. Moreover, local laws are often insufficient, with weak or non-existent enforcement.

¹ <https://www.ipcc.ch/report/ar5/syr/>

² <https://www.fairtrade.org.uk/media-centre/blog/why-fairer-trade-is-crucial-to-fighting-the-climate-crisis/>

- **We would like to see the government take a broader approach, with the legislation applying to a deforestation as a whole.** The details of such an approach, and clarification on the definition of deforestation and best practice for businesses, could be developed through secondary legislation, alongside affected communities and civil society, and in alignment with the action required on forestry set out in SDG 15 and Agenda 21 (chapter 11) of the Rio Summit on Environment and Development. The **Accountability Framework Initiative (AFI)** provides an existing framework for holistic definitions of deforestation and best practice guidance. The Government ought also to refer to the **REDD+ initiative**³, a mechanism developed by Parties to the United Nations Framework Convention on Climate Change (UNFCCC), and which offers incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. The Government ought also to consider that proposals are in alignment with the action required on forestry set out in **SDG 15 and Agenda 21 (chapter 11) of the Rio Summit on Environment and Development.**
 - In conjunction with legislation, the government could also consider how it might **support developing and low income countries with capacity building both to strengthen environment laws as well as to ensure effective compliance**⁴, including through its use of Overseas Development Assistance (ODA) through an effective trade for development framework. The EU Action Plan to Protect and Restore the World's Forests offers a good practice example of this coherent and holistic approach across aid, trade and business policy⁵.
- II. Legislation should in principle apply to *all* businesses, proportionate to company size and volume of risk commodity**
- In order to create a level playing field the **Fairtrade Foundation believes the law should in principle apply to *all* businesses, including the financial sector, with measures proportionate to company size and the volume of the risk product traded.** We appreciate that SME's may not have the capacity or expertise to conduct the same level of due diligence as larger corporations, nor the means to remedy abuses if found. The Fairtrade Foundation therefore recommends a **risk-based approach** whereby companies ought to assess their risk of having commodities in their supply chain which have contributed to deforestation and human right abuse, and to take steps to mitigate such risk. This is in line with the UN Guiding Principles on Business and Human Rights (UNGPR). Such an approach could be to include **provisions on different levels of due diligence and requirements for companies depending on the volume and value** of forest risk commodities that a company is placing on the market, as well as the **size of the company.**
 - By applying the law to only large companies it risks shifting imports of illegal products to smaller companies. Moreover, many large retailers and brands will already be conducting some degree of due diligence as a result of reputational risks associated with their supply

³ <https://www.un-redd.org/>

⁴ Important work in this area is ongoing through the UNFCCC, which adopted the 7 decisions of the Warsaw Framework for Redd+ at COP19. The 7 decisions to Reduce Emissions from Deforestation in Developing Countries and Stimulate Action (REDD+) include a variety of methodological resources, monitoring practices and ongoing research: <https://unfccc.int/topics/land-use/workstreams/redd/redd-methodological-guidance>

⁵

file:///C:/Users/alice.lucas/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/7HVK6V3J/EN_annexe_1_2019-1.pdf

chains. We have also heard from commercial partners that there is a risk of large retailers abandoning high risk sourcing for their own brand products, leaving the market to smaller retailers, which could have a detrimental impact of small holder farmers and workers, as well as failing to ensure deforestation-free supply chains.

- In addition, **lessons can be learned from existing due diligence requirements at the national level**. For example, the French Duty of Vigilance law which applies to financial institutions, as well as the EU Timber Regulation which applies to all companies regardless of size. We would also urge the Government to ensure that the UK aligns with and exceeds EU progress towards mandatory human rights and environmental due diligence legislation. The EU Commissioner for Justice has recently committed to mandatory due diligence legislation⁶.

III. Legislation must include human rights due diligence

- We are moreover concerned by **the lack of human rights focus** in current proposals. Human rights are a vital part in understanding and implementing environmental rights⁷. For example, deforestation can often be interlinked with land grabs by unscrupulous corporations, denying indigenous groups their right to land⁸. The Fairtrade Foundation would urge the government to consider **broadening the current legislation in line with recommendations by the Global Resource Initiative (GRI) taskforce⁹, or to publically commit to a timetable for due diligence covering human rights and other commodities**. We note that there is **growing support for cross-sectoral human rights and environmental due diligence legislation**, particularly at the EU level¹⁰.

IV. Sanctions need to be proportionate and effective, incentivizing businesses to engage and resolve risks in their supply chains

- The Fairtrade Foundation is keen to see further details from the government on the level of **finest that could be levied at businesses who violate the law**. Penalties must be sufficiently robust to ensure compliance, and strong enforcement mechanisms ought to be put in place. The government ought to ensure that enforcement takes place through an independent body with expertise in this area. The experience of the Modern Slavery Act (Supply Chain measures) is that **without meaningful sanctions a significant minority of companies will ignore their responsibilities**, at the expense of the responsible companies that do take action. We therefore support a **robust sanctions framework**, to ensure a level playing field.

⁶ <https://www.business-humanrights.org/en/latest-news/eu-commissioner-for-justice-commits-to-legislation-on-mandatory-due-diligence-for-companies/>

⁷ The right to a healthy environment is widely acknowledged in international and national conventions and frameworks: <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what>. Moreover, the Special Rapporteur for Environment and Human Rights was established in 2012 with a mandate to examine these links: <https://www.ohchr.org/en/Issues/environment/SREnvironment/Pages/SREnvironmentIndex.aspx>.

⁸ For example, <https://www.hrw.org/news/2019/09/22/interview-deforestation-threatens-indonesias-indigenous-peoples>

⁹ The GRI taskforce recommended that mandatory due diligence legislation: Cover both human rights abuses and environmental risks and impacts, which will need to be carefully and clearly defined, and require companies to analyse the presence of these risks within their supply chains, take action to prevent or mitigate those risks and impacts, and publicly report on actions taken and planned.

¹⁰ <https://www.business-humanrights.org/en/latest-news/eu-mandatory-due-diligence/>

- It is important that legislation **incentivises business to engage and resolve rather than avoid areas where illegal deforestation is a risk**. Fairtrade producer representatives have raised concerns with us that some approaches to HERDD can result in “buyer flight” from more challenging locations whereas we want to see policy that rewards responsible business investing in change. The Fairtrade Foundation is keen to ensure that due diligence policies push companies to address salient human rights and environmental issues rather than abandon or avoid high-risk sourcing areas and do not encourage “risk dumping” by buyers onto primary producers.

V. Legislation must align with the UN Guiding Principles and OECD Guidelines, with the meaningful engagement of rights holders, including farmers and workers.

- The Fairtrade Foundation is keen to see current proposals align with existing internationally agreed frameworks including the **UN Guiding Principles on Business and Human Rights** and **OECD Guidelines**. In line with the UNGP, any due diligence must ensure that it promotes the meaningful engagement of rights holders (especially communities in producing countries affected by deforestation) at each step of the process as well as dialogue with civil society and producing country governments. As a producer-driven system – 50% owned by smallholder farmers and workers – Fairtrade strongly believes in listening to and incorporating the experiences and knowledge of affected people and enabling them to influence policies that directly impact them.
- In addition, the Fairtrade Foundation is concerned that a ‘top-down’ due diligence approach risks becoming a ‘tick-box’ exercise for many businesses and traders, and for compliance and administrative costs being passed down the value chain to producers who may not have the capacity and/or investment to meet new requirements (sometimes termed “risk dumping”). As such, the Fairtrade Foundation would like to see a due diligence approach that **incentivizes and encourages companies to invest in value-addition and capacity building for small scale producers to be able to lead their own due diligence approaches**. This community owned approach would be context specific and start with the farmers – aligning with the UNGP and OECD Guidelines.

VI. To tackle the root cause of deforestation, due diligence policies must work towards payment of living incomes

- Alongside legislation, **the government ought to also consider steps to ensure the payment of living income/living wages. Most deforestation is driven by poverty**, as farmers are caught in a negative income cycle, forced to use forest land in order to survive. **Attainment of a living income would tackle the real root cause of deforestation and ought to be encompassed within a due diligence approach**. As part of a smart mix of measures designed to initiate action to achieve living income and living wages, which are prerequisite for decent livelihoods, the Fairtrade Foundation would like to see due diligence legislation which **covers trading practices** that ensure long term investment in farmers and workers, **and pricing practices** which support the more equal distribution of value throughout the supply chain. This includes encouraging businesses to commit to long term contracts with suppliers, and should cover fair pricing and support for income diversification. It would also enable farmers and workers to invest in more environmentally friendly methods of production and adapt to the growing impacts of the climate crisis. **This is particularly relevant in the cocoa supply chain, where**

the average income for farmers is just 74p a day¹¹. The Fairtrade Foundation notes the inclusion of cocoa in the GRI report of 'risk commodities'.

¹¹ <https://www.fairtrade.org.uk/wp-content/uploads/legacy/Craving-a-Change-in-Chocolate---February-2019.pdf>