

COLLECTIVE POSITION PAPER ON EU ACTION TO PROTECT AND RESTORE THE WORLD'S FORESTS: PROPOSAL FOR A 'SMART MIX' OF MEASURES

SUMMARY

A 'smart mix' of measures by the EU is necessary to help tackle the negative impacts on forests associated with the production of forest risk commodities, including:

- ◆ Partnerships between the EU and producer countries to put in place the enabling conditions necessary to protect forests and improve the standards of production of agricultural commodities.
- ◆ EU legislation to introduce an obligation of due diligence on companies involved in commodity supply chains, and to put in place other demand-side measures to support markets for sustainably produced commodities.
- ◆ Dialogue with other consumer countries, to ensure that stricter standards in the EU market do not simply divert unsustainably produced products away to other markets.
- ◆ Measures to steer flows of finance and investment away from unsustainable and towards sustainable activities and supply chains.
- ◆ Encouragement for robust, consistent and practical systems and approaches to enable companies to assess, verify and report on risk and risk mitigation within their supply chains.

This is the conclusion of a large and growing group of companies from across the supply chain, and NGOs, that participated in the Tropical Forest Alliance's series of roundtable discussions on action to protect forests held between April and July 2020.

We recognise the role of the EU, as one of the world's largest importers and consumers of almost all the major forest risk commodities, in driving deforestation. We applaud the publication, in July 2019, of the European Commission's communication on 'Stepping up EU Action to Protect and Restore the World's Forests', and we welcome the opportunity to contribute to the impact assessment of demand-side measures currently under way. We look forward to the publication of proposals for an ambitious smart mix of measures at the conclusion of this exercise.



WHY IS A SMART MIX NECESSARY?

From companies' and governments' experiences of trying to decouple agricultural supply chains from deforestation, we know that there is no 'silver bullet': no single policy instrument is capable of addressing by itself all the drivers of unsustainable production. A combination of measures is therefore necessary, to tackle the challenges set out below. This is in line with the notion of a "smart mix" as defined in the UN Guiding Principles on Business and Human Rights, whereby to fulfil their duty to protect human rights, states will need to use a range of approaches. The commentary to the UNGPs elaborates on this when it says that states "should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights".

There are several reasons why current patterns of production and consumption of many agricultural commodities are often associated with deforestation. Conditions on the ground in producer countries are often not adequate to protect forests and promote sustainable, or deforestation-free, production. One reason is because the immediate returns to producers from deforesting – for example, to increase the area of oil palm plantations, or to encourage the growth of cocoa trees – are generally greater than the returns from farming in ways that keep forests standing. Another is that farmers, particularly smallholders, may lack the capacity – including finance, technology and skills – to farm sustainably. A third is because the governance of forests, agriculture and land use – the framework of laws and policies and the processes through which stakeholders interact with them – may be insufficient to prevent deforestation and often may expressly permit it. And finally, even where the laws are sufficient, they may be inadequately enforced. In general, the incentives and frameworks to farm sustainably are weak or absent.

Consumer countries, such as EU member states, contribute to these problems because they are an important source of demand for these commodities, especially where the bulk of the product is destined for export. Companies that source forest risk commodities and process and trade in them often find it challenging to avoid the negative impacts associated with their production. Although there have been many voluntary initiatives, including company programmes and certification schemes, many with positive impacts, overall they have not solved the problems. This is partly because many of the conditions of production lie outside the control or influence of the companies concerned, and partly, too, because consumer countries often lack systems to ensure that the forest risk commodities they import and consume are not associated with deforestation, or other negative impacts such as child labour.

No single policy instrument is capable of addressing by itself all these drivers of unsustainable production, though many can contribute. This is why we call for a 'smart mix' –

a combination of mutually reinforcing measures that provide a framework for all stakeholders to play a role:

- ◆ Through partnerships on the ground with producer countries, for example to build capacity for improved governance and law enforcement and to put in place many of the enabling conditions necessary to protect forests and improve the standards of production of agricultural commodities, including basic services and infrastructure and support for SMEs and farmers.
- ◆ Within the EU, to create a clear market demand for sustainable products, through ensuring that all companies placing forest risk commodities on the EU market face a level playing field in terms of legislation, and to provide favourable market conditions for sustainable products and/or less favourable market conditions for unsustainable products. This mainly involves legislation to introduce an obligation of due diligence on the companies involved in commodity supply chains. It also includes efforts by EU member states and their competent authorities to better understand the challenges faced by European buyers in order to encourage and support their due diligence efforts, including sharing examples of good practice and developing common reporting formats.
- ◆ By other consumer countries, to ensure that stricter standards in the EU market do not simply divert unsustainably produced products away to other markets and to try to develop common standards across consumer countries, reducing complexity in supply chains.
- ◆ By financial institutions and their regulators, to steer flows of finance and investment away from unsustainable and towards sustainable activities and supply chains – ideally at the global rather than EU-only level.
- ◆ All these measures need to be underpinned by robust, consistent and practical systems and approaches to enable companies to assess, verify and report on risk and risk mitigation within their supply chains. This includes the need to promote the greater and more consistent use of data and technological innovation and to build on existing best practice, including but not limited to certification.

These headings map closely on to the five priority areas identified by the European Commission in their deforestation communication of July 2019.

If well designed and effectively implemented, these measures should be mutually supportive. For example, without demand-side regulation in consumer countries, action in producer countries may simply result in companies sourcing their products more cheaply from other producer countries not implementing the same measures.

Equally, without action in producer countries, demand-side measures such as due diligence legislation may simply result in EU-based companies concentrating on sustainably produced

commodities, or abandoning high-risk suppliers, while unsustainable commodities go elsewhere; the same outcome may occur if other consumer countries fail to act on their own supply chains. And all these measures may fail without robust means of verifying how products are produced and move through companies' supply chains.

PRODUCER PARTNERSHIPS

Partnerships between the EU and producer countries, including with governments, industry, farmers and civil society, are a critical part of the smart mix of measures. They will be necessary to help provide many of the enabling conditions to support the production of commodities in ways that do not drive deforestation or negative impacts on other ecosystems and for companies to fulfil their obligations under due diligence legislation. These enabling conditions include improvements in standards of governance and law enforcement and the provision of basic services, infrastructure, and support for farmers. The partnerships should be based on mutual respect and rest on open, inclusive dialogue, working collectively and responding to producer country needs to develop shared solutions delivering shared benefits.

The EU should play a key role, through development assistance, in providing support and coordination for existing regional, national and sub-national partnership initiatives, including multi-stakeholder processes and supply chain traceability systems. More assistance should be provided for activities specifically geared towards reducing the negative impacts of agricultural commodities, and supporting reforestation alongside reducing deforestation. Priority should be afforded to those regions, countries and sub-national jurisdictions where the greatest impact can be made and where European supply chains can use their associated leverage. It is also important to target assistance on local landscape-driven initiatives, which can often be more ambitious than central or provincial strategies.

The framework of Voluntary Partnership Agreements (VPAs) between the EU and timber-exporting developing countries aimed at tackling illegal logging provides a valuable model for tackling major challenges and achieving long-lasting change in producer countries. These agreements address the underlying problems of governance and law enforcement by placing key decision-making powers in the hands of stakeholders in the producer countries and by establishing incentives, through trade preferences and the provision of capacity-building assistance.

The VPA model would need some modification to adapt it to agricultural commodities, particularly in basing it on a sustainability rather than a legality standard. The definition of 'sustainability' would be a key question to address through the multi-stakeholder deliberative process and the negotiations on

the agreement. The VPA model seems particularly well suited to cocoa production in Ghana and Côte d'Ivoire, given that the EU is the main market for their cocoa exports and they already have experience with the VPA process. Negotiating such an agreement for other agricultural commodities, however, is likely to prove challenging, particularly where political will is lacking and the EU is not the main export market. The EU should therefore explore the scope for supporting initiatives which could in time become elements of a VPA-type bilateral agreement, such as the establishment of similar kinds of multi-stakeholder deliberative processes, and traceability systems, including at sub-national or landscape levels.

The EU should also incorporate ambitious sustainability conditions in trade and investment agreements, strengthen trade and sustainable development chapters in existing agreements, and improve the sustainability impact assessment process. There is a need for greater coherence between EU policies in different areas, such as trade, agriculture, environment and development.

DEMAND-SIDE MEASURES

Alongside action on the ground in producer countries, action is also needed in the EU to ensure that sustainably produced commodities are favoured or required on the EU market and unsustainably produced commodities are disfavoured or excluded.

The key step is the introduction of mandatory EU-wide due diligence legislation covering human rights, labour rights, land rights and environmental impacts, through both a broad 'horizontal' approach to due diligence and a focused commodity-specific approach. This should foster a better understanding of supply chains and their exposure to the risks of environmental harm and abuses of human, labour and land rights, drive continual improvement, encourage the development and evolution of plans to address the risks, and strengthen global commodity supply chains (not just reduce risk in EU supply chains). It should reward continued engagement with and support for suppliers that perform less well initially, acting as an enabler of good practice and future progress rather than encouraging companies simply to abandon suppliers from high-risk areas.

Commodity-specific legislation is needed to define clearly the criteria on which the due diligence obligation for each commodity should be based, and to create a level playing field to ensure that the same criteria are followed by all companies placing commodities on the EU market, whether or not they are based in the EU. These criteria must include, but go wider than, legality, and should build where possible on existing systems and definitions, such as the various OECD guidance documents and the Accountability Framework Initiative. The due diligence obligation must be carefully and

clearly defined, to ensure that all businesses fully understand their responsibilities and liabilities. It should be implemented by all actors throughout the supply chain, with no threshold by company size or turnover, though measures should be included to minimise the burden on SMEs and smallholders. The legislation should include a requirement to publish a report on the company's due diligence system, its implementing activities and future plans, and the impact on the company's supply chains, with the aim of improving transparency and facilitating scrutiny of the evolution of due diligence systems. Systems for complaints and remediation should also be included, as outlined in OECD guidance and the Accountability Framework Initiative.

Due diligence legislation should ensure that businesses avoid sourcing products associated with human rights abuses and environmental harm, but additional measures are required to ensure that sustainably produced commodities gain greater rewards in the market. Potential demand-side measures to support the growth of market share for sustainable commodities should be considered, including public procurement policy and the reform or reinterpretation of EU competition law to enable companies to collaborate in the pursuit of global public goods.

We do not agree with proposals to introduce new labelling systems for products as 'deforestation-free'. As well as the potential for confusion with existing labelling and certification schemes, governments should undertake the responsibility of regulating their own markets, rather than rely on consumers exercising individual choice.

INTERNATIONAL COOPERATION

Engaging in dialogue with other consumer countries – in particular, China, the world's largest importer of most forest risk commodities, but also India and others – is an important part of the smart mix, in order to encourage these countries to adopt the same or similar measures to the EU. This both increases the chances of scaling up positive outcomes and avoids the diversion of commodities produced unsustainably away from the EU towards other markets.

The EU should promote joint initiatives to develop and implement sustainability standards and policy measures and to share data and examples of best practice. These should build where possible on existing networks and initiatives, and include industry associations and groupings, reaching both producers and consumers of forest risk commodities to build a sense of shared responsibility and shared interest.

FINANCE

The redirection of finance and investment away from unsustainable and towards sustainable activities is essential, but will not happen without intervention by EU and global

regulators. Potential options include requirements on financial organisations to report specifically on their deforestation risk exposure throughout the supply chain, and the application of a due diligence obligation to loans and investments. Investment in sustainable activities needs to be scaled up, and made more accessible to smallholders and SMEs, through approaches such as blended finance and specific green finance instruments, such as climate finance, green bonds, REDD+ resources and ecosystem service payments.

VERIFICATION

Industry and governments must be able to access and rely on clear, consistent and credible tools for assessing, verifying and mitigating deforestation risk and tracking the movement of products through supply chains. Where possible these should be built on existing actions and initiatives, including on traceability and transparency, rather than starting from scratch and inventing entirely new systems. Technological innovation is increasingly important in improving transparency in supply chains and should be supported.

The EU should play a role in bringing together, coordinating and making more consistent the necessary data and intelligence on deforestation risk into a central point, including through the EU Observatory shortly to be established. Certification systems provide important tools but have their limits. Recognition of other forms of supply chain interventions, complementary to certification, will be increasingly necessary. The burdens of costs associated with certification or other systems should be shared equitably across the value chain.

CONCLUSION

The EU, as one of the world's largest importers and consumers of almost all the major forest risk commodities, currently contributes to the destruction of global forests.

This is unacceptable: to combat climate change, protect biodiversity and sustain the livelihoods of farmers and forest communities, the EU and its member states must take action to reduce and eventually eliminate these pressures on forests. We propose here a 'smart mix' of mutually reinforcing measures aimed at addressing the drivers of deforestation and involving all stakeholders – governments, businesses, NGOs and citizens of the EU and producer countries – in ambitious action.

LIST OF SUPPORTING ORGANISATIONS

	Ahold Delhaize Hugo Byrnes, VP Product Integrity		Earthworm Foundation Arief Perkasa, Strategic Outreach Lead
	Alliance for the Preservation of Forests Laure Grégoire, Spokesperson		European Cocoa Association Catherine Entzminger, Secretary General
	APRIL Group Lucita Jasmin, Director for Sustainability & External Affairs		European Palm Oil Alliance Frans Claassen, Chair
	Cargill Marta Zuluaga Zilbermann, VP Government Relations Europe, Middle East & Africa		FEDIOL Nathalie Lecocq, Director General
	Carrefour Bertrand Swiderski, CSR Director		FEFAC Alexander Döring, Secretary General
	CDP Morgan Gillespy, Global Director, Forests		Ferrero Francesco Tramontin, Vice President Group Public Policy Center and EU Institutional Affairs
	COCERAL Iliana Axiotiades, Secretary General		General Mills Mary Jane Melendez, VP, Chief Sustainability & Social Impact Officer
	Cococo Chocolatiers Brian Beck, President		Global Canopy Niki Mardas, Executive Director
	Colgate-Palmolive Ann Tracy, Chief Sustainability Officer		Golden Agri-Resources Anita Neville, Senior Vice President Group Corporate Communications
	Croda International Chris Sayner, Vice President - Customer Alliances, Corporate Sustainability		IDH, The Sustainable Trade Initiative Willem Klaassens, Director Markets & SourceUp
	Danone Eric Soubeiran, Vice President Nature & Water Cycle (CSO)		Jerónimo Martins Sara Miranda, Chief Communications and Corporate Responsibility Officer
	Donau Soja Organisation Matthias Krön, Chairman		Mars, Incorporated David Coleman, Vice President Public Affairs Europe

LIST OF SUPPORTING ORGANISATIONS

	METRO AG Veronika Pountcheva, Global Director Corporate Responsibility		Spanish Foundation for Sustainable Palm Oil Horacio Gonzalez-Aleman, Executive Advisor
	Mondelēz International Christine Montenegro McGrath, Vice President and Chief of Global Impact		Stockholm Environment Institute Toby Gardner, Senior Research Fellow and Director, Trase
	MVO - The Netherlands Oils and Fats Industry Eddy Esselink, Senior Manager Sustainable Development		Tesco Anna Turrell, Head of Environment
	Nestlé Bart Vandewaetere, VP Corporate Communications & Government Relations, Nestlé EMENA		The Hershey Company Jason R. Reiman, SVP, Chief Supply Chain Officer
	Olam Cocoa Andrew Brooks, VP, Head of Cocoa Sustainability		The Nature Conservancy David Cleary, Director, Global Agriculture
	PepsiCo Gloria Gabellini, Director, Environmental Policy Europe		Toms Group A/S Lars Henrik Vejrup Hansen, CFO and Interim CEO
	Rainforest Alliance Iris Millenaar, Senior Advocacy Officer Europe		Touton SA Joseph Larrose, Group Sustainability Director
	Reckitt Benckiser Miguel Veiga Pestana, Senior Vice President Corporate Affairs		Unilever Annick Boyen, Vice President Communications - Global Markets
	Roundtable on Sustainable Palm Oil Inke van der Sluijs, Head of Operations for Europe and Africa		WCS EU Janice Weatherley-Singh, Director, EU Strategic Relations
	Sainsbury's Judith Batchelar, Director of Corporate Responsibility & Sustainability and Public Affairs		Wilmar International Perpetua George, General Manager Group Sustainability
	Siat Group Florent Robert, Group QHSE & Sustainability Manager		World Cocoa Foundation Richard Scobey, President
	Solidaridad Gonzalo la Cruz, Regional Managing Director South America		