

Public consultation on stepping up EU action against Deforestation and forest degradation

Fern's additional position paper

Fern welcomes the initiative of a Roadmap on Stepping up Action to Halt Deforestation but we are concerned that it relies only on existing policies and tools, which we do not believe constitute stepping up action. We believe the EU should propose new and targeted policies to contribute to halting, preventing and reversing deforestation.

The EU must therefore propose an EU Action Plan to Protect Forests and Respect Rights.

This should include a regulation to control the import, financing and investment of agricultural commodities cultivated on forest land converted in violation of community tenure rights or other human rights abuses. It should also be based on the principles behind the High Carbon Stock (HCS) approach.

New regulation needed

As voluntary efforts to tackle deforestation and human rights (HR) abuses are too slow, don't include all major players, and lack a system to make companies accountable, **the EU must regulate EU imports of forest risk agricultural commodities (FRAC), to ensure that** neither the EU financial sector, nor products placed on the EU market cause negative environmental and social impacts like deforestation, forest degradation or human rights abuses. The EC's [feasibility study](#) concluded that regulation would have the greatest impact.

In exploring regulatory options, Fern recommends that the EU controls FRAC imports by building on Member State initiatives such as [France's 'Loi sur le Devoir de Vigilance'](#), and learns lessons from [the EU Timber regulation and the EU Illegal Fisheries regulation](#). Other tools include the UN Principles on Business and HR, the Organisation for Economic Cooperation and

Development (OECD) [Guidelines on Responsible Business Conduct](#) and the [OECD Guidelines on Agricultural Supply Chains](#).

The basis of a regulation could be human rights due diligence, because large-scale land conversion for FRAC often goes hand in hand with violations of community tenure rights. There is already an internationally agreed framework that could be built on: the [Voluntary Guidelines on the Governance of Tenure \(VGGT\)](#). Efforts should include turning the HCS approach into international law.

In addition to a regulation on forest risk commodity imports, the EU must also ensure coherence within its own policies, and support producer countries. **The EU should take the following actions:**

1) **Ensuring trade doesn't lead to more deforestation**

The EU's trade, finance and investment policies can have a big impact on forests in highly-forested countries. Forests and community tenure rights should be identified as priority areas during trade negotiations with highly forested countries. Trade & investment agreements should include binding and enforceable provisions to control deforestation and respect community tenure rights.

To ensure coherence between EU trade policy and EU commitments to halt deforestation, mitigate climate change and respect human rights, the EU must ensure that the free trade agreements (FTA) it is currently negotiating with highly forested countries (Indonesia, Malaysia, the Philippines and the Mercosur bloc) - include provisions and enforcement mechanisms to ensure that increased trade does not increase deforestation and human rights violations.

This would be in line with the Commission's non-paper on the 15 proposals¹ to revamp the TSD chapters.

Fern also calls for transparent and inclusive trade negotiations on issues affecting forests and land rights, stronger civil society monitoring and dispute resolution systems, since greater participation of civil society in the negotiation and implementation of trade agreements helps achieve a more sustainable trade agreement.

Here are some concrete proposals for how to put these recommendations into action:

- **Developing a roadmap during negotiations supporting forest governance reform**

¹ Non-paper of the Commission services, Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements, February 2018. It promises that the Commission will separately 'identify, consider and address priorities for each partner country' in relation to TSD issues which *may* lead to the inclusion of specific issues in FTAs beyond the standard TSD formulation, and which *will* involve the identification of priority issues for implementation by the parties.

Each FTA should contain a roadmap to protect forests, mitigate climate change and respect community tenure rights as part of the FTA. This helps provide clarity over the actions, such as legislative reforms, to be taken by Parties before the agreement comes into force. The start of the agreement could be made conditional on complying with these commitments. This is referred to as pre-ratification conditionality, requiring institutional or legislative changes before an agreement can come into force.

- **Developing FTA provisions to control deforestation**

FTAs should include binding and enforceable provisions to control deforestation, respect customary tenure rights, implement the Paris Agreement and put rules in place that require companies to act in line with international obligations. Provisions could be backed up by the roadmap described above and developed with all stakeholders including local CSOs, defining and outlining activities for both parties to meet the provisions, including milestones that both parties agree to.

- **Strengthening monitoring mechanisms and enforcement**

Existing civil society monitoring mechanisms should be clarified, strengthened and properly resourced and a monitoring tool should be developed and could [include indicators or scorecards](#) to track progress and ensure accountability from the Parties to implement provisions. Inspections should take place to verify compliance with the provisions. Inspiration may be drawn from the provisions included in the Sanitary and Phytosanitary (SPS) chapters of trade agreements which allow for such verification to take place.

For more information, read Fern’s discussion paper [‘Forests and forest peoples in EU Free Trade Agreements’](#)

2) **Support producer countries to improve legal enforcement & governance**

The EU should use its significant market power as a lever to support governance reform processes in producer countries that link progress with greater EU market access.

The European Commission’s [feasibility study](#) identified that “bilateral partnership agreements on forest risk commodities” would have “high” contribution to solving the problem – one of only two supply-side interventions that were ranked so highly.

Alongside an EU due diligence regulation ensuring imports do not cause human rights abuses or deforestation, the EU should support processes in producer countries to clarify and improve national laws affecting forests and land rights in the agricultural sector. These discussions should take place in a multi-stakeholder process bringing together national government, civil society, farmers and other industry actors. These actors should work together to identify where the gaps in legal enforcement are and where existing national laws need to be improved to bring them in line with international environmental and human rights standards.

The EU should commit to providing diplomatic, technical and financial support to this process, and should meet periodically to check on the implementation of the commitments made by the multi-stakeholder group.

The incentive for producer country governments to enter this process would be that companies —under pressure from due diligence requirements under a new EU regulation— would be reluctant to operate in countries with a high illegality risk, and may turn elsewhere unless enough efforts are made to improve governance.

The EU could track and “reward” improved governance in the producer country by using a red/yellow/green carding system, similar to what exists under the EU’s Illegal, unreported & unregulated (IUU) Fishing Regulation.

3) **Make the CAP a genuine food and farm policy**

Soy ranks as the second largest agricultural driver of deforestation after cattle production. The EU imports 35 million tonnes of soy beans for animal feed annually, historically mainly from Brazil, Argentina and Paraguay, where deforestation due to conversion of forests to agriculture continues. These imports are driven by low to zero import tariffs on soy products and measures supporting animal production in the EU Common Agricultural Policy (CAP).

The EU should promote locally-sourced, vegetable-based diets and make agricultural support conditional on farmers using legally and ecologically sourced feedstocks, reducing nitrogen surplus, increasing animal health and using resources efficiently.

For more information read Fern’s [report on the EU Common Agricultural Policy](#) and this [civil society open letter to the AGRIFISH Council](#).

4) **Better implement the EU Timber Regulation and the Voluntary Partnership Agreements**

As one of the largest consumers of timber, the EU took the lead in global efforts to address illegal logging and its associated trade by launching the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan in 2003. The Action Plan includes a set of complementary measures to tackle illegal logging and related trade and improve forest governance in producer countries (Voluntary Partnership Agreements and the EU Timber Regulation). Since then, illegal tropical timber imports in the EU have reduced by 60 per cent.

In addition to addressing illegal logging, FLEGT has helped improve governance in some of the world’s most difficult environments, giving local civil society organizations the space to raise their concerns – in some countries for the first time. FLEGT has also brought greater scrutiny and transparency to the forest sector, improved government accountability, and enabled the effective engagement of a range of stakeholders.

However, progress has been uneven across VPA countries, and patchy implementation of the EUTR creates loopholes for illegal logging. Accelerating and sustaining reforms requires genuine political commitment, increased community participation, and efforts to address core governance issues such as corruption, impunity and tenure rights. It is also important to **ensure adequate EUTR enforcement across the EU, including stronger checks, and appropriate follow up action.**

For more information read [this statement from civil society organizations from Africa and South East Asia on improvements that need to be made to the FLEGT Action Plan](#).

5) **The EU must hold EU finance and investment accountable**

Banks drive deforestation through loans to agribusiness companies. A Fern investigation found that 23 companies alleged to be involved in land grabbing had received nearly US\$ 50 billion in loans. EU-based banks such as HSBC, BNP Paribas (France), Standard Chartered (UK), Rabobank (Netherlands) and Crédit Agricole (France) provided nearly two fifths of the loans.

To stop deforestation and respect human rights, financial regulators need to adopt strong regulations, and impose social, environmental and governance standards on financial institutions' clients. Greater scrutiny of public development banks is also needed – mainly Development Finance Institutions (DFIs). Fern [found an alarming lack of accountability about where DFI money is going](#). Where evidence was available, DFIs had financed projects with serious environmental and human rights impacts.

The EU must impose social, environmental and governance standards on EU banks and Development Finance Institutes. The EU finance and investment sector should be held to the same strict standards as importers of forest risk commodities (see above regulation proposal).

6) **Remove subsidies for bioenergy that harm forests and the climate**

The EU's Renewable Energy Directive has driven increased harvesting of wood from forests, which has put pressure on carbon stocks and biodiversity. The EU [did not heed the concerns related to the first Renewable Energy Directive](#) and has updated the Directive for 2030 with no improvements on forest protection. Forest biomass, which is not an infinite resource such as wind and solar, and which releases CO₂ when burned, is classed as a renewable energy source.

Neither does the EU's long-term climate strategy (LTS) does adequately consider forest protection. Here, forests' primary role is considered to be as a feedstock for energy production – replacing coal and gas. The strategy therefore focuses on intensifying the burning of wood for energy and planting fast-growing monoculture tree plantations, which sequester less carbon than old-growth forests, and simultaneously do not provide the same ecological benefits as natural forests.

All scenarios in the EU LTS rely on substantial use of biomass for energy – ranging from 190 Mt of oil equivalent (Mtoe) to just over 250 Mtoe. The higher range would require us to more than double the amount of bioenergy consumed in the energy sector in 2016.

The LTS assumes that biomass will be mainly produced domestically, with only 4-6 per cent coming from outside the EU by 2050. It is hard to see how this scenario would come about, given that **the EU currently has no policies capping biomass imports**. Member States are relying so much on bioenergy to fulfill renewable energy targets that they are increasingly importing biomass. Import volumes are already substantial, as revealed by a [Bioenergy Threat](#)

[Map](#) report released by the Environmental Paper Network (EPN). Indeed, the EU is already the largest importer of wood pellets and imports are likely to grow as long as the EU incentivises bioenergy through the REDII and LTS. None of the scenarios in the LTS consider the climate impacts of importing biomass.

The EU must recognise that biomass is a finite resource. It must end subsidies for burning woody biomass that is directly harvested from forests and restrict the amount of biomass that EU Member States can use towards their renewable energy targets to levels that can be sustainably supplied. Strict sustainability criteria must be implemented to avoid impacts on people and the environment - and here the energy operator must be obliged to show proof of compliance. Bioenergy must only count towards renewable energy targets when concrete emissions savings have been proven, and any emissions must be correctly accounted for in the EU accounting framework. The concept of a true circular economy must be respected by burning wood for energy only when it cannot be used for any other purpose. Stumps and stem wood must be excluded from energy production, as these feedstocks are frequently the most carbon-rich and leaving them in the forest limits emissions and benefits ecology. Finally, minimum thresholds for conversion efficiency must be implemented and respected so that woody biomass is only used in the most efficient applications.