

Fern submission to the trade policy review

Fern is dedicated to protecting forests and the rights of people(s) who depend on them. We make decisions by consensus and build campaigns together with other social and environmental organisations and movements across the world. We identify the threats facing the world's forests, and work in partnership with affected communities, social and environmental organisations, and policy makers to devise and deliver solutions where the EU can make a difference.

Fern supports the European Commission's initiative to review EU trade policy to deliver a stronger EU. COVID-19 has exposed cruel flaws in our global economic systems and the need for their re-evaluation. "There is no great mystery about the cause of the COVID-19 pandemic – or of any modern pandemic", said Dr Peter Daszak, President of [EcoHealth Alliance](#) and Chair of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) workshop that led to the release of the Pandemics report last October.¹ "The same human activities that drive climate change and biodiversity loss also drive pandemic risk through their impacts on our environment. Changes in the way we use land; the expansion and intensification of agriculture; and unsustainable trade, production and consumption disrupt nature and increase contact between wildlife, livestock, pathogens and people. This is the path to pandemics." By eradicating deforestation from its trade flows, and respect the rights of forest peoples the EU will confirm its commitment to the Paris Agreement target and contribute to the UN Sustainable Development Goals (SDGs).

Fern's submission addresses questions 8 and 9 of the consultation note and focuses on how the EU can become stronger by eradicating deforestation from its trade policy and ensure it respects the rights of forest peoples.

Question 8: How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?

The EU leads the world in devising trade policies which aim to protect human rights and the environment. Despite this, it still bears significant responsibility for the world's biggest driver of deforestation - clearing land for agriculture. Over the last decade, the EU's exposure to deforestation risk per thousand tonnes of Brazilian soy imported was double that of China.² The EU is also the second biggest importer of agricultural goods which cause deforestation - much of it illegal. An area of forest the size of Portugal was lost globally between 1990 and 2005 because of EU consumption of commodities grown on deforested land. But the placing on the EU market of 'forest-risk commodities' - such as soy, palm oil, beef, cocoa and leather – does not just drive deforestation, it also fuels human rights abuses, from child labour to land grabs and

increased poverty. More than 1.6 billion people live within 5 km of a forest, including 250 million of the world's extreme poor who often rely on forests for food, medicine, fodder, and fuel. In many tropical forest nations, forests contribute 20-25% of the poorest people's income, about the same amount as agriculture.³ From laws [stopping conflict minerals](#) and [illegally sourced fish](#) from entering its markets, to [timber regulations as part of the EU Forest Law Governance and Trade \(FLEGT\) programme](#), which imaginatively uses demand-side pressures to tackle the root causes of illegal logging, the EU regularly fulfils its commitments to uphold environmental and social standards.⁴ Its move to impose [trade sanctions](#) on Cambodia for its bad record on human rights and democracy is the latest example. The EU has also demonstrated willingness to negotiate trade agreements in a participative way, giving local civil society organisations and communities a seat at negotiations and in implementation of Voluntary Partnership Agreements (VPAs) with tropical timber-producing countries.

Most EU Free Trade Agreements (FTAs) do not, however, have the same environmental or social aims, or similar enforceability mechanisms. They are also not participatory. The growing push against the EU-Mercosur deal, including from Member States, shows that EU trade policy is broken. Other problematic trade deals or negotiations have, in the past, led to enormous discontent among citizens, most recently displayed in the popular opposition to the EU-US Transatlantic Trade Investment Partnership (TTIP) and the Canada Comprehensive Economic and Trade Agreement (CETA).

As set out by President von der Leyen in her political guidelines, the EU should strengthen its role in ensuring the highest standards of climate, environmental and labour protections also in its trade policies. The EU is also well-placed to follow up actions outlined in the [Leaders' Pledge for Nature](#). Politicians participating in the United Nations Summit on Biodiversity in September 2020 have committed to reversing biodiversity loss by 2030. The signatories also promise to redouble efforts to stop thinking "in silos" and commit to shifting to sustainable production and consumption, particularly in food systems. This will involve establishing eliminating practices harmful to ecosystems in supply chains, land use and agricultural policies.⁵ This would be a paradigm shift in international trade.

The EU is currently embarking on or concluding trade details with several highly-forested countries, notably Indonesia, Malaysia, the Philippines and the [Mercosur](#) bloc.

The amount of forest in these countries and the huge number of people depending on them for their livelihoods mean particular care needs to be given to the impact that increased trade may have on efforts to achieve the SDGs.⁶ We cannot tackle the climate crisis or halt biodiversity loss without protecting forests. The latest [UN](#) report on biodiversity concluded that deforestation drives biodiversity loss at a greater scale than current global warming, with grave risks to humanity.⁷ If the EU is to achieve its commitment to end deforestation by 2020, fulfil the SDGs, meet the Paris Agreement, and deliver the European Green Deal, dealing with deforestation in trade deals should be a strategic priority.

The EU has experience of using trade as a lever to tackle deforestation, thanks to the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. They should draw lessons from this plan and use them to inform current FTA negotiations.

Addressing deforestation when negotiating FTAs would help the EU to transition to a greener, fairer, and more responsible economy at home and abroad.

This is because deforestation is a symptom of many of the issues the EU aspires to tackle, including:

- poor forest and land governance (large-scale deforestation is often illegal and linked with corruption)⁸
- violations of the land tenure rights of communities whose livelihoods depend on forests and who often own their land under customary law
- tangled and irresponsible supply chains (despite [hundreds](#) of corporate pledges, wealthy countries' consumption of "forest risk commodities" continues to fuel large scale conversion of forests for agriculture at a [historic](#) level). Over 440 companies have committed to free their supply chains of deforestation, and seven European countries, through the Amsterdam Declaration Partnership, are also working towards deforestation-free, sustainable supply chains. But none of these commitments has had much impact on the ground to date
- meeting the Paris Agreement goal of limiting global temperature rises to below 1.5°C (rampant deforestation even puts the 2C target beyond reach)

How should implementation and enforcement support these objectives?

By introducing a hierarchy principle stipulating that nothing in the FTA may prejudice effective implementation of international environmental, labour, and human rights agreements, including the Paris Agreement, the Convention on Biological Diversity commitments and the UN Declaration on the Rights of Indigenous Peoples.

By making market access conditional on deforestation and conflict free criteria in line with international commitments. That means:

- Quota allocations and lower tariff rates should be tied to compliance with social and environmental criteria agreed by the parties bilaterally, in meaningful consultation with civil society organisations, and respecting international environmental, labour, and human rights agreements.
- EU trade agreements should include the option to suspend trade preferences if provisions to ensure they are in line with international treaties on human rights, the Paris Agreement, and multilateral environmental agreements, are breached.

Trade agreements should be based on partnership as described in Fern's reports [Getting the Incentives Right](#), which explores how the EU can leverage its trade policy to support good governance in producer countries to address deforestation. Under such an agreement, commitments could be backed up by a roadmap with milestones for each trading partner describing how to achieve them. Any roadmap should be developed with all stakeholders including local civil society organisations and smallholder farmers, defining, and outlining policy reforms and law enforcement actions needed from both trading partners.

The trade partnership the Commission is currently exploring with cocoa-producing countries is an innovative new model, as it seeks to couple a higher cocoa price (paid to farmers) with sustainability compliance, including no deforestation and child labour.

By strengthening civil society participation. This means:

- FTA negotiations with forested countries should include transparent, inclusive and deliberative discussions on forests and land rights. Civil society organisations, in

particular local NGOs working with forest communities and, where possible, community representatives, should take part.

- Existing civil society monitoring mechanisms should be clarified, strengthened and properly resourced. Participants should be truly representative and have the capacity to participate. All information should be made accessible to those participating, in the correct format and language, and there should be enough time to participate.
- The Commission should establish clear reporting and monitoring tools to track progress and ensure accountability. It could include indicators or scorecards to track progress and ensure accountability. This could help provide the information needed to properly enforce FTAs' Trade and Sustainable Development (TSD) chapters.

By introducing a formal complaint mechanism that NGOs, trade unions, and members of the public can use to report breaches of social, environmental, and human rights obligations in current and future EU FTAs. The [mechanism proposed by ClientEarth](#) would function similarly to the already-existing Trade Barriers Regulation (TBR), which provides a complaint procedure for EU businesses facing foreign trade barriers. Again, this would help with enforcement of TSD chapters. The Chief Trade Enforcement Officer should play a key role in administering the mechanism. For more detailed recommendations, see our 2018 report [Forests and forest peoples in EU FTAs](#).

Question 9: How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?

More responsible business conduct and transparent, responsible and sustainable supply chains can be achieved in two ways:

1. A Forest Risk and Human Rights Due Diligence Regulation

The EU should establish a Due Diligence Regulation that makes it mandatory for EU companies to ensure they are not placing products on the EU market that have driven deforestation, ecosystem degradation or human rights abuses.

- The clearer and more detailed company requirements are, the more likely it is that the legislation can be effectively enforced.
- There needs to be clear procedures for how to monitor and enforce companies' implementation.
- Penalties for infringements must be dissuasive and harmonised among Member States.
- Legislation should allow competent authorities to gather proof of infringements.
- Companies should be required to develop a robust due diligence system, the absence of which should be a criminal offence.
- Certification should not serve as proof of compliance with the regulation.

For more detailed recommendations, see our 2020 report [Enforcing due diligence legislation 'plus'](#)

2. Commodity Partnership Agreements

As mentioned above, the EU should foster commodity trade partnership agreements with major forest risk commodity producing countries to complement any future Due Diligence Regulation and the various commitments that companies and countries have made to free supply chains of deforestation and human rights abuses.

Such partnerships can address the direct and underlying causes of forest loss and human rights violations. They must be developed in an inclusive deliberative process giving civil society, communities and farmers a seat at the table; have a clear focus and theory of change; have strong incentives; and include an effective and constructive monitoring and enforcement mechanism. Sufficient funding should be made available to allow the partnerships to work, among others by using development cooperation funds.

To be a true partnership, an honest assessment of the impact of existing policies (including trade, agriculture and energy) on forests and human rights should be completed in both the EU and producer countries. If shown to negatively impact forests and rights, laws and policies should be revised. The EU must also look at concrete measures to halt EU deforestation and biodiversity loss.

Options for integrating trade incentives into a partnership agreement include: agreements similar to VPAs (i.e. the EU agrees to only accept products guaranteed as legal, sustainable and human rights compliant according to a national licensing system); a mechanism similar to the Illegal Unreported and Unregulated fishing (IUU) carding system; governance milestones coupled with a risk alert system; or increasing or decreasing tariffs to favour sustainable and rights-compliant production.

We realise that not all, or even many countries, will be able or willing to engage in a partnership with the EU. In some cases, progress can, however, be made through working with specific jurisdictions within these countries. Alternatively, less ambitious agreements can be made, linking aid and trade measures in a more limited fashion—such as a risk alert system or tariff-based incentives.

In parallel, the EU's regulation of companies – as per the regulatory proposals to be introduced in 2021 by DG JUST and DG ENV -- should ensure that the EU only consumes forest risk commodities that are free from deforestation and human rights abuses.

For more detailed recommendations, see our 2020 report on [getting the incentives right](#).