

Getting the incentives right

Why partnership agreements should be at the heart of EU efforts to end deforestation



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Cover photo: Oil Palm Concession in Papua © Ulet Ifansasti / Greenpeace

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Introduction

Deforestation: 'a wicked problem'

Converting forest land for agricultural crops is the main cause of tropical deforestation. The EU is a major importer of forest risk commodities (FRCs), i.e. beef (41 per cent of global imports in 2014), maize (30 per cent), cocoa (80 per cent), coffee (60 per cent), palm oil (25 per cent), soy (15 per cent) and rubber (25 per cent).¹ The majority of these commodities come from just seven countries: Argentina, Brazil, Paraguay, Indonesia, Malaysia, Ghana and Côte d'Ivoire. Deforestation frequently goes hand in hand with human rights violations, notably the violation of land rights of local communities and Indigenous Peoples, and the violation of labour rights, including the use of child labour, notably in the palm oil and cocoa sectors.

Over 440 companies² have committed to free their supply chains of deforestation, and seven European countries, through the Amsterdam Declaration Partnership,³ are also working towards deforestation-free, sustainable supply chains. In 2021 the EU is expected to table a corporate governance law requiring companies to execute due diligence across the supply chain, aiming for a do-no-harm approach, as well as specific legislation to tackle deforestation and human rights violations in FRC supply chains.⁴

These are all positive developments, but more is needed. Halting or reducing tropical deforestation lies predominantly in the hands of the forested countries. They need to have the incentives to address deforestation and human rights violations as well as the tools to improve governance in the forest and agricultural sectors, because good governance is an essential condition to tackle deforestation.⁵

That is because deforestation is a 'wicked problem', an academic term for a problem that cannot be framed and understood in linear cause–symptom–effect relationships; it is a problem that evolves unpredictably over time and that involves conflicts of values among different stakeholder groups.⁶ These problems cannot be addressed by simple commitments, such as removing bad products from supply chains or providing more development aid. They require governance approaches instigating deep and broad systemic change.⁷

So, what is the role of the EU in supporting good governance in producer countries to address deforestation, and how can EU trade in FRC be used as leverage? These are the questions this paper aims to explore.

1 Ecofys 2018.

2 Forest Trends 2017.

3 Denmark, Germany, Netherlands, Norway, the United Kingdom, Italy and France have pledged to achieve fully sustainable and deforestation-free agro-commodity supply chains by 2020. For more information see <https://ad-partnership.org/about/>

4 For more details see Fern's report of its webinar 'Ending imported deforestation' on 26 June 2020. Available [here](#).

5 As specified by the United Nations Food and Agricultural Organisation (FAO), governance refers to the formal and informal rules, organisations and processes through which public and private actors articulate their interests and make and implement decisions. They define it as the way in which public and private actors, including formal and informal institutions, smallholder and Indigenous organisations, small, medium-sized and large enterprises, civil-society organisations and other stakeholders negotiate, make and enforce binding decisions about the management, use and conservation of forest resources. For Fern, assessing governance means examining the seven key pillars of good governance: accountability, transparency, coordination, participation, capacity, gender and equity. These indicators broadly correspond to the 'principles of governance' outlined in the [FAO-PROFOR framework](#) for assessing and monitoring forest governance (2011), and the [FAO-PROFOR Guide for assessing forest governance](#) (2014).

6 For more information on 'wicked problems' see Pacheco 2015 and Poynton 2013.

7 Dentoni 2016.

“To achieve zero deforestation, new ties need to be woven between different levels of government, the private sector and civil society. But in order to act on private-sector commitments, incentive systems and regulations that are reinforcing old patterns first need to be untangled.”

– Pablo Pacheco

Commodity trade partnership

We believe developing 'commodity trade partnerships' is a possible way to untangle old patterns and define new paths forward. These partnerships would ideally create an enabling environment that catalyses trade in sustainable commodities, through a form of trade agreement, while supporting forest countries to address the direct and underlying drivers of deforestation and land-use change. Sustainable in this context means human rights compliant as well as environmentally sustainable.

Such partnerships should:

- aim to tackle underlying conditions that enable deforestation, such as poor governance and law enforcement, with incentives provided through trade measures and financial support;
- complement and support EU companies' actions within their own supply chains and extend sustainability objectives to producers outside EU supply chains;
- complement and be reinforced by a future EU Forest Risk Commodities Regulation.

But what would be the content of such a 'commodity trade partnership'? How can they be developed? Should they focus on one commodity or on several, or should they focus on wider land use or governance issues? Should they be at the national or jurisdictional level, where those are different? Which stakeholders should be part of the partnership and how should they be selected and given a voice? How can marginalised groups, such as Indigenous Peoples, be heard in contexts that currently discriminate against them so systematically? How can partnerships strengthen Indigenous Peoples' customary tenure rights and include them and other rural communities such as local farmers in decision-making? How could their effectiveness be measured?

These are just a few of the questions that this paper explores and that need to be thought through in any discussion on commodity trade partnerships.



Deforestation near Yangambi, DRC.
Photo by Axel Fassio/CIFOR

1. Lessons learned from existing partnership agreements


Four lessons

Academic studies indicate that neither company zero-deforestation commitments nor the Amsterdam Declaration Partnership have had much or any impact on halting deforestation.⁸ Soy data from Trase also shows that companies with zero-deforestation commitments do no better than companies that have not made any commitments.⁹ Signatories to the Amsterdam Declaration were exposed to similar or even higher levels of relative deforestation risk than China, with no discernible decline in deforestation risk since the Declaration came into force. The reasons listed as to why these initiatives did not have much impact are lack of clarity of the commitments, lack of effective monitoring and enforcement tools, and/or lack of a clear Theory of Change.

But there are examples of partnerships that have been effective. So, what can we learn from them? We looked at the literature and at eight relevant initiatives, including their aims, their impact, structure, and process. Although all eight are partnerships, not all focus on commodities and not all have a trade element. None-the-less, lessons can be drawn from all of them (see page 9-11 for the initiatives).

⁸ Bager 2020; zu Ermgassen 2020; Forest Trends 2017; Garrett 2019; NYDF Assessment Partners 2019.

⁹ Trase 2018, available at <https://yearbook2018.trase.earth/>



"Most policy proposals lack an explicit and proven Theory of Change, reducing their potential impact on reducing deforestation. Due diligence and multi-stakeholder fora stand out as policies that are feasible yet rest on a convincing Theory of Change."

– Simon Bager

There appear to be four important elements for making a partnership effective.

First, the initiative should clearly define “how the partnership creates the required change, rather than just what the required change is”. In other words, there should be a clear Theory of Change that can be monitored and evaluated. Describing the partnership’s aim is obviously important, but it is equally important to spell out who needs to do what to achieve the aim; to define what the obstacles are to achieving the aim, and how to remove them; and what the inbuilt assumptions are. This is further elaborated on in section II.

Second, there must be clear and direct incentives to encourage partnership actors to change. In the most effective partnerships to date, the aim was the disincentive of market exclusion of non-compliant commodities. Other trade incentives – as well as other financial incentives – are possible, but incentives must be clear to get the partners to act. Furthermore, the incentives must be built into legislative and/or governance structures to prevent them being easily dismantled by new incoming governments or administrations. Suggestions for trade incentives are made in section III.

Third, there must be an independent and robust monitoring and evaluating system with a powerful enforcement mechanism as part of the partnership agreement. Without an indication of impact, any agreement is likely to stall, and without enforcement mechanisms it is difficult to make the agreement impactful. This is further elaborated on in section V.

Fourth, to be legitimate and workable, the agreement must be guided by a multi-stakeholder, inclusive process in which governments, private sector (including small farmers), local and international NGOs, and communities all are heard, to allow for the breadth and depth required for governance improvements. All initiatives examined in this paper were based on a multi-stakeholder process, as this is today seen as the norm. Not all stakeholder processes are alike, however, and although getting that process right is difficult, it is important for guaranteeing its long-term effectiveness. This is elaborated on in section V.

Of the eight initiatives, the Illegal, Unreported & Unregulated Fishing (IUU) carding system, the Forest Law Enforcement, Governance & Trade (FLEGT) Voluntary Partnership Agreements (VPAs) and the Soy Moratorium are the three that have had the most measurable impact in terms of reduced illegality or deforestation. That may be because they are the oldest initiatives, but a proper comparison with the newer initiatives is not yet possible. It is noteworthy though that these three were all relatively inclusive multi-stakeholder processes with a clear Theory of Change, a strong trade link and an enforcement mechanism. The IUU and the VPAs also led to improved governance by influencing national policies and legislative processes. The Soy Moratorium built on existing Brazilian policy and legal incentives to halt deforestation.

It is noteworthy that the VPAs and the IUU carding system operate at the national level in the producer countries. This makes it relatively straightforward for the EU to link it with EU trade incentives, such as banning products from non-compliant countries (IUU) or only allowing licensed products from partner countries (FLEGT). Equally both schemes have legality as the basis and are grounded in international and national laws, avoiding potentially more difficult discussions on defining non-compliant commodities or countries by some other criteria that may be harder to define, though indeed in practice even legality has not proven simple to pin down. Last, both initiatives include legislation that complements the ‘partnership element’, increasing the effectiveness of the partnership: the catch certificate scheme in the case of the IUU, and the EU Timber Regulation in the case of VPAs.

The United Nations Development Programme (UNDP) Green Commodities Programme (GCP), the Cocoa & Forests Initiative (CFI) and the Africa Palm Oil Initiative (APOI) also operate at the national level, with an important role allocated to the national government, but to date they do not include a mandatory trade element requiring compliance with standards or action plans; none of them has consumer country government partners in the agreement. Nor do any of them include a monitoring and enforcement mechanism.

The Mato Grosso Produce, Conserve and Include (PCI) Strategy and Terpercaya in Indonesia operate at the jurisdictional level and are not commodity trade partnerships. In the case of PCI, the aim is to reduce deforestation, restore areas and improve livelihoods across the entire Mato Grosso territory. Terpercaya has similar aims, although in the first instance it focuses on palm oil only. In theory, however, these initiatives could be linked to an EU trade regime providing trade preferences or requirements for compliant commodities.

Beyond these four elements, other important issues include that any effective commodity trade partnership requires action to be taken on the ground in producer countries. This affects the conditions of production and producers including through improvements in governance and strengthening of property and tenure rights (see section II). In consumer countries action should be taken to provide favourable market conditions for sustainable products and/or less favourable market conditions for unsustainable products. Support measures should also be created (see sections III and IV).

Finally, action is needed to steer flows of finance and investment away from unsustainable activities and supply chains and/or towards sustainable activities and supply chains, possibly through complementary legislation, although that goes beyond the scope of this paper.

Eight existing partnership agreements

1 The EU FLEGT Action Plan is designed to reduce levels of illegal logging and improve governance in the forest sector. Legally binding bilateral trade agreements between the EU and timber producing countries – called Voluntary Partnership Agreements (VPAs) – are its central plank. VPAs include national traceability and export licensing systems intended to ensure that only timber products that have been produced legally can be exported. The EU Timber Regulation (EUTR) – which makes it a criminal offence to put illegally sourced timber on the EU market and requires importers to set up a due diligence system – is an important complementary measure. In 2015 the EU Court of Auditors argued FLEGT was hampered by a lack of focus and targets, and that funds could have spent more effectively, but several independent evaluations have since pointed to significant impacts.¹⁰ Notably, VPAs have contributed to a reduction in illegal logging and improved governance in countries such as Indonesia, Cameroon and Ghana.¹¹ The EUTR has had some impact on company behaviour but it is widely acknowledged that its implementation could be strengthened to prevent illegally sourced timber entering the EU.^{12,13} Lessons also need to be learned from the fact that not all VPA processes have assessed legality against *all* applicable laws, and in so doing missed an opportunity to ‘lever up’ regressive laws by referring to more progressive laws, including national constitutions and international environmental and human rights law.

¹⁰ Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=33292>

¹¹ Cerutti 2020.

¹² See e.g. WWF 2019, Enforcement Review of the EUTR: A Synthesis Report.

¹³ Brack 2022.

2 **Mato Grosso Produce, Conserve and Include (PCI) Strategy** is a jurisdictional initiative to prove that the Brazilian state of Mato Grosso can be an agricultural powerhouse ('Produce') while halting deforestation ('Conserve') and supporting farmers and Indigenous Peoples ('Include'). It is a partnership with governmental bodies, private-sector actors and local and international NGOs, as well as (although at a later stage) smallholders and Indigenous Peoples. PCI has 21 goals and Specific, Measurable, Achievable, Realistic and Timebound (SMART) target indicators for each year, up to 2018. It includes a group to monitor and evaluate progress. A dashboard shows progress towards the targets, indicating that most progress is being made in increasing areas that are well managed and in production, and that least progress is being made in smallholder production and land regularisation. An independent impact assessment has not yet been done.

3 **Tropical Forest Alliance (TFA2020) Africa Palm Oil Initiative (APOI)** is an initiative to produce sustainable palm oil in ten West and Central African countries.¹⁴ Based on a joint declaration, each country has developed a national plan with milestones, and a timeline that is being implemented by a national platform. This Declaration places sustainability, good governance, transparency, recognition of community and human rights, partnerships, and equitable benefit sharing at the heart of the of the oil palm sector. Partners include African governments, African Non-Governmental Organisations (NGOs) and the private sector at both national and regional levels. Palm oil is the primary focus, but the idea is that the national platforms can and should expand to other commodities. There is no impact on the ground yet as the initiative is still too young, although the initiative has pointed to some governance improvements in some countries.¹⁵ No independent assessment has yet been carried out.

4 **Cocoa and Forests Initiative (CFI)** is an initiative bringing together governments of Côte d'Ivoire, Ghana and Colombia and 33 of the world's leading cocoa and chocolate companies to end deforestation and promote forest restoration and protection in the cocoa supply chain. The participating governments have signed National Frameworks for Action focusing on (1) the conservation and restoration of forests; (2) sustainable intensification and diversification of farmers' income; and (3) engagement and empowerment of cocoa-growing communities. Each of the 33 company action plans has been aligned to the National Implementation Plans. The initiative has come under some NGO criticism, showing several serious shortcomings including the lack of participation of key actors; that key drivers of forest loss (such as corruption, low pricing of cocoa, and lack of clarity on tenure) are not being addressed properly, that there is a lack of clear indicators and processes for monitoring progress, and a lack of sanctions.

5 The **UNDP Green Commodities Programme (GCP)** aims to transform agricultural production and trade through multi-stakeholder collaboration and building enabling environments in 12 producer countries.¹⁶ UNDP acts as a neutral broker to bring together all stakeholders into a commodity and country-specific National Commodity Platform, which then collaboratively creates a National Action Plan. National Commodity Platforms bring together government officials, farmers, civil society groups and the private sector in a safe space to tackle the root causes limiting the sustainability of a sector. This is done by devising public policies and legal frameworks, considering issues around land-use planning and looking for effective ways to enforce laws. Platforms are led and owned by the government, driven by participants and enabled by the UNDP through its country offices. A steering committee for the platform provides coordination and helps reach decisions by consensus. No independent impact assessment has been done yet, but the initiative itself points to some governance improvements.¹⁷

¹⁴ Cameroon, Central African Republic, Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Ghana, Liberia, Nigeria, Republic of the Congo, and Sierra Leone.

¹⁵ Moving towards sustainable production; TFA Africa Palm Oil Initiative, no date. Available at: https://proforest.net/proforest/en/files/apoi_impactdoc.pdf

¹⁶ The programme is currently active in Mongolia (cashmere), Philippines (fisheries), Indonesia (palm oil), Papua New Guinea (palm oil), Liberia (palm oil), Ghana and Côte d'Ivoire (cocoa), Dominican Republic (cocoa), Costa Rica (pineapple and fisheries), Peru (coffee), Paraguay (beef and soy), and Ecuador (fisheries).

¹⁷ Personal communication by email 28/06/2020 with Andrew Bovarnick.

6 The **Soy Moratorium** has at its core that companies refuse to buy soy from traders who get their supply from forest destruction, slave labour or Indigenous lands in the Amazon. It brought together companies, environmental NGOs and the Brazilian government, and included an independent, robust monitoring system and powerful enforcement mechanism – aiming to exclude non-compliant soy from the market. Farmers growing soy on land in the Brazilian Amazon that was cleared after 26 July 2006 were no longer able to sell to participating companies, which covered 90 per cent of soy exported from the Brazilian Amazon. It undoubtedly contributed to a large drop in deforestation in the Brazilian Amazon, although production increased.¹⁸ However, there were several other developments that contributed: the launch of the DETER system¹⁹ detecting and responding to deforestation; elevating deforestation to the President's office; increased cooperation across different ministries including the Federal Police and the powerful Public Prosecutor's Office; expansion of protected areas and Indigenous territories, and suspending access to agricultural credit for those farms and ranches located in counties with the highest deforestation rates.²⁰ The Soy Moratorium is also likely to have exacerbated soy-associated land conversion in the Cerrado, by displacing soy expansion away from the Amazon.²¹ There are also clear indications that the reduction in deforestation in Brazil from 2005 onwards (which was because of stringent national policies as well as the Soy Moratorium) may have simply pushed deforestation into neighbouring countries such as Paraguay and Peru.^{22,23}

7 **Terpercaya, Indonesia** has developed jurisdictional sustainability indicators to demonstrate sustainable palm oil and other commodities production, and to encourage progress towards sustainability by linking jurisdictions with international markets, yet to be defined, for palm oil using supply-chain mapping through Trase. The thinking behind Terpercaya is that measuring sustainability performance at the jurisdictional level, based on a set of indicators and a supply-chain tracking system, may be simpler, less costly, and more effective in reducing deforestation while maintaining (or increasing) palm oil production and including smallholders and Indigenous Peoples in global supply chains. Twenty-two indicators have been agreed, with the aim of a multi-stakeholder group updating/assessing them annually, including government, private sector, local and international NGOs and Indigenous Peoples' networks. These indicators will now be used to assess the sustainability of commodity production across a district, encouraging local authorities to ensure that the whole district meets these criteria, after which the district can be 'certified' as producing sustainable palm oil. It is still unclear, however, who will do the certification and who will buy the certified products. As the system is not yet operational there is no measurable impact on the ground.

8 The EU **Illegal Unreported and Unregulated (IUU) Fishing Regulation** aims to prevent, deter and eliminate IUU fishing. The regulation includes a catch certification scheme requiring companies placing fishery products on the EU market to provide a certificate that the fish has been caught legally, which relies explicitly on official documentation from producer countries attesting to legality compliance. It also relies on a 'third-country carding scheme' whereby, if a country fails to implement relevant international agreements, the EU can hand out yellow or red cards. A yellow card formally sets out the improvements needed to maintain access to the EU market. In the most severe cases of non-performance, the EU will issue a red card, banning the import of fishery products from that country. On making required improvements, a country can be removed from the carding list. To date, the EU has engaged with almost 50 countries via this carding system. The majority have undertaken key recommended reforms with no need for warnings. There is clear evidence that countries are motivated to act when threatened with a yellow or red card. Notably the governments of Ghana and Thailand significantly improved their efforts to tackle IUU fishing when they were yellow-carded.²⁴

18 One study indicates a 5.7-fold decrease in annual deforestation in the Amazon region of Mato Grosso, together with a 2.4 increase in planting and a 3.5 increase in crop harvest (Kastens 2017). Another study indicates that the deforestation risk declined particularly from 2008 onwards when satellite monitoring was introduced and points to a reduction in deforestation from 30 per cent in 2006 to around 1 per cent in 2014 (Gibbs 2015).

19 Detection of Deforestation in Real Time system launched in 2004 for the detection and responding to deforestation events.

20 Nepstad 2014.

21 zu Ermgassen 2020.

22 Leblois 2017.

23 This points to the limits of working on the supply side alone. Theoretically if there was a strong demand-side control this should not have happened.

24 Sumaila 2019; EIJ 2016.

2. Key content issues a partnership should address

The specific aims of a commodity trade partnership should be developed jointly in a deliberative multi-stakeholder process (see section V). Care should be taken that the partnership does not just spell out the aims and actions required by the partners, but also how these actions will create the required change and the assumptions behind them. Aims and actions should be tested and adjusted over time, guided by a monitoring and evaluation system.

Although the precise content of the partnership should depend on the outcome of this multi-stakeholder process, there are issues that are likely to require significant attention in each partnership. They include but are not limited to definitions of forests and deforestation, cut-off dates, the customary rights of Indigenous Peoples and local communities, and the role of smallholders.

Definitions of deforestation

How forests are defined affects the amount of land available for agricultural production, and the cost of monitoring compliance. Implicitly or explicitly excluding certain types of ecosystems will influence which locations and land uses get targeted for agricultural development. The Soy Moratorium showed that focusing just on forests could negatively impact other ecosystems. If the focus is on illegal land conversion that should be clearly defined and rooted in a holistic appraisal of applicable law, including international environmental and human rights law.

Research into zero-deforestation commitments indicates that without a concrete cut-off date for deforestation in the immediate future or past, commitments are unlikely to discourage further clearance, as producers continue to receive the message that commodities coming from deforestation can be marketed without repercussion. There may also be a scramble to get everything out before the cut-off date. But an immediate cut-off date has the danger of cutting off suppliers who could have been persuaded to stop clearing; they also offer what amounts to an amnesty for past deforestation and/or illegality.²⁵ Hence any cut-off date, or lack of it, has consequences that should be thought through as part of the multi-stakeholder discussion.

Note that many zero-deforestation commitments do not include indirect land-use change which can be a major problem, notably with soy. Even where soy expands over pasture and is deforestation-free, it often displaces beef production and creates incentives for further deforestation by driving up expected agricultural rents and injecting capital into agricultural markets. Any agreement should therefore look at indirect impacts and unintended consequences.

25 Some point out that new land clearance is unlikely to be done by new suppliers – it is more likely to be done by existing suppliers expanding.



"An analysis of almost 73,000 concessions in eight tropical forested countries, found that more than 93 per cent of these developments involved land inhabited by Indigenous Peoples or local communities. These concessions therefore almost always generate conflict."

– The Munden Project

Customary tenure rights

Property rights in many tropical forest countries are dysfunctional. Ownership or lease of land is often granted to companies without the knowledge or consent of the people who live or depend on that land. In countries such as Indonesia and Liberia more than a third of the land has been given out in concessions without proper Free, Prior and Informed Consent (FPIC). In an analysis of almost 73,000 concessions in eight tropical forested countries, more than 93 per cent of these developments were found to involve land inhabited by Indigenous Peoples and local communities. These concessions almost always generate conflict leading to often violent human rights abuses that go hand in hand with the environmental degradation wrought by the concessionaires.

Considering that most forest land is owned or used by local communities, and that where Indigenous Peoples have rights to the forest land there is less risk of deforestation,²⁶ tackling deforestation must go hand in hand with clarifying property rights, including the recognition and protection of community tenure rights. Specific attention should be given to ensure that also women's rights to land are being recognised and protected. There must be a time-bound process to demarcate and gazette Indigenous Peoples' and local communities' lands and to resolve existing tenurial conflicts. This is not just to avoid conflict, but also to do justice and recognise customary law and the fact that local communities and specifically Indigenous Peoples are the best guardians of the forest.²⁷

Endorsement of the FAO Voluntary Guidelines on the Governance of Tenure (VGGT) encapsulates the existing legal commitments by recognising the need to legalise, demarcate and gazette customary tenure rights, and many countries have started a process to do so. Effective implementation is key for a successful agreement (see Box 1).

Box 1. The Voluntary Guidelines on the Responsible Governance of Tenure²⁸ contain progressive standards on community tenure, including recognition of the need for States to respect and protect customary and informal tenure systems (VGGT: Section 9). The development of the VGGT began in 2009 and the guidelines were adopted through a multi-stakeholder process by the Committee on World Food Security in May 2012. A major strength of the VGGT stems from its high level of legitimacy and endorsement by governments, whose representatives were involved in creating them, as well as the G7 and G8, the EU, the Organisation for Economic Cooperation and Development (OECD), donor agencies and many civil society organisations as well as transnational agribusiness, food and drink companies. Although the VGGT standard is not binding in itself, the standard is rooted in international laws which are legally binding on states that are party to those laws and reflected by the fundamental rights and freedoms found in many countries' constitutions. A drawback is that existing monitoring and accountability mechanisms at the global and national levels are weak or absent. The EU can help improve accountability by developing laws and policies that require respect for the VGGT. The OECD Guidelines for Responsible Agricultural Commodities have fully integrated the VGGT. For more information see [Fern \(2017\) The VGGT what potential to engage?](#)

²⁶ Seymour, 2014; WRI, no date; Ding H, no date.

²⁷ Ibid.

³¹ The full name is: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. They promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment.

Smallholders

Any commodity trade partnership agreement risks squeezing smallholders out of the supply chain, as they often have difficulty complying with increased demands for transparency, legality or sustainability. However, no agreement will succeed without their buy-in. Hence any partnership agreement must include mechanisms targeting improved smallholder production and improved financial flows to smallholder farms, e.g. guaranteeing a higher price for the products they sell, financial products for pre-season finance or some form of insurance in case of a bad season or price collapse.

Most smallholder producers do not have access to global financial markets. This is even more the case for women smallholders. Lack of finance for smallholders is a key reason for environmental and social problems, including not having money to replace aging trees, or for reforestation, and being dependent on pre-season finance from companies (or the government), creating a disadvantageous negotiating position.

Smallholders are often badly organised, or not organised at all. To play an effective role in any partnership agreement, there is likely a need to strengthen the institutional capacity of smallholders or their cooperatives (for instance), notably in Africa, to empower them to advocate for their members in national policy discussions and to act as landscape managers. Specific attention should be given to ensure female farmers' voices are heard, as they are often not or under-represented at all levels.

It is worth noting that not all smallholders are alike, and some may in fact be comparatively large and well-resourced operators, although not on the scale of transnational corporate actors. Any participatory agreement must ensure that less powerful voices are heard and not excluded or eclipsed by more powerful actors, even if broadly speaking they are all considered part of the same stakeholder category.



Nutrition survey in the village of Bafwaboli, near Kisangani - DRC
Photo by Axel Fassio/CIFOR

3. Trade incentives to incorporate in a partnership agreement

For a partnership to be effective there must be clear and direct incentives for the actors to change. In the most effective partnerships examined above, there was a mechanism for market exclusion of non-compliant commodities. Other trade mechanisms are possible if they are clear and enforceable.

The depth and the inclusiveness of the partnership agreement may differ, depending on the level of political will to address deforestation and human rights violations. At one end of the spectrum are countries that may want a genuine partnership agreement with the EU, for instance Ghana, concerning timber and cocoa. At the other end are countries currently not interested in any partnership to tackle deforestation and human rights, such as Brazil. Many others are in between.

The quality of the partnership is determined by the level to which a country wants to engage. But in all cases, the EU should take action to provide favourable market conditions for sustainable or compliant products and less favourable market conditions for unsustainable or non-compliant products.

This section provides some examples – not mutually exclusive – of trade-related measures to support or enforce a partnership agreement and/or a future EU Forest Risk Commodities Regulation for which the EU is expected to table a legislative proposal in 2021.²⁹ They include measures that would only be effective with a partnership as well as unilateral trade measures that the EU could consider if no form of partnership is possible.

A VPA-like agreement

The EU could (as it has done with illegal timber through the VPA process) develop legally binding trade partnership agreements with one or more producer countries focused on one or more commodities.³⁰


Like with the VPAs, such a partnership agreement could include developing a full-blown licensing scheme, licensing compliant products, and legislation banning non-licensed products from partner countries. A partnership could also be based on working with partner countries towards the creation of zero-deforestation jurisdictions in a country, from which EU companies would then be able to import. This is the approach that the Terpercaya project is working towards concerning palm oil in Indonesia. A partnership of this type would require a tracing system to prove that the commodities are coming from the claimed jurisdictional area.

This type of legally binding partnership agreement can only be developed effectively if producer countries have the political will to engage with such a process, and give small farmers and civil society actors including local communities and Indigenous Peoples a role in designing the agreement.

²⁹ For more details see Fern report webinar 'Ending imported destruction', 26 June 2020. Available here: <https://www.fern.org/fr/ressources/ending-imported-destruction-how-eu-due-diligence-regulations-could-protect-forests-and-people-2169/>

³⁰ This may be the outcome of a multi-stakeholder dialogue the EU has started with Ghana and Cote d'Ivoire on cocoa. See joint NGO recommendations for this process here: <https://www.fern.org/publications-insight/key-elements-for-an-agreement-between-the-eu-and-cocoa-producing-countries-to-ensure-sustainability-in-the-cocoa-sector-2207/>

³¹ Former DG Trade Commissioner Cecilia Malmström at the formation of the Amsterdam Partnership, available: http://trade.ec.europa.eu/doclib/docs/2015/december/tradoc_154020.pdf



"As the world's largest market of consumer goods and services, our choices are affecting many hundreds of millions of people every day. We therefore have a responsibility to ensure that those choices do not undermine human rights, the protection of the environment and economic opportunity. In short, we need supply chains that are responsible. The question is how to achieve it."³¹

– Cecilia Malmström

A third country or region carding system

The EU Regulation to end Illegal, Unreported and Unregulated (IUU) fishing includes a third country carding system that could be useful in an FRC trade partnership. Under the IUU, if a country fails to implement relevant international agreements, the EU can impose a trade ban on the country's fisheries products by issuing a red card. But before doing so, and where a country's governance capacities and performance are deemed insufficient, the EU will issue a warning (yellow card) formally setting out the improvements needed to maintain access to the EU market. On making the required improvements, the country will be removed from the list of problem countries. Even before a yellow card is issued, the EU engages with the country to help foster improvements, including through the provision of capacity-building resources.

This IUU carding system is complemented by two other legal measures: first, a catch certification scheme requiring companies placing fishery products on the EU market to provide a certificate that the fish has been caught legally, which relies explicitly on official documentation from producer countries attesting to legality compliance by vessels.³² Second, the carding system is complemented by an IUU vessel list which bans importation of fishery products from vessels known to engage in IUU fishing. It should be noted that the relevant international agreements are all internationally established legal obligations, which means that the EU uses the IUU to effectively enforce these international agreements.

A similar carding system could be set up jointly by the EU and producer countries to promote implementation of the VGGT – see Box 1. If the VGGT were the focus, the EU and the producer country could begin with the development of a baseline assessment, showing existing measures for securing and protecting tenure. It would be followed by a roadmap developed by the partner country (in collaboration with the multi-stakeholder group) which could, in turn, be monitored and supported to ensure good progress. EU development aid is already supporting VGGT implementation in 49 countries.³³ The Commission should make material publicly available, including country assessments of their legal frameworks and administrative systems governing tenure; Commission fact-finding missions; and country roadmaps for bringing practices in line with VGGT principles and recommendations. This would not only foster accountability, but also provide useful information for operators exercising due diligence in reference to VGGT principles, which hopefully will become part of the to-be-developed EU Forest Risk Commodities Regulation.³⁴ The advantage of using the VGGT is that they are an internationally accepted standard. For more information see [Fern's report Hardening Soft Law](#).

A similar system could also be set up with zero deforestation and human rights as the focus. In that case the EU and the producer country would first conduct an assessment to identify the countries' or jurisdictions' risks of deforestation and human rights abuses. It would be followed by a roadmap developed by the partner country with EU support to tackle governance issues, which would be monitored and supported to ensure good progress.

To make a carding system work for deforestation and human rights, it would be helpful or possibly essential to have internationally agreed guidelines for 'deforestation-free' commodity supply chains to accompany those that already exist in relation to human rights. These could be developed through existing international platforms and forums seeking to operationalise companies' 'zero-deforestation' commitments and then incorporated into the OECD-FAO Guidance for Responsible Agricultural Supply Chains. This could build on the work done through the [Accountability Framework](#), although this has not yet been widely supported by industry or government actors.

32 Most NGOs would not be happy with a system that relied on official government documents to summarise legality of source in the timber and agricultural sectors.

33 <https://landgov.donorplatform.org/>

34 For more details see Fern's report of its webinar 'Ending imported deforestation' on 26 June 2020. Available [here](#).

A risk alert system

A risk alert system could be used as a complementary measure to an EU Forest Risk Commodities Regulation for those countries for whom a full-blown commodity trade partnership agreement is not (yet) feasible. It would require a country, or possibly a jurisdiction, through a deliberative inclusive process (see section V) to develop an action plan to cut deforestation, respect community tenure rights and improve governance across the forest and land sector with clear targets and milestones. If a country misses one or more milestones it would then be given a risk alert and a timeline to improve.³⁵

Hence it would have some of the same elements as the third country carding system, notably the country assessment process. But rather than issuing a yellow or red card, if the assessment throws up risks of deforestation or human rights violations, the EU would put in place risk alerts. Such a 'risk list' is operated by the US Department of Labor concerning child labour or forced labour.³⁶

If the EU Forest Risk Commodities legislation takes the form of a due diligence regulation, the regulation could modify its requirements when a risk alert is in place. When importing products to a country subject to a risk alert, companies could be required to increase their due diligence, and to proactively demonstrate to EU authorities that the products they are importing are not linked to deforestation or human rights abuses. A risk alert may also be an indication to EU financial institutions – who would likely be subject to due diligence obligations under the new regulation – to carry out more due diligence, and therefore to raise their interest rates when lending to these countries.

The EU could work with the producer country to make progress on governance milestones defined by the multi-stakeholder process. Progress, or lack thereof, could be linked with import quotas and/or financial support.

Tariff or quota-based incentives

Both the EU and producer country governments have the power to affect supply chains not just through subsidies, bans or moratoria, but also via tariffs. Lowering of export and import tariffs for no-deforestation, no-conflict or sustainably produced commodities could increase the competitiveness of such commodities. As an element of a partnership agreement, or independently of such an agreement, both the EU and partner countries could explore opportunities for lowering import tariffs and export tariffs, or even quotas, for compliant agricultural commodities.

Other possible trade restrictions include: increased import tariffs; making producers pay a 'deforestation' fee similar to a carbon offset, as the EU proposed for biofuel; or putting in place export tariffs, although they have to be World Trade Organisation (WTO) compliant. For more information see Fern's report [Duty Free, Making tariffs work for forests and people](#).

³⁵ If this approach is taken, displacement of production and hence deforestation should also be monitored as part of the plan where possible.

³⁶ US Department of Labor's 2018 List of goods produced by child labor or forced labor available at: <https://www.dol.gov/sites/dolgov/files/ILAB/ListofGoods.pdf>

Ban on non-compliant products

Unilateral measures should be a last resort, but laws in the US show that they can promote useful action by companies. A 1996 amendment to the 1930 US Tariffs Act, embedded in the Trade Facilitation and Trade Enforcement Act (TFTEA), grants the Customs and Border Protection Agency powers to exclude whole categories of products from the market given sufficient evidence that they are at significant risk of being produced with forced labour. Companies are then required to demonstrate through due diligence that their imported goods are free from this taint.

This law was used to bring a case against palm oil giant Sime Darby in April 2020, by Liberty Shared³⁷, and in February 2020 by IRAdvocates and Corporate Accountability Lab³⁸ urging the US Customs and Borders Protection agency to ban all cocoa imports from Côte d'Ivoire unless the sued companies produce "a full and transparent supply chain, a detailed public report on how they are using independent third-party monitors to implement their policies, and a grievance mechanism for victims". US Customs have since acted by requesting detailed information from the sued companies.

The EU could consider creating a similar mechanism whereby, where a producer country shows no interest or willingness to tackle serious land rights abuses, deforestation or forest degradation in a certain commodity value chain, the EU can impose a temporary commodity ban from that country (or region) until the issues are resolved. This could help push the country to resolve the issues. The EU could offer financial and technical support to resolve the issue.

³⁷ Saunders 2020.

³⁸ 14 February 2020; Rights Groups Demand that CBP Order Chocolate Companies to Demonstrate They Have Changed their Practices within 180 days or Face Import Ban; Contacts: Terry Collingsworth, IRAdvocates Executive Director email: tc@iradvocates.org; Charity Ryerson, Corporate Accountability Lab Legal Director: charity.ryerson@corpaccountabilitylab.org

Aerial view of the Amazon Rainforest
Photo by Neil Palmer/CIAT



4. Conditions to make a partnership agreement work

Partnerships need financial support to work. But they can only be effective if EU and producer countries' policies and legislation are coherent and working in tandem to tackle deforestation and human rights abuses. In many producer countries legislation is unclear, incoherent or in conflict with international law, or indeed other domestic laws, including constitutions. Some laws, notably in the agricultural sector, may actively undermine attempts to tackle deforestation. In the EU, trade or agricultural policies may actively undermine policies to tackle deforestation and human rights too.

Assessing whether the existing legal and policy framework is clear and fit for purpose in both the EU and producer countries is, therefore, important for any partnership to be effective. Identifying contradictions, inconsistencies and gaps, and coming up with a roadmap for how to tackle them on both sides, should therefore be considered as a vital step. The process of designing the partnership agreement should allow room for reflection on the relevance of laws and be predicated on making the reforms that are necessary in both producer and consumer countries.



“The process of designing the partnership agreement should allow room for reflection on the relevance of laws and possibilities for reform in both producer and consumer countries.”

– Michel Laforge

Consistency between laws and policies in producer countries

First, conflict or coordination between (for instance) forest and agricultural policy may dramatically increase or reduce deforestation. Such conflict is evident in Indonesia where local government support for job creation in the palm oil sector contrasts with national-level goals for reduced deforestation. In Brazil, too, federal programmes using tax incentives, credit access and subsidies encouraged investment in large-scale farming and cattle ranching, which contributed to rapid deforestation between 1960 and 1980. When rural credit restrictions were put in place for counties experiencing high deforestation, a decline in deforestation ensued.³⁹ Similarly, the Brazilian Forest Code requires Amazonian landowners to retain at least 80 per cent of their properties as forests, even though the current regime is keen to open up the Amazon.

Second, good governance depends on functioning legal systems based on progressive coherence between national laws and international legal commitments. 'Legal' does not always mean legitimate. Nobody will argue that the laws underpinning apartheid in South Africa were just, and the same argument should be made for the Indonesian Forestry Laws of 1967 and 1999 claiming state ownership over Indigenous forest land. Hence it is important that the existing national legal system can be challenged and improved, including bringing it in line with national constitutions and international human rights and environmental laws and standards-- which then, of course, must be implemented.

Consistency with EU Free Trade Agreements

At the EU level an assessment should include whether existing EU policies or laws would be conducive or undermining to stopping deforestation & human rights abuses in the partner country. For example, it may be that EU Free Trade Agreements (FTAs) are undermining such an effort.

As the EU is negotiating an FTA with most of the countries exporting FRCs (Brazil, Argentina, Paraguay, through the Mercosur Agreement as well as with Indonesia and Malaysia – although the latter seems to have stalled), it is important to ensure that FTAs support any potential partnership agreement to stop deforestation and human rights abuses. FTA texts should be scrutinised to ensure they do not contribute to human rights violations or deforestation. As the aim of any FTA is to increase trade, which without sufficient safeguards would mean more deforestation and human rights violations, it should be recognised that FTAs are a significant risk.

For the EU to implement its forest commitments – in tandem with a possible commodity partnership agreement – DG Trade must ensure FTAs stimulate only legal, human rights compliant, sustainable production. Strengthening the FTA negotiation process to make it more transparent and deliberative is equally important. Trade and Sustainable Development (TSD) chapters – the chapters of FTAs dealing with environmental and social issues – rely on dialogue and cooperation on environmental and labour issues and are therefore well suited to a deliberative process. Currently the text in these chapters is too vague to have an impact; the chapter itself is not enforceable in line with the rest of the FTA, and the process is opaque. Change is required. For detailed suggestions on how to use FTAs to address deforestation and human rights violations, see Fern's report [Forests and Forest People in EU Free Trade Agreements](#).

39 Nepstad 2014.

Consistency with the EU Common Agricultural Policy and the Renewable Energy Directive

It is not just with FTAs that EU policies can undermine the EU's stated intention of reducing deforestation. Both the EU Common Agricultural Policy (CAP) and the Renewable Energy Directive (RED) have contributed to deforestation.

The CAP, which is currently being revised, can be linked with the expansion of soybean cultivation as European farmers rely on almost tariff-free imported soy from Brazil, Argentina and Paraguay to use as animal feed. Of all the soy meal consumed in the EU, 83 per cent goes in concentrate feed for pigs and poultry.⁴⁰ As Fern argued in its report Agriculture and Deforestation; the CAP, soy and forest destruction, reform of the CAP should not only make agricultural support conditional on reducing nitrogen surpluses, increasing animal health and welfare, and the efficient use of available resources, but also reduce the consumption of FRCs and elaborate incentives for legal and sustainable production of soy, possibly including the development of sustainability criteria for feed imports – to be negotiated and agreed with all stakeholders in producer countries.

Concerning renewable energy, by putting in place a 20 per cent target for renewable energy by 2020, and a 10 per cent target for the transport sector in its first RED (2009), the EU stimulated the use of palm oil for biodiesel. Most palm oil imported by the EU is now used for bioenergy, especially biofuels for transport. Imports increased from 4.9 million tonnes in 2009 to 6.7 million tonnes in 2017.⁴¹ Several studies, including a recent one by Rainforest Foundation Norway, make a direct link between tropical forest destruction and the increased EU consumption of palm oil for biofuel.⁴²

A revised RED, REDII (2018) increased the renewable energy target (32 per cent by 2030) and transport target (14 per cent) but recognised that converting forests and peatland to produce biofuels risks negating gains made from changing to renewable energy. Therefore, it stipulated that, by 2030, biofuels that have a high risk of indirect land use change (ILUC) may not count towards Member States' obligatory targets. Palm oil has been singled out as the only agricultural crop that carries such a risk, letting soy and rapeseed (for instance) off the hook.

REDII also still allows for large-scale burning of trees for bioenergy. Despite a warning letter by more than 700 scientists pointing out that "burning forests for energy, even if forests regrow, will increase carbon dioxide in the atmosphere and warming for decades to centuries – as many studies have shown – even when wood replaces coal, oil or natural gas",⁴³ the EU adopted REDII. The increase in forest harvests across the EU for bioenergy now risks reducing forest biodiversity even further as well as reducing the EU's forest sink; while imports of pellets from the US is driving forest destruction in the US.

Ensuring that all EU policies, including agriculture and energy policies contribute to forest restoration rather than destruction and respect human rights are therefore essential and a condition for the EU to be a trustworthy partner in any partnership agreement.

40 The changes in the tariff regime created incentives for European farmers to import soy meal and other non-grain concentrate feed products from countries outside the EU, while their own (at that time) subsidised grain production was sold for export.

41 Submission by Biofuelwatch and Global Forest Coalition to European Commission. Available at: <https://ec.europa.eu/environment/forests/pdf/respondents-additional-inputs/Global%20Forest%20Coalition+Biofuelwatch.pdf>

42 Rainforest Foundation Norway. Biofuel add fuel to forest fires. March 2020. Available at: <https://www.regnskog.no/en/news/biofuels-add-fuel-to-forest-fires>

43 Letter from scientists to the European Parliament concerning biomass, updated January 2018. Available at: <https://www.euractiv.com/wp-content/uploads/sites/2/2018/01/Letter-of-Scientists-on-Use-of-Forest-Biomass-for-Bioenergy-January-12-2018.pdf>

Financial support

Any commodity trade partnership requires funding. If the EU embarks on partnerships it must allocate sufficient funds and in such a way that it has measurable impact on the ground. Financial support required depends on the partnership, but funds are likely to be needed for:

- The process of designing and implementing the agreement; notably capacity building of all partners in the partnership – specifically local communities, and women within these communities, NGOs, small farmers' organisations and Small and Medium Enterprises (SMEs) – as well as the consultation element (see section V).
- The clarification and demarcation of customary land and participatory land use planning as without this production could easily be illegal and is likely to fuel both human rights abuses and deforestation (see section II).
- Properly recompensing producers (particularly smallholders and women) for the true price of sustainable production as there is a price differential between sustainable and non-sustainable production which puts the former at an anti-competitive disadvantage.
- The process of monitoring, evaluating and enforcing the partnership, including data gathering (see section V).

Financial support could be provided through mobilising Official Development Assistance and other public finance and philanthropic funding. Of the average annual public finance investment in climate mitigation only three per cent went to agriculture, forestry, land use, and natural resource management in 2015/2016.⁴⁴ Of all development funds from Norway and EU Member States less than two per cent goes to forests,⁴⁵ and of all funds raised to mitigate climate change globally only 10 per cent goes to local level action.⁴⁶ The DG DEVCO plans for forest partnership agreements could be integrated with these commodity trade partnerships, where applicable.

Money could also come from new innovative solutions that reward sustainable and human rights compliant behaviour within commodity supply chains, or from increasing the price paid to smallholder farmers, for example through a consumer levy or an obligation on buyers to pay a higher price, as is currently being discussed in the cocoa sector.

Last, money could be diverted from financing deforestation by requiring transparency and subjecting financial institutions to EU due diligence requirements. Almost 44 billion Euros in loans and 17.5 billion Euros in new shares and bonds were provided to high deforestation risk activities in South-East Asia alone during the period 2010–2015, often by multinational-- mainly EU, US, China and Japan-based --banks. EU banks provided more than 20 per cent of the loans and more than 25 per cent of the underwriting of bonds and shares. There is an urgent need for companies across the value chain to decouple production from forest impacts, including deforestation and forest degradation and abuse of the rights of forest communities. Requiring financial institutions to disclose deforestation risk could support this. For more information see Fern's report [Clear Cut, Making EU Financial Institutions Work for Forests and People.](#)

44 Buchner, 2017

45 In 2012 (latest data available) it was 1.75 per cent with Norway contributing nearly 50 per cent. See Fern's report 'Taking Stock, tracking trends in European aid to forests' available: <https://www.fern.org/publications-insight/taking-stock-tracking-trends-in-european-aid-for-forests-and-communities-543/>

46 Soanes, 2019

5. Key process elements to be addressed

Not just the content, but also the process of developing an effective partnership agreement is important. The effectiveness of any initiative tackling governance issues depends on the governance of the initiative itself, at least to some extent. To tackle systemic, wicked problems, the initiative must be inclusive, representative, transparent, self-critical, resilient and enduring. Below we describe some of the elements that would contribute to this.

Building on existing initiatives

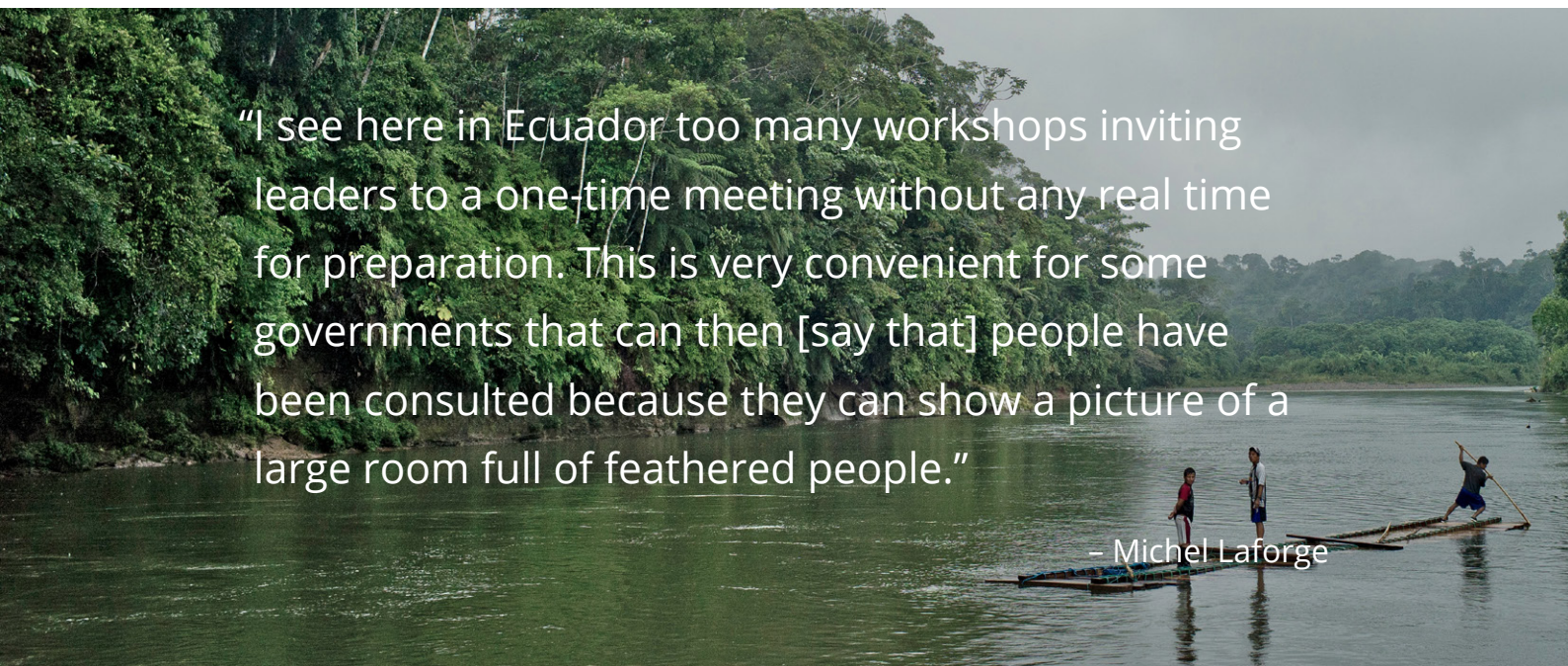
There are many initiatives and activities focusing on governance, commodities, supply chains, land rights and land use, and corruption. It is therefore important to know what existing initiatives there are, to assess them and to build on them. Building on them could mean learning from existing initiatives; merging with an ongoing process by adding objectives and stakeholders or partners rather than creating new and parallel structures; or ensuring sufficient information-sharing with other initiatives to strengthen both.

Getting the right people around the table

Those who are impacted by the partnership, and those responsible for implementing it, should be at the table. But that is easier said than done, and the more all-encompassing the partnership the more difficult this is.

The private sector. When negotiating commodity partnerships, it is important to know and understand the trade links, so that key producers and trading companies are on board. The Soy Moratorium shows that when a significant majority of the companies are on board, the agreement can be successful. Trase data increasingly allow us to know who the traders are. For other commodities, the role of SMEs or local farmers is critical: not only because they are key producers, whose absence would put implementation at risk, but also because they are large in number, and collectively more connected to local people.

Photo by Tomas Munita/CIFOR



"I see here in Ecuador too many workshops inviting leaders to a one-time meeting without any real time for preparation. This is very convenient for some governments that can then [say that] people have been consulted because they can show a picture of a large room full of feathered people."

– Michel Laforge

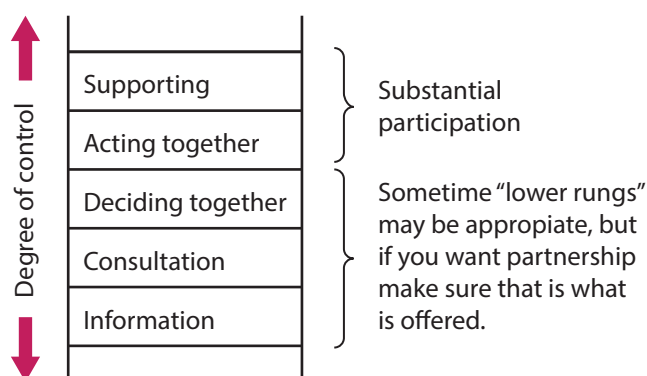
NGOs. NGOs are rarely a harmonised group, as they represent different interests, political visions and bring different knowledge and skills. First it is important to make a distinction between national or local NGOs and international NGOs. NGOs with headquarters in the Global North may have different agendas than local NGOs. Second, it can be beneficial to have a mixture of NGOs specialised in (for instance) human rights, forest ecology and political economy. Third, NGOs must choose their own representatives and develop ways of communicating among themselves to ensure proper feedback mechanisms.

Communities and Indigenous Peoples. Indigenous Peoples and local communities are often rights-holders rather than stakeholders. Their seat at the table is critical. Not all local communities are well organised, however, making representation difficult and capacity-building a requirement. This is further complicated by the fact that governments often fail to recognise the existence of some representative organisations. Others are captured by elites or well-known individuals. Ensuring proper representation, therefore, takes time, preparation and capacity building. It is particularly important to understand that local communities are often at a disadvantage in terms of power, whether that is the result of their remoteness, education, lack of financial resources and/or them being systematically marginalised. Actions to address this power imbalance are therefore key to ensure these communities' voices are not eclipsed by e.g. NGO, private sector or government actors.

Governments. All relevant ministries should partner or be consulted, including those that tend not to be supportive. Those with power to implement must be at the table. That includes the bureaucrats or politicians with decision-making power.

A deliberative process

There is a scale of involvement, from being informed and consulted to actively participating in a process. It should be clear in advance what the level of participation of partners in a commodity partnership agreement is.



Any participative process should ensure, first, that participants are truly representative and have the capacity to participate; second, that all information is accessible to those participating, in the correct format and language; and third that there is enough time to participate, including consulting constituencies.



“We have many examples in Indonesia of where information was only shared at the last minute and often in a language that is not easy to understand by local NGOs and Indigenous Peoples.”

– Minang Minansari

EU and partner governments should first assess who stakeholders and rightsholders are, who can best represent them, and how they should be elected or selected. It is essential that rights-holders (such as Indigenous Peoples and local farming communities) and stakeholders (such as civil society organisations as well as small and medium enterprises) have sufficient capacity to advocate and be truly representative and accountable – and that the process builds in enough time for them to participate effectively and self-select their representatives rather than have these representatives chosen for them.

Ideally the process should consider the structural problems that the partnership aims to address. This often includes the disenfranchisement of rural people from policymaking, the lack of recognition of customary tenure rights, conflicting or inadequate laws and/or lack of enforcement, and a lack of accountability and transparency that often allows politicians to act with impunity.

Monitoring and enforcing the partnership

Effective monitoring and enforcing mechanisms are important to create buy-in, allow for re-assessment and adaptation, and to motivate actors to create the required change. The exact monitoring and enforcement mechanisms will depend on the objectives of the partnership agreement. However, attributes of a functional monitoring system are likely to include traceability mechanisms (linking suppliers to a specific place, see below), real-time deforestation detection, monitoring overall governance improvements, monitoring of land rights gazettement or demarcation processes and developing a record of infractions that can be checked.

Technology is an increasingly helpful tool here, as real-time deforestation detection is perfectly possible through various initiatives including Starling and Global Forest Watch.⁴⁷ The EU Commission could build on and strengthen these tools in their plans to improve the availability, quality and harmonisation of reliable information on forest resources and land-use change.⁴⁸ Similarly, advances have been made in community based monitoring that can be used to identify and record human rights compliance issues, including icon-based Global Information System (GIS) technology that can be used in situations where many people are illiterate.

The monitoring results should feed into enforcement mechanisms to be developed as part of the partnership or the trade-based incentives described in section III. There also needs to be clarity on who is going to do the monitoring and the assessments, ensuring its independence, and clarity about how stakeholders can provide input.

⁴⁷ The first one is more detailed but not free; the second one is less detailed but free.

⁴⁸ EU Communication, Annex I.

Traceability

Enforcing any measure is likely to require traceability across the supply chain. One of the reasons most frequently mentioned in academic studies for the failure of existing company zero-deforestation commitments to have any impact is the lack of traceability in the supply chain.⁴⁹

To date, few companies have been able to trace their products all the way to the plantation or the farm. It is complicated and costly. It took Golden Agri-Resources more than a year to trace their palm oil back to 85,000 smallholders in their supply chain, across eight provinces in Indonesia.⁵⁰ However, there seems to be a growing consensus among NGOs and large companies that traceability to the source (e.g. to the farm or, in the case of soy, the municipality) is a necessity. Several large companies in both the palm oil and the cocoa sectors have now committed themselves to traceability to the source. Other tools, like Trase, are also helpful to provide information on where products are coming from.

For some commodities and products, traceability may be made easier through technological solutions. For example, risks of food fraud in the wine, meat, egg and honey sectors are managed through the use of isotopic databases for source areas, against which spot checks can be made in supply chains, and the European Soy Label uses the same technology to validate its producer country claims and avoid mixing with product from outside Europe.⁵¹ And some argue that the jurisdictional approach would make traceability easier, as once a product is 'verified' as compliant, only traceability to the jurisdiction would be required.

But traceability is simply the ability to know where your product comes from. It is only ever a tool, not an end in itself. To be an effective tool, traceability and the wider concept of transparency should not be seen as a static instrument but as a process of continuous improvement, e.g. by first calling attention to unsustainable production practices; then supporting supply chain actors in making more sustainable decisions; then ensuring that those same actors are held to account, including for remedying harm caused, through state and non-state frameworks, and are not falling behind in delivering on their commitments; then providing updated information to inform renewed efforts to improve practices; and so on.

⁴⁹ Garrett 2019 and zu Ermgassen 2020, among others.

⁵⁰ Ian Suwarganda, personal communication, 22 July 2020.

⁵¹ Saunders 2020.

Conclusion and recommendations

The EU should consider commodity trade partnership agreements with major FRC producing countries as an important complement to any future EU 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 directly address the direct and underlying causes of forest loss and human rights violations.

These partnerships 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; 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 on forests and human rights, including trade, agriculture and energy policies should be done in both the EU and producer countries. If shown to negatively impact forests and rights, these laws and policies should be revised. The EU specifically must also look at concrete measures to halt deforestation and biodiversity loss in the EU.

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 or sustainable – including human rights compliant - according to a national licensing system), a mechanism similar to the IUU carding system, governance milestones coupled with a risk alert system, or increasing or decreasing tariffs to favour sustainable and rights-compliant production.

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 reduces its consumption of FRC to those products that are free from deforestation and human rights abuses.

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