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Why an EU regulation on agricultural commodities imports is needed and what it should look like

Frequently asked questions

1) Are corporate voluntary commitments to halt deforestation working?

More than 450 companies in the food and agriculture sector have made commitments to stop deforesting and respect human rights. **But it has become increasingly clear that these companies cannot achieve this goal on their own.**

A [systematic analysis](#) of 250 companies, 150 financial institutions and 50 national and subnational jurisdictions revealed that the rate of progress by most companies falls far below what would be required to meet the European Union's (EU) [international commitment](#) to halt deforestation by 2020. What's more: there is [no evidence](#) that these commitments are having the intended impact.

There are many reasons for this:

(1) **Most influential companies have not made commitments.** The companies that *have* made forest-related supply-chain commitments are generally not among the 250 most influential companies as identified by the Global Canopy Programme's Forest 500 initiative. Only about one-fifth of this group made zero-or zero-net deforestation commitments.

The cattle industry is a particularly striking example: in terms of commodities, it is the largest driver of deforestation, but only 16 per cent of companies in the cattle supply chain have policies to address deforestation. Even where companies do have policies they are often weak, and very few companies are developing new commitments.

(2) **Commitments are ambiguous and not easily enforceable/accountable.** Commitments differ widely - their diversity and lack of clarity make it difficult to assess and compare company ambitions or to hold companies accountable.

Until commitments follow harmonised definitions, efforts to monitor them can only provide a limited picture of progress made. Often, companies' efforts do not extend to the entirety of their operations, or companies undermine their commitments by the use of shadow companies,¹ as recently [documented in the case of Wilmar and Asia Pulp and Paper \(APP\)](#).

(3) **Decreasing deforestation in one region or country can easily increase deforestation in another** (leakage). It is [estimated](#) that between nine and 42 per cent of forest clearance reductions in one country will be offset by increases in another. For example, there are clear [indications](#) that the reduction in Brazilian deforestation from 2005 onwards — thanks to stringent national policies - may have increased deforestation in neighbouring countries such as Paraguay and Peru.

Shifting the deforestation problem to other places, commodities, or ecosystems presents a risk that could nullify commitment-based efforts to tackle deforestation.

Displacement between regions and countries happens if legislative frameworks or levels of enforcement vary, inviting producers to move towards regions with weaker regulation. There is also the risk of leakage between commodities (i.e. soy and beef), where both commodities compete for land but are regulated with different levels of stringency.

(4) **Lack of good governance.** Companies often operate in countries lacking good governance and law enforcement. This makes it difficult for them to comply with national and international laws, and to acquire and manage legal concessions without paying bribes.

A study by PriceWaterhouseCoopers (PWC) for the Dutch consultancy IDH (the sustainable trade initiative) shows that forest certification in a country with poor governance and law enforcement is too difficult and costly.² Certification cannot end deforestation on its own, legislation is also required.

(5) **Lack of clarity on land rights.** Although many countries have adopted constitutions or land laws recognising community tenure, there is still a lot of ambiguity, leaving many communities in legal limbo. Globally, an estimated 2.5 to 3 billion rural dwellers own more than 6 billion hectares of land under customary law, but much of this is not acknowledged as their property. This leads to frequent conflicts and human rights abuses when land customarily

¹ Major agribusiness firms are using opaque corporate structures to gain access to palm oil sourced from plantations operating in violation of their sustainability commitments

² Mainstreaming sustainability in tropical timber, IDH position paper.

owned by communities or Indigenous Peoples is leased to companies for logging or agricultural concessions without their consent.

⇒ **For more information, read Fern's report [Company Promises](#)**

2) Why is an EU regulation needed?

A [report](#) published last year by Fern and Forest Trends found voluntary commitments are a crucial first step to ending destruction, but they need to be followed by government regulation to really get deforestation under control.

Government intervention ensures a level playing field, creates a political climate where commitments can be enforced, and creates legal clarity to which companies can be held to account.

Because the EU is a major trading block which consumes a large percentage of imported agricultural commodities, it is a natural starting point for regulation and could trigger an effect globally.

NGOs like Fern, think tanks like Chatham House and Forest Trends, research institutes like [CIFOR](#), and companies such as [Mondelez](#) are now all calling for governments to regulate so that companies put [due diligence processes](#) in their supply chains.

Support for an EU regulation of agricultural commodities is also growing among EU Member States. France and Belgium have recently [called for European due diligence regulation for forest-risk products](#), and Germany's development minister Gerd Mueller [spoke out](#) in November 2018 in favour of EU due diligence regulation for all commodity imports.

Frans Timmermans, Vice President of the European Commission, [said](#) in October 2018 that there was a limit to how far voluntary initiatives could solve social and environmental problems in commodity imports, and that ultimately regulation would be needed.

⇒ **For more information, read Fern and Forest Trends' report [Getting the "Bads" Out of Goods - Evolution from voluntary to regulated approaches in reducing the undesirable impacts of global trade](#)**

3) Which requirements should a new EU regulation meet?

Any regulation should **be based on and incorporate relevant internationally agreed human rights laws and principles and environmental standards**. This is to ensure any regulation is legitimate and just; as national law can be in contradiction to international law, be unjust and not legitimate.³

³ Today, in many countries, national laws do not accept community customary tenure rights recognised by international law.

Any long-lasting solution also needs to **tackle the structural problems driving deforestation** – as deforestation is just a symptom of poor forest and land governance, violations of community land rights, and unjust consumption habits in wealthy countries.

Finally, the regulation must **stimulate inclusive processes**. It must support the development of governmental programmes to halt deforestation that include local communities and civil society.

As large-scale land conversion and deforestation often go hand in hand with violations of human rights, and specifically the violation of community tenure rights, focusing a regulation on ‘ensuring supply chains are free of products grown on contested land’ may be a good way forward.

4) Why should a new EU legislation focus on tenure rights?

Up to 2.5 billion people, including 370 million indigenous people, depend on collectively managed land and natural resources. They have [proven](#) to be the best protectors of forests, and therefore of our climate. Despite this, their rights to their forests are under threat.

When indigenous peoples and local communities have no or weak legal rights, their forests tend to be vulnerable to deforestation and thus become a source of carbon emissions. For example, [research by the World Resources Institute](#) found that deforestation of indigenous community forests in Brazil would likely have been 22 times higher without their legal recognition. The same report finds that in Indonesia, rampant deforestation is driven in part by forest communities’ weak or lacking human rights.

While it is [estimated](#) that 65 per cent of the world’s land is occupied by Indigenous Peoples and rural communities, only 10 per cent is legally recognised as belonging to them. This means they and the forests they depend on are vulnerable.

In many cases, even just speaking out in defence of land and environmental rights can lead to people being forced from their homes, threatened and even killed. In 2018, 321 defenders in 27 countries were targeted and killed for their work – the highest number ever on record – according to data collected [by Front Line Defenders](#). More than three-quarters of these were defending land, environmental or Indigenous Peoples’ rights.

⇒ **For more information, read Fern’s guide [Securing community land and resource rights in Africa: A guide to legal reform and best practices](#)**

5) What tools could a new EU regulation rely on?

A: Existing international standards

As there is still no internationally-accepted definition of ‘deforestation-free’, a regulation could build upon internationally agreed standards around tenure rights. These include the [Universal Declaration of the Rights of Indigenous Peoples](#) (UNDRIP), the [UN Voluntary Guidelines on the](#)

[Governance of Tenure](#) (VGGT) and the recently adopted [UN Declaration on the rights of peasants and other people working in rural areas](#).

In the meantime, the EU and other stakeholders should define an internationally-accepted standard of “deforestation-free”, which can be used in future international and national regulations.

While this is happening, Fern recommends using the VGGT as the basis for a regulation to ensure supply chains are free of products grown on contested land (see boxed text below).

The VGGT gains its legitimacy through its endorsement by [120+ nation states](#), the EU, the G8, the G20, the Organisation for Economic Cooperation and Development (OECD), the International Bar Association, the Pan-African Parliament and the Community of Latin American and Caribbean States (CELAC). In 2013, the World Bank also made the VGGT a reference in its own procedures and guidance to government borrowers and private sector clients.

As the EU is already very active in promoting the VGGT in its development aid,⁴ basing a regulation on them would also be a good way to increase policy coherence at the EU level.

⇒ **For more information, read**

- **Fern’s report [VGGT: what potential to engage?](#)**
- **Fern’s briefing note [Making soft laws enforceable: How the EU can use human rights guidelines to fight agricultural deforestation](#)**

B: Existing laws requiring EU companies to exercise due diligence

The EU has already regulated its trade in conflict diamonds, illegal fishing and illegally sourced timber. It can use best practice to inform a new regulation to ensure supply chains are free of products grown on contested land.

A new EU regulation should require companies to exercise due diligence to ensure the agricultural commodities they trade were not cultivated on contested land.

The proposed due diligence measure would be similar to the due diligence obligations that [the EU Timber Regulation](#) imposes on operators who first place timber or timber products on the EU market.

The regulation would require operators to either (1) trace their commodity supply chain back to the farm, and be reasonably confident that the land on which the commodities were cultivated was not converted in violation of tenure rights, or (2) be reasonably confident that

⁴ The EU coordinates its involvement on VGGT issues through the Donor Working Group on Land and to date primarily funds implementation, notably to improve land governance and VGGT application in 10 African countries. Its national land tenure programmes provide funding for land administration programmes in several African countries, as well as the International Law Commission and the Africa Land Policy Initiative.

every entity in their supply chain exercises similar due diligence to ensure that the commodities were not cultivated on land that was converted in violation of tenure rights.

C: Existing carding systems

Another useful legislation for the new regulation would be the [EU Regulation on unreported and unregulated \(IUU\) fishing](#), which shows how international laws and guidelines can be used as a basis for supply-side measures to stop illegal commodities being traded in the EU. The IUU regulation created a third country carding system to support developing countries to comply with relevant international agreements. It also gives the authority to restrict trade from non-cooperative countries.

The IUU Regulation's carding process requires 'third countries' (those not in the EU) which export fish to the EU to meet international standards for fisheries management. If they do not meet these standards, third countries can face a series of measures, culminating in the possible exclusion of their fish products from the EU.

The European Commission and third country authorities set up a dialogue to assess systems in place to prevent IUU fishing and the extent to which they comply with international fisheries management standards. This engagement with third countries allows the EU to offer capacity-building and technical assistance to strengthen fisheries management and control in third countries. Similar measures [modelled on the IUU Regulation's carding system](#) could be used to assess forest communities' tenure and use rights.

⇒ **For more information, read**

- Fern's report [Hardening international soft law frameworks into EU measures to address forest-risk commodities](#)
- Fern's report [Developing EU measures to address forest-risk commodities: What can be learned from EU regulation of other sectors?](#)
- Fern's discussion paper [Can an EU Human Rights Due Diligence Regulation help us tackle deforestation and respect human rights?](#)

6) Will one EU regulation be enough?

No - it's just a start.

There is no quick fix that can halt a problem as complex as deforestation, nor one silver bullet.

In addition to a regulation on forest risk commodity imports, the EU must also ensure coherence within its own policies, and support producer countries.

Other actions must include:

- **Developing new international standards on sustainability.** Stimulate the development of an international standard on deforestation in agricultural supply chains, e.g. by strengthening the [OECD Guidance for Responsible Agricultural Supply Chains](#) to ensure it

addresses deforestation in line with High Carbon Stock (HCS) /High Conservation Value (HCV) principles.

- **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. 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 trade agreements it is currently negotiating with highly forested countries – such as [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.

Fern calls for transparent and inclusive trade negotiations on issues affecting forests and land rights, stronger civil society monitoring and dispute resolution systems, as well as provisions to ensure all trade agreements with highly forested countries do not contribute to deforestation and human rights violations, including customary tenure rights.

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