



November 2020

Written evidence on Amendment NS1 of the Environment Bill (Due diligence on forest risk commodities) from the Agricultural Industries Confederation (AIC)

For consideration of the Environment Bill Committee

Background

In August, Defra launched a consultation on due diligence on certain forest risk commodities. Specifically, the consultation focussed on whether the Government should introduce a new law designed to do the following:

1. prohibit larger companies from using agricultural commodities that have not been produced in line with local laws in the countries where they originate
2. require those companies to undertake due diligence, so checking for risks of illegal deforestation in their supply chains
3. require companies to publish information about their due diligence exercise to prevent forests from being illegally converted into agricultural land.

Businesses would need to take steps undertaking due diligence to show that they have taken action to make sure this is carried out. Failure to comply could risk in fines being issued.

On 11th November 2020, the [Government announced that the proposals](#) outlined in the consultation would be brought forward under the Environment Bill (NS1). Based on the consultation and the work of the Global Resource Initiative, the Government have laid an amendment to take primary powers in the Environment Bill to implement the framework of this proposal. The requirements would come into force once secondary legislation has been passed.

Who we are

The AIC (Agricultural Industries Confederation) is the trade association which represents the UK Agri-supply industry which has a farmgate value of over £8 billion. We represent a wide range of members who supply farmers with the key inputs and advice they require to produce crops and livestock products. For the purposes of this proposal, our members supply **soy and palm oil**, that are used by the UK livestock sector as feed.

We would like to underline our view that we support the objective of preventing the import of commodities that have been produced on land that has been deforested illegally, and it is our view that there is a role in Government in helping to prevent this. We do however have concerns about the proposals that are drafted and the possible unintended consequences they may bring. This also includes the impact the proposals could have to UK farming businesses, and the competitiveness of the sector against other countries – if the legislation is unevenly applied.

Existing initiatives such as the UK Roundtables on Sustainable Soya and Palm Oil can not only help reaffirm this commitment, but also go over and beyond this baseline in considering how to progress to sourcing commodities that carry zero deforestation risk. Such challenges can only be met by a partnership between industry and Government, and we stand ready to ensure this is carried out.

Summary

The AIC believes the following changes or clarifications need to be made to the Environment Bill under Schedule NS1: *Use of Forest Risk Commodities in Commercial Activity*.

1. Products made with embedded forest risk products (such as composite products or meat from animals fed on forest risk commodities) need to be clearly reflected in Clause 2 of the Schedule in the Bill (Prohibition on using illegally produced commodities). **There is no mention of this in the Bill** and failure to do so could lead UK farming businesses at a competitive disadvantage on food standards;
2. Clause 2 (Prohibition on using illegally produced commodities) and Clause 3 (Due diligence system) of the Schedule make no consideration of how these two issues interact and possibly contradict one another. We urge this to be clarified in the Bill;
3. Clause 3 requires consideration of grouped commodities sourced from a number of different regions, each with different local laws and how this can be followed;
4. The Bill should make consideration of existing schemes in place that address sustainable sourcing of commodities is already carried out in accordance with local laws, and included as an exemption, as earned recognition, under Clause 5 of the Schedule;
5. A de minimis quota under Clause 5 should also be set, allowing the proposals to target only those businesses primarily engaged in sourcing such commodities;
6. A confidentiality clause should be included within Clause 13, allowing for investigations to take place before any public sanction is issued;
7. To show leadership on the issue, products sourced or procured by Government departments should align with this policy, and this should be reflected within the Bill.

How much UK supplied soy has a legal or illegal deforestation risk?

UK Soy supply data, collated by AIC, shows that 57% of imported soya into the UK comes from sources carrying no deforestation risk (illegal or legal). This means it is covered by zero deforestation standards set by soya scheme owners or covered by ASM (Amazon Soy Moratorium) contracts, or grown in territories with no deforestation risk (such as USA and Canada).

The remaining 43% has had no sourcing scheme requested, however this research shows that the majority (37%) of this figure is considered low risk of any deforestation using the FEFAC methodology. The FEFAC methodology is a risk calculator developed by FEFAC in conjunction with CIARA and ABIOVE and weights the risks as follows: Brazil (Cerrado) – 50% (SCF considers the contribution of soy in deforestation to be significantly lower than the FEFAC estimate), Argentina (Gran Chaco) – 3%, Paraguay – 100%. The Paraguayan figure is unknown due to insufficient data, which explains the precautionary approach. **This leaves 6% that carries a risk of deforestation.**

What is already being done to address deforestation in soya and palm oil supply chains

AIC Services, as a member of the Roundtable on Sustainable Palm Oil (RSPO), have developed a Palm Oil Credit Scheme (APOCS) to purchase RSPO Credits on behalf of AIC members and thus encourage and support development of sustainable production and supply chains. By purchasing RSPO Credits, a business directly supports those palm growers who have changed growing practices to meet all of the RSPO Principles and Criteria to produce certified sustainable palm oil products. RSPO Criteria 2.1 requires growers to produce palm products that are 'compliant with all applicable local, national, and ratified international laws and regulations.'

The Feed Material Assurance Scheme FEMAS standard has a Responsible Sourcing Module which is successfully benchmarked to the FEFAC Soy Sourcing Guidelines. AIC are involved with the development of the guidelines as members of the FEFAC Soy Sourcing Guidelines Development Group.

Existing 'book and claim' or mass balance models are offered by soy supply schemes which are benchmarked under FEFAC soy sourcing guidelines. This means there is a documented system for demonstrating that soy purchased is compliant with the scheme claims. Many of these schemes carry zero deforestation criteria and these are recognised by the Roundtable on sustainable soya as meeting the roundtable objectives.

Existing industry initiatives such as the Roundtable on sustainable soya are evidence that the UK supply chain is working together to ensure the sustainability of soya in particular. This has been a very effective mechanism of addressing sustainable soya, initiated by Government, which it should be commended for.

We believe the Bill should make consideration of existing schemes in place that address sustainable sourcing of commodities is carried out in accordance with local laws, and included as an exemption, as earned recognition, under Clause 5 of the Schedule.

Practical considerations to business

Most, if not all businesses will have systems in place to ensure the sustainability of sourced material or product. Many businesses will source a product from a number of different countries or regions, each with a number of different regional and local systems of Government and legislation. This will also vary from countries with very centralised systems of governance to countries with federated power, that have regions with much greater autonomy.

Collating all of this information into a single mandated format by Government, for commodities that will often be grouped, is extremely challenging in practical terms. Clause 3 requires consideration of grouped commodities in this way.

It is important to state that an individual firm's due diligence and illegality should not be necessarily considered the same thing. Many firms will undertake careful and detailed due diligence in their supply chain to the best of their abilities, and this of course does not provide a total guarantee of legality at source. Government would need to consider how they would approach a situation where a company has undertaken the best possible measures of due diligence, but local laws may have been broken at source. This consideration could draw upon existing due diligence measures, such as the Modern Slavery Act - in how to best balance the due diligence undertaken by an individual firm and illegality or actions taken in bad faith at the primary production end.

Clause 2 (Prohibition on using illegally produced commodities) and Clause 3 (Due diligence system) of the Schedule make no consideration of how these two issues interact and possibly contradict one another. We urge this to be clarified in the Bill.

Sanctions and enforcement

As stated above, the system in place for reporting and collecting data on local laws must be clear for business and robust. If it is not clearly defined, Government would stand open to challenge for fines issued where they are difficult to substantiate. More significantly, the process must be extremely robust because it could unnecessarily and unwittingly damage the reputation of a firm, unless a charge can clearly be substantiated. This is especially true of larger firms, national or multinational firms that are answerable to shareholders; it cannot be understated how damaging a threat of public investigation could be before it is substantiated. It is for these reasons why any sanction process must be clear, fair, and confidential, before any decisions are made, otherwise businesses will be extremely nervous of operating within the UK if this is not clearly defined. **As a result of this, a confidentiality clause should be included within Clause 13, allowing for investigations to take place before any public sanction is issued.**

Business threshold

The AIC welcome a minimum business threshold for reporting on due diligence. If such measures were to be enacted it would clearly affect smaller businesses that do not have the personnel or resources to undertake due diligence audits within the scope of what system is prescribed by Government. It should also be noted that 'large' companies may not be responsible for sourcing significant quantities of forest risk commodities. For example, a multinational firm primarily geared towards another sector may source a commodity in scope, in small quantities. It is unclear how such a firm would be treated, whilst there may be smaller companies who exclusively import these commodities who fall under the business size threshold. **As a result, a de minimis tonnage under Clause 5 should also be set on larger companies for this reason.**

What is **not** included within the Bill

Government procurement

The agricultural supply industry should certainly meet the challenges of deforestation. However, industry alone cannot enforce such changes. As stated by the Global Resource Initiative (GRI) in its Final Recommendations Report, Government procurement policy has a significant role to play in buying choices and influencing change. As a result, **products sourced by Government departments should align with this policy ambition, and to show leadership, this should be reflected within the Bill.**

Imported products that are made with forest risk commodities (embedded products)

Whilst the Schedule focuses upon the role of UK based companies, Government cannot ignore due diligence on **imported** products with a forest risk commodity footprint. The Government's response to the recent consultation does states that '*Forest risk commodities*' include those embedded within products, however there is no detailed explanation if this would extend to imported foods, of which forest risk commodities are a component part, or for example imported meat that has been produced from animals fed on a soy diet.



A number of public commitments on food standards have been made by Government, which are very welcome, however it would seem incongruous if they are not extended to international firms selling into the UK. Any UK legislation should not impose cost burdens on UK producers and firms if the same level of scrutiny is not required or enforced for international companies exporting products with embedded forest risk commodities to the UK. This has not been identified or noted in any detail and we believe if we are to make any meaningful steps on deforestation, it must be recognised within its scope. The consequence would simply be that by imposing this on a unilateral basis, it will only incentivise companies to move their operations and investment out of the UK. **Products made with embedded forest risk products need to be clearly reflected in Clause 2 of the Schedule in the Bill (Prohibition on using illegally produced commodities).**

ENDS.

Author: Ed Barker, Head of Policy and External Affairs

Contact details: [REDACTED] ed.barker@agindustries.org.uk