

Protecting Forests, Respecting Rights

OPTIONS FOR EU ACTION ON DEFORESTATION AND FOREST DEGRADATION

Catching it all!

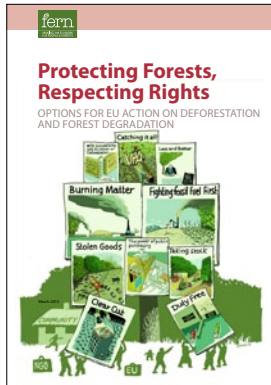


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COMMUNITY



Blower's



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Preface

What we eat is an essential part of who we are as people – and as peoples – our identities and cultures. It reflects not just our tastes, but our values.

That is why this new report is so important. It shows that much of the food sold in Europe's stores comes from tropical areas whose forests were cleared illegally for crops and pastures. Each year Europeans consume millions of tons of beef, soybeans, palm oil, sugar, and cocoa grown in such areas; some six billion Euros of the stuff in 2012 alone. This often involves big companies and wealthy farmers pushing out local villagers; sometimes even killing them.

Most Europeans can't even imagine that, and are shocked when they find out. It wasn't supposed to be this way. Families shouldn't have to worry they are contributing to global warming and devastation each time they sit down for a meal, switch on their heating or fill up their car. They ought to be able to go about their everyday lives, without abetting illicit acts.

This situation is particularly ironic because Europe has been an environmental leader that has worked hard to protect tropical forest. The EU Timber Regulation and Forest Law Enforcement Governance and Trade (FLEGT) initiative have been pioneering efforts to address illegal logging; and have started making headway.

But, unfortunately, the problem isn't only timber. It is also food, leather, and biofuels; what this report calls Europe's global "foodprint". In fact, in most tropical countries logging isn't the main activity destroying forests. It is the expansion of agriculture into new areas.

Over the last several years some major agribusiness firms and financiers have promised to help clean up their act. Others will probably follow.

But we can't rely on that alone. Someone must make sure they keep those promises and set some clear rules; bring to justice the land grabbers, murderers, and money launderers; give consumers reliable information about what they buy; and promote the rule of law. Those are roles for government, along with civil society. Europe's foodprint is too large and destructive to depend solely on good intentions.

Fortunately, the authors of this report have given these issues careful thought and come up with practical recommendations, based partly on the experience with FLEGT. They propose a new European "Action Plan on Protecting Forests, Respecting Rights", including specific changes in trade, biofuel, procurement, investment, disclosure, and land rights policies.

As Europe gets ready to host the final negotiations for a new climate deal, this couldn't be timelier. Forests and land use change are key components of the fight for global survival. Everyone can agree that our stores' shelves shouldn't be stocked with products leading to deforestation. Now they must agree to act.

David Kaimowitz, Director of Natural Resources and Sustainable Development, Ford Foundation

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Acronyms

APRIL	Asia Pacific Resources International
CITES	Convention on International Trade in Endangered Species
EU	European Union
FLEGT	Forest Law Enforcement, Governance and Trade
NGO	non-governmental organisation
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
REDD	Reducing Emissions from Deforestation and Forest Degradation
TFT	Formerly called The Forest Trust, now TFT
VPA	Voluntary Partnership Agreement
WRI	World Resources Institute
WTO	World Trade Organisation

Summary

Over the past two decades, the European Union (EU) has been the world's largest driver of tropical deforestation. Consumption of agricultural commodities in particular has given the EU a huge and largely unacknowledged footprint in the rainforests. Millions of tonnes of soy, beef, palm oil, sugar, cocoa and much more arrive at European ports with a hidden cargo of 'embodied deforestation'. Thousands of products in European supermarkets are similarly tainted. Much of this produce is illegally produced on previously forested land: a result of forged and bogus permits, breaches of land laws and a range of other environmental and human rights offences. In 20 years, products for the EU have caused the deforestation of an area of the tropics the size of Portugal.¹

If the EU and its corporations are to fulfil recent pledges to end their contribution to global deforestation – and meet the promise of the new EU President Jean-Claude Juncker to 'serve as a model for others' – this cannot continue. The EU must change its own rules for trade, investment, finance, climate and consumption, and provide the legislative and regulatory support necessary both for forward-looking companies to fulfil their promises and for communities to see their land rights recognised. Only then can Europe and its businesses end their addiction to food crops and other agricultural commodities that wreck the rainforests. Only then can they eliminate Europe's 'foodprint'.

This report is a synthesis of 11 reports commissioned by Fern, assessing the impacts of EU policies on forests and people. Together, they form a set of recommendations for the EU to tackle deforestation and respect rights.

1 European Commission, The Impact of EU Consumption on Deforestation: Comprehensive Analysis of the Impact of EU Consumption on Deforestation (EU Forest Footprint study), page 23, available at http://ec.europa.eu/environment/forests/impact_deforestation.htm

Introduction: leading the world again

The European Union likes to see itself as a world leader on environmental issues. Serving as a model for others has been central to Europe's self-identity and its image in the world. It has developed blueprints that have formed the basis for fighting endemic illegality in the global timber industry, protecting biodiversity, tackling climate change, and many other vital tasks.

In 2008 the EU pledged, as part of its climate change policy, to halve tropical deforestation by 2020 and eliminate it by 2030.² In September 2014, at the United Nations Climate Summit, the EU, along with 32 national governments and 53 major companies based in Europe and elsewhere signed up to an almost identical target in the New York Declaration on Forests.³

This is a worthy goal. Deforestation is responsible for at least 10 per cent of the anthropogenic carbon dioxide emissions that cause global warming. Forests are also important for regulating local climate, promoting rainfall, moderating temperatures, and storing water to ensure year-round flows in many rivers – and not least for the materials they provide for the people who live in and around them. Tackling deforestation is important for maintaining food security locally and globally.

But how will the EU's 'zero deforestation' target be achieved? The traditional method is conservation. Europe has long offered developing countries rewards for protecting their forests, most recently through the mechanism known as Reducing Emissions from Deforestation and Forest Degradation (REDD), which aims to cut carbon emissions by



The European Union sees itself as a world leader on environmental issues.

© David Dávila Vilanova/FlickrCC

giving forest protectors cash compensation equivalent to the amount of carbon they keep out of the atmosphere.

But there is a growing realisation that conservation alone is not adequate. The economic pressures to clear forests for commercial agriculture will continue to grow. Even with high carbon prices, forest land will still usually be more valuable when converted to farmland for growing crops like palm oil and soy than when protected for its carbon.⁴

Moreover, pilot REDD projects so far suggest that little of the funding will reach forest communities, whose support is essential to stem deforestation, and whose rights ought to be protected, but who instead are still bearing the brunt of the

² European Commission; Addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss; 2008, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008DC0645>.

³ New York Declaration on Forests; Action Statements and Action Plans; 23 September 2014

⁴ http://pfb-cbfp.org/docs/research_docs/CIRAD%20Can%20fragile%20state%20reduce%20deforestation.pdf

continued abuses. Achieving zero deforestation will require a much wider assault on the economic and social drivers of deforestation.⁵

The EU has already moved to prevent imports of illegal tropical timber and to improve forest governance. That has been important and will remain so. But expansion of farmland for the production of agricultural commodities, often for export, has now become the primary cause of tropical deforestation. And the EU and its markets are a major contributor to this deforestation.

So if the EU is to maintain its leadership role in global environmental protection, it must take urgent steps to end the deforestation embodied in its imports of foodstuffs such as palm oil, beef, soy and sugar, as well as biofuels and biomass used for heat and power. It must act most urgently in the many cases where that deforestation is illegal within the countries concerned.

In his inaugural speech to the European Parliament, the President of the new European Commission, Jean-Claude Juncker, declared:

'I do not want a Europe stuck on the sidelines of history. ... I want a Europe at the heart of the action, a Europe which moves forward, a Europe which exists, protects, wins and serves as a model for others.' He continued: *'I want the EU to lead the fight against global warming ... [and to] strengthen democratic legitimacy.'*

With these words he combined the vital elements necessary for environmental justice and security in countries on which the EU relies both for commodities and for the planet's continued habitability, and for ensuring that the EU can keep its promise of zero deforestation.⁶

This report synthesises a series of studies by Fern into how the EU can achieve these goals through public spending policies, and regulatory and fiscal measures on consumption, production, investment and trade.

Box1: Protecting Forests, Respecting Rights: Options for EU Action on Deforestation and Forest Degradation

This report is a synthesis of 11 reports commissioned by Fern, assessing the impacts of EU policies on forests and people. Together, they form a set of recommendations for the EU to tackle deforestation and respect rights. Reports looking at trade and investment, the Common Agricultural Policy and company reporting are forthcoming. Reports to date (March 2015) include:

Policy area	Fern report	
Finance	Clear Cut: Making EU Financial Institutions Work for People and Forests www.fern.org/clearcut	
Consumption and Production	Less and Better: Making EU Consumption Policies Work for People and Forests www.fern.org/lessandBetter	
Bioenergy	Burning Matter: Making EU Bioenergy Policy Work for People and Forests www.fern.org/burningmatter	
Public Procurement	The Power of Public Purchasing: Making EU Public Procurement Policy Work for People and Forests www.fern.org/publicpurchasing	
Development aid	Taking Stock: Tracking Trends in European Aid for Forests and Communities www.fern.org/trackingtrends	
Climate	Fighting Fossil Fuel First: Making EU Climate Policy Work for People and Forests www.fern.org/fightingfossilfirst	
Illegal Logging	Catching it All: Making EU Illegal Logging Policies Work Better for People and Forests www.fern.org/catchingitall	
Tariffs	Duty Free? Making EU Tariffs Work for People and Forests www.fern.org/dutyfree	

5 www.fern.org/carbonmarketswillnotdeliver

6 http://ec.europa.eu/priorities/docs/pg_en.pdf

Europe's deforestation footprint

When we think of deforestation, we mostly think of chainsaws cutting timber and trucks carrying it out of rainforests – or of desperate peasant farmers chopping and burning trees to clear land so they can grow crops to feed their families. But these images are only a small part of the story. At the start of the 21st century, it has become clear that demand for agricultural commodities traded on international markets is the largest cause of tropical deforestation. It is not people far away who are destroying the forests; it is us.

In 2013 an EU study found that between 1990 and 2008, 53 per cent of global deforestation was due to agricultural expansion, a third of which was to grow crops for international trade. The EU as a whole was the largest single destination for these crops and livestock products, and was responsible for 36 per cent of the deforestation embodied in internationally traded agricultural commodities. The EU's markets cleared nine million hectares of forests, an area the size of Portugal: this for a region with just seven per cent of the world's population.⁷

The EU's deforestation footprint is not just environmentally damaging: it is also often illegal. The think tank Forest Trends has found that half of all tropical deforestation since 2000

"It is not people far away who are destroying the forests; it is us."

has been the result of conversion of forests for commercial agriculture that contravened either the land rights of forest dwellers or national environmental laws. Illegality and unsustainability frequently go hand in hand.⁸

New research by Fern has concluded that in 2012 the EU imported roughly a quarter of all the internationally traded soy, beef, leather and palm oil that had been grown on illegally cleared tropical forest land. This European trade had a value of EUR 6 billion, and was equivalent to illegally felling

a forest the size of a football field every two minutes. Italy was the leading consumer, followed by Germany, France, the Netherlands and the UK.⁹

Trail of destruction: whose forests are we destroying?

Half of Europe's agricultural commodities from deforestation come from Brazil, and a quarter from Indonesia, two countries that between them are hosts to half of the world's tropical deforestation. In 2009, beef exports from Brazil to the EU embodied 102,000 hectares of deforestation, and soy imports from Brazil a further 73,000 hectares. Palm oil from Indonesia embodied another 33,000 hectares. Other imports heavily implicated in deforestation include leather from Brazilian cattle, soy from Argentina and cocoa from West Africa – for which the EU is the predominant global importer.¹⁰ An estimated one-third of feed given to pigs and poultry bred for meat in the EU is soy, mostly from Latin America.

China's consumption has now probably overtaken that of the EU as the largest single cause of embodied deforestation. But the average European consumer is still responsible for far more deforestation than the average Chinese.

The environmental impact of Europe's hunger for agricultural commodities can be seen across tropical landscapes. In Indonesia, the largest driver of forest destruction is oil-palm plantations, 80 per cent of which are illegal. The island of Sumatra, which is almost twice the size of Britain, was until recently home to one of the world's largest intact rainforests. But in the past two decades, major agriculture and timber companies have moved in, expelled local people, stripped the timber and replaced the jungle with oil-palm monocultures.

The destruction is set to continue. Most of the former forest province of Riau in central Sumatra is officially zoned for 'clearance' for oil-palm by the end of the decade. And its produce will be coming our way. Some 30 per cent of palm oil exports end up in the EU.¹¹

7 European Commission, The Impact of EU Consumption on Deforestation: Comprehensive Analysis of the Impact of EU Consumption on Deforestation (EU Forest Footprint study), page 23, available at http://ec.europa.eu/environment/forests/impact_deforestation.htm

8 Lawson S, Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations, Forest Trends, September 2014.

9 Stolen Goods: The EU's Complicity in Illegal Tropical Deforestation; www.fern.org/stolengoods

10 http://ec.europa.eu/environment/forests/impact_deforestation.htm

11 Stolen Goods: The EU's Complicity in Illegal Tropical Deforestation; www.fern.org/stolengoods



Ghana chainsaw millers at work: Respecting rights of farmers to land and trees in Ghana is essential to address Ghana's forest crisis.

© Fred Pearce

In Brazil, most forest loss is for soy growing and cattle grazing. Up to 90 per cent of the forest clearance in the Amazon for these activities in the first decade of the century was illegal. But that is not enough to supply the world's markets. In the past two decades, soy production has spread across the cerrado savannah grasslands and forests of southern Brazil. More than 60 per cent of the cerrado – an area the size of

"EU's deforestation footprint is not just environmentally damaging: it is also often illegal."

Britain, France and Germany combined – is now cropland. Most of the fields are owned by large landowners such as Blaiero Maggi and Erai Maggi Scheffer, two cousins with half a million hectares of soy fields between them, supplying global markets, including the EU.¹²

Meanwhile, Brazilian cattle ranchers have moved into neighbouring Paraguay in search of new pastures. There, they are clearing the remote Chaco forest, which is still home to some uncontacted groups of Ayoreo people. The clearance of the Chaco forest is one of the largest and fastest losses of natural forest ever seen. Most of the clearing is illegal. Few communities have been consulted, let alone compensated. Much of the beef is destined for European markets.

The trail of illegality and forest destruction behind supplying Europe's markets is growing longer every day.

Deforestation for oil-palm is spreading from Indonesia and Malaysia to several African countries, where corruption is rife, and to Papua New Guinea, where a Parliamentary Commission in 2013 found that 90 per cent of licences to grow the crop, covering five million hectares, had been obtained corruptly.¹³

12 Pearce, F. *The Landgrabbers* Eden Project Books, 2012

13 Pacific News Agency, 'Reports on land leases reveal corruption: PM O'Neill', 20 Sept. 2013.

Around 40 per cent of Europe's cocoa comes from former forest lands in Côte d'Ivoire, which has a long history of the use of bonded and even child labour.

Rampant illegality drives both corruption and systematic violence against people who attempt to defend their rights. Global Witness has recorded the murder of more than 900 environmental and land-rights activists since 2001, and the most dangerous country in this regard is Brazil.¹⁴



Indigenous peoples such as the Baka of Cameroon suffer most from deforestation. Recognition of their customary rights to land is central to reducing deforestation.

© Kate Davison Greenpeace

Box 2: Land rights

The New York Declaration on Forests pledges to 'at least halve the rate of loss of natural forests globally by 2020, and strive to end natural forest loss by 2030'. But it goes much further in its statements both on curbing the role of agricultural commodities in deforestation, and on land rights and forest governance.

Signatories – including the governments of Germany, France, the UK, Belgium and the Netherlands – pledged to 'support and help meet the private sector goal of eliminating deforestation from the production of agricultural commodities such as palm oil, soy, paper and beef products by no later than 2020' – just five years away.

They also pledged to 'strengthen forest governance, transparency and the rule of law' in forests, and to support 'empowering communities and recognising the rights of indigenous peoples, especially pertaining to their lands and resources'. These promises – also signed by 53 major corporations – are in line with pledges previously made by the Consumer Goods Forum, which represents a host of leading consumer goods companies, headed by Unilever and Nestlé.

Fulfilling such pledges on forest governance will be essential to meeting the zero-deforestation target, for there is growing evidence that the best people to protect forests are the people who live in them. Far from being a threat to their environments – a charge routinely made by some conservationists – forest-dwellers and users offer the best chance of successful conservation.

Comparisons between community forests and indigenous reserves on the one hand, and state parks on the other, repeatedly show that the former do better at protecting forests – and thus at protecting the climate, too. A joint study by the World Resources Institute (WRI) and Rights and Resources Initiative in 2014 concluded that 'legal forest rights for communities and government protection of their rights tend to lower carbon dioxide emissions and deforestation'.¹⁵ The head of the WRI, Andrew Steer, put it simply: "If you want to stop deforestation, give legal rights to communities."

14 <https://www.globalwitness.org/deadlyenvironment/>

15 <http://www.wri.org/securingrights>

How can Europe end its hidden hand in deforestation?

The task is not hopeless. Many countries want help in bringing legality to their forests. Both Brazil and Indonesia have recently sought to reduce deforestation and illegality. In Indonesia, the governors of two provinces plagued by illegal deforestation have been jailed for the corrupt issuing of plantation licences, and the recently elected government is also acting on land rights. Brazil has dramatically reduced rates of deforestation in the Amazon in the past decade – thanks both to government actions, such as prosecuting slaughterhouses, and to the heroic defence of their lands by indigenous communities.

But while markets for illegal goods remain open, the incentives for criminal behaviour remain high. Governments that want to curb illegality and deforestation would find it much easier to act if illegally grown commodities were not

freely sold on international markets. The EU should take a leading role in helping them, by outlawing in Europe what is already illegal in the source countries.

So what should we do? Ensuring the legality and sustainability of the EU's agricultural commodities supply chain will undeniably be a complex task. The precise regime is likely to emerge from a process of trial and error. But to realise Juncker's pledge that the EU should continue to act as a role model for the world, an action plan is needed now. It will require initiatives across fields ranging from Official Development Assistance (ODA) to corporate finance, industrial regulation to public procurement, and trade rules to product labelling and consumer empowerment. But most of all, it will require political courage.

Production forest in Long Bagun, East Kalimantan, Indonesia. Conversion to agricultural land leads to total forest destruction; logging for timber can have less impact.

© Michael Padmanaba/CIFOR/FlickrCC



Industry regulation

In the past two years, we have seen the beginnings of what some major producers of food and other consumer goods have called a 'supply chain revolution'. Companies such as Nestlé, Unilever and the world's largest cosmetics company, l'Oréal, have made public pledges that their products will not contain embodied deforestation. Similarly a dozen major banks, including Barclays, Santander and Goldman Sachs, have signed up to commitments to eradicate deforestation from activities that they finance by 2020.¹⁶

Some companies have also directly addressed social issues. PepsiCo, for instance, announced 'zero tolerance for ... land displacements of any legitimate land tenure holders ... whether based on indigenous rights, custom, informality, or occupation, regardless of whether the right is currently protected by law or formally recorded'.¹⁷

This is all good news. But we cannot leave these companies to get on with the job alone.

Their voluntary pledges have yet to be implemented on the ground. Few of the company standards yet fully address issues of legality. They often ignore the widespread illegal issuing of permits and licences for deforestation and agricultural activity, and do not even pay lip service to the principle of the free, prior and informed consent of affected communities.

And no corporations have yet offered sufficient transparency about their activities so that outsiders can properly judge their progress. Exposure of failures still depends on whistleblowers and expensive investigations by non-governmental organisations (NGOs) such as Greenpeace.

For a detailed analysis and recommendations see our reports '**Stolen Goods; The EU's complicity in illegal tropical deforestation**' (www.fern.org/stolengoods) and '**Catching it all; Making EU illegal logging policies work for forests and people**' (www.fern.org/catchingitall) and a forthcoming report on Company Reporting.



So the next step is for large companies to open up their supply chains to full scrutiny and to commission independent public audit of their performance on land rights and deforestation. Some have taken early steps in this direction. Nestlé, the world's largest food company, has begun a global assessment of the land tenure of its commodity suppliers, audited by consultants ProForest and TFT. One early finding was that only 58 per cent of its chocolate producers in Côte d'Ivoire had secure land rights, which it has flagged up as a threat to its supplies as well as to the farmers.¹⁸

Such audits should become the norm. They should be an essential part of corporate due diligence. Companies need them for their own governance. In many cases they will reveal companies' reliance on illegally produced commodities. Such reliance represents a serious reputational risk to their brands, but also a more direct risk to the bottom line, since such investments often have to be abandoned or delayed due to land conflicts with local populations.¹⁹

EU regulations should require such audits, and make it a criminal offence to facilitate or invest in projects that lead to illegal forest loss or land and human rights violations. Ethical companies should welcome such a move. They can only deliver their promises within a framework of law and transparency, in which the 'good guys' have a defence against 'free riders', intent on playing the system to gain market share.

"...we cannot leave these companies to get on with the job alone. Their voluntary pledges have yet to be implemented on the ground."

We believe many companies would welcome legislation in consumer countries, as well as agreements between supplier and consumer countries to block trade in illegal products. Some admit as much. For instance, in 2014, Mark Bowman – Africa managing director for SABMiller, the world's second-largest brewer – said that 'the present free-for-all' of voluntary corporate pledges allows 'bad investors to ride roughshod over the rights of smallholders and communities' and 'makes it difficult for good investors who want to farm in a way which is beneficial to local people and the environment from accessing land'.²⁰ This could be changed, he said, by strong, legally enforced land rights.

16 <http://www.cisl.cam.ac.uk/business-action/sustainable-finance/banking-environment-initiative>

17 https://www.pepsico.com/Assets/Download/PepsiCo_Land_Policy.pdf

18 http://rightsandresources.org/wp-content/uploads/RRI4087_AR2014r11B3.pdf

19 www.rightsandresources.org/documents/files/doc_5715.pdf

20 <http://edition.cnn.com/2013/06/18/opinion/land-grabs-africa-mark-bowman/>

Ultimately only governments can address the issues of illegality and land rights. Promoting the good must be accompanied by penalising the bad, both to ensure that 'good' products are not undercut in the marketplace and to curb demand when it exceeds sustainable supply.

Legality is not the same as sustainability, of course. But achieving the second without the first will be impossible. And consumer nations are likely, politically, to get a better reception for offering to help supplier countries to police their existing laws than for demanding that suppliers comply with other countries' definitions of sustainability.

"EU regulations should make it a criminal offence to facilitate or invest in projects that lead to illegal forest loss or land and human rights violations."

Demand for agricultural commodities traded on international markets is the largest cause of tropical deforestation.

© Daniel Beltrá / Greenpeace

VPAs: a model for regulating agricultural commodities

A potential model for ensuring a legal trade in agricultural commodities is the EU's established system for banishing illegally sourced timber from European markets. In 2003, the EU adopted an action plan on Forest Law Enforcement, Governance and Trade (FLEGT). This aims to reduce illegal logging while strengthening community rights to forest land. It requires companies importing timber and timber products to the EU to conduct due diligence to ensure that the timber has not been harvested illegally, and is in accordance with law. Otherwise their timber will be stopped at the dockside.

This requirement has been complemented by a series of Voluntary Partnership Agreements (VPAs) between the EU and producer nations. These are legally binding trade agreements that establish

For more information see Fern's report '**Catching it all; Making EU illegal logging policies work for forests and people**' (www.fern.org/catchingitall) which recommends among other things to develop a regulation similar to the European Union Timber Regulation, but dealing with illegally sourced agricultural commodities.





Small and medium enterprises will have to benefit from VPAS. Montée Parc Market, Yaoundé, Cameroon.

© Ollivier Girard/CIFOR/Flickr

rules in producer countries to prevent any trade there in illegal timber. The agreements are, at the EU's insistence, drawn up with community and stakeholder engagement, and also aim to ensure land rights. Once signed, individual exporters no longer have to demonstrate due diligence on each consignment, because the timber is assumed to be legal. Six VPAs have been signed to date: with Indonesia, Cameroon, Ghana, Liberia, the Central African Republic and the Republic of Congo. Nine more are being negotiated.

In practice, the effects of the rules extend far beyond European markets. All countries that have signed VPAs have applied the same rules on legality to all domestic and export sales of timber. By one estimate, more than 75 per cent of the value of cross-border trade in timber and timber products from tropical countries comes from countries that are at some stage of the VPA process.

"One drawback of FLEGT in its current form is that it does not fully cover timber cut as a by-product of clearing land"

One drawback of FLEGT in its current form is that it does not fully cover timber cut as a by-product of clearing land for growing agricultural commodities or mining. When FLEGT was agreed a decade ago, this so-called 'salvage' or 'conversion' timber was a minor element in world trade. But, thanks to the growing importance of markets for agricultural commodities in driving deforestation, most timber from VPA countries now comes from the conversion of forests for commercial agriculture. Many of those conversions are illegal, but often the national VPAs do not proscribe timber from land illegally converted for agriculture.

Thus the agricultural commodities trade is undermining EU timber trade reforms. This must be addressed swiftly. Better drafted VPAs can help. Future VPA agreements could require the exclusion of all conversion timber, for instance. Effective implementation of the existing EU Timber Regulation that prohibits illegally sourced timber to enter the EU market, whether from forestry concessions or conversion, is also needed.

But ultimately new rules are required. A broader Action Plan on Deforestation is necessary, extending the FLEGT rules on land rights and trade to cover agricultural commodities, particularly those with a large footprint of embodied deforestation. It could start with key commodities such as palm oil, soy and beef. This would not ensure zero deforestation on its own, but it would ensure legality, which is often the major barrier to achieving zero deforestation.

Under such rules, only commodities grown on land legally approved for them – and legally converted from forests – would be eligible for import to the EU. Suppliers would have to show that such commodities were not grown on illegally cleared land, and that the rules had buy-in from civil society.

They should also have to comply with internationally agreed norms on land tenure, such as the EU's own tenure guidelines, the UN guidelines on the responsible governance of tenure of land, fisheries and forests, and the proposed UN declaration of the rights of peasants and other people working in rural areas.²¹

21 <http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPeasants/Session2/ChristopheGolay.pdf>

Finance: follow the money

Corporate policy is strongly driven by the ethics and expectations of investors. European financial institutions such as banks, hedge funds and pension funds, are major bankrollers of large-scale agriculture corporations exporting to the EU. Fern's analysis suggests that 20 EU-based finance institutions have currently loaned or underwritten almost USD 18 billion of investment to foreign agricultural companies based in developing countries. Three of the top five national destinations for these investments are the deforestation hotspots of Indonesia, Brazil and Malaysia.

Europe's top investors have been HSBC, Standard Chartered and Deutsche Bank. All were especially active during the commodity prices boom from 2007 and 2011, which led to a 'land rush' to grow crops, often on previously forested land.

"Routes for exerting control within the EU might include the Pension Funds Directive, rules on credit rating agencies and the proposed Shareholder Rights Directive."

In theory many banks and pension funds want to clean up their acts. They profess adherence to internationally agreed ethical standards such as the Equator Principles, which require, for instance, that companies seek free, prior and informed consent of communities that might be displaced by their activities.

But these high principles are not always matched by action on the ground. While the Equator Principles do require reporting on implementation, this rule generally only applies to mines and other very large projects involving investment of USD 100 million or more, for instance.²² Moreover, corporate ethical pledges are often very general. An

See Fern's report '**Clear cut; Making EU financial institutions work for people and forests**' (www.fern.org/clearcut) for more information and recommendations, including ensuring that EU financial sector regulations enforce financial institutions' existing due diligence processes.



investment house with a policy of avoiding deforestation, or protecting the rights of indigenous peoples, can only be held to account if it also adopts specific operating procedures that can be checked, or if it submits to an external environmental and social audit. Most do neither.

So the gap between principle and reality can be stark. Deutsche Bank, a signatory of the New York Declaration on Forests, prominently promotes its green bond portfolio as a sign of its corporate responsibility. But it is also an important source of finance for two Vietnamese rubber companies involved in the illegal clearance of intact forest and questionable land deals in Cambodia and Laos – Hoang Anh Gia Lai and the state-owned Vietnam Rubber Group.²³

It can be assumed that regular customers of these banks do not want their deposits to be spent on deforestation. And when they learn the truth, they can put pressure on finance houses with a strong high-street presence. Thus, in February 2015, Santander promised to stop funding the pulp-and-paper company Asia Pacific Resources International (APRIL) after a sustained consumer campaign following a Greenpeace investigation into APRIL's role in destroying Indonesian rainforests. 'Any further loans will be conditional on APRIL implementing new sustainability measures which address its involvement in deforestation,' the bank promised.²⁴

But hedge funds and others can be much more resistant to such pressure. They can get away with it because there is currently no regulation on the financial sector to tackle environmental and social issues that arise from agribusiness projects. This is true even when such ventures fail to comply with laws and regulations in the countries where the investment is targeted.

That needs to change. Routes for exerting control within the EU might include the Pension Funds Directive, rules on credit rating agencies and the proposed Shareholder Rights Directive. But there is a strong case for some new dedicated regulation of investment in agricultural projects that threaten forests or lead to land grabs. Ideas for such initiatives should be considered as part of the current review of regulations that control the financial sector.

The heat may have gone out of the land and commodities boom, with falling commodity prices since 2012 (Crude palm oil, for instance, costs 40 per cent less than in early 2011, while the share price of Wilmar, the world's largest producer,

22 www.equator-principles.com

23 www.globalwitness.org/rubberbarons/

24 <http://www.greenpeace.org.uk/media/press-releases/santander-stop-funding-forest-destruction-indonesia-20150225>

has dropped by 50 per cent). But deforestation and land abuses continue. And, given the underlying drivers of rising populations and a growing global middle class, the partial respite is likely to prove short-lived. Now is the time to put in place measures that will reduce the abuses during the next upsurge.

Box 3 Free riders

The weakness of voluntary commitments by agricultural companies and their investors has been shown in recent investigations.

Thus in December 2013, Singapore-based Wilmar, the world's largest producer and trader of palm oil, announced a new land policy based on 'no deforestation, no peat, no exploitation'. But this has proved easier to announce than to bring into practice. The company stands accused of continued violations in new developments in Liberia, Nigeria, Indonesia and elsewhere. In Uganda, in a case that reached the courts in early 2015, it is accused of failing to resolve a longstanding dispute with farmers expelled from their land on Kalangala Island in Lake Victoria in 2011 to make way for oil palm plantations.²⁵

Among Wilmar's biggest financial backers has been HSBC, Europe's largest bank, whose published environmental policies have been highly commended by NGOs. In early 2015 the Global Canopy Programme's Forest 500 project ranked the bank as one of only seven corporations – and the only financial institution – with 'maximum points' for its policies on protecting forests by controlling global supply chains.²⁶ But there is an alarming gap between policy and practice.

But, just as recent revelations have shown that HSBC's policies on tax avoidance differed from its practice, so it is with its environmental policies. Global Witness has exposed HSBC as an important backer of companies responsible for logging and subsequent oil-palm planting in Sarawak in Malaysian Borneo. It invested an estimated USD 130 million. The NGO concluded that 'four of HSBC's current clients in Sarawak systematically violated the bank's own internal forestry lending policies', notably on requiring that projects have Forest Stewardship Council certification.²⁷

Targeting government spending: ODA and public procurement

It is clear that conventional forest conservation is not enough to protect forests. Even if there were a vibrant market in carbon offsets it would unlikely be sufficiently commercially attractive – or socially acceptable – to curtail forest clearance for commercial agriculture. This raises important questions about overseas aid.

EU aid for protecting forests has dramatically increased in recent years. Much of the almost EUR 500 million spent each year on protecting forests is earmarked as part of action for climate protection. Biodiversity ODA, much of it also devoted to forests, now exceeds EUR 300 million.²⁸

But the danger is that without other measures to curb the commercial drivers of deforestation, investing EU aid in forest protection may be throwing good money after bad. Many believe that budgets would be better spent on dealing directly with those drivers. In particular, reform of the large ODA budget for agriculture could ensure that its investments did not in future contribute to deforestation or the breaching of the UN voluntary guidelines on responsible land governance, signed and supported by the EU and Member States. This lack of coherence must be addressed if EU aid is to tackle deforestation.

Meanwhile, REDD pilot projects, such as those currently planned

See Fern's reports on European development aid **Taking Stock; Tracking Trends in European Aid for forests and communities** (www.fern.org/trackingtrends), on public procurement **The power of public purchasing; Making EU public procurement policy work for people and forests** (www.fern.org/publicpurchasing), and on climate policies. **Fighting Fossil Fuel First; Making EU climate policy work for forest and people** (www.fern.org/fightingfossilfirst) for a better understanding of where EU financing should go to and how to consume only sustainably produced products. Key recommendations include strengthening local communities' tenure rights and ensuring fossil fuels remain in the ground. The need for public procurement policies that tackle agricultural commodities is also highlighted.



25 www.foeeurope.org/Uganda-palm-oil-court-land-grab-190215

26 www.globalcanopy.org/forest500

27 <http://www.globalwitness.org/library/hsbc-rakes-us130-million-bankrolling-rainforest-destruction-and-human-rights-abuses-malaysia>

by the World Bank with European money, need to focus on achieving the required conditions for keeping forests standing, such as strengthening forest peoples' rights to land and resources and improving land governance. They should come in line with the principles that underlie FLEGT. That means they should not be undertaken in countries with weak forest governance and insecure land tenure, unless those issues are addressed first. Monitoring governance rather than carbon would also be a step in the right direction.

EU Member States should also make sure that their public procurement policies are in line with their aspirations. During the New York Climate Summit, the UK, Germany and Norway made commitments to work with other consumer countries to 'encourage deforestation-free supply chains, including through public procurement policies to sustainable source commodities such as palm oil, soy, beef and timber'. France joined them later.

This is a good start, and much could be achieved. The Organisation for Economic Cooperation and Development (OECD) estimates that in developed countries, public procurement accounts for an average of around 12 per cent of GDP.²⁹ The figure may be higher for agricultural commodities, thanks to public catering services such as schools, hospitals, office canteens, prisons and care homes.

Because of their importance as buyers in specific markets, public bodies can sometimes drive change across entire supply chains. Europe's procurement policies for timber have become standard for the whole output of companies that supply them.

Within the EU, public procurement is a matter for Member States, though some common voluntary criteria for sustainable procurement policies have emerged, including for food. They cover matters such as organic production, animal welfare and recycled packaging, though only a minority of public procurement contracts are as yet covered.

But to be effective, public procurement policies need to be simple, so they can be operated in the same way by different agencies. Suppliers need to know where they stand. One model is to impose industry certification standards such as those of the roundtables for palm oil, soy and beef, and other schemes such as the Fairtrade and Rainforest Alliance labels. Another is for Member States to set their own standards and encourage the certification schemes to meet them. This has the added advantage that it will lead to improvements within the certification schemes themselves.

But however it is done, public procurement is one of the most effective ways of driving change.

Consultation with local communities in design and implementation of the VPA is key. Liberia and now Honduras have set good examples of how this can be done.

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Biomass and biofuels

Around 60 per cent of Europe's deforestation footprint arises from food production and consumption. But other causes include cotton, rubber and biomass – for burning directly in power stations and for processing into liquid biofuels.

The EU has been a leader in developing biofuels from agricultural crops as a way to reduce its greenhouse gas emissions from transportation. Bio-ethanol can replace petrol, and biodiesel can replace petroleum-based diesel. In 2009, the EU's Renewable Energy Directive set Member States a target to source 10 per cent of energy for transport from renewable energy (mostly biofuels blended with conventional fuel) by 2020.

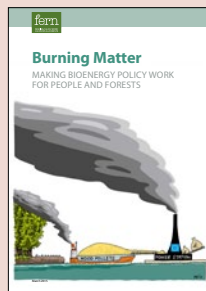
The thinking is that burning biofuels is close to carbon-neutral. This is because the carbon emissions from burning biofuels should be balanced by carbon absorbed from the atmosphere by the next crop as it grows. But the science behind the plan is incorrect. It does not allow for the emissions generating the energy needed to manufacture the biofuel. Nor does it account for the substantial indirect emissions from the land-use changes required to grow the fuel crops. Sugar, palm oil, corn and jatropha – particularly if they are grown in former forest areas or displace food production into such areas – can cause indirect emissions that are greater than the emissions from burning the petrol it replaces.

"The thinking is that burning biofuels is close to carbon neutral. This is incorrect."

The Renewable Energy Directive requires that crops burned to meet its targets should not be grown on former primary forest land. But it does not prevent the displacement of other crops onto such land.

At first the EU hoped that virtually all of its biofuels would be grown in Member States. But in practice, the EU is a net

For more information and to see recommendations on what the EU can do to ensure its bioenergy policy is not leading to deforestation, see **Burning matter; making EU climate and bioenergy policy work for forests** available at www.fern.org/burningmatter



importer of biofuels feedstock. Much of this feedstock comes from tropical countries such as Indonesia and Brazil. The latter provides more than half the bio-ethanol in international trade, and the EU is its second largest market.

This raises serious questions about the climate benefits of the financial support the EU gives to biofuels, which currently receive subsidies in excess of EUR 5 billion a year. Such expenditure is, in some cases, funding deforestation in Indonesia, Malaysia, Brazil and elsewhere – without any demonstrable benefit regarding carbon emissions. Moreover, by raising demand for biofuel feedstocks that are also used for food – such as palm oil and sugar – they will tend to raise food prices, aggravating the wider commodity-market drivers of deforestation. There are also devastating impacts on food security.

A radical rethink is required. A new generation of biofuels may one day break the link with land and forests. But until then, subsidies for land-based biofuels should be eliminated, and targets should be restricted to biofuels derived entirely from non-land sources. The money saved would be better spent on developing technologies that directly reduce transport emissions and allow tougher fuel emissions standards.

The EU has also supported the direct burning of biomass for heat or power. One of the Europe's largest power stations, Drax in England, is co-fired with coal and biomass. EU energy generated from biomass is currently expected to triple in the period between 2008 and 2020. But this too is of questionable benefit to the climate.



EU demand for biomass should be restricted to what can sustainably be supplied.

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Potential biomass fuels include agricultural residues, organic waste and grass crops such as miscanthus. But wood is by far the most common biomass fuel in the EU, because it is more energy-dense, and is cheap and easy to transport, especially in pellet form. The EU is the world's largest producer and consumer of wood pellets for biomass energy. With EU consumption 50 per cent higher than its production, much of this is imported.

This raises questions about whether the wood harvest to feed Europe's power stations adds to deforestation. While most concern has been about possible imports of timber pellets from Brazil, in early 2015, environmental NGOs in the US raised fears too. They warned that the south-eastern states of the US could this year export six billion tonnes of wood pellets to the EU, 'driving deforestation and forest degradation in the US'.³⁰

Even if the pelleted trees are all replaced by new ones, the emissions from burning wood pellets will stay in the atmosphere for a long time. This is because – unlike other biomass fuels, which are mostly annual crops – the next crop of trees will take decades or centuries to grow and soak up the emissions from burning the first crop. The EU should revise its misplaced presumption that biomass is climate-neutral, and consider the implications for its support of biomass burning.

Trade rules and import duties

Trade rules and import tariffs are a potentially highly effective way of keeping out agricultural commodities that cause deforestation. But there has been some concern that the rules of the World Trade Organisation (WTO) may outlaw such purchasing policies because they are a barrier to international trade.

This is far-fetched. The WTO rules may outlaw government-imposed bans on products from specific countries, or even bans tied to specific trade certification schemes. But existing interpretation of admittedly vague and sometimes untested rules shows that the WTO does not prevent more general trade restrictions on environmental or ethical grounds.

International law and multilateral agreements already contain many legal trade restrictions on environmental grounds. Examples include the Convention on International Trade in Endangered Species (CITES) rules on trade in endangered species and restrictions on ozone-depleting substances. Licensing systems requiring companies to show due diligence in ensuring legality – as under FLEGT – have also been accepted as legitimate. In general, lawyers say that import duties and other measures that favour sustainable produce – and ban illegally produced commodities – should be consistent with WTO rules.

The key test may be the definition of 'like products'. The WTO bans discrimination between 'like products' that are indistinguishable from one another. So can sustainably and unsustainably produced goods be described as 'like products'? Is palm oil from recently deforested land 'like' palm oil from other land?

The WTO does allow for environmental measures to be taken, but to really meet social sustainability goals, the EU needs to draw up future free trade agreements that include implementing the Food and Agriculture Organisation Land Tenure Guidelines and that open up their negotiation and implementation in the way being achieved with FLEGT VPAs. See Fern's report **WTO Compatibility with EU Action on Deforestation** (www.fern.org/WTOcompatibility) and Fern's forthcoming report on trade investment (www.fern.org/tradingup). Tariffs could also help, see Fern's report **Duty free? making EU tariffs work for people and forests** available at www.fern.org/dutyfree





A worker loading oil palm fruit onto a truck in Sabah, Malaysia. Palm oil production has led to massive forest loss and rights violations in Southeast Asia and production is now moving to Africa.

© CIFOR/FlickrCC

A number of resolved WTO cases suggest that otherwise identical products that have been produced in different ways are not 'like products'. For instance, the WTO sanctioned a US embargo on imports of shrimps caught in ways that threatened sea turtles. Trade lawyers suggest we can 'read across' from that case to conclude that discriminating against unsustainably produced palm oil or other foodstuffs is acceptable to the WTO.

"The EU needs to draw up future free trade agreements that include rules such as implementing the UN voluntary guidelines on land tenure."

In practice, many discriminatory tariffs imposed on imports and exports pass under the WTO's radar. They include EU import duties that are generally low on products the EU does not itself produce, but higher on those it does produce. The EU also sets some tariffs more favourable for reasons of policy, including green policy. It currently permits zero import tariffs on soy, for instance – an effective subsidy over other potential sources of animal feed. The EU's import duty on palm oil for food is also low – at 3.8 per cent – and is zero for non-food applications such as biodiesel.

Fern argues that these policies are misguided, because they effectively subsidise environmental destruction. But they set a precedent. Similar differential tariffs could be applied

on commodities according to whether or not they have (for instance) embodied deforestation. Tariffs on regular palm oil could be raised, while those on palm oil considered as sustainably produced could be abolished.

The EU could also be removing hidden subsidies, such as zero tariffs, for imported protein feed such as soy that drives deforestation and undermines community rights. Beef from

Brazil is the EU's single biggest deforestation footprint. Brazilian soy imported for animal feed is not far behind. Some Member States have introduced a 'grassland premium' to discourage the use of such animal feeds altogether. That could be extended, but the ultimate aim should be to reduce meat consumption across the EU – for both health and environmental reasons.

To be equitable, policies to use tariffs to exclude agricultural commodities that contain embodied deforestation should be accompanied by technical and financial assistance from the EU to help exporters and governments meet sustainability criteria.

And to meet social sustainability goals, the EU needs to draw up future free trade agreements that include rules such as implementing the UN voluntary guidelines on land tenure, and that open up their negotiation and implementation in the way being achieved with FLEGT's VPAs.

Consumers: the key ingredient

European consumers could hold more power over the global market in agricultural commodities than any other group in the world. Their ethical and environmental concerns are well established. They are the highest per-capita consumers of fair-trade and organic produce in the world. They recycle and reuse. They have been at the forefront of putting pressure on industrialists who cause deforestation, threaten endangered forest species or engage in land grabs, notably through supporting campaigns by influential NGOs such as Greenpeace and Friends of the Earth.

But the power of this ethical consumer lobby is currently being undermined by a lack of information that could help construct campaigns and help consumers make informed day-to-day shopping choices. To

For more information and to see recommendations on what the EU can do to ensure its consumption and production policies are not undermining but supporting EU efforts to halt deforestation see **Less and better; making EU consumption policies work for people and forests** available at www.fern.org/lessandbetter



take two examples, most processed products do not have to show the origin of their ingredients; and the meat you buy does not have to indicate where the feed given to the animal came from. This should change.

Origin is not the only issue, however. Consumers also need more detailed information about the environmental impact of those food products. Delivering that will require the development of easy-to-understand benchmark standards for information that food producers are required to put on the label. One model would be the 'traffic lights' system used to alert consumers to products high in sugar, fat or salt.

This is a natural fit for consumers and regulators alike. There are often synergies between products that are healthy for consumers and healthy for the environment. Diets and deforestation are linked. Given the prevalence of obesity in Europe, this connection would also help consumers address the underlying issue of over-consumption in general. The average EU diet is too high in calories, fats and protein. Growing too many calories is bad for forests; eating too many calories is bad for people.

Corporations may balk at this additional red tape, but they are becoming used to the idea of such disclosure of environmental information – as pioneered, for instance, by the Carbon Disclosure Project.

Campaigning groups were disappointed by the weak reforms in the latest reform of the CAP, that was concluded in 2013.

© Greenpeace





Action on EU consumption would help the EU in fulfilling sustainable development goals (SDGs), in particular Goal 2, to end hunger, achieve food security and improved nutrition and promote sustainable agriculture.

Labelling is only part of the story, however. Regulation and financial incentives are also needed to help Europeans consume well, for themselves and for the environment. To fight over-consumption, the EU should encourage a shift of taxation towards consumption, and campaign against perverse incentives such as supermarket price promotions that encourage over-purchasing.

"The EU must act swiftly to achieve a reduction in food waste of at least 30 per cent by 2025."

Another potential tool is the EU Resource Efficiency Initiative, part of the Europe 2020 strategy. It aims to help members 'shift towards a resource-efficient, low-carbon economy to achieve sustainable growth'. It covers climate change, energy, transport, industry, raw materials, fisheries, biodiversity, regional development and, crucially, agriculture. It is potentially a good fit for addressing the damage done to forests and their inhabitants by supply chains that deliver products to Europe.

Meanwhile much could be done to help consumers and retailers to reduce food waste. Produced but uneaten food uses up almost 1.4 billion hectares of land globally: almost 30 per cent of the world's agricultural land area.³¹ According to the UN Food and Agriculture Organisation, that amounts to as much as 300 kilograms of food waste per head per year in



Action on EU consumption would help the EU in fulfilling sustainable development goals (SDGs), in particular Goal 12, to ensure sustainable consumption and production patterns.

Europe. The EU must act swiftly to achieve a reduction in food waste of at least 30 per cent by 2025.

While the largest proportion of waste is created in the home, almost as much occurs during farming and manufacturing, and significant amounts are produced in the catering, retail and wholesale sectors. Such losses have to be checked. Better labelling on the shelf-life of products could help. So would changes in EU rules to allow misshapen but otherwise good produce to be sold. But more fundamental reforms are needed, including perhaps tariff penalties for sectors with a bad waste record.

Tropical deforestation threatens the global climate, local ecosystems and the livelihoods of many of the world's poorest. And tackling these issues is close to the heart of many European consumers, who do not want their everyday habits and purchases tainted by human rights abuses and environmental destruction. They have a right to be protected from complicity in these crimes. They should be able to be confident that their purchases are not a result of illegal activity. But currently they have no such rights and can have no such confidence.

That has to change. Europe's foodprint on the world's forests must be eliminated. Failure to act will be a betrayal of Europe's consumers. And by fostering ecological unsustainability and encouraging festering disputes over land and human rights abuses, it will also ultimately threaten Europe's own supplies of foodstuffs.

31 http://ec.europa.eu/food/safety/food_waste/library/docs/bio_foodwaste_report_en.pdf

Conclusions

Europe needs three strategies to reduce and eliminate its role in deforestation from the consumption of agricultural commodities.

- First we need to reduce consumption. Sometimes that is a simple health imperative for individuals. Many of us would live longer lives if we ate less and more wisely. But beyond that, there is huge potential for being more efficient and less wasteful consumers. Existing EU proposals on resource efficiency could be valuably extended to agricultural commodities. Reducing waste – in particular, food waste at all stages from the field to the fridge – could reduce our effective demand by a third or more. Reform of policies on biofuels and biomass to reflect the real carbon footprint of different fuels could also substantially reduce consumption and Europe's embodied deforestation.
- Second, we need to address much more rigorously how we produce what we consume – in terms of our environmental footprint, particularly on deforestation, but also our social footprint on forest communities through land grabs and other violations of human rights. While reducing what we consume, therefore, we also need to ensure that what we do consume is produced legally and sustainably. That means reforms to tariffs and public procurement policies; ensuring that European corporations and investors adhere to good practice on transparency and follow best industry practice at all times; and outright bans on illegally produced commodities, through new regulations on key commodities following the FLEGT model.
- Finally, the EU needs to strengthen positive developments on land rights and food sovereignty through its aid policies and trade relations. That means, at the least, ensuring that European corporations and investors follow the UN voluntary guidelines on land tenure, respecting customary rights and always seeking free, prior and informed consent of locals before land and other investments. It means requiring all those in the supply chain, including consumer goods manufacturers and retailers, to set up proper due diligence processes. That should include the commissioning and publication of full independent supply-chain environmental and social audits of both agribusiness companies and their major investors. Last, but not least, it means all EU aid and other commercial relations between governments, development finance institutions and producer countries should contribute to strengthening local peoples' tenure rights and improve land governance.

"This report is a synthesis of eleven reports commissioned by Fern, assessing the impacts of EU policies on forests and people. Together, they form a set of recommendations for the EU to tackle deforestation and respect rights."



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