

# Briefing Note on the EU Timber Regulation and on sourcing of deforestation-free commodities

## October 2021 – April 2022

### EU ACTION TO PROTECT AND RESTORE THE WORLD'S FORESTS

As part of its broad plan of actions to tackle deforestation and forest degradation as outlined in the **2019 Communication** on *'Stepping up EU action to protect and restore the world's forests'*, on 17 November 2021, the Commission **adopted a Proposal** for a **Regulation to curb EU-driven deforestation and forest degradation**. Recognising that the main driver of deforestation and forest degradation is the expansion of agricultural land, the proposed Regulation will apply to imported and domestically-produced cattle, cocoa, coffee, palm oil, soy and wood (key commodities associated with deforestation and forest degradation), as well as certain products derived from these commodities. It will require **mandatory due diligence** for all operators placing relevant commodities and products on the EU market (or exporting them from the EU), to ensure that such products are both **legal** according to the laws of the country of production and **deforestation-free** according to the definition set out in the Regulation proposal (i.e. produced on land that has not been subject to deforestation or forest degradation after 31 December 2020). Small and medium-sized enterprise (SME) traders are subject to lighter information requirements than operators and large traders. All relevant products must be covered by a due diligence statement that will be hosted in a Union-wide digital information system and which will facilitate Member States' (MS) implementation of the Regulation. There will be a minimum level of inspections for MS authorities to perform and a requirement for effective, proportionate and dissuasive penalties. The first review of the Regulation (two years after entry into force) will consider expansion to other ecosystems and commodities. The proposed Regulation would also repeal the EU Timber Regulation (EUTR).

By promoting the consumption of 'deforestation-free' products and reducing the EU's impact on global deforestation and forest degradation, the new rules are expected to reduce greenhouse gas emissions and biodiversity loss. The proposed Regulation will complement and align with EU political commitments including in the **European Green Deal**, the **EU Biodiversity Strategy for 2030**, the **new EU Forest Strategy for 2030** and the **Farm to Fork Strategy**, as well as commitments made at CoP26 in the **Glasgow Leaders Declaration**.

The background to the proposal included: an **Open Public Consultation** signaling strong support for binding measures to ensure product sustainability and a single EU definition of "deforestation-free"; meetings and workshops involving the **Expert Group/Multi-Stakeholder Platform**; European Parliament and Council Resolutions in support of EU measures to reduce deforestation; the EUTR and FLEGT Regulation Fitness Check and a dedicated Impact Assessment (documents available [here](#)).

Key to the success of the Regulation will be enhanced engagement and support to producer countries, including through **Forest Partnerships**, as well as enhanced engagement with other consumer countries and in international fora. The proposed Regulation is **complementary to other measures** proposed in the 2019 Communication, including those relating to working in partnership with producer countries (Priority 2) and strengthening international cooperation (Priority 3). At CoP26 the European Commission **announced** an EUR 1 billion contribution to the Global Forests Finance Pledge, with a 5-year support package to help partner countries protect, restore and sustainably manage forests worldwide.

Before the proposal enters into force, it must be adopted by the European Parliament and the Council. Further details of the legislative process are outlined in this European Parliament **briefing**. Stakeholders have largely welcomed the Commission's proposal, expressing a range of views around *inter alia* scope of products and habitats covered, definitions, enforcement, the cut-off date, cost and feasibility, and support for smallholders (e.g. **civil society position statement**, **Indonesian CSOs**, **Fern**, **WWF**, **Friends of the Earth**, **FSC**, **Fair Trade**, **Copa-Cogeca**, **EuroCommerce**, **COCERAL**, **FEDIOL** and **FEFAC**, **European Cocoa Association**). There is also evidence of broad **public support** for deforestation-free commodities in the EU.

# IMPLEMENTATION & ENFORCEMENT OF EUTR



## TIMBER IMPORTS FROM THE RUSSIAN FEDERATION AND BELARUS

At the **8<sup>th</sup> meeting** and **9<sup>th</sup> meeting** of the Expert Group/Multi-Stakeholder Platform with a focus on implementation of the EUTR and FLEGT Regulation, held virtually on 16 March 2022 and 29 April 2022, the European Commission updated MS on sanctions adopted by the EU on 2 March 2022 and 8 April 2022 for timber and timber-derived products from **Belarus** (under Council Regulation **2022/355**) and the **Russian Federation** (under Council Regulation (EU) **2022/576**), as well as the Russian Federation's ban on the export of certain wood products enacted on 8 March 2022, which applies to exports to EU Member States and other specified countries (see *Legislation & Policy* section for further details).

The Commission and Member States' Competent Authorities (MS CAs) agreed upon guidance for timber and timber-derived products originating from the Russian Federation and Belarus. It was confirmed that placing onto the EU market of products covered by the EU sanctions or the Russian Federation's export ban will be considered illegal for the purposes of the EUTR. It was noted that, in line with Regulation 2022/355, products from Belarus under contracts that were concluded prior to 2 March and executed before 4 June 2022 may still be imported, providing the operator can demonstrate negligible risk of illegality under the EUTR. Similarly, in line with Regulation 2022/576, products from the Russian Federation under contracts concluded prior to 9 April and executed before 10 July 2022 may still be imported, providing the operator can demonstrate negligible risk of illegality under the EUTR. Current discrepancies between the product scope of EU sanctions on Belarus and the product scope of the EUTR were highlighted, noting that Annex 10 of Regulation 2022/355 refers to CN Code 44 (i.e. wood and articles of wood; wood charcoal), whereas the EUTR does not include all sub-codes under CN Code 44 (e.g. it does not cover charcoal) but it does include other CN codes such as wooden furniture (CN code 94) and pulp and paper (CN codes 47 and 48). Pending a possible future realignment of the product scope of EU sanctions on Belarus, these products currently fall outside the sanction regime. The EU sanctions on the Russian Federation cover CN codes 44, 4705, 4804 and 9403, hence almost the entire product scope of the EUTR. Regarding timber and timber-derived products from the Russian Federation or Belarus imported into the EU that are not covered by EU sanctions, operators would need to conduct a full risk assessment and effectively mitigate the risk of acquiring illegally harvested timber. However, it was agreed that due to present circumstances (including the ongoing suspension of third-party verification schemes in Belarus and the Russian Federation), it is impossible for operators to carry out full risk assessments or to effectively mitigate the non-negligible risk of acquiring illegally harvested timber. Therefore, it was concluded that operators must refrain from placing on the EU market all timber and timber-derived products originating from Belarus or the Russian Federation, including timber and timber products exported via third countries.

Two forest product certification schemes, the **Forest Stewardship Council (FSC)** and the **Programme for the Endorsement of Forest Certification (PEFC)**, have suspended their operation in Belarus and the Russian Federation. As of March 2022, wood from Belarus and the Russian Federation can no longer be used in their certified products.

## European Commission holds **9<sup>th</sup> meeting** of its Expert Group/Multi-Stakeholder Platform with a focus on implementation of the EUTR and FLEGT Regulation (April 2022)

In addition to the discussion featured above, the Commission and CAs agreed upon guidance for timber and timber-derived products originating from Ukraine, taking a three-level approach in order to reflect the situations in different parts of the country. The following guidance was agreed on: 1) Imports into the EU of goods that originate from the non-government-controlled areas of Donetsk and Luhansk oblasts are prohibited in line with respective sanction decisions in Council Regulations 2022/263 and 692/2014. 2) It is considered not possible for operators to determine negligible risk for imports from areas of Ukraine experiencing ongoing military hostilities, as third-party verification schemes are

suspended in such areas and operators cannot conduct field checks. 3) In areas of Ukraine not subject to active military hostilities, the situation remains highly volatile. Whilst challenges exist, operators may place timber and timber products on the EU market, provided that they are able to determine negligible risk. When conducting due diligence assessments for imports from these areas, the December 2020 **Conclusions on Ukraine** and **Annex** still apply. The Commission also reported that updated guidance on '*Consideration of prevalence of armed conflict and sanctions in due diligence systems*' is **available** online.

#### **European Commission holds 8<sup>th</sup> meeting of its Expert Group/Multi-Stakeholder Platform with a focus on implementation of the EUTR and FLEGT Regulation (March 2022)**

At the meeting, held virtually on 16 March 2022, the Commission updated Member States on sanctions adopted by the EU on 2 March 2022 on timber and timber-derived products from Belarus (under Council Regulation **2022/355**), as well as the Russian Federation's ban on the export of certain wood products enacted on 8 March 2022. Conclusions regarding the import of timber and timber-derived products from the Russian Federation and Belarus have since been repealed by the conclusions of the 9<sup>th</sup> Expert Group/Multi-Stakeholder Platform meeting, summarised above.

#### **European Commission holds 7<sup>th</sup> meeting of its Expert Group/Multi-Stakeholder Platform with a focus on implementation of the EUTR and FLEGT Regulation (November 2021)**

At the meeting, held virtually on 25 November 2021, the Commission presented its **legislative proposal** for a Regulation to minimise EU-driven deforestation and forest degradation, drawing particular attention to how it will address the findings of the EUTR/FLEGT Regulation Fitness Check. The Commission provided updates on the FLEGT Voluntary Partnership Agreement (VPA) progress in Ghana, Viet Nam and Lao PDR, and on the 3<sup>rd</sup> Periodic Evaluation of Indonesia's FLEGT licensing system. Amended guidance on '*Consideration of prevalence of armed conflict and sanctions in due diligence systems*' was presented. The Environmental Investigation Agency (EIA) presented findings of their investigation into imports of timber from Myanmar<sup>1</sup>, and the Italian CA presented on national EUTR implementation to deter imports of illegal timber.

#### **European Commission holds 6<sup>th</sup> meeting of its Expert Group/Multi-stakeholder platform with a focus on Deforestation and Forest Degradation (November 2021)**

At the meeting, held virtually on 23 November 2021, the Commission presented its **legislative proposal** for a Regulation to minimise EU-driven deforestation and forest degradation, with opening remarks from the Director for Global Sustainable Development. The Commission summarised how the proposed Regulation will complement the EU's Renewable Energy Directive and Sustainable Corporate Governance initiative, and outlined how it will address the findings of the EUTR/FLEGT Fitness Check and Impact Assessment. The Commission addressed questions from the Platform relating to the proposed Regulation, and provided clarifications regarding, *inter alia*, key definitions, the commodity scope, engagement with third countries, and due diligence obligations of operators and traders. The Commissioner for Environment, Oceans and Fisheries gave closing remarks.

#### **EU Court of Auditors (ECA) special report assesses EU efforts to protect EU forests (October 2021)**

The ECA concluded that the funding and policies in place for EU forests have had a 'positive but limited' impact on conserving biodiversity, combatting illegal logging and addressing climate change. Concerning the EUTR, the report noted the need to assess the quality of Member States' checks on domestic operators. The European Commission has **responded** to the ECA report's findings and recommendations.

#### **Hungarian CA provides updates on actions taken to enforce the EUTR (March 2022)**

In December 2020, the Hungarian CA received a notification from IKEA of Sweden AB that the company's timber screening programme had detected issues with some products. As a result of their investigation, the CA confiscated 272 pieces of furniture from IKEA Hungary Ltd. and donated them to charity, as they were found to contain illegally sourced birch. However, IKEA Hungary Ltd. was found to have fulfilled its obligations as a trader under Article 5 of the EUTR. The CA notes that the complexity of the IKEA conglomerate's corporate structure made it difficult to determine the roles and legal obligations of different market actors within the IKEA supply chain, as well as to identify the importer, EU entry route and other traders of the products in question before their purchase by IKEA Hungary Ltd. FSC certification was noted to play a major role in the conglomerate's due diligence system (DDS).

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<sup>1</sup> Covered in the **April – September 2021** briefing note.

### Spanish CA provides updates on actions taken to enforce the EUTR (March 2022)

In September 2021, the Spanish CA, in coordination with INTERPOL, the Environmental Protection Service and Borders Service of Guardia Civil, seized two containers of timber at the port of Las Palmas, Canary Islands. The containers, from Gambia bound for China, were declared as containing walnut but in fact contained CITES-listed rosewood (*Pterocarpus erinaceus*). The operator faces criminal proceedings for false documentation and breach of the EUTR and CITES Convention. The seizure was part of WCO-INTERPOL **Operation Thunder 2021** against wildlife trafficking.

### Swedish CA provides updates on actions taken to enforce the EUTR (January 2022)

In 2021, the Swedish CA conducted inspections on 36 operators and six traders, involving products from 16 different third countries and the checking of 58 samples. One operator was fined and another was banned from trading, though this ban was later lifted as the operator was able to demonstrate an operational DDS. Seven cases are pending. In one pending case the Swedish Forest Agency imposed a ban applicable to teak (*Tectona grandis*) from Myanmar, but the operator successfully petitioned the Administrative court to be able to continue its business. The Swedish Forest Agency is appealing the court's ruling. In another pending case, an operator sentenced to pay a fine of SEK 90 000, as well as the timber value of SEK 800 000 (for illegally felling 18 ha of forest without notifying the Swedish Forest Agency), is appealing the court's verdict.

## ILLEGAL LOGGING & TRADE



### Forest Trends and EIA report ongoing trade in timber from Myanmar, despite sanctions (March – April 2022)

The Forest Trends' **report** documents timber imports from Myanmar over the period February to November 2021 by the EU, Canada, Switzerland, the United Kingdom and the United States, all of which imposed sanctions on entities involved in Myanmar's timber sector following the military coup of 1 February 2021. Trade to EU Member States reportedly totaled >3000 metric tonnes valued at EUR 19 million over this period, 60% of which were bound for Italy<sup>2</sup>.

More recently, the Environmental Investigation Agency (EIA) **reported** the seizure by German authorities in April 2022 of 111 cubic metres of teak from Myanmar. The teak, valued at EUR >1 million, is alleged to have been smuggled into Germany via Croatia. The teak was seized at locations owned by Hamburg-based company WOB Timber GmbH.

In addition to international sanctions on the timber sector, an assessment of Myanmar's forest certification system was **suspended** by the certification body PEFC from 14 September 2021, on the basis that open and uncensored stakeholder engagement in Myanmar is currently not possible.

### EIA follow-up investigation reveals ongoing trafficking of mukula rosewood from Zambia (September 2021)

Following its December 2019 **report** into the trafficking of mukula rosewood (*Pterocarpus tinctorius*) from Zambia<sup>3</sup>, EIA now documents ongoing illegal trade in the species, estimating harvest of ten thousand trees. The new report alleges that plots of land seemingly allocated to people with disabilities are being used to harvest mukula. The land applications were found to have been fraudulently submitted by the Zambia Agency for Persons with Disabilities (ZAPD), allegedly supported by certain government ministries, on behalf of supposed beneficiaries. EIA claims that the plots were then selectively logged by contractors, under the pretext of clearing the land for farming, with the same harvest permits used multiple times. The report also implicates the Zambia National Service, Zambia Forestry and Forest Industries Corporation, and several Chinese-controlled Zambian timber companies as complicit in the trade. EIA calls for a zero-export quota for mukula under CITES.

### NGOs report increased illegal logging in Romania's old-growth forests (February 2022)

Agent Green, ClientEarth and EuroNatur **report** that commercial logging and associated habitat degradation increased over the period 2020–2021 at Natura 2000 sites in Romania, despite a **letter of formal notice** from the European Commission in February 2020. The Commission had called on Romania to address legislative shortcomings in order to

<sup>2</sup> Previous news items concerning EU imports of teak from Myanmar were covered in the **April – September 2021** briefing note.

<sup>3</sup> Covered in the **December 2019 – January 2020** briefing note.



fully implement the EUTR, allow authorities to effectively check operators and ensure that environmental impact assessments are conducted before logging.

#### **EarthSight reports ongoing EU imports from Russian conglomerate previously linked to illegal logging (February 2022)**

In December 2020, EarthSight's '**Taiga King**' report found that EU companies were purchasing PEFC-certified timber from major Russian Federation timber company BM Group and its subsidiaries, despite the conglomerate's president facing illegal logging and corruption charges. EarthSight's follow-up **report** uses customs records to show that EU imports of BM Group-harvested timber have resumed. Although two BM Group subsidiaries lost their PEFC certification after the initial investigation, the parent company retained its certification until January 2022, when it was voluntarily terminated. In a recent **statement**, PEFC notes that EarthSight's second report finds no evidence of PEFC certification requirement violations.

#### **EIA denounces FSC's decision to restore ties with major timber processor HS Timber Group (November 2021)**

The Austrian timber multinational HS Timber Group (formerly 'Holzindustrie Schweighofer'<sup>4</sup>) will be required to trace legal ownership of logs in order to regain FSC certification, and a **summary** of FSC's decisions regarding HS Timber Group's certification is available. However, EIA alleges that ownership paperwork is insufficient for full traceability, noting that the company continues to source approximately half of its Romanian timber from log traders, risking introduction of laundered logs into its supply chain. A month previous to FSC's decision to end its disassociation with HS Timber, the certification body was **urged** by NGOs to require certificate holders to trace timber to point of harvest.

#### **DRC official under scrutiny for alleged involvement in awarding illegal forest concessions (October 2021)**

Greenpeace Africa **reports** that the Environment Minister of the Democratic Republic of the Congo (DRC) is implicated in awarding six illegal forest concessions to the timber and mining company Tradelink, despite a civil society appeal to cancel the contracts. The concessions, which cover >1.3 million hectares, have since been **suspended** on the basis that they exceed the maximum 500 thousand hectare limit that can be awarded to a single company in DRC.

## COMMODITY-DRIVEN DEFORESTATION



#### **Research article on indirect sourcing of agricultural commodities within countries of production (April 2022)**

The article examines direct and indirect sourcing of cattle, cocoa, palm oil and soy by trading companies (multinationals as well as smaller companies involved in the procurement, processing and export of commodities from producer countries), as well as assessing the efficacy of six approaches, including traceability and certification, currently used by commodity traders to comply with sustainable sourcing commitments. A small number of commodity traders dominate global supply chains and typically sourced >40% of commodities through local intermediaries, rather than directly from producers, constituting a "blind spot" for sustainable sourcing and potentially undermining zero deforestation goals.

#### **Ivorian civil society organisations express support for geolocation requirement in EU Proposal (February 2022)**

A **letter** published by 30 civil society organisations and 35 farmers' organisations in Côte d'Ivoire, representing >34 700 cocoa smallholders, stresses the organisations' commitment to developing a sustainable and equitable national cocoa sector, and conveys support for the product traceability and geolocation requirements laid out in the European Commission's proposed Regulation to combat EU-driven deforestation and forest degradation.

#### **Research paper reveals illegal deforestation linked to soy farming in Brazil's Mato Grosso state (February 2022)**

The **analysis**, conducted by Brazilian NGO Instituto Centro de Vida (ICV), finds that 92% of deforestation on soy farms in the state over the period 2008-2019 was unauthorised, and only 30% of farms where illegal deforestation took place were later embargoed. Under Brazil's Soy Moratorium, land deforested after 2008 cannot be used to grow soy; however, ICV finds that a third of illegally cleared land was later planted with soy. Following ICV's analysis, Greenpeace **links** soy from 'high risk' areas to the supply chains of several major multinational **agri-businesses**, and ultimately to EU and United

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<sup>4</sup> Previous news items concerning HS Timber Group were covered in the **November 2017 – January 2018, April – May 2018 and July – August 2019** briefing notes.

Kingdom (UK) soy imports. ICV's report recommends that satellite monitoring is expanded to cover entire farm complexes rather than focussing only on original mapped polygons, as this can miss newly cleared areas.

#### **EarthSight continues investigation into illegal deforestation linked to EU car industry (October 2021)**

Following its 2020 **report** linking leather used by major car manufacturers to illegal deforestation in Paraguay's Chaco ecoregion, EarthSight alleges a lack of progress by Paraguayan authorities and importing companies to address the illegalities and halt the destruction. New satellite analysis shows further clearances by cattle ranchers in the Chaco's protected PNCAT territory, in violation of indigenous rights and environmental laws. EarthSight notes that imports of Paraguayan leather to EU tanneries supplying the car industry is also continuing. In December 2021, Paraguay's Senate reportedly **requested** government clarification on whether issuance of deforestation permits to farmers implicated by EarthSight took place. BMW, a company highlighted in both reports, **refutes** EarthSight's allegations.

#### **Major shareholder considers divesting beef company over illegal deforestation (December 2021)**

On 21 December 2021, Norges Bank, which manages the Norwegian Government Pension Fund Global (GPFG), **placed** multinational agri-business Marfrig 'under observation' for environmental destruction in Brazil. GPFG holds 0.2% of Marfrig's shares. An **investigation** by GPFG's Council on Ethics found that, between 2016 and 2019, Marfrig purchased cattle from Brazilian farms that had been embargoed by authorities due to illegal deforestation. Marfrig's supply chain monitoring system was also considered to be inadequate. A recent Global Witness **report** highlights the scale of investment by the world's major banks and wealth funds in agri-businesses linked to deforestation.

#### **Aidenvironment's first RDM **report** links deforestation in Brazil to soy and beef supply chains (February 2022)**

The NGO's Real-time Deforestation Monitoring (RDM) report is the first in a bimonthly series on supply chain transparency supported by the EU Life Program. It presents six case studies linking >21 thousand hectares of deforestation and >500 fires in Brazil's Cerrado ecoregion over the period April 2021 to January 2022 to major agri-business producers of soy and beef.

#### **Deforestation in Indonesia linked to palm oil and pulpwood continues (March 2022)**

Mongabay **reports** results of an analysis conducted by NGO Pusaka, which finds that >5800 hectares of forest were cleared in 2021 in Papua province, Indonesia, with the majority of the deforestation linked to palm oil and pulpwood companies. The report claims that a major South Korean pulpwood company responsible for approximately 1800 hectares of the total documented deforestation has cleared areas of protected peat forest. The company's concession manager denies the allegation. The report comes as the Indonesian government finalises the **revocation** of hundreds of concession permits.

#### **Greenpeace **reports** deforestation by Australia's beef industry exempt from forest protection laws (December 2021)**

An analysis of satellite imagery conducted by Greenpeace and the Wilderness Society links 57 beef farms to the clearance of 13 500 hectares of forest in Queensland, Australia since 2018, including habitat of threatened species. Although the state passed laws in 2018 to limit deforestation, significant forested areas were exempt from protections including 70% of the clearances documented in the report.

## **LEGISLATION & POLICY**



#### **EU sanctions on wood products from the Russian Federation (April 2022)**

On 8 April 2022, the Council of the European Union adopted Council Regulation (EU) **2022/576** (amending Regulation (EU) 833/2014) prohibiting the import into the EU of goods originating from within the Russian Federation. Annex 21 of Regulation (EU) 2022/576 covers the majority of the product scope of the EUTR (CN codes 44, 4705, 4804 and 9403). These prohibitions do not apply to contracts (or ancillary contracts) concluded prior to 9 April 2022, as long as they are executed before 10 July 2022. For EUTR products falling outside the scope of the sanctions, the recent conclusions of the 9<sup>th</sup> meeting of the Expert Group/Multi-Stakeholder Platform (featured on page 2) should be taken into account.

### EU Sanctions on wood products from Belarus (March 2022)

Following the European Council **conclusions** of 24 February 2022, on 2 March 2022, the Council of the European Union extended the scope of sanctions applicable to Belarus (Council Decision CFSP **2022/356** amending Decision 2012/642, Council Regulation (EU) **2022/355** amending Regulation (EC) 765/2006). These measures target trade in specified goods, including listed wood products (CN code 44 - wood and articles of wood and wood charcoal). The measures include a prohibition on the *import* of those wood products if they originate in Belarus or have been exported from Belarus, their *purchase* if they are located in or originate from Belarus, and their *transport* if they originate in Belarus or are being exported from Belarus. These prohibitions do not apply to contracts (and ancillary contracts) concluded prior to 2 March 2022, as long as they are executed before 4 June 2022. For EUTR products falling outside the scope of the sanctions, the recent conclusions of the 9<sup>th</sup> meeting of the Expert Group/Multi-Stakeholder Platform (featured on page 2) should be taken into account.

### Russian Federation ban on exports of certain HS codes (March 2022)

**Resolution M2 313** of 9 March 2022 bans the export from the Russian Federation of certain goods, including wood products under HS codes 4401 21 and 4401 22 (wood in chips or particles), 4403 (untreated timber), and 4408 (sheets for veneering, plywood or similar laminated wood). The export ban applies to specified countries including, among others, Member States of the European Union and is in force until 31 December 2022. The ban does not apply to goods that are in transit through the Russian Federation, originating from and destined for countries outside of the Russian Federation, or to goods originating in the Russian Federation and moved through the territories of foreign states to other areas of the Russian Federation. Goods exported from the Russian Federation to support military activity in foreign states, exports to support activities of organisations of the Russian Federation in the Spitsbergen archipelago, and goods exported by individuals for personal use are also exempt.

In January 2022, the EU brought a **challenge at the WTO** concerning export restrictions placed by the Russian Federation on wood products. The challenge addresses measures that increased export duties on certain wood products and reduced the number of border-crossing points for Russian exports of wood products into the EU. The dispute settlement consultations that the EU has requested are the first step in WTO dispute settlement proceedings.

### European Commission publishes proposed Directive on corporate sustainability due diligence (February 2022)

The **proposed Directive**, adopted on 23 February 2022, requires companies over a certain size to identify and mitigate or halt any 'adverse impacts' of their operations, subsidiaries or value chains on human rights and the environment. The Directive will support and complement the Commission's proposed Regulation on deforestation and forest degradation by providing a broad framework for value chain due diligence, including for activities that are not covered by the Regulation but which may nonetheless contribute to deforestation either directly or indirectly.

### United Kingdom adopts new Environment Act (November 2021)

On 9 November 2021, the UK adopted a new **Environment Act**. In the context of deforestation-related considerations, Section 116 together with Schedule 17 address 'Use of forest risk commodities in commercial activities', which introduce measures for deforestation-free supply chains. The Act prohibits the import of products associated with *illegal* deforestation; larger UK businesses or their subsidiaries will only be allowed to use key commodities linked to the expansion of agriculture (such as soy, palm oil, cocoa, beef and rubber) if produced in-line with country-of-origin forest protection legislation and regulations. The scope of businesses and commodities covered was under **consultation** until 11 March 2022. Due diligence on forest risk commodities will be required for large businesses operating in the UK, with systems required to identify, assess and mitigate risks. The Act expressly excludes timber and timber products falling under the EUTR.

### United States draft legislation introduced in Senate: Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act (October 2021)

The proposed US legislation addresses deforestation in global supply chains by prohibiting the importation of commodities from land that has undergone *illegal* deforestation. The products initially listed for inclusion are palm oil, soybeans, cocoa, cattle, rubber and wood pulp, with additional listings for derived products. A form of due diligence is incorporated into the legislation: an import declaration would be required confirming that the person importing has exercised reasonable care to assess and mitigate the risks of commodities being produced on land subject to illegal deforestation. The draft Act requires additional action plans for high-risk areas and covered products from these areas would be subject to additional due diligence requirements. The draft Act also sets out measures for a fund to assist

countries committed to tackling deforestation, amends money laundering regulations to include proceeds of illegal deforestation, and provides procurement preferences for commodities that are produced on land that is not subject to deforestation.

Although the approaches of the EU, UK and US to tackle commodity-driven deforestation are at different stages in the legislative process, there are several analyses comparing these measures, including by global law firms **Covington, Steptoe, Ropes & Gray** and **Freshfields Bruckhaus Deringer**. Whilst the frameworks adopt a similar approach, centred around operator due diligence, there are some notable differences between the regimes (as currently presented). Both the UK and US focus on illegal deforestation, and the US draft Act goes further by also making a distinction between legal and illegal deforestation and providing for procurement preferences for products that are deforestation-free. The EU draft Regulation addresses both legal and illegal deforestation. There are also differences in scope: the UK Environment Act is expected to apply only to larger businesses, while the EU's proposed requirements apply to all operators and large traders, with simplified requirements for SME traders. The draft US FOREST Act does not set minimum thresholds and applies to all importers.

#### **US president signs **Executive Order** to enhance protection of forests in the US and globally (April 2022)**

The Executive Order, signed on 22 April 2022, outlines planning and information-gathering directives for US government departments with the domestic aims of protecting old-growth forests on federal land, reducing the risk of wildfires, building climate resilience using nature-based solutions, and supporting sustainable economic development around forest ecosystems. The Executive Order also builds on US commitments made at CoP26 to combat global deforestation, directing the Department of State to develop a report on strategies to reduce or halt US purchasing of forest-risk commodities that are produced on illegally or recently deforested land.

#### **Indonesia's Ministry of Trade **announces** temporary ban on exports of crude and refined palm oil (April 2022)**

As of 28 April 2022, exports of crude, refined, bleached and deodorised palm oil, deodorised palm oil, and used cooking oil from all Indonesian customs areas, as well as the free trade areas and ports of Batam, Bintan, Karimun and Sabang, are prohibited under Regulation No. 22 of 2022 of the Ministry of Trade. The temporary export ban will remain in place until the price of cooking oil in Indonesia has fallen sufficiently and domestic supply needs are met.

#### **Swiss Timber Trade Ordinance enters into force, prohibiting placement of illegal timber on the market (January 2022)**

Switzerland's revised Environmental Protection Act forms the legal basis of the Ordinance, which entered into force on 1 January 2022. Intended to be analogous to the EUTR, the Ordinance requires operators to perform due diligence to ensure illegally harvested or traded timber and wood products are not placed on the Swiss market. The Ordinance is enforced by the Federal Office for the Environment as regards imports, and at the canton level for domestic timber.

#### **Estonian Environmental Board moves to **suspend** logging in Natura 2000 habitats (February 2022)**

Following a **letter** of formal notice from the European Commission in June 2021, Estonia has suspended logging in Natura 2000 habitat sites, including >12 000 hectares of privately-owned forest. The suspension came into force on 4 February 2022 and will last up to 28 months. The Estonian Environment Ministry **reports** that it intends to propose amending the country's Nature Conservation Act to better safeguard Natura 2000 forest habitats.

#### **Forest Trends **reports** revisions to the US HTS that improve traceability of tropical timber products (January 2022)**

The January 2022 edition of the US **Harmonized Tariff Schedule** includes 25 new codes for tropical wood products, better enabling US Customs and Border Protection to track certain veneer, furniture and flooring products.

## OTHER NEWS, RESOURCES & PUBLICATIONS



#### **EU-FLEGT Facility and FLEGT IMM publish updates on FLEGT (December 2021 – January 2022)**

The EU-FLEGT Facility reports the **ratification** of the EU-Honduras FLEGT VPA on 17 December 2021, as well as a **briefing** on lessons from Indonesia's FLEGT licensing system. The FLEGT Independent Market Monitor (IMM) notes that Ghana's Electronic Wood Tracking System is now **operational**.



### Forest Trends **reports** on corporate sector progress on deforestation-free commitments and policies (April 2022)

The first of two instalments on private sector progress towards zero-deforestation, the report examines changes since 2020 in the commitments and policies of 125 major companies that source tropical commodities associated with deforestation and forest degradation.

### Fern publishes **report** on trade agreement provisions to incentivise sustainable palm oil (January 2022)

Fern's report provides recommendations including incentives for sustainable and deforestation-free palm oil in the Comprehensive Economic Partnership Agreement (CEPA) currently under negotiation between the EU and Indonesia.

### ClientEarth release latest edition of their EUTR newsletter (February 2022)

The **latest edition** of EUTR News covers the period December 2021 – February 2022, and focusses, *inter alia*, on recent EU sanctions imposed on Belarus, the Commission's proposal for the EU directive on corporate sustainability due diligence, and a comparison of traceability requirements under the EUTR versus the proposed deforestation Regulation.

### Launch of new tools, guidance and datasets to aid due diligence and transparency (September 2021 – April 2022)

- Preferred by Nature's **guide** for companies selling wood-based products in the EU.
- FAO-EU FLEGT Programme's **toolkit** of support materials for forest-sector MSMEs.
- Proforest's palm oil **toolkit** for responsible sourcing and deforestation-free commitments.
- The French Ministry of Ecological Transition's **guide** to zero imported deforestation in public procurement and risk assessment **tool** for deforestation linked to soy imports (both in French).
- The Chocolate Collective's **2022 Chocolate Scorecard** ranking the environmental and socio-economic performance of major global chocolate companies.



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