Implementing due diligence on forest risk commodities – Defra consultation

Questions 1-7 – background about BCA

Questions 8-20 – for businesses, not to be completed by BCA

Implementing the due diligence requirements

Question 21. Should we lay secondary legislation at the earliest opportunity?
BCA is supportive of the intent to lay secondary legislation at the earliest opportunity as a clear determinant of the urgency needed to address deforestation across the commodity sector from both a climate change and a producer livelihood aspect.
We are concerned however this current consultation contains little detail in terms of what businesses would need to prepare for. As such a short period such as 6 months would be wholly inappropriate to develop a due diligence process designed to meet the requirements of detailed legislation, including establishing the mechanisms for that information to be successfully passed along the supply chain.
Some 84% of coffee is produced on farms smaller than 2 hectares. Therefore it is entirely possible that coffee cherries pass through 4-5 parties before it arrives at a processing mill, still in the country of production, where the cherries are processed, hulled, dried and the beans then bagged for export. Establishing a clear understanding of the requirements expected in all parts of this supply chain will require a concerted education effort and the establishment of clear information protocols. Finalising the regulatory requirements that will need to be met is therefore paramount, but delivering a workable solution cannot happen in a matter of months.

Question 22. What should we take into account when considering how long businesses have to prepare for regulation before it comes into effect?
As mentioned in response to the previous question, for coffee the greater challenge is the number of parties involved at the production stage. The vast majority (70-80%) of coffee production is in the hands of some 12.5 million smallholders with most production countries then having a number of cooperative or other intermediate collection stages before coffee is delivered to processing mills and, from there, into the export stream. Being able to develop the necessary level of understanding, training etc. is something which will take a considerable amount of time to complete to the extent necessary to protect an uninterrupted supply of coffee into the UK market. It is therefore imperative that sufficient lead-in times are determined according to the specific requirement of each commodity sector.

FOREST RISK COMMODITIES

Identifying key commodities in scope

Question 23. Can you provide any further evidence on commodities that drive deforestation? Please provide detail here.
We have no further evidence references but would acknowledge the references used by Defra which are included in the consultation footnotes.

Legislative sequencing

Question 24. Which of the following factors do you think should be considered to determine legislative sequencing? Please tick all that apply and state your reasons.

- the commodity's impact on global deforestation
- the UK's role in this global deforestation
- ability to deliver effective regulation
- other (please specify)

BCA would support the impact on global deforestation being taken as one of the factors as it is key in delivering a positive impact within a meaningful timeframe. The approach should also tie in with policy developments already underway and leadership being delivered through COP26 and support for the Forest, Agriculture and Commodity Trade (FACT) dialogue.

This impact does however also need to be viewed through lens of what is already taking place and due recognition needs to be taken of initiatives already in place – as per examples given later on.

From a coffee perspective, the major factor would be the ability to deliver effective regulation and therefore the timescale within which this could be achieved. For reasons already outlined the significant numbers of producers and the in-country pre-processing supply chains which exist in many producing countries, means there is a significant education and training role which needs to be undertaken before there could be any meaningful and accurate information produced which would satisfy the due diligence requirements.

Secondary to this is the impact of coffee on global deforestation and the role the UK market plays in this. As a consuming country, the UK has been at the forefront of measures to tackle deforestation over the past decade and significant progress has been made in this area. Many of the BCA members who are importing coffee from origin countries have established programmes designed not only to minimise the impact of coffee production on existing forests but also to assist producers with agronomic expertise and knowledge which helps those producers manage their existing productive area and therefore reduce the need for additional area to be deforested.

Member Business Examples

Nestlé – Coffee Sourcing

Sustainable coffee | Nestlé Global (nestle.com)

Nestlé has made the commitment for 100% of its coffee to be deforestation free by 2025.

Currently, 82.8% of coffee sourced through Nescafé Plan or Nespresso AAA Sustainability Quality Program.

Nescafé Plan

sustainable-journey-ten-years-nescafe-plan-2021-en.pdf (nestle.com)

As part of the Nescafé plan, Nestlé work towards reducing the environmental impact of coffee, from the farming to our factories.

Nestlé also support and implement various types of training for farmers that support their economic and environmental resilience and build a body of knowledge around best practices.

These cover topics such as sustainable crop growing, reforestation and helping address local human rights issues, such as gender disparities.

Cafedirect and Producers Direct

Producers Direct is a farmer-led NGO, established by Cafedirect in 2009, with a mission to work with smallholder farmers to develop innovative and sustainable solutions to the daily challenges they face. The charity works with 1.3M smallholders in East Africa and Latin America to design farmer-led digital and in-person services across four key pillars. These are: 1) training and information to improve incomes and resilience, 2) data for improved decision making, 3) financial services to de-risk investment in on-farm diversification and adopting new practises and 4) access to markets so farmers increase their profits. To date they have increased the incomes of the farmers in this network by 50%, and with funding from the Global Resilience Partnership have supported 346,029 smallholder farmers to mitigate deforestation and adapt to climate change.

In Peru, Producers Direct currently works with 10 coffee producer organisations supplying Cafedirect, all located in the high tropical forests, which are the ones providing water and other ecosystem services to the lowlands and, at the same time, are some of the most vulnerable areas facing climate change.

These producer partners and farmers have cited climate change time and time again as the biggest challenges they are facing. Jointly with these producer organisations, Producers Direct is working to develop both in person and digital solutions to improve smallholder producer resilience.

The digital solution is called FarmDirect, and consists of: a farmer level digital tool (accessible via Smartphone and ‘dumb phones’), a dashboard designed for producer organisations and a dashboard designed for other supply chain actors such as coffee buyers. At the core of the approach is data. This includes ‘ground truth data’ captured by farmers on the ground such as photos of coffee plants, GPS location, aggregated data captured by producer organisation partners such as data about their members, coffee sales and coffee prices and landscape level data such as satellite imagery and soil data. This ‘big’ data drives the provision of actionable insights (generated by Machine Learning) and climate smart services tailored to the needs of individual farmers, producer organisations and supply chain partners.

In terms of other considerations the following are considered appropriate:

- The level of advancement in particular countries in relation to tracking and monitoring deforestation. For example in Peru, the Peruvian Ministry of the Environment and the Alliance of Bioversity International and CIAT (part of One CGIAR) have created Terra-i Peru which provides detection and early warning of land cover/ land use changes. The existence of these types of systems would make it faster and easier to design a system which works for smallholders and the other supply chain actors seeking regulatory compliance.
- Identifying a clear strategy to use this new legislation and consequent monitoring systems to collectively increase the competitiveness of UK companies, especially SMEs that already employ advanced practises which positively impact people and the planet. To this end it is imperative that sufficient focus is given to taking this legislation forward not in isolation, but as part of a coherent strategy which delivers positive outcomes across the board and gives a more efficient and more transparent coffee delivery chain.
- Allowing time for testing, learning and consolidation of any new monitoring systems - no system will be perfect straight away, it is more efficient to develop new systems at a small scale, test them at this small scale and then scale in increments based on learning.

Question 25. What data sources or information should be used to consider the proposed factors?
Details on the numbers involved in coffee production, relative farm size etc. are well documented through a number of publicly available sources. Work by Enveritas within the last 5 years suggests there are some 12.5 million smallholders who are producing up to 80% of global coffee production. Only around 20% of coffee is produced on what would generally be regarded as large farm holdings, a large percentage of which would be found in Brazil. ***Further examples?? Should we provide member examples of projects similar to those given in the Deforestation position paper – to be annexed***

Question 26. Do you have any further comments regarding the order in which we introduce key forest risk commodities?
The primary driver should remain the impact a given commodity has on global deforestation, based on the available data such as that referenced in the JNCC 2021 and World Resources Institute 2020 reports. A sequencing of legislation would also allow the UK to build a more bespoke approach on a commodity by commodity basis, recognising that achieving real progress cannot be achieved through a "one size fits all" approach.
Beyond companies delivering on the due diligence requirements there is also the need for authorities or other devolved bodies responsible for administration or auditing to put in place their own approaches and systems which we believe will also be complicated by the producer numbers involved. Additionally, the European nature of the coffee sector and its existing supply routes means there is a need for many businesses to introduce requirements alongside what potentially could be very different EU requirements, also aimed at delivering commodities not from deforested areas. Moving too quickly would significantly increase the risk of unworkable systems which are of no benefit to business, consumers or legislators. Time taken to ensure all parties have in place the correct measures will deliver a more sustainable approach and positively build on the work which is already well underway at the commercial level in terms of projects to deliver alternative production approaches, such as an increase in the area of shade coffee.

<u>First round of secondary legislation</u>

46. We have identified three options for the first round of secondary legislation:

Option 1: introduce 2 commodities in the first round of secondary legislation
Officials estimate this would take 18 to 24 months to come into effect, including a minimum period of 6 months for businesses to prepare for regulation. During that time, we would continue to work on how other commodities can be introduced in subsequent rounds, which could follow swiftly.

Option 2: introduce 3 to 4 commodities in the first round of secondary legislation Officials estimate this would take 3 to 4 years to come into effect, including a minimum period of six months for businesses to prepare for regulation. As with Option 1, we would continue exploring how to introduce other commodities in subsequent rounds.

Option 3: introduce 5 to 7 commodities in the first round of secondary legislation Officials estimate this would take 4 to 5 years to come into effect, including a minimum period of six months for businesses to prepare for regulation.

We could then start work to assess other forest risk commodities for inclusion in scope, including those which may become key drivers of deforestation in the next five years.

Question 27. Which option for the first round of secondary legislation do you recommend? Please state your reasons.
Building on the responses given to earlier questions and the need to be able to demonstrate from both a business and a legislative perspective that an effective and workable system can be implanted – and recognising the approach may well have to differ across the different commodity sectors – we would support Option 1. We would see this as being a more achievable approach and one which offers the greatest level of successful and continued deliverability. Moving forward with Option 1 would also deliver that primary goal of addressing most quickly those commodities which have been demonstrated to have the biggest impact globally. It is considered that these commodities would also be the ones for which more preparatory work has already been undertaken and where the knowledge at both commercial and authority level is most advanced (ie. through existing Roundtables)

BUSINESSES IN SCOPE

Turnover definition

51. We intend that the definition of 'turnover' is that of the Companies Act 2006 (Section 474)10. This aligns with other legislation and the definition used by businesses for their financial accounting reports.

52. We propose that businesses should be in scope of the requirements if they exceed the turnover threshold in the previous financial year. We believe this is the simplest and most effective way that enables businesses (and the regulator) to understand who is in scope of the requirements. It also aligns with the approach taken in reporting requirements under the Modern Slavery Act – where those reporting must meet the in-scope criteria in the previous financial year.

Question 28. Should businesses fall in scope of the requirements if they exceed the turnover threshold in the previous financial year?
We would support this approach.

Regulating UK based businesses that have operations in the UK

Question 29. Should we use UK turnover as the metric to capture UK based businesses?
Yes, we would support this approach for coffee although we recognise that the addition of traded volume may be appropriate for other sectors as it would more accurately reflect their relative importance to the commodity in question and would remove businesses which, although large in size, do not trade significant commodity volumes.

This raises a much wider point as to the value of seeking to operate a "one size fits all" approach to what are very different commodity sectors.

Regulating non-UK based businesses that have operations in the UK

Option 1: turnover related to UK activity
Non-UK based businesses would be in scope if they exceed a threshold related only to their UK based commercial activities, and not according to the scale of their global operations.
This threshold would therefore be set using a similar turnover metric to UK based businesses, while accommodating for the fact that non-UK based businesses may not have a UK turnover as reported on by businesses headquartered in the UK.

Option 2: global turnover
Non-UK based businesses would be in scope if they exceed a threshold related to their overall global operations, as opposed to the turnover generated from their UK based activities.
For example, a non-UK based business that operates in the UK and multiple other countries would be in scope if its turnover across all the countries they operate in exceeds the specified threshold.

Question 30. Which of the following metrics should be used to regulate the UK operations of businesses that are based outside of the UK under due diligence legislation? Please state your reasons.

For the purposes of this question, we are asking about businesses whose headquarters are not in the UK, but which have commercial activities in the UK. This could be either without a UK-registered business, or through a small or medium sized UK-registered business.

- option 1: turnover related to UK activity
- option 2: global turnover
- other (please specify)

We believe the most effective approach would be to regulate on the basis of the global turnover of the business, albeit with a different threshold to that used for UK based businesses. Our response is based on the difficulty of accurately determining the true UK turnover of businesses who are not UK based and may operate in the UK market through a number of different routes to market. Working off a standardised global turnover figure will be the easiest way of regulating this area of the marketplace and ensuring relevant operations are brought within scope. We would be happy to support the establishment of a differing threshold, equally we would not oppose the same threshold being applied if this was the most favoured approach by consultation respondees.
We would however reiterate the point that the approach should also take into account traded volume for those commodity sectors where it is deemed appropriate as part of a smarter approach to regulation based on sector risk assessment.

Question 31. Can you provide any data or information that will help identify potential businesses in scope based outside the UK? Please provide details for your answer.

As an association we would not hold that type of data but would be happy to assist in verifying information as appropriate. From our member responses it has been suggested the following would be appropriate data sources - Forest 500 | Powerbrokers of Zero Deforestation

Forests - CDP

BRITISH COFFEE ASSOCIATION

Turnover threshold level

Question 32. Which of the following factors should be considered when setting the turnover threshold level? Please tick all that apply and state your reasons.

- policy impact
- burden on business
- deliverability
- other (please specify)

Given that coffee is a commodity that is exclusively imported (ie. there is no domestic production) not only in the UK but across Europe as a whole, the UK supply chains remain strongly inter-twined with European coffee purchasing and movement. UK based businesses, particularly those falling into the SME definition, may not always be best placed to drive the necessary level of change. It is therefore imperative there is close liaison between the development of policy in the UK and in the rest of the European market.

Potential burden on business will be heavily dependent on the final detail of the rules and, in particular, the level of information and burden of proof required. It has therefore to be a factor which is taken into account in setting the threshold levels.

We would also support the concept of deliverability being included in the threshold establishment criteria. The coffee sector is characterised by a wider range of businesses and supply chains offering different routes to market. The effective enforcement of this legislation will need to take into account the law of diminishing returns and determine at what threshold level the cost of enforcement outweighs the benefits being delivered.

Question 33. For each of the following commodities, please tick where the turnover threshold for inclusion of UK based businesses should be set.

Our response focuses only on coffee, for which we believe a £50 million turnover would be the most appropriate threshold level.

Question 34. Do you have any further comments regarding businesses in scope?

No.

EXEMPTION

Exemption threshold

Question 35. Should we set a single exemption threshold for each regulated forest risk commodity, combining raw commodity use with derived commodity use?

Yes, we would support this approach.

Calculating volumes of commodities used

Question 36. Should businesses be able to use conversion factors to estimate the volumes of commodities used in the supply chain to understand whether they can be exempt from due diligence requirements? Please state your reasons.

This question would appear to have less relevance to coffee and we do not therefore express a particular view.

Question 37. Should we use the proposed approach for businesses to understand whether they could be exempt? Please state your reasons. The proposed approach is to give businesses the freedom to choose which methodology they use to calculate volumes, to provide information on recommended methodologies in guidance, and to require in secondary legislation that the methodology should be reasonable.
As per the response to the previous question we do not express a particular view.

Exemption threshold level

Question 38. Which of the following factors should be considered when setting the exemption threshold level? Please tick all that apply and state your reasons.
- **policy impact**
- **burden on business**
- **deliverability**
- **other (please specify)**

Our response would be commensurate with the comments given for Question 32 albeit that the policy impact point would seem to have a lower importance here.

Question 39. For each of the following commodities, please tick the scale at which the exemption threshold level should be set.
Our response focuses only on coffee, for which we believe the exemption level should be set at 10 tonnes.

Question 40. Please provide reason for the scale selected for each commodity in Q39.
For coffee we believe this level sets an appropriate exemption level above which the business should obligated.

Question 41. Do you have further comments on the exemption?
No.

Question 42 - 44
To be answered by individual businesses

DUE DILIGENCE SYSTEM

Risk mitigation level

Question 45. Should businesses in scope be required through secondary legislation to 'eliminate risk or reduce risk to as low as reasonably practicable'? Please state your reasons.
We would strongly urge that the Government supports the concept of "as low as reasonably practicable". We believe the view would be the same for all commodity sectors, but certainly for coffee the complexity of the supply chain and the distance and remoteness which can occur between producer and businesses in scope means it would be impossible for any business to guarantee it could eliminate risk. Fundamentally, elimination would also go against the drive of the legislation which is aimed at removing deforestation through best practice improvement.

Guidance on the due diligence system

Question 46. Which of the following should we provide information on in guidance to support businesses to establish effective due diligence systems?

Please tick all that apply and state your reasons.

- what is required of eligible business to comply with regulations
- examples of best practice to support businesses in improving their systems
- metrics and indicators to help assess where there are low, medium, or high risks of illegal land use and ownership
- methods that businesses may use to assess and mitigate risk
- available resources to help understand legal frameworks in producer countries
- other (please specify)

We believe guidance should include all of the options referenced above. Having such guidance clearly documented and freely available to all supply chain actors, is key to reducing the burden on SME's while preserving the intended policy impact of the legislation.

Given the framing of the legislation there will be a strong need for a resource which maintains an up-to-date position on the legal framework in producer countries as the first step in compliance. It is a resource which is most logically established at the national level.

Following this the ability to determine whether producing countries have a low, medium or high level of risk in relation to illegal land use & ownership is paramount in allowing businesses to determine where their resource needs to be focussed to ensure full compliance with the legislation. Delivering a system which can retain public confidence would be supported by ensuring the assessment of risk is based on widely understood criteria. To this end guidance which offers assistance on the methods which might be used to assess risk would be welcomed by business, particularly those who might have had less previous exposure to undertaking such assessments.

Moreover, methods that businesses may use to assess and mitigate risk: in particular the data that is required to apply those methods, especially which data is available (i.e. through existing satellite imagery) and which data would need to be collected.

Finding ways for this new legislation to present an opportunity to improve current systems: how businesses and other supply chain actors could collaborate (pre competitively) to create a system which works for all stakeholders, rather than each company designing and deploying their own systems which is onerous for companies and for the producer organisations and their producers. Adhering to multiple certification systems already in place is already onerous for farmers and producer organisations, adding more requirements without good coordination could augment this considerably.

Methods and guidance, as well as examples of good practice, in relation to communicating effective due diligence systems to consumers.

The guidance must also recognise some of the challenges that are present in the existing market based solutions for monitoring and tracking deforestation. There are multiple providers with specific algorithms associate with satellite tracking already operating in the field. These may be important in high risk countries, but different methodologies come through with different answers – some may represent palm plantation clearing as deforestation for instance – it should be clear the level of acceptability of due diligence required, and that the methods used to track are open to critical review, including those that are operating to report which commodities are having what impact.

It is therefore important to understand by what methodology is a failure of due diligence expected to be assessed?

We should remember that conversion of a degraded pasture land to a coffee system is a net positive impact for the planet – as is the adoption of agroforestry systems. Therefore needs to be clarity in the methods to be applied and how deforestation is attributed to specific commodities or not.

Certification schemes and standards

Question 47. Should we set out in guidance how businesses may use existing certifications and standards to help meet the due diligence requirement? Please state your reasons.

We would support the development of guidance in this area and welcome the view that Government should not seek to authorise specific named schemes but instead set out criteria which schemes should be expected to prove compliance with. From a coffee perspective we would point to the existence of the Global Coffee Platform Baseline code. This baseline code operates as a standard which certification schemes are assessed against for equivalence. Ensuring the criteria link with the existing requirements of the baseline code, as they relate to deforestation and due diligence issues, will be an important component of delivering a workable approach and one which many existing businesses are already operating to.

Question 48. Which of the following criteria should we set out in guidance to support the use of existing certification schemes and standards? Please tick all that apply and state your reasons.

- proof of legality
- chain of custody
- robustness
- transparency
- other (please specify)

We would support the use of the criteria cited above.

Further evidence to inform due diligence system requirements

Question 49. Please provide any relevant evidence on current business practices, methods, and metrics available to assess and mitigate risk.

We have set out below some examples from members of projects they are currently running – this is only 2 or 3 examples of a much wider body of activity within the coffee sector, not least developing activities such as shade coffee where reforestation is a key component.

It is however important to recognise that the ability for the coffee sector to move more fully to a legally assured supply chain will be dependent, to a large extent, on the situation in the country of production, not least where coffee ownership changes on a number of occasions before it arrives at the processing mill, simply as a matter of scale. Undoubtedly there will be a greater need in some producing countries and/or areas for education and training than in others. In some areas there will be challenges in getting the necessary messaging into all parts of that primary supply chain.

The membership examples given below must therefore be seen in that wider context and a recognition that scaling up successful projects can and will take both time and commitment which needs to come from both the supply chain itself but also relevant authorities.

Collated examples from the BCA Membership:

Nespresso AAA Program

Discover the AAA Sustainable Quality Program | Nespresso

Nespresso has been working to promote ecosystem preservation and prevent deforestation as part of its AAA Program since 2003, supporting farmers in implementing best agricultural practices and raising awareness on the value of trees.

The AAA Program was developed in partnership with the Rainforest Alliance and sets rigorous sustainability standards, 39 criteria in total, 13 of which covering the environmental and social dimensions specifically.

Environment includes water use, soil conservation and deforestation prevention, while social comprises occupational safety, fair treatment of workers and the prohibition of child labour.

Nespresso sources 93% of its coffee through the AAA Sustainable Quality™ Program, and over 48% is certified with Rainforest Alliance or Fairtrade.

Nespresso Agroforestry

Climate Resilience through AAA Agroforestry | Nespresso

Since 2014, Nespresso has been working with AAA coffee farmers to reintroduce trees in and around coffee farms to strengthen the resilience of communities to climate change. A nature-based agricultural approach known as agroforestry.

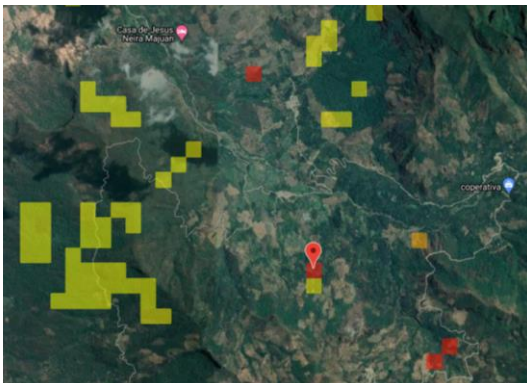
Through Nespresso's agroforestry schemes in partnership with Pur Projet, TechnoServe, SOS Mata Atlântica, ECOM and OLAM, Nespresso have planted 5.2 million trees in and around coffee farms since 2014. These efforts span 9 countries: Brazil, Colombia, Costa Rica, Ethiopia, Guatemala, Indonesia, Kenya, Nicaragua, and Uganda.

Café Direct

Producers Direct, Cafedirect and its network of 10 Producer Organisations and their farmers and the Alliance of Bioversity International & CIAT (ABC) are already working together to develop FarmDirect which puts the power of data, training, finance and access to markets into the hands of smallholder farmers. In particular, from 2022, a major three-year project will commence to test and scale FarmDirect as a tool to empower 7,000 farmers to implement climate smart sustainable agriculture and increase their incomes by 50%.

A particularly innovative and useful tool for coffee farmers within FarmDirect (known as Croppie) will incentivise farmers to share ground truth data through gamification and by using data shared by farmers to provide tailored services and actionable insights. In particular, Croppie enables farmers to take photos of their coffee cherries and receive machine learning driven yield predictions and individually tailored financial and agronomic advice from peers and experts. This tool will empower farmers to make decisions on how best to adapt to climate change and manage other risks such as commodity price fluctuation. Work is also underway with financial services providers to test how data gathered via this tool can increase access to loans and insurance.

There is a proposal to develop a feature of FarmDirect that will pioneer **inclusive** zero-deforestation value chains and mitigate climate change by preserving carbon stocks on coffee farms, with scope to expand to other commodities. This will be achieved through 1) providing a mechanism for farming communities to receive alerts of potential deforestation events and collectively respond to them and, 2) empowering farmers to document and evidence their carbon stocks 3) providing aggregated data dashboards for Producer Organisations and companies to evidence the deforestation free, high carbon stock credentials for the coffee grow by a particular coffee community.



1) Providing a mechanism for communities to manage deforestation: The Peruvian Ministry of the Environment and ABC have created Terra-i Peru which provides detection and early warning of land cover/ land use changes. An example is shown in the picture below of a potential area of deforestation near the area of one of the partner Producer Organisations. The new EU, UK and US regulations on buying zero-deforestation commodities *could* lead to this coffee community being excluded from the supply chain if action is not taken.

The solution will communicate Terra-i alerts to farmers, Producer Organisations and Producers Direct, and allow working together to collectively take appropriate action. This could be simply providing 'ground-truthing' evidence that this deforestation event was not deforestation (for example caused by pests or diseases), or that it was not on coffee growing land, so the coffee cooperative should not be penalised. If the alert is in fact true deforestation, this data will be used to empower the coffee cooperative as a whole to take collective action, which again will be evidenced.

2) Documenting carbon stocks (and training on how to reduce GHG emissions): A simple tool will be incorporated into FarmDirect which will train farmers in carbon reporting, enabling farmers to record for example the number of shade trees on their farm in order to provide an estimate of individual farm carbon stocks. Farmers will also access data-driven training on how to reduce GHG emissions.

3) Dashboards evidencing 'deforestation free, high carbon stock' coffee credentials: Data would be aggregated to a cooperative level and ultimately a landscape level, to be made available via the dashboard so Producer Organisations can evidence the 'high carbon stock, deforestation free' credentials of their coffee. Alongside companies like Cafedirect and UK retailers this would provide the aggregated data they require to evidence these credentials both to evidence adherence to the relevant county deforestation law and to communicate a USP for their customers.

Question 50-54
For individual businesses to reply to.

Annual reporting

Question 55. What should businesses be required to report on to enable a regulator to identify areas for further scrutiny?

We would support the concept of businesses reporting on the geographical regions within producing countries from where they are sourcing their coffee. Given the farm size of the average coffee producer it is clear however that a coffee consignment being purchased by a UK based importer or roaster could, quite easily, be made up of the produce from some 5-6,000 producers. It is therefore impractical to require reporting down to the individual producer level. Reporting on a regional basis does however allow authorities and others to determine whether those regions are at risk from deforestation practices.

This approach also has the added benefit of being able to acknowledge those progressive countries , states and districts which are taking steps to drive sustainable development alongside agricultural production. Examples of this can be seen in the Tropical Forest alliance Jurisdictional Action Network A platform of resources to help private sector action in jurisdictional initiatives - JA Hub (jaresourcehub.org)

Businesses do already provide information on the certification systems which they use and this can be included in the reporting process. The majority of existing certification systems operating within the coffee sector (some of which are also operating in other commodity sectors) operate to the Global Coffee Platform baseline code, which has prohibited the purchase of coffee from deforested areas since 2014.

Businesses can also report on the risk assessment measures they undertake to support the purchasing requirements they operate to as well as acting as an audit on the certification systems they require as part of those purchasing requirements. In all instances, reporting should be limited to non-commercially sensitive information.

Question 56. Should non-commercially sensitive information about businesses' due diligence exercises be made public to increase sector transparency and accountability?

In line with the response to the previous question we would not object to businesses making public non-commercially sensitive information on their due diligence exercises in support of the move towards greater supply chain transparency. The important point to note however is that there is no single determinant of what non-commercially sensitive information is and this will vary from business to business according to a number of factors and indeed may vary according to the different supply chains and origin countries within a single business. For example where a business is the major purchaser from a production region or country then this will be considered to be commercially sensitive as opposed to those areas where purchase is a smaller percentage of the businesses overall purchase requirement.

Question 57. What information should be made public about businesses' due diligence exercises to support accountability and decision making?

We would point to the answers given in the preceding two questions.

ENFORCEMENT

Designating an enforcement authority

Question 58. Which criteria should the enforcement authority fulfil? Please tick all that apply and state your reasons.
We would support a UK wide remit for a regulatory body. We would see it as important that the regulatory body operated across the same geographical territory as the legislation it was responsible for to ensure a consistent operation of the legislation but also a clear understanding for businesses on the approach being taken by the regulatory authority.

The capacity to regulate through established centres of expertise requires further consideration and explanation. We would certainly support a regulatory capacity which draws from existing expertise as this is crucial in ensuring the regulatory approach is applied form the basis of understanding rather than a purely theoretical understanding. The way in this would be developed however is important to understand beyond the broad principle.

This links to the final point where we would reinforce the points re. capability and experience. It is critical that an understanding of the commodity sector is built into the enforcement authority to ensure the appropriate provision of enforcement.

Overview of enforcement regime

Question 59. Should the maximum variable monetary penalty be £250,000?
No particular view on the maximum penalty level.

Question 60. Do you have any further comments on the enforcement regime?
Much more detail is needed on the structure and level of proposed enforcement given the intention that the cost of enforcement will be charged back to each regulated business. Moving forward we would have to question the fairness in levying an equal charge on all businesses irrespective of the size of that business, particularly if reference is not made to covering only those parts of the business which relates to commodities covered by the legislation.
This, in turn, reinforces the argument towards including a determination of tonnage alongside turnover calculations.

The maximum penalty proposed is much lower than EU legislation and disproportionality penalises smaller companies.

If Government are to introduce fines there needs to be a clear methodology – which, as much as possible, should be aligned with other geographies (e.g. the EU) – for an appropriate enforcement body. The chosen enforcement body should have the resources, mandate and expertise to provide guidance, monitor uptake and help develop due diligence as a predictable standard of conduct. Independent verification of how business implements due diligence can play a supportive role.
Much more detail is needed on the structure and level of proposed enforcement given the intention that the cost of enforcement will be charged back to each regulated business. Moving forward we would have to question the fairness in levying an equal charge on all businesses irrespective of the size of that business, particularly if reference is not made to covering only those parts of the business which relates to commodities covered by the legislation. The regulation should provide for a scalable approach to penalties, with more significant fines in case of repeated serious breaches.

The focus should be on the commodity concerned rather than imposing fines on the company's global annual turnover. Fines foreseen under EU regulations governing the safety of food and cosmetic products placed on the EU market could be used as a reference point for developing similar approaches. Penalties should be defined as clearly as possible at EU level, in order to avoid a patchwork of systems at Member State level that will lead to distortions in the internal market. Sanctions need to be proportionate; disproportionate measures may divert resources and dissuade companies from full transparency which is key to encouraging responsible business practice. A warning and correction system may be more proportionate before resorting to fines.