Deforestation: Comments on possible options for EU demand-side measures

Dear Mrs Fink-Hooljer,

Responding to the invitation to provide feedback on the ongoing discussion on measures to curb deforestation, we would like to share with you our views on several points raised during the multi-stakeholder meeting of 25 February 2021.

As you know, COCERAL, FEDIOL and FEFAC are supportive of the EU ambition to take a leading role in the global fight against deforestation. EU actions can provide an important contribution towards reducing and halting deforestation, provided a comprehensive set of smart tools is set up. In order to effectively tackle global deforestation, we consider that the EU’s toolbox should include a mandatory due diligence system.

The policy options still under consideration and briefly outlined at the meeting trigger the following remarks from our side:

- A due diligence obligation has the means to support change in supply chains as part of a “smart mix” of measures. The EU due diligence process should be risk-based as per the OECD/FAO guidelines and the UN Guiding Principles. It should apply to forest-risk commodities and their derived products and provide for enabling provisions, such as clear definitions related to deforestation, which should follow the approach taken by the Accountability Framework Initiative, FAO or High Conservation Value / High Carbon Stock approach (HCV-HCS). Moreover, it should avoid setting in place measures that bear a disproportionate burden or result in unintended consequences.

- In case the Commission opted for the classification of producer countries through benchmarking or country carding (option 2 and 5), we would consider imperative for sub-national situations to be taken into account, so as to make sure that ‘good’ operators in high-risk areas are not excluded. In addition, there should be a possibility for countries that get a negative rating to redeem compliance and re-enter the system, otherwise no positive development would be possible.

- The option of a mandatory public certification (option 3) risks becoming excessively burdensome for all players, in terms of costs and applicability. In addition, we are concerned about the inherent negative message this delivers to all those farmers that have been improving their practices through compliance with voluntary certification
systems. These, although not perfect, have considerably contributed to driving change through our supply chains.

- The least valid option in our view is to introduce a mandatory labelling (option 4), as it can mislead consumers when applied to multi-ingredients products and it brings constraints to ensure relevant information is transferred across the supply chain without having a positive impact in terms of environmental benefits, neither in producer countries nor on the EU market.

The policy the EU aims at introducing to fight deforestation can be a game changer not only for Europe but also at global level. With this in mind, we have to stress the need for setting in place a system that allows achieving its objective and at the same time creates the least possible pressure on business operators. Several provisions that we understand are likely to be part of the due diligence obligation are raising concerns as to their disproportionate nature, with negative implications as to their viability and their effectiveness:

- Although we understand the need to impose a duty of due diligence on all products put on the EU market for WTO-compatibility reasons, most of the options and their built-in obligations will prove totally disproportionate on EU commodities compared to the risk their production triggers. Applying substantially less burdensome provisions to lower-risk countries could be a more reasonable alternative, but may create a two-tier market.

- It is important to acknowledge that voluntary commitments have led to different cut-off dates depending on the biome or the system. If the EU were to set a mandatory cut-off date to exclude from the EU market those products not meeting a certain standard, a past date would not be helpful in steering change in production practices but would only allow the EU to source from existing no-deforestation areas, with no real impact elsewhere. At least using the date of implementation would allow public authorities and private sector to continue their engagement with other players and get more buy-in from both public and private actors.

- To reduce the risk of leakage, we consider that the enforcement of a mandatory due diligence, in particular the liability of companies, should not be designed in such a way that it discourages public and private players from engaging with countries or regions where environmental risks are high. Potential liabilities should be linked to the failure of implementing some or all steps of the due diligence procedure, rather than to the failure of meeting specific environmental objectives such as a deforestation-free obligation.

COCERAL, FEDIOL and FEFAC are committed to ensuring that their sourcing of commodities is not associated with environmental risks, including deforestation, and with human rights violation. Companies take responsibility for carrying out their due diligence obligation and for mitigating or admitting a possible negative impact of their operations. Hence, we believe that introducing at EU level criminal liabilities, which are a matter for national judicial systems, would prove detrimental to effective progress on the ground.

Finally, we must reemphasise that mandatory due diligence can only be one of several tools that will be necessary to effectively fight deforestation. We are concerned that the current exclusive focus on demand-side measures, separate from possible supply-side measures, will not ensure both sides of the actions to be complementary and reinforcing. We also wish to underline that exclusion will not solve deforestation, will have important cost implications for food in the EU and will contribute to a two-tier market. Instead of increasing operational costs on companies, there should be more emphasis on providing incentives to farmers. Higher value for environmental services and carbon sequestration would allow to better engage with farmers and make them adhere to the common objective.
We remain committed to continuing a constructive exchange with your services with a view to reaching practical, proportionate and effective solutions to fight deforestation.

Yours faithfully,

CC: Commissioner Sinkevičius' Cabinet, DG Agriculture, DG Trade, DG Devco, DG Environment