



**FOREST POLICY TRADE AND FINANCE INITIATIVE**

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# **NAVIGATING THE FALSE DICHOTOMY BETWEEN LEGALITY AND ZERO DEFORESTATION**

**AN INTERNATIONAL PARTNERSHIP PATHWAY  
TO REDUCING AGRO-CONVERSION**

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## **About Forest Trends**

Forest Trends works to conserve forests and other ecosystems through the creation and wide adoption of a broad range of environmental finance, markets, and other payment and incentive mechanisms. This report was released by Forest Trends' Forest Policy, Trade, and Finance program, which seeks to create markets for legal forest products, while supporting parallel transformations away from timber and other commodities sourced illegally and unsustainably from forest areas.

Other publications can be found at [www.forest-trends.org](http://www.forest-trends.org).

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## Acronyms

<b>CBDR-RC</b>	Common But Differentiated Responsibilities and Respective Capabilities
<b>CO<sub>2</sub>e</b>	Carbon dioxide equivalent
<b>EUTR</b>	European Union Timber Regulation
<b>FLEGT VPA</b>	Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreement
<b>Gt</b>	Gigatons
<b>IPLC</b>	Indigenous Peoples and Local Communities
<b>Mha</b>	Million hectares
<b>NDC</b>	Nationally Determined Contributions
<b>NYDF</b>	New York Declaration on Forests
<b>REDD+</b>	Reducing emissions from deforestation and forest degradation (and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries)
<b>TFA</b>	Tropical Forest Alliance (see <a href="https://www.tropicalforestalliance.org/">https://www.tropicalforestalliance.org/</a> )
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>WHO</b>	World Trade Organization

## Glossary

*We use the Accountability Framework (2019) definitions for the following terms:*

**Conversion:** Change of a natural ecosystem to another land use or profound change in a natural ecosystem's species composition, structure, or function.

**Deforestation:** Loss of natural forest as a result of: i) conversion to agriculture or other non-forest land use; ii) conversion to a tree plantation; or iii) severe and sustained degradation.

**Natural ecosystem:** An ecosystem that substantially resembles—in terms of species composition, structure, and ecological function—one that is or would be found in a given area in the absence of major human impacts. This includes human-managed ecosystems where much of the natural species composition, structure, and ecological function are present.

**Natural forest:** A forest that is a natural ecosystem.

*The following terms are also used, with the first two closely following the Accountability Framework (2019):*

**Zero conversion:** Synonym of “No-conversion” defined by the Accountability Framework (2019) as: “Commodity production, sourcing, or financial investments that do not cause or contribute to the conversion of natural ecosystems (as defined by the Accountability Framework).”

**Zero deforestation:** Synonym of “No-conversion” defined by the Accountability Framework (2019) as: “Commodity production, sourcing, or financial investments that do not cause or contribute to deforestation (as defined by the Accountability Framework).”

**Agro-conversion:** Conversion driven by commercial agriculture.

**Illegal deforestation:** Deforestation that takes place in contravention of a producer country's legislative framework (laws, regulations, instructions, and any other legal instrument that penalizes non-compliance) at the time the deforestation took place.

**Legality approach and/or criteria:** An approach and/or criteria seeking to ensure that commodity production, sourcing, and imports are not the product of illegal deforestation or illegal conversion.



## Executive Summary

Deforestation and other natural ecosystem loss are wreaking havoc on the climate, on biodiversity, on human rights, and on ecosystem resilience across the tropics. About 60 percent of recent tropical forest loss was caused by commercial agriculture. At least 69 percent of this agro-conversion was illegal (Forest Trends 2021).

A diverse set of global strategies has advanced over the past two decades to reduce commodity-driven deforestation. These include certifications and other standard-setting frameworks; voluntary corporate commitments; carbon payments for reduced emissions (e.g., REDD+); multi-stakeholder processes (like the Tropical Forest Alliance); jurisdictional approaches that link multiple strategies together; and more.

While there have been some successes and lessons learned, the overall global picture is disheartening. Deforestation and agriculture-driven deforestation both continue to increase.

Together, we must reverse these trends as quickly as possible. The stakes for people and the planet are incredibly high: climate disruptions from just one degree Celsius of warming in 2021 give us a glimpse of possible futures that we still have the power to change, and the global COVID-19 pandemic gives us a glimpse of the risks we face from fraying the web of life.

In this Commentary, Forest Trends outlines a pathway to achieving this critical pivot away from agro-conversion and towards a nature-positive global food and land-use system. We argue that demand-side measures to ensure legality are a steppingstone and thus a faster path for tropical countries to get to zero deforestation.<sup>1</sup>

We make a critical distinction between the *objective* of reducing agro-conversion to zero and the specific *strategies* we pursue to achieve this objective. And we argue that there is a clear path forward for navigating what has emerged as a false dichotomy between legality and zero deforestation.

To state plainly: Forest Trends fully supports the objective of zero-deforestation commercial agricultural commodity production.<sup>2</sup> There is enough land in global agricultural production to provide healthy diets to a growing human population for decades (Willett et al. 2019), and the services forests provide are too valuable and irreplaceable to keep sacrificing (Dasgupta 2021). Forest Trends also fully supports the private sector's efforts to eliminate agro-conversion from their supply chains through zero-deforestation commitments and their implementation and invests significantly in the success of this strategy (e.g., through our *Supply Change Initiative*).

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<sup>1</sup> There has been increasing attention on the damage from conversion of non-forested natural ecosystems, such as peatlands, wetlands, and shrub and savannah lands, leading to an expansion of many strategies to include both deforestation reduction and reduction of other natural ecosystem conversion. Forest Trends strongly supports this expansion of strategic scope. When we use "zero-deforestation" in this report with respect to strategies, policies, and criteria for commodity production and trade, it is intended as shorthand for "zero-deforestation and zero-conversion."

<sup>2</sup> We note that some tree harvesting is to be expected in the context of well-managed use of forest landscapes by indigenous peoples, local communities, and/or smallholders cultivating agricultural commodities within these landscapes, with noted variation according to local political economies of land use and production, participation in commercial markets, and customary tenure systems. There is a plethora of evidence demonstrating that some agro-conversion can be (and is) practiced sustainably in accordance with customary forest use practices and, indeed, that customary management of forests leads to better conservation outcomes than strict protection.





However, we argue herein that demand-side trade barriers erected by nations to keep out forest-risk commodities should be based on *legality* criteria – not zero deforestation – largely because this approach centers the foundational role of strong producer country governance, and because we believe that tropical deforestation will only be eliminated when there is sufficient domestic political consensus to codify these objectives into law and implement them through effective regulations, governance, and enforcement.

We also outline a broader set of related strategies to support forest countries on the pathway to zero agro-conversion, including a particular focus on incentives from the international community to support land-use regulatory frameworks in forest countries that eliminate forest loss entirely. If and when this happens, there is no longer any practical difference between strategies aiming at zero-deforestation criteria, and those aiming at zero illegal deforestation.

Global policy makers are increasingly aware of the critical alarm bells that climate change and ecosystem destruction are ringing. History shows us that the most rapid and stable solutions to international collective action problems involve cooperation, rather than retreating to our corners. We must work together in partnership to put out these fires – and we can, with mutual respect and understanding and a shared commitment to changing the world.

## WHY “ILLEGAL” IS THE APPROPRIATE CRITERION FOR DEMAND-SIDE TRADE REGULATION

Demand-side trade regulation of deforestation-risk commodities is being considered by several importing countries (the EU, UK, and US in particular). There is active debate among policy makers and stakeholders on whether and how these regulations should be constructed – particularly whether they should be based on a legality<sup>3</sup> or zero-deforestation standard. This commentary argues that demand-side trade measures to ensure legality are a more equitable and likely faster steppingstone to support countries in their pathway to zero agro-conversion than zero-deforestation trade barriers would be.

Forest Trends recommends that import regulations focus primarily on producer country rule-of-law (e.g., the legality of forest-risk imports) based on the following evidence and logic:

- **Demand-side import restrictions by governments on a legality basis support forest country ownership** of land-use objectives broadly, and producer countries’ efforts to uphold the rule of law and curb corruption specifically. Both are critical linchpins of successful deforestation reduction efforts (Seymour and Busch 2016).
- **Illegal agro-conversion is particularly egregious**, as insufficient enforcement and corruption in land and forest management rob communities of their rights and livelihoods (NYDF Assessment Partners 2020); rob producer countries of resources that could be used for sustainable development (Blundell et al. 2017); and prop up authoritarian regimes and criminal networks (INTERPOL 2016).
- **Demand-side trade regulation is necessary** to reduce trade of deforestation commodities (Brack and Wolosin 2018), the driver of more than 2 million hectares (Mha) per year of forest loss and 1.2 Gigatons of carbon dioxide equivalent (GtCO<sub>2</sub>e) per year of emissions (Forest Trends 2021b).
- **There is not a sufficiently robust political consensus around zero deforestation in producer countries to justify demand-side import restrictions by governments on a zero-deforestation basis.** Regulating zero deforestation for imports without such consensus is an anti-collaborative

<sup>3</sup> Ensuring the commodity in question was not produced in violation of a producer country’s legislative framework (e.g., their laws and regulations).



approach that applies extraterritorial criteria to tropical forested trading partners (that are usually less wealthy and geopolitically powerful), that consumer countries have not historically applied to themselves.

- **Legality regulation complements zero-deforestation private sector action** by raising the floor for laggards and leveling the playing field for leaders and by inducing supply chain controls across a broad set of private sector actors (Schatz and Jenkins 2020).
- **Legality regulation fosters a path of partnership and collaboration** based on reciprocity and mutual respect between producer and consumer governments, and its implementation will create the conditions and processes necessary for those actors aiming to go further to achieve zero deforestation (Adams 2021).

## THE INTERNATIONAL PARTNERSHIP PATHWAY

We propose the *International Partnership Pathway* to eliminating agro-conversion, which consists of five priority strategies across actor groups, centered around the foundational role of strong producer country governance. This Pathway carefully combines legality and zero-deforestation demand-side strategies, along with complementary strategies by all actors to support their implementation and eventual convergence. We believe that this cooperative approach will help the world move more quickly and equitably towards climate-positive and nature-positive food and land management systems.

The International Partnership Pathway facilitates cooperative progress as follows:

- 1 Producer country governments build towards progressive implementation of domestic laws and regulations** that have a material impact on land use, forest conversion, and Indigenous Peoples and Local Communities' (IPLC) ability to express their customary and legal rights to land and forests without external appropriation. Over time, they strengthen laws and regulations to ratchet down legal deforestation and ecosystem conversion as well.
- 2 Demand-side country governments advance trade regulations that ban imports of agricultural commodities produced on illegally converted land** and effectively enforce them, alongside existing laws to tackle human rights abuses and environmental harms linked to international trade. They also require due-diligence and transparency for imported forest-risk commodities to facilitate manufacturer and consumer ability to identify and avoid all deforestation products if they choose.
- 3 Manufacturers and retailers, traders, and large producers adopt, fully implement, and transparently report on zero-deforestation supply chain commitments** in line with existing best practice guidance, such as the Accountability Framework Initiative.
- 4 All actors with the capacity to do so provide support and incentives for zero-deforestation and zero-illegal deforestation supply chains**, including carrots and sticks, through for example, preferential finance, capacity building and technical assistance, monitoring and transparency initiatives, and outreach and organizing.
- 5 The international community advances a broad suite of incentives to support land-use regulatory frameworks in forest countries that eliminate forest loss and protect community rights**, with cooperative efforts flowing through multiple global agendas, including climate, development, trade, security, human rights, wildlife and biodiversity, anti-corruption, and more.

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**Zero illegal  
versus zero  
deforestation is  
a false choice  
– we need each  
from the  
appropriate  
actor groups.**  
.....



## 1

## Background: The Extent of Illegal Deforestation for Agriculture

While subsistence agriculture and logging still contribute to deforestation, commercial-scale agricultural expansion is now recognized as the single largest driver of deforestation worldwide by far, and thus also of greenhouse gas emissions from land-use change. Several initiatives have quantified how much and where deforestation is driven by commercial agriculture, and even how much of this deforestation was driven by international trade. However, fewer analyses have been able to determine the extent to which agricultural commodities are being grown on lands that have been illegally cleared of forests (Forest Trends 2021).

### Defining “illegal deforestation”

Forest Trends defines illegal deforestation as forest clearing in violation of a producer country’s legislative framework (e.g., their laws and regulations) at the time the deforestation took place. Forest Trends focused only on material violations, specifically on illegalities in licensing (e.g., failures to obtain permits or permission from landowners, conduct environmental impact assessments, corrupt and fraudulent authorizations, etc.) and on forest clearance (overharvesting, outside of boundaries, tax evasion, etc.). Breaches of international law or customary law are not included unless they are integrated into national legislation.

In early 2021, Forest Trends released a study, *Illicit Harvest, Complicit Goods*, that attempted to quantify the extent and nature of illegal deforestation driven by agricultural expansion, and places it within the scope and scale of all tropical deforestation between 2013 and 2019. The report revisited an analysis that Forest Trends conducted in 2014 covering 2000 to 2012. It found that more forest land is being illegally cleared to make way for agricultural crops and pastures than ever before, including:

- **77 Mha of tropical forests were lost between 2013 and 2019: the equivalent of clearing more than five Manhattans every day.** During this time, average annual tropical forest loss surged to more than 11 Mha per year, compared to 7.3 Mha per year in the first 12 years of the 21st century – an increase of 52 percent. Brazil, Indonesia, and the Democratic Republic of the Congo (DRC) together accounted for 51 percent of all tropical forest loss between 2013 and 2019. All three have seen increases in average annual loss (by 14 percent, 17 percent, and 162 percent, respectively) during this time.
- **Almost two-thirds (60 percent) of tropical deforestation between 2013 and 2019 was driven by commercial agriculture.** Commercial agriculture was the primary identifiable driver of forest loss everywhere except Africa, where subsistence agriculture reportedly drove almost all deforestation. More than 6.58 Mha of tropical forests were cleared each year to make way for commercial agricultural operations. This represents an increase of 28 percent in the average annual scale of agro-conversion compared to 2000 to 2012.
- **At least 69 percent of agro-conversion was conducted in violation of national laws and regulations,** and this is likely an underestimate. Illegal agro-conversion was responsible for at least 31.7 Mha of the total 77 Mha of tropical forest loss between 2013 and 2019 (Figure 1) – an area roughly the size

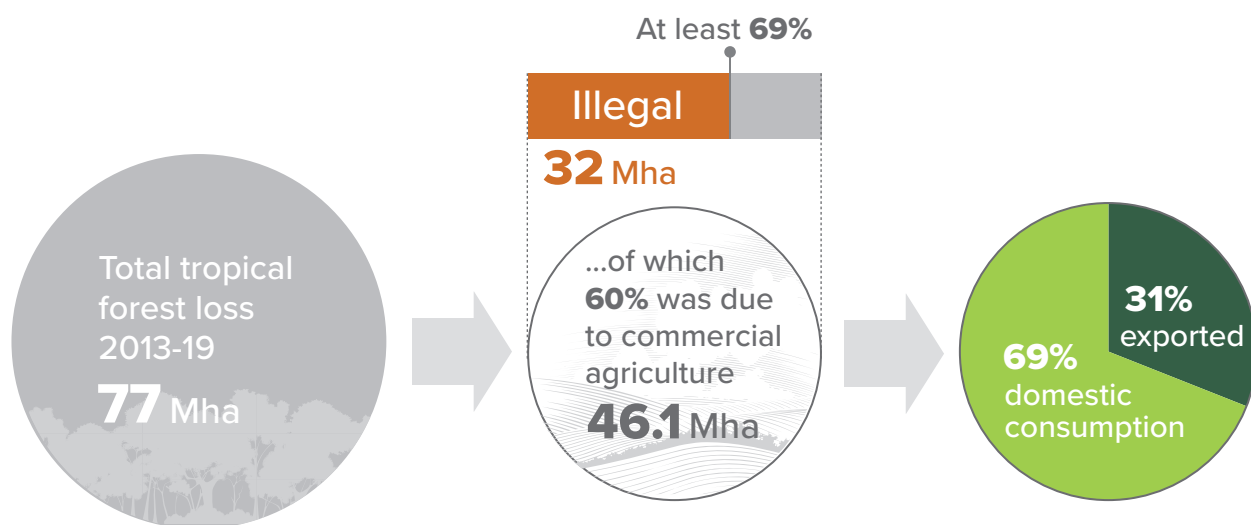




of Norway. This equates to an average annual loss of more than 4.5 Mha per year, an increase of 28 percent from the 2000 to 2012 period (3.5 Mha per year). Illegal activities were narrowly defined as only those directly connected with clearing and of material import, such as obtaining land illegally, clearing in excess of permits, fraud and corruption, human rights abuses, tax evasion, and breaches of environmental law.

- **Soy, palm oil, and cattle products drive global figures of illegal deforestation, but other smaller-scale commodities, such as cocoa, rubber, coffee, and maize, are also leading causes of illegal deforestation in some regions**, with devastating effect. Identifiable illegal deforestation is pervasive in the expansion of croplands for soy (at least 93 percent of agro-conversion across all soy-growing countries in this study), cocoa (93 percent), and cattle products (beef at 81 percent and leather at 87 percent). The global average proportion of illegality for palm oil (59 percent) is constrained by low data availability in Malaysia, although 81 percent of clearing for Indonesia's palm oil is estimated to be illegal. Global estimates for commodities like rubber, coffee, and maize are limited by data availability, but are still high enough to show significant issues with legal compliance.

**Figure 1 | Area of tropical forest loss (million hectares; Mha) driven by commercial agriculture, and estimates of how much loss was illegal (69%) and exported (31%), 2013-2019**



Source: Forest Trends 2021

- **Emissions from illegal agro-conversion account for at least 42 percent of all emissions from tropical deforestation.** Illegal agro-conversion was likely responsible for at least 2.7 GtCO<sub>2</sub>e per year, and 19 GtCO<sub>2</sub>e between 2013 and 2019. On an annual basis, that's more than India's emissions from fossil fuels in 2019, and if illegal agro-conversion were a country's fossil emissions it would be third largest after China and the US. The largest producer of emissions from illegal agro-conversion was Latin America (13.7 Gt), mainly due to massive forest loss in Brazil associated with fires over the last few years.



- **More than 31 percent of agricultural commodities linked to deforestation were exported, raising significant concerns about their association with illegal deforestation.** In 2019, exports of ten agricultural commodities valued at US\$55 billion were linked to agro-conversion – mostly those grown in Latin America and Asia. This trade represents emissions of at least 1.2 GtCO<sub>2</sub>e per year from more than 14 Mha of forest land cleared between 2013 and 2019. The report examined 23 of the countries with the highest rates of deforestation and found that at least one-fifth – and in some cases virtually all – of agricultural exports were linked to illegal deforestation.
- **Deforestation for agro-commodity production that is driven by export demand varies, but the annual area cleared has increased overall since 2013,** which will affect the potential impact of consumer and demand-side measures. However, the proportion of production linked to agro-conversion that is then exported has declined from 49 percent from 2000 to 2012 to 31 percent since 2013. This is because in some countries, deforestation has increased but is not driven by commercial agriculture (DRC, Madagascar, Sierra Leone), or their agricultural products are not destined for export (Colombia, Bolivia, Mexico). In these countries especially, demand-side measures, such as import regulations, have less leverage than in countries where exports dominate.



## 2

## Seeking Nuance and Conceptual Balance in Global Deforestation-Reduction Strategies

Commercial-scale agricultural supply chains stretch around the globe, distributing responsibility for deforestation from where forests are actually removed to the ultimate consumer, making action by consumers and their governments not just an option but an obligation. Most of that agro-conversion – at least 69% in recent years – is illegal, conducted in violation of producer country laws and regulations, and particularly egregious in its frequent links to corruption and contravention of social safeguards and norms, as summarized in Part 1.

This report focuses on why demand-side measures to ensure legality are a steppingstone and thus a faster path for tropical countries to get to zero deforestation. But why focus specifically on illegal agro-conversion as the criteria for demand-side regulatory action? Why not direct all of the collective energy and policy advances on the demand side towards excluding all agro-conversion products from trade, which would – by definition – also exclude products sourced from illegal agro-conversion?

First, to state plainly, Forest Trends fully supports the *objective* of zero-deforestation agricultural commodity production.<sup>4</sup> There is enough land in agricultural production worldwide today to provide a healthy diet to a growing human population for decades into the future (Willett et al. 2019), and the services forests provide to people are too valuable and irreplaceable to keep sacrificing (Dasgupta 2021).

We must, however, make a distinction between the *objective* of reducing agro-conversion to zero and the specific *strategies* we pursue to achieve this objective.

Actions to reduce agro-conversion do not take place in a vacuum: a web of relevant actors are each located within their own social, political, historical, legal, and economic contexts, with different obligations and capacities to act. The relative importance of maintaining forests, as opposed to pursuing alternative uses for forest land, such as agricultural production, will legitimately vary among these actors as they define and pursue land-use objectives, including food and commodity production. As such, the criteria applied by commodity purchasers, and those regulating their trade, may need to vary as well.<sup>5</sup>

In setting out to make recommendations to these various actors, with the ultimate *objective* of eliminating all commercial agro-conversion, we must take into account these differences.

**We believe that the most rapid, equitable, and successful path to achieving stable and sustainable zero-deforestation global land use requires careful consideration of *who* should set the criteria** for ethical land use within their sphere of control and/or influence, potentially even including some agro-conversion. Eliminating products of illegal deforestation best supports the development of sound institutions that are capable of responding to the needs of markets, while addressing the climate crisis head-on.

<sup>4</sup> There has been increasing attention on the damage from conversion of non-forested natural ecosystems, such as peatlands, wetlands, and shrub and savannah lands, leading to an expansion of many strategies to include both deforestation reduction and reduction of other natural ecosystem loss. Forest Trends strongly supports this expansion of strategic scope. When we use “zero-deforestation” in this report with respect to strategies, policies, and criteria for commodity production and trade, it is intended as shorthand for “zero-deforestation and zero-conversion.”

<sup>5</sup> Consider, for example, whether some agro-conversion in a high forest-cover but food insecure country, or by smallholders or Indigenous people within their customary and/or legally tenured lands, may be ethical.



## VOLUNTARY EFFORTS HAVE BEEN INSUFFICIENT TO ACHIEVE SYSTEMIC CHANGE

Over the past decade, a great deal of energy and effort have been invested in a suite of strategies related to voluntary zero-deforestation commitments by companies, which explicitly seek to identify and eliminate the products of deforestation from their supply chains. Forest Trends fully supports the private sector's efforts to eliminate agro-conversion from their supply chains through zero-deforestation commitments and their implementation, and invests significantly in the success of this strategy (e.g., through our *Supply Change* Initiative). Much has been learned from advancing, supporting, and implementing these voluntary private-sector commitments; some companies have made significant progress and there is significant room for additional advancement through this strategy.<sup>6</sup>

However, voluntary approaches *alone* have not and will not solve the problem.

### **Voluntary Zero Deforestation Won't Get Us There.**

More than six years after the New York Declaration on Forests (NYDF), and more than ten years out since the Consumer Goods Forum committed to achieve zero net deforestation in key commodity sectors – two major milestones where the voluntary corporate strategy was elevated as a key solution – commodity-driven deforestation continues to rise (GFW 2021), and the number of companies making voluntary zero-deforestation commitments has plateaued. Voluntary approaches have been a key factor driving change in some places, but from a global strategic standpoint, they have not reached the scale needed to effect systematic change (NYDF Assessment Partners 2019).

This shouldn't be surprising, as it follows historical patterns. We have argued elsewhere, based on case studies of global efforts to "Get the Bads Out of Goods" (Brack and Wolosin 2018), that progress toward change is messy, non-linear, and time-consuming, but that over time a forward evolution to include an expanding set of mutually supportive strategies can be seen in those cases where issues have been successfully addressed: from civil society awareness raising, to corporate voluntary measures, to government regulation, and ultimately international coordination (Figure 2).

We extracted three lessons for reducing agro-conversion from the "Get the Bads Out of Goods" analysis:

- 1 "Voluntary measures alone are insufficient to successfully address commodity-driven deforestation at the global scale," even if they have been a critical step forward and will remain important.<sup>7</sup> They may be necessary, but they are insufficient.
- 2 "Consumer country regulation and, ultimately, international cooperation will be needed if international goals are to be reached." (e.g., agro-conversion free commodities)
- 3 Successfully advancing trade regulation "will require a greater level of consensus on common standards than currently exists, including by producer-country governments." (e.g., a legitimate and common standard of ethical supply)

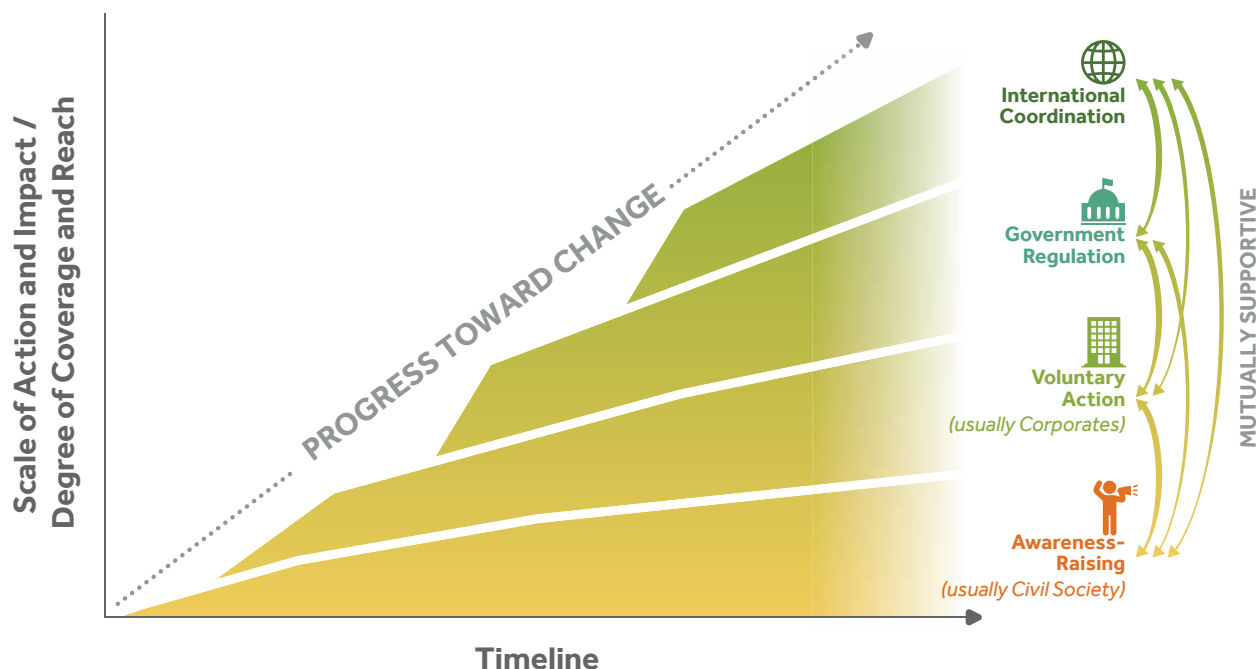
**Demand-side  
trade  
regulation is  
necessary.**

<sup>6</sup> See, for example, Supply Change data (<https://supply-change.org/#company-profiles>) and success stories highlighted in NYDF Assessment Partners (2020a).

<sup>7</sup> For example, surveys of farmers and ranchers in regions of Brazil and Costa Rica that have successfully reduced deforestation indicate that positive incentives on their own are insufficient and that legal and regulatory enforcement are also required to push bad actors out and level the playing field for good actors (Saunders 2020).



Figure 2 | The Evolution of Progress from Voluntary to Regulatory Approaches



Source: Forest Trends 2021

## HOW CAN WE CHART THE COURSE FROM VOLUNTARY PRIVATE ACTION TO DEMAND-SIDE TRADE REGULATION?

We return below to highlighting the continuing need for private sector voluntary zero-deforestation approaches. First, though, we consider how we should proceed from voluntary private action to national or multilateral demand-side trade regulation with all due haste. What considerations should we take into account in setting the course of that advance? Through what lenses should we view the choice between demand-side regulation based on legality versus zero?

### Why Import Regulation Based on Zero Deforestation Will Slow Down Progress

Demand-side regulations will work the fastest if they do not meet significant resistance from producer country governments and will ultimately have the longest impact if they support producer country governance reforms. From a practical standpoint, most importing nations will have difficulty advancing import bans on products failing to meet a given minimum standard without at least a non-objection – if not actual political support – from forested producer countries for that standard. Environmental and human rights issues, like deforestation, remain second-order priorities in most bilateral relationships between nations, making the issue unlikely to be insisted upon in the face of objections and potential retaliation impacting higher diplomatic, trade, and economic priorities. A decades-long trend towards trade liberalization and increasingly intertwined cross-border supply chains further stacks the deck against unilaterally imposed trade barriers.<sup>8</sup>

<sup>8</sup> The responses to a recent proposal by the EU to introduce a carbon border adjustment mechanism suggest that unilateral trade measures advanced for climate purposes still generate significant objections; the EU's consideration of zero-deforestation measures, a potential exception, is discussed below.





Even if deforestation-free import bans were to be implemented by one or more consumer countries unilaterally and over the objections of forested countries, they are unlikely to succeed in reducing deforestation for at least five reasons:

- 1 Deforestation can only be addressed at scale when producer country governments take ownership of their responsibility for setting and enforcing the boundaries of acceptable land use within their borders,** largely because these governments have at their disposal the most important tools and capabilities to maintain those boundaries. This practical consideration is borne out in the evidence of what works to stop deforestation: there is strong evidence that improved land governance and its implementation and enforcement are critical to reducing deforestation (Nepstad et al. 2014; Busch and Ferretti-Gallon 2017).
- 2 There needs to be cooperation between producer and consumer governments.** There is evidence that a collaborative model wherein demand-side countries partner with forested producer countries to support governance changes is helpful (Neeff and Linhares-Juvenal 2016). Many developing tropical forest countries have, and would also continue to benefit from, financial and technical support to help them improve and implement their legal and regulatory frameworks. In short, alignment on the objectives of import-country regulations with the objectives of exporting forest-country governance frameworks, combined with technical and financial support, can accelerate success.
- 3 Demand-side regulation based on legality is more likely to be adopted as a broadly shared global norm across countries** who represent a much larger proportion of global demand for forest-risk commodities, reducing leakage (see below).
- 4 Principles of equity, national self-determination, and mutual respect among nations make it inappropriate for importing countries to unilaterally impose what they consider an “acceptable” land-use development pathway on trading partners** through a full ban on all agro-conversion products, regardless of such a ban’s potential efficacy. This is especially true in light of many developed countries’ historical land clearing and resulting agricultural land base. Or at least it is perceived or argued to be true by important political constituencies in tropical forested countries, particularly lower- and middle-income countries.
- 5 Deforestation-free import bans, if passed, will likely be challenged by producer countries in the WTO, possibly resulting in years of delay.** Indonesia has proven willing to challenge the EU on sustainability criteria applied to its palm oil imports by the EU Renewable Energy Directive, and an early response from the Brazilian soy industry to draft European Commission (EC) regulations on zero-deforestation imports suggests there will be significant negative responses there as well (AFP 2021).

## Country Ownership of Mitigation Objectives, Including Deforestation Reduction, Is at the Core of the Paris Agreement

But regardless of one’s opinion of the argument that forested countries have a right to set their land-use development pathway based on equity and self-determination (or as countries often frame it, their sovereignty), *these concepts are nonetheless core principles at the very heart of the current global climate policy regime*. In the context of the Paris Agreement, countries have the right to define their mitigation contributions themselves in a bottom-up process, in the context of “Common but Differentiated Responsibilities and Respective Capabilities” (CBDR-RC). This includes the choice of whether and how to participate in the REDD+ mechanism. Under the UNFCCC’s accounting standards, emissions associated with the production of a traded product is attributed to the country of origin regardless of the ultimate consumer or user’s geography. In the absence of an alternative approach to account for emissions embedded in trade, equity in the division of responsibility for climate action – including for reducing emissions from



agro-conversion, and especially for traded agro-conversion emissions – rests largely on the principle of CBDR-RC and the bottom-up process of Nationally Determined Contributions (NDCs). Any ban on traded products of agro-conversion expressly related to climate emissions from deforestation that are not aligned with the source country’s national priorities, therefore, is effectively an end-run around the Paris Agreement’s bottom-up design and CBDR-RC, under the umbrella of environmental exceptions that may be allowable under global trade governance.<sup>9</sup>

## **A Lack of Consensus Around Near-term Zero-deforestation Objectives Among Key Tropical Forest Countries is Clear**

Few countries or regions have codified zero-deforestation targets into national law or regulation.<sup>10</sup> Many forest countries and jurisdictions have supported *aspirational* zero-deforestation goals, for example, as signatories to the NYDF, or the recently released Glasgow Leaders’ Declaration on Forests and Land Use, or in targets in their NDCs – most of which are conditional upon action or finance by others. At the sub-national scale, jurisdictions that have made the most significant progress towards political consensus – such as Mato Grosso, Brazil – have generally converged on timelines towards zero net deforestation (or zero net emissions from deforestation), not immediate cessation of all agro-conversion.<sup>11</sup> These glide-path jurisdictional goals, and aspirational and conditional targets, are important steps, but most of these governments would still consider zero deforestation a goal for the future, not an internationally enforceable commitment for today.

.....  
*There is not sufficient  
consensus around  
zero deforestation in  
producer countries  
for zero deforestation  
regulation to proceed  
equitably.*  
.....

And even countries that *have* set deforestation reduction objectives and made progress meeting them are likely to defend their exports and contest trade restrictions based on deforestation, for example, Indonesia’s WTO challenge to the European Union’s approach to palm-based biofuels (Davies and Blenkinsop 2019).

This lack of political consensus in forested producer countries is complex and shifting over time, with policy links to poverty reduction, economic growth, and climate change, among other objectives, such as political and rhetorical links to national identity and sovereignty and political economy links to the relative power of the agriculture industry, civil society, and indigenous peoples. It may not be “righteous” in the sense of motives, given that so much deforestation is driven by political corruption and graft rather than legitimate national development objectives. But it is, nonetheless, a fact.

We thus argue that **the lack of sufficiently robust political consensus around zero deforestation in producer countries makes the implementation of import bans based on zero deforestation potentially damaging to the overall objective of eliminating agro-conversion**, and some would argue, inappropriate.

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<sup>9</sup> Countries may have legal standing in the context of the WTO to unilaterally impose environmental standards on traded products if they apply the same standards to their own products as well (Brack 2019). The potential WTO-compatibility of such unilateral import restrictions, while questionable, does not make them fair or equitable, especially in the context of the existing UNFCCC agreements. While there have been proposals to address embodied emissions through mechanisms such as border tax adjustments, an outright unilateral ban of certain products, absent significant global agreement and against the spirit of the Paris Agreement and the existing UNFCCC framework, would be an initial volley in what could escalate into a global climate trade war (Bacchus 2021).

<sup>10</sup> Paraguay’s 2004 Zero Deforestation Law is a notable exception, which prohibited forest clearing in the Upper Parana Atlantic Forest and led to decreased losses in the region (Da Ponte et al. 2017).

<sup>11</sup> For example, Mato Grosso, Brazil’s Produce, Conserve, Include strategy proposes a 90% reduction in deforestation by 2030 (Hillsdon 2020).



Given the necessity of demand-side regulation, and the barriers to outright bans on all deforestation outlined above, we turn to our analysis toward import restrictions based on legality criteria rather than zero-deforestation criteria.

## LEGALITY-BASED DEMAND-SIDE REGULATION CAN PROVIDE A STABLE, EQUITABLE PATH TO ELIMINATING AGRO-CONVERSION

First, it is important to note the significant qualitative difference in import barriers to eliminate the products of *illegal* deforestation compared to those aiming to eliminate the products of *all* deforestation, vis-à-vis who is defining the criteria of “ethical supply.” Rather than an extraterritorial extension of demand-country values, demand-side legality criteria – with legality defined according to the producer’s own laws – are fully respectful of a producer country’s efforts to define and uphold the rule of law and combat corruption within their borders.

*Demand-side  
regulation based on  
legality is  
fundamentally  
different.*

Legality-based trade policies are much more difficult (though certainly not impossible) for producer countries to openly protest, as opposed to barriers using zero-deforestation criteria. And any such protestations against legality-based import bans would be taken less seriously by the international community.

Legal and regulatory frameworks are, ideally, an expression of national values and objectives – and to the extent that they are not, they may be changed by the producer country itself, preferably in consultation with stakeholders and in a transparent process aided by freedom of political expression.

But what about their potential impact? If we only erect trade barriers against illegal agro-conversion instead of all agro-conversion, how much can we actually achieve?

### Demand-side Regulations Based on Legality Can Better Enable Producer Country Ownership

Country ownership of the criteria for ethical supply is far more important than the simply practical “realpolitik” question of increasing the likelihood of instituting such regulation in demand countries; we believe it is on the critical path to impact. Assuming consultative and transparent stakeholder engagement, we believe that **the most stable and equitable path to eliminating agro-conversion lies through full ownership by forest countries of their deforestation reduction goals and solutions.** The clearest and most impactful expression of a nation’s domestic values and goals, when democratic governance is working well,<sup>12</sup> is through the rules it sets out for self-governance: law and regulation. When a country’s citizenry has been involved in the formulation and implementation of these frameworks, through organic processes, civil society pressure, multi-stakeholder deliberative processes, and multi-level representative democracy, then laws and regulations will have legitimacy and staying power. They will then embody the common goals that a country’s citizenry agrees to take seriously enough to empower governments to enforce. They become the norms and shared values that governments are supported for enforcing. And as such, they become stable and sustainable over the long term, maintaining forest protection even in the face of shifting political winds. Obviously, this vision is an ideal, and there are very real gaps between this vision and reality on the ground.

<sup>12</sup> Not a trivial caveat, to be sure.



## Demand-side Regulations Based on Legality Can Help Fight Corruption

.....  
***Corruption stands in the way of stronger laws and full implementation.***  
.....

One of the largest gaps between vision and reality is corruption. Corruption robs developing countries of income to reduce poverty and robs communities of power in favor of elites. The demand-side legality approach is a direct means of supporting anti-corruption efforts in producer countries, helping to close the corruption gap rather than side-step it (which zero-deforestation standards may allow).

The legality approach requires that buyers of agro-conversion products know their sources and query the legitimacy of any forest conversion they may find in their sourcing areas – to go beyond looking elsewhere for zero-deforestation supplies. Buyers will demand documentation that any conversion was legal through maps, documents, and paper trails. Producers must “show the receipts,” so to speak.

If there is to be agro-conversion, or frankly, any large-scale extraction of value from forests and land, it must shift from unsustainable exploitation to long-term sustainable use with broadly shared benefits. Embedding anti-corruption implementation efforts into product supply chains through legality requirements is vital for ensuring that the profits from such extractions are contributing to human development instead of being siphoned off into the bank accounts of corrupt officials or criminal networks, who by definition, have no vested interest in improving national governance or sustainability (in any sense of the word). **The legality approach is a way to differentiate between rational land-use policies that might allow some agro-conversion and corrupt deforestation drivers which are usually also illegal.**

.....  
***Demand-side legality policies strike at the heart of corruption.***  
.....

## Demand-side Regulations Based on Legality Create Private Sector Demand for Improved Governance and Transparency in the Land Sector at the National Scale

The legality approach is also a route to improving governance and transparency where they are lacking. Where there are significant grey areas in legal frameworks that make it difficult to document the legality of conversion, or insufficient cadastral maps for producers to document responsibility (or lack thereof) for legally-allowed deforestation, then buyers and legal producers will both demand that governments clarify legal frameworks and increase transparency to maintain market access – and these improvements will have positive leakage impacts on neighboring bad actors who are breaking the laws.

As a result, it drives a wedge between illegal and corrupt actors on one hand, and responsible producers and legitimate buyers on the other, introducing new risks for the former, and incentives through market access to the latter (e.g., it “levels the playing field”).

Given the necessity of demand-side regulation and the lack of support for zero-deforestation criteria by producer countries and the ability of demand-side legality approaches to expose and reduce corruption and drive systemic governance and transparency improvements, **we conclude that the fastest path to combatting all deforestation necessitates that demand-side countries should ban the import of agricultural products from *illegal* deforestation, but not all deforestation.**



## PRIVATE SECTOR LEADERS SHOULD STILL ELIMINATE ALL DEFORESTATION FROM THEIR SUPPLY CHAINS

.....  
*Unlike demand countries, the private sector can and should eliminate all deforestation from their supply chains.*  
.....

**Private sector actors, on the other hand, play a very different role in society and markets than nation-states.** Consumers and companies are both free to express preferences for whichever standards of ethical production they choose. Companies have every right to avoid enabling certain production methods, like forest conversion, or for that matter, child and slave labor, etc.; they have many reasons for doing so to: meet customer demands; avoid reputational risk from NGO exposés; seek reputational benefits from leadership; align with values broader than just profit seeking; avoid future supply risk from a crumbling natural world (Anderson 2020); avoid financial risk from stranded assets; avoid regulatory risk if governments move faster; avoid legal risk from links to corruption and money laundering – a list of incentives that is long and well-known.

We have argued elsewhere, and maintain in this Commentary, that trade restrictions applied by demand countries on a legality basis and voluntary zero-deforestation standards implemented by the private sector are distinct but complementary approaches (Schatz and Jenkins 2020). As leading companies work on their zero-deforestation commitments, they are solving difficult implementation problems and encouraging more sustainable production. But the worst actors, many of whom have little exposure to public pressure, still produce and trade illegal commodities, with all the harms this entails, including undercutting responsible and zero-deforestation producers. Evidence from the implementation of the EU Timber Regulation (EUTR) suggests that demand-side legality regulation encouraged such “laggards” in the timber sector to start tracking their supplies and increasing transparency to a minimum standard of due diligence, and that industry leaders increased their supply chain scrutiny in response to the legislation as well (Norman 2021). Demand-side regulation based on legality thus enhances both legal and zero-deforestation supplies, while squeezing out illegal production (Figure 4).

## ELIMINATING DEFORESTATION WILL ULTIMATELY REQUIRE A CONVERGENCE BETWEEN “ZERO-ILLEGAL” AND “ZERO-DEFORESTATION” APPROACHES

We believe that **tropical deforestation will only be fully eliminated, or even reversed, when there is sufficient domestic political consensus to codify zero-deforestation objectives** into law and implement them through effective regulations, governance, and enforcement. If and when this point of consensus is reached, codified, and implemented, there is no longer any practical difference between strategies and systems aiming at zero-deforestation criteria, and those aiming at zero-illegal deforestation. They converge to become one and the same.

This vision of a *convergence* between legality and zero deforestation, with aligned global norms and systems in place to maintain and enforce them, will only happen when there is sufficient *domestic* political consensus in forest countries for zero deforestation, alongside just and effective political systems that support reaching and maintaining such consensus.<sup>13</sup>

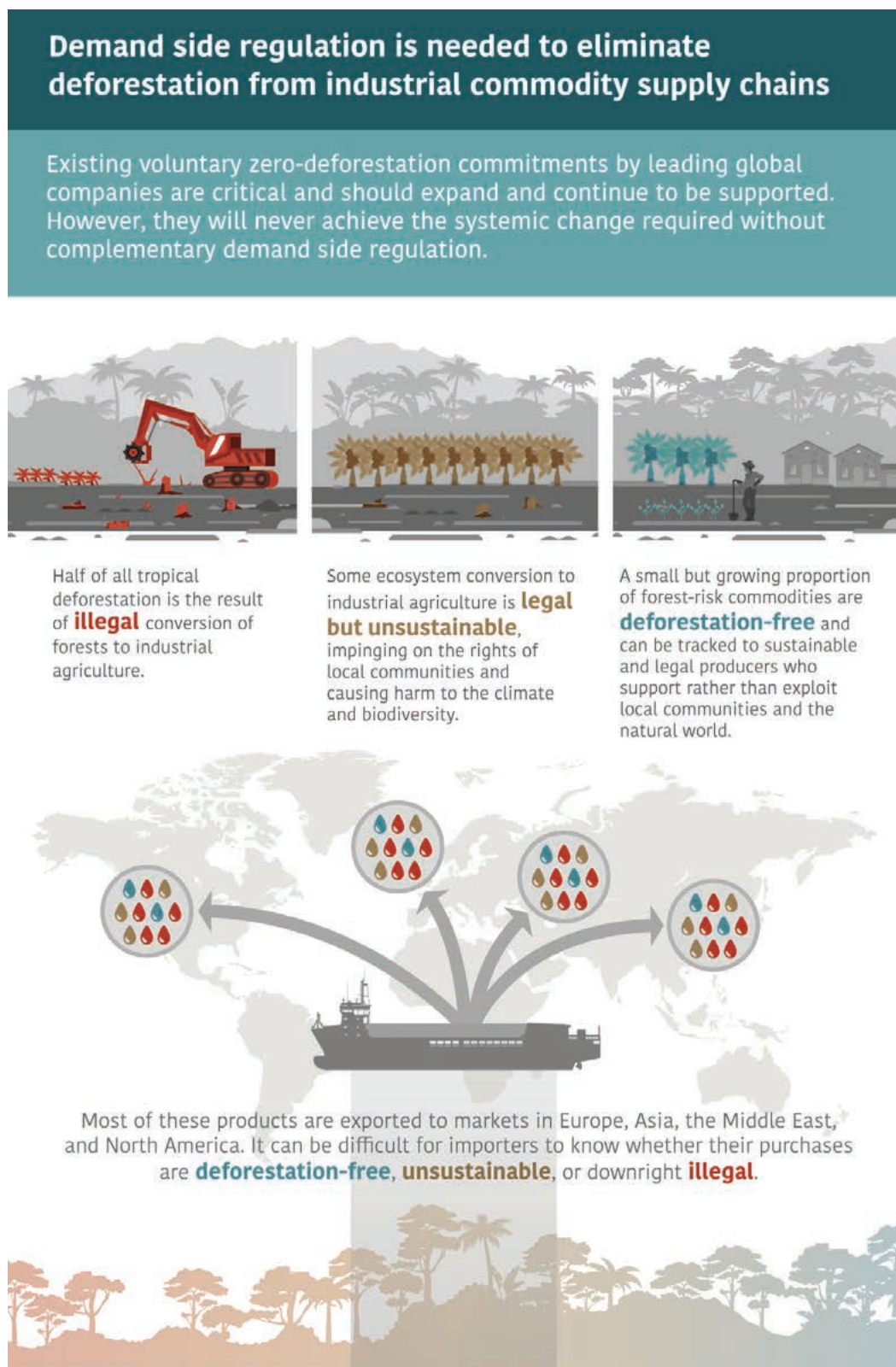
.....  
*Reaching zero agro-conversion requires country ownership of the zero-deforestation objective and national implementation through law and regulation.*  
.....

<sup>13</sup> The EU-FLEGT’s VPA process with respect to timber legality reflects this need for mainstream buy-in.





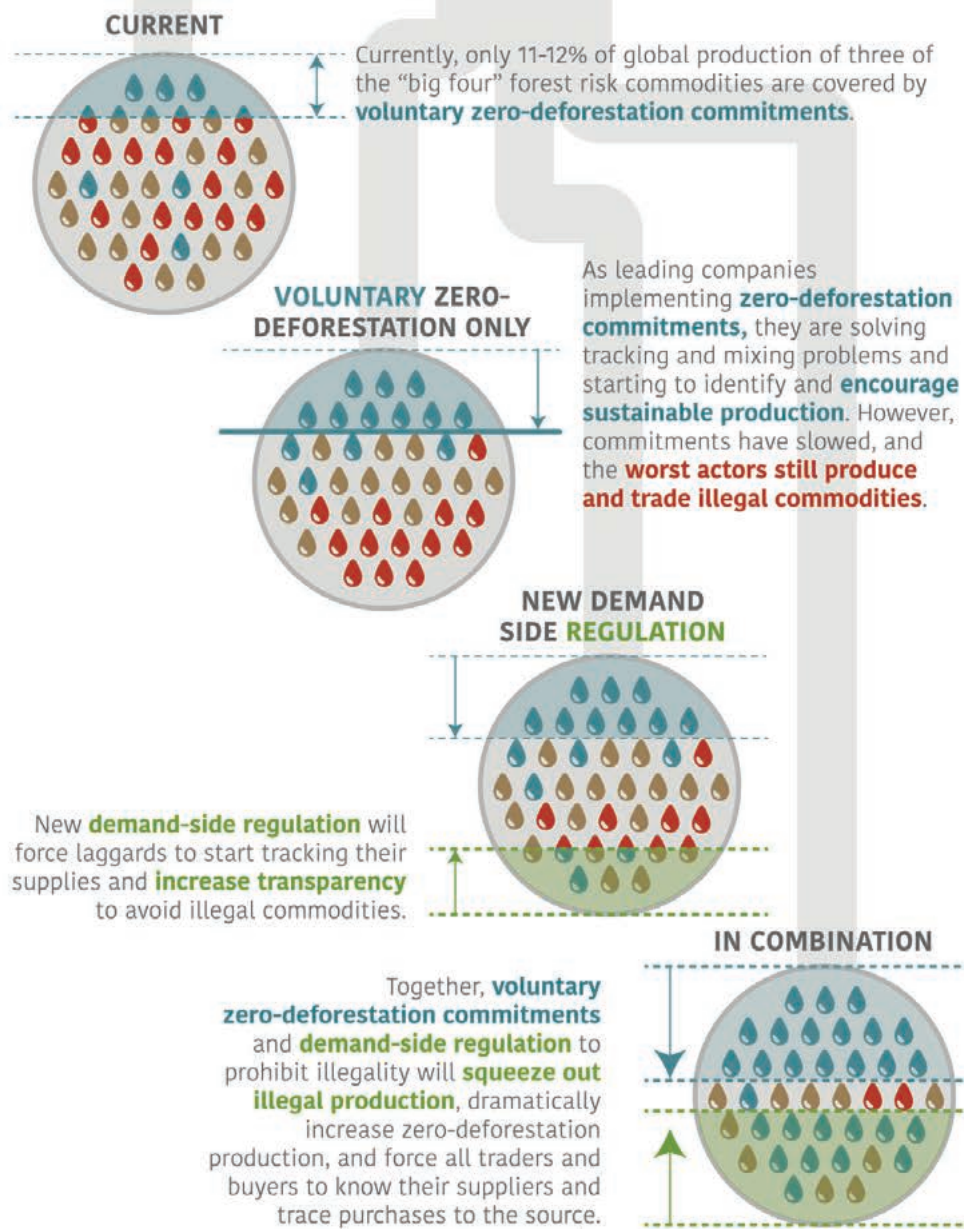
Figure 3 | Why Legality and Zero-Deforestation Approaches are Complementary





## Not all deforestation is equivalent

Voluntary commitments can not achieve zero deforestation without regulation





## The International Community Must Support a More Rapid Convergence by Providing Zero-deforestation Aligned Incentives and Support

We focus above on the appropriate role of key demand-side actors – import countries and companies – to provide incentives for strengthening and shifting producer country governance away from agro-conversion. And while these strategies have the potential to shift the political economy away from agro-conversion as a rural development strategy, **we believe that supply chain action to reduce deforestation alone will not be sufficient to generate the rapid shift in forest country policy priorities necessary** to eliminate deforestation as quickly as intersecting climate, biodiversity, and human rights crises demand.

The answer is *not* to walk away from international partnerships and mutual respect by setting a forest country's development goals for them, banning products when they don't meet criteria set from abroad, and sliding towards climate trade wars and isolationism. Rather, **the answer is to double down on partnerships by providing incentives aligned with zero deforestation and supporting a forest country's citizens, companies, NGOs, jurisdictions, and governments**, based on shared values and shared benefits.<sup>14</sup>

***The international community must help create the conditions that make zero-deforestation development the best and obvious choice for forested countries.***

All nations concerned about climate change should maximize the opportunities presented by international climate policy to support forests as a critical natural climate solution and provide a broad range of incentives for tropical forest countries to contribute to international climate objectives by stopping and reversing deforestation as rapidly as possible. Most critically, the international community must scale up funding for REDD+, including through new financial mechanisms, private sector involvement, and carbon pricing.

Incentivizing tropical countries to reduce deforestation emissions in the context of a bottom-up structure like the Paris Agreement also requires demand countries to set and achieve *their own* aggressive, science-based domestic climate targets. The world's richest countries in particular must rapidly strengthen their domestic NDCs to encourage forest countries to accelerate their own NDCs. Meanwhile high-emitting industries must set aggressive science-based targets to mitigate their own emissions first, only seeking social license to finance offsetting mitigation through natural climate solutions as part of a transition to zero.

If countries are asking their tropical forested trading partners to reduce deforestation emissions embodied in traded agricultural products, they should also be supporting approaches to equitably and effectively address embodied emissions in all traded products and provide incentives to reduce emissions intensity of all trade. Approaches like border adjustments or carbon intensity tariffs could create incentives to shift to lower- or zero-emissions production methods, including but not limited to the agriculture sector.

## Climate Policy Is Not the Only Opportunity to Drive Convergence

And finally, it is important to remember that forests are more than just carbon, and the international community can support the movement of forest countries towards zero-deforestation objectives in other ways as well. Development banks and donor agencies can and should support rural economic growth and development that is consistent with sustainable forest management and stable forest cover in a myriad

<sup>14</sup> See, for example, Adams 2021.



of ways. The international community, civil society, and the private sector all have opportunities to advance human rights and land rights around the world and support IPLC and forest defenders, which evidence shows also reduces deforestation. The international community should scale up funding for tropical forest countries to implement biodiversity protection programs and targets such as those being discussed in negotiations under the Convention on Biological Diversity, including mechanisms like debt-for-nature swaps and newly developing approaches to private sector finance for conservation.

## PULLING THE THREADS TOGETHER TO CREATE THE INTERNATIONAL PARTNERSHIP PATHWAY

Given these considerations, we propose the *International Partnership Pathway* as a way to eliminate agro-conversion, which consists of five priority strategies across actor groups, centered around the foundational role of strong producer country governance. This Pathway carefully combines legality and zero-deforestation demand-side strategies, along with complementary strategies by all actors to support their implementation and eventual convergence. We believe that this cooperative approach will help the world move more quickly and equitably towards climate-positive and nature-positive food and land systems.

The International Partnership Pathway facilitates cooperative progress as follows:

- 1 Producer country governments progressively build towards implementation of domestic laws and regulations** that have a material impact on land use, forest conversion, and IPLC ability to express their customary and legal rights to land and forests without external appropriation. Over time, they strengthen laws and regulations to eventually ratchet down legal deforestation and ecosystem conversion as well.
- 2 Demand-side country governments advance trade regulations that ban imports of agricultural commodities produced on illegally converted land** and effectively enforce them alongside existing laws to tackle human rights abuses and environmental harms linked to international trade. These governments also require due diligence and transparency for imported forest-risk commodities to facilitate manufacturer and consumer ability to identify and avoid all deforestation products if they choose.
- 3 Manufacturers and retailers, traders, and large producers adopt, fully implement, and transparently report on zero-deforestation supply chain commitments** in line with existing best practice guidance, such as the Accountability Framework Initiative.
- 4 All actors with the capacity to do so provide support and incentives for zero-deforestation and zero-illegal deforestation supply chains**, including carrots and sticks through tools such as, preferential finance, capacity building and technical assistance, monitoring and transparency initiatives, and outreach and organizing.
- 5 The international community advances a broad suite of incentives to support land-use regulatory frameworks in forest countries that eliminate forest loss and protect community rights**, with cooperative efforts flowing through multiple global agendas including, climate, development, trade, security, human rights, wildlife and biodiversity, anti-corruption, and more.





### 3

## Common Critiques of Legality Regulation and Responses

This section addresses several thoughtful critiques of the International Partnership Pathway, particularly those directed at the second strategy of erecting consumer-country trade barriers against products of illegal deforestation, but not all deforestation-linked products.

### Critique 1: Legality Regulation Will Lead to Weakening of Producer-country Laws

Perhaps the most common critique of demand-side regulation based on legality standards is that it creates a perverse incentive for producer countries to weaken their laws to be more permissive of agro-conversion and land grabbing, allowing products to be classed as legal with little or no change in deforestation. It is true that forest countries could respond with amnesties, legalization, and/or weakening of laws and regulations. However:

- **Rarely have nations responded to demand-side measures by weakening their legal framework.** Most agro-conversion is illegal, and the laws most likely to be violated, such as anti-corruption laws preventing bribes for obtaining conversion permits, have not been changed in response to demand-side initiatives in the past decade. In most cases, land sector laws are complex and can take significant time and effort to change. Where there are relatively strong laws in place, this policy friction and bias towards the status quo can work in forest conservation's favor. And finally, many of the relevant laws – such as anti-bribery laws, and to the right to Free, Prior, and Informed Consent (FPIC) for affected communities – are intertwined with international law and commitments as well as domestic law, adding additional friction.
- **The risk is mitigated by other elements of the International Partnership Pathway.** Private sector zero-deforestation commitments and implementation can provide a strong counterweight against political backlash and legal backsliding, as zero-deforestation producers and buyers become advocates for stronger governance and regulation. Demand-side trade policy that bans illegal imports can and often does include implementation processes for importers that involve due diligence and/or risk assessment approaches targeting all deforestation, increasing transparency and thus the risks to producers that choose to import even the products of legal deforestation if there is significant backsliding. Finally, the fourth and fifth elements of the International Partnership Pathway are critically important to prevent forest country legal backsliding, as they provide incentives for change towards stronger rather than weaker legal and regulatory frameworks.
- **Robust enforcement of weaker laws may be preferable to low enforcement of stronger laws.** If one believes, as we do, that effective land sector governance is critical for eliminating deforestation, and that the path to effective governance lies through full ownership by forest country governments of their land-use policies and objectives, then some backsliding may be acceptable if it occurs through effective democratic processes and is actually enforced. A system with weaker laws that are backed by the government, enforced, and broadly accepted as social norms is better than a system with strong laws that are regularly ignored, for example, where a government looks the other way and allows rampant illegality. In short, the means (effective and country-owned governance) are more important than the ends (reduced deforestation).





## Critique 2: Existing Laws Allow Too Much Deforestation

A second critique of demand-side regulation based on legality standards is that forest countries' existing legal and regulatory frameworks allow too much legal deforestation, meaning that treating the products of legal deforestation as acceptable for import will not address the climate emergency. There is an element of urgency inherent in this critique – that there is not time to wait for countries to pass the “right” laws, or for positive incentives to take hold and lead to the convergence between legal deforestation and zero deforestation envisioned above. When used as an argument in favor of zero-deforestation trade criteria, as opposed to legality criteria, this critique boils down to an assertion that the global climate emergency justifies the imposition of extra-territorial emissions-based standards on other countries' production choices.

While the full commentary above provides multiple arguments that run counter to this assertion, four points warrant emphasizing and elaboration:

- **Unilateralism may not be a faster route to addressing deforestation.** We argue above that the route to deforestation reduction lies through improved governance, which lies through country ownership of both implementation and objective. By cutting rule-of-law out of the critical path, unilateral zero-deforestation trade barriers threaten to slow rather than speed progression along this route.
- **Unilateralism vis-à-vis agro-conversion may not be worth the costs, even if it's faster.** It is neither just nor right to impose demands on one's trading partners that one never has or likely never will impose domestically. Reciprocity and basic respect in international relations is critical to justice. If one is concerned about climate change because of its justice implications, proposing unjust solutions is incoherent and counterproductive.
- **Unilateral setting of “acceptable” deforestation for another nation conflicts with the core structure of the Paris Agreement.** The bottom-up commitment approach of the Paris Agreement has not yet generated collective ambition sufficient to achieving 1.5 or 2 degrees Celsius. But it has been agreed upon by every country, and COP26 in Glasgow proved that the design is capable of driving increased ambition over time. Trade barriers erected to exclude products on the basis of zero deforestation are a fundamental rejection of CBDR-RC and the entire NDC process.
- **Unilateral trade barriers against all deforestation products would be a move towards a global climate trade war.** Agriculture is not the only sector where traded emissions are becoming new climate battle lines (e.g., steel and aluminum trade between China and the US and EU [Bacchus 2021]). Countries or blocs that impose trade barriers on the basis of emissions intensity of production are accepting UNFCCC rules for accounting of emissions at the production source but rejecting the fundamental bottom-up commitment approach of the Paris Agreement. This “forum shopping” by rich and/or powerful nations between the UNFCCC/climate context and the WTO/trade context may be “legal” from an international law perspective, but it takes advantage of gaps and policy incoherence between these two global agreements to dictate the development pathway of developing countries. As such it is unjust, and a step away from global cooperative approaches on climate and towards balkanization of climate action and a potential global climate trade war.



### Critique 3: Existing Laws are Unjust and Allow Exploitation of IPLC Rights

One of the strongest critiques of the legality approach in favor of zero-deforestation trade barriers comes from the perspective of IPLCs' tenure rights to land and forests.<sup>15</sup> Statutory law and/or the enforcement thereof are not currently sufficient in many places to prevent national or state governments themselves from doing violence to human rights through both action and inaction. While half the world's land and over 80 percent of its biodiversity is under IPLC customary management, as of 2017, only 15 percent of forests across 41 countries assessed by the Rights and Resources Initiative were owned or designated for use by IPLCs (RRI 2018).<sup>16</sup> This is especially true where: 1) national-level legislative frameworks (and their decision-making pathways) are not representative of IPLC stakeholders, 2) customary forest tenure is not recognized in statutory law, 3) there are overlapping territorial claims (particularly between indigenous territories and territories claimed by the State), and/or 4) representative governance is either not in place or not working well enough to change these realities on the ground.<sup>17</sup>

In other words, there is a gap between the ideal and the reality. In practice, elites largely legislate for their own benefit, while progressive laws are often the result of mass mobilization, if they advance at all. The tendency to legislate for the benefit of elites is even stronger in undemocratic regimes. Even in countries that operate with representative systems of governance and freedom of political expressions, the rights of IPLCs are not guaranteed or acknowledged and gains must be constantly defended.

And yet, a growing body of evidence acknowledges that IPLCs in forested areas are crucial to protecting forests and mitigating climate change, with numerous studies concluding that IPLC-owned and -managed forests have greater carbon storage, more biodiversity, and less deforestation and associated carbon emissions, than forest lands claimed by the State or private entities (Stevens et al. 2014; Baragwanath and Bayi 2020; RRI 2021; FILAC 2021). The international community is finally starting to recognize the critical role of IPLCs and to elevate their voices in an unprecedented way, as demonstrated by recent funding pledges at COP26.

**A ban on imports of *all* deforestation products may reduce incentives for land grabbing and unjust exploitation by powerful elites in a way that legality regulations do not** (in places where such exploitation is legal). Some forest defenders and their allies in the Global North thus see the “zero-deforestation approach” as support from international partners to redress harmful domestic policies and/or lack of policy enforcement and see the “legality approach” as insufficient.

This argument is powerful because it frames zero-deforestation import regulations as advancing justice for marginalized people where there is, under existing systems, large scale injustice.

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<sup>15</sup> This report uses the term “indigenous peoples and local communities” to encompass customary rightsholders in forested landscapes. This term recognizes that concepts of indigenous identity vary and is inclusive of ethnic minorities, afro-descendent communities, other traditional land users, and the women within these communities.

<sup>16</sup> There is significant variation in legal recognition of IPLC tenure between, and within, tropical forested regions: 7% of forests in Africa, but 36% of Latin American forests, are owned or designated for use by IPLCs. In Asia, this figure is 31%, but can be read as just under 14% when excluding China.

<sup>17</sup> While this debate often centers around indigenous tenure and governance, our discussion here is inclusive of local communities impacted by deforestation, which includes non-Indigenous-identifying peoples with customary ownership of forests and agricultural lands (non-Indigenous ethnic minorities, local communities of the same ethnicity as the ruling/urban class, Afro-descendants, and the women within these groups who are often most marginalized by agro-conversion) and acknowledges that concepts of indigenous identity vary widely across the world.



**Without question, Forest Trends shares the objective of advancing justice for the marginalized and land rights for IPLCs.** As sovereigns located within national territories and the main stewards of most tropical forests, strengthening tenure, governance, and ultimately control of IPLC territories are a critical element of the International Partnership Pathway and integral to forested countries attaining ownership of their own land use and political self-determination.

However, we do not see the route to advancing such justice as running through zero-deforestation trade bans by consumer countries because:

- **Two wrongs do not make a right.** The fight against unjust colonization of customary lands, including IPLC territories, at the hand of state and national governments should not rely on unjust neo-colonialism from nations in the Global North imposing unilateral land-use standards on those very same state and national governments. IPLCs should be rightly seen as leaders in the fight against deforestation, not passive recipients, or beneficiaries.
- **Most land grabbing is illegal and driven by corruption.** There is much that can be achieved towards this objective through legality trade policies.
- **Legality approaches should include UNDRIP principles** within the scope of applicable law, where both the producer country and the importing country are signatories.

#### **Critique 4: Enforcement of Import Bans Is Easier for Zero-Deforestation Trade Criteria**

Import ban implementation is difficult when such bans seek to exclude products from the market based on their production – whether the exclusion targets all deforestation or illegal deforestation (or human rights violations, child and slave labor, or most other “global bads” for that matter). In both cases, import regulations designed to exclude certain products will need to include processes that ensure the reliability of traceability documentation and systems (Forest Trends 2020a). Given the size and economic characteristics of the supply chains facing regulation, economically efficient compliance at scale will be necessary.

Once traceability has been established, demonstrating whether a production area has been cleared after a given date is relatively easy using satellite imagery for most forest risk commodities.

Demonstrating legality, on the other hand, presents additional challenges beyond traceability to geographic origin: it requires that companies demonstrate the legality of land conversion for agriculture if any conversion is found in their supply chains (Forest Trends 2020a). One of the key lessons learned from enforcing the EU Timber Regulation has been the inherent weakness of a compliance system based on the collection of public documentation in countries grappling with endemic levels of corruption and poor capacity (Forest Trends 2020b). Overlapping and changing laws, opaque political processes, and the threat of corruption will cause significant barriers to farmers wishing to demonstrate the legality of their land, as well as companies wishing to demonstrate the legality of their supply base at scale. And when trade regulators are able to identify highly suspect imports, collaboration with producer-country enforcement authorities can be exceptionally difficult due to a lack of capacity, understanding, political will, or corruption. In many cases, demand-side enforcement authorities cannot rely on producer-country authorities to demonstrate legality.

These facts lead some to argue that zero-deforestation import bans are easier to implement than zero-illegal deforestation import bans. In other words, “you can just look at satellite data to tell if there was deforestation, but satellites can’t tell you anything about legality.” Demonstrating the legality of observed conversion in a fully traced shipment is challenging, no doubt. However:



- **“Once traceability has been established” is not a trivial caveat**, and we believe that it will be faster to achieve full traceability with the full support and partnership of producer-country governments. The International Partnership Pathway will speed traceability, while unilateral zero-deforestation regulation may very well hinder it.
- **Experience of timber regulation enforcement officials suggests legality regulation may be easier to implement.** In a recent Forest Trends TREE<sup>18</sup> survey of enforcement officials, 47 percent of respondents felt that illegal deforestation would be easier to define in a way that was enforceable, compared with just 29 percent who felt that deforestation after a cut-off point would be simpler in legal terms (Forest Trends 2020b).
- **Regulation recently proposed by the European Commission includes requirements that forest risk commodities be both deforestation-free and produced legally** according to relevant legislation of the producer country, making this “ease of implementation” argument somewhat moot regarding the comparative benefits of the EU versus US and UK proposals.

## Critique 5: Market Bifurcation, Leakage, and China’s Role as an Importer of Forest-risk Commodities

None of the countries contemplating demand-side deforestation trade policy proposals (the US, UK, and EU) will make a significant dent in agro-conversion – illegal or otherwise – if markets bifurcate and products deemed unacceptable for import are consumed either domestically in the country of production, or exported to countries that do not have similar trade policies on deforestation (e.g., China has an outsized role in the consumption of forest-risk commodities).

There is no question that efforts to stem the trade of “global bads” (like the climate impacts of agro-conversion) are more successful when shared approaches at large scales are used – global agreements, ideally, but otherwise common criteria and implementation across as broad a cross-section of import countries as possible (Forest Trends 2018). This leads us to two conclusions:

- **Demand-side regulation based on legality is more likely to be adopted as a broadly shared global norm across countries**, representing a much larger proportion of global demand for forest risk commodities – possibly even including China. As a matter of bedrock principle, China does not impose extraterritoriality, especially on outgoing foreign direct investment. However, it has shown some willingness to act against blatantly illegal actions by producers; for example, the recent revision of China’s Forest Law (2019) prohibits the “purchase, process[ing], or transport [of] timber that is clearly known to be felled...illegally” (P.R.C. 2019) and is expected to apply to timber imports. The recent joint US-China statement released at COP26 also shows an explicit willingness to collaborate on reducing illegal deforestation through effective enforcement of import bans (US Department of State 2021).
- **Demand-side country governments should not only act at home**, but also elevate forests and agro-conversion in bilateral and multilateral diplomacy, partnerships, and institutions to reduce leakage and support global norms against illegal goods.

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<sup>18</sup> The Forest Trends Timber Regulation Enforcement Exchange (TREE) process began in 2012 and facilitates a series of information-sharing workshops that bring together key stakeholders and enforcement officials for the US Lacey Act, the EU Timber Regulation, and the Australian ILPA. This dialogue has recently expanded to the Asia Pacific region, where a number of countries have new or developing timber trade regulations. Forest Trends continuously engages with members of the TREE network through surveys and other pieces of work to better understand the gaps and challenges in enforcing timber trade regulations.



## Closing Remarks

While these are not the only critiques of demand-side legality regulation, they are some of the ones we hear most often in the debate. Our responses above – arguing in favor of legality for demand-side regulation – should be viewed in the context of the International Partnership Pathway that we propose. From an “all actor” perspective, the debate between zero illegal deforestation and zero deforestation is a false choice – the private sector can and should seek to eliminate deforestation from its supply chains as rapidly as possible. But we strongly believe that role of States is different, and that wealthy northern countries in particular must therefore approach agro-conversion differently, as partners with forested countries, supporting their objectives and rule-of-law through legality-based trade policy. To the extent that importing countries would like to see deforestation eliminated entirely, they must recognize that the pathway there requires partnerships of other kinds as well – through REDD+, through aggressive climate action at home, and more – to support a convergence of forest country laws and regulations towards zero deforestation.





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