

Stemming the Deforestation Tide: The Role of Corporate No Deforestation Commitments

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Deforestation is one of the most significant worldwide environmental problems. Like climate change, demand from developed countries is a significant driver of deforestation that occurs primarily in developing countries, especially among tropical forests. Agricultural commodities production of crops such as soybeans, palm oil, and beef, as well as pulp and paper production, account for much of deforestation around the world. Deforestation is a critical factor in the release of greenhouse gases and a major contributor to loss of biodiversity.

A variety of tools are being deployed to reduce the impact of deforestation, including enactment of national forest preservation laws, preservation of forests through programs such as REDD+,¹ and adoption of laws designed to minimize the sale of illegally harvested lumber, such as the Lacey Act in the United States.² These are critical tools in reducing deforestation, but are widely seen as insufficient by themselves to end large-scale deforestation.

New corporate commitments to end deforestation may help change this picture. For a variety of reasons, often centered on protecting their brand or maintaining their reputations, major transnational companies have rapidly adopted policies designed to reduce and eventually achieve zero deforestation from their own operations and from the operations of their suppliers. This Article explores this movement and the non-governmental organization (“NGO”) involvement in the no deforestation efforts. It begins with a discussion

of the rapidly growing area of corporate social responsibility and green supply chain management. It then turns to a description of various approaches and issues associated with zero deforestation policies. The Article then describes the no deforestation policies of a few major transnational corporations and the commitment of the Consumer Goods Forum, one of the largest trade associations in the world. It then examines some of the responses to corporate no deforestation policies by NGOs, and concludes with a perspective on these new programs.

I. Corporate Social Responsibility and Green Supply Chain Management

In today’s globalized economy, achieving society’s goal of sustainable development requires new governance mechanisms that incorporate, but reach well beyond, traditional regulatory programs.³ For most of the last forty years environmental governance has primarily been, and been seen as, a regulatory process within the domain of government. But today’s problems, such as climate change and deforestation, are too pervasive and too complex to be resolved simply by turning to government programs. Instead, environmental governance must increasingly become a shared enterprise, anchored by strong government regulatory programs, but

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1. See generally *About the UN-REDD Programme*, UNITED NATIONS COLLABORATIVE PROGRAMME REDUCING EMISSIONS FROM DEFORESTATION & FOREST DEGRADATION IN DEVELOPING COUNTRIES, www.un-redd.org/AboutREDD/tabid/102614/Default.aspx (last visited Nov. 25, 2015).
2. 16 U.S.C. §§ 3371–78.

3. Klaus Bosselmann and David Grinlinton observe in their book *Environmental Law for a Sustainable Society*,

The notion of “sustainability” is more than a catchy phrase for an improved environmental protection strategy. Many commentators have linked sustainability to fundamental concepts such as freedom, justice and equity. There is a widespread perception today that sustainability must inform future development of society in much the same way as freedom and equity informed its present development. Only a sustainable society, capable of working with nature, not against it, will have a chance of survival.

KLAUS BOSSELMANN & DAVID GRINLINTON, ENVIRONMENTAL LAW FOR A SUSTAINABLE SOCIETY viii (2012). Prof. John Dernbach in *Agenda for a Sustainable America* notes, “sustainable development requires action by governments at all levels but cannot be achieved by government alone. All segments of American society—individuals, nongovernmental organizations, businesses, the scientific and technological community, educational institutions, religious organizations and families—need to play an active and constructive role.” JOHN DERNBACH, *AGENDA FOR A SUSTAINABLE AMERICA* 28 (2009).

fully integrating economic and values-based behavioral drivers as well.⁴

Supply chain environmental management implicates both internal corporate economic drivers and social norms. These supply chain requirements are sometimes situated under the umbrella of ‘corporate social responsibility’ (“CSR”).⁵ The CSR concept carries an implication that corporate decisions to exceed environmental regulatory requirements or to impose supply chain environmental requirements are a matter of organizational values. While organizational values can have an impact on environmental behavior, especially as manifested through senior managers who are committed to environmental performance or even to the concept of sustainability, more often CSR behavior is based on underlying economic considerations that have changed significantly over the last decade.⁶

These ‘internal’ economic drivers include reputation, customer demand, investor pressure, lower operational risk, liability mitigation, the ability to attract and retain employees, insurance cost and availability, community license to operate, lender concerns, government and public relations, enhanced ability to plan operations and anticipate or even shape future regulatory standards, access to markets, product differentiation, green procurement standards, industry codes of conduct, international environmental standards such as ISO 14000, and operational efficiency.⁷ Internal economic drivers such as reputation, consumer demands, and even investor pressure are, of course, linked to societal values.

Reputation or brand protection is one of the key drivers of environmental performance. For example, the BP oil spill and the company’s earlier refinery explosion significantly eroded the firm’s reputation⁸ even leading to a boycott of its retail outlets.⁹ Corporate reputation is an important asset to many companies. Black and Carnes point out:

[I]t has been shown that favorable reputations have firm-specific financial benefits to corporations by reducing the mobility of industrial rivals; by allowing firms to charge premium prices; or by enhancing firm access to capital markets.... Corporate reputation therefore meets the customary accounting definition of an intangible asset, though it is not one that is specifically identifiable (in contrast to a patent or a trademark).¹⁰

In a recent study conducted by the consulting firm KPMG of executives from consumer manufacturing, retail, and distribution businesses, 65% said that consumer trust was either

very or critically important to the success of their business; 2% higher than regulatory compliance and fifth among the ten factors related to business success.¹¹ Sixty-one percent rated social and environmental responsibility as either very important or critical to their success, the eighth ranked factor.¹² Only growth outranked consumer trust when identifying the organizations’ number one priority among those surveyed.¹³ The report observed:

Sustainability and CSR cover several areas, including environmental impact and consumer and employee health and wellness issues. Issues with any of these or other areas related to CSR can quickly derail a company’s growth although as many companies realize, successful CSR efforts can actually be an enabler of growth, by helping to build consumer trust.¹⁴

Although the decision to implement environmental initiatives is ultimately linked to the bottom-line, the growing push from stakeholders has caused companies to consider building their reputation for corporate responsibility. Esty and Winston were surprised at how often executives said the reason for launching an environmental initiative was because it was the “right thing to do.”¹⁵ However, building a good reputation is not just the right thing to do, it is also a point of competitive advantage because “doing the right thing attracts the best people, enhances brand value, and builds trust with customers and other stakeholders.”¹⁶ Esty and Winston conclude, “The logic of corporate environmental stewardship need not stem from a personal belief that caring for the natural world is the right thing to do. If critical stakeholders believe the environment matters, then it’s the right thing to do *for your business*.”¹⁷ Perhaps the most important new set of stakeholders are banks and insurance companies because they may require environmental assessments for major loans and give lower lending rates to companies with carefully constructed environmental management plans.¹⁸ One example is Allianz Insurance Group’s recent decision to end lending involving coal operations, withdrawing investments totaling close to four billion euros.¹⁹

Community pressure is also an important force to be reckoned with. In their research on the pulp and paper industry, Gunningham, Kagan, and Thornton found firms were motivated to go beyond compliance because of pressures from the

4. LeRoy C. Paddock, *Green Governance: Building the Competencies Necessary for Effective Environmental Management*, 38 ELR 10609, 10609 (Sept. 2008).

5. *Id.* at 10636, 10637–39.

6. *Id.* at 10636–37.

7. *Id.*

8. Jad Mouawad & John Schwartz, *Cleanup Costs and Lawsuits Rattle BP’s Investors*, N.Y. TIMES, June 1, 2010, <http://www.nytimes.com/2010/06/02/us/02liability.html>.

9. Naureen S. Malik, *BP Protests Threaten Independent Dealers*, WALL ST. J., June 16, 2010, <http://online.wsj.com/article/SB10001424052748703280004575308973098327064.html>.

10. L. Black & T. Carnes, *The Market Valuation of Corporate Reputation*, 3 CORP. REPUTATION REV. 31 (2000) (citations omitted).

11. KPMG & CONSUMER GOODS FORUM, TO STAND STILL IS TO FALL BEHIND: 2015 GLOBAL CONSUMER EXECUTIVE TOP OF THE MIND SURVEY 3 (2015), http://www.theconsumergoodsforum.com/files/Publications/KPMG_CGF_Top_Of_Mind_Report_2015.pdf.

12. *Id.*

13. *Id.* at 10–12.

14. *Id.* at 8.

15. DANIEL C. ESTY & ANDREW S. WINSTON, GREEN TO GOLD: HOW SMART COMPANIES USE ENVIRONMENTAL STRATEGY TO INNOVATE, CREATE VALUE, AND BUILD COMPETITIVE ADVANTAGE 13–14 (2006).

16. *Id.* at 14.

17. *Id.*

18. *See id.* at 9, 11.

19. Marion Dakers, *Allianz to End Its Investment in Coal*, TELEGRAPH, Nov. 24, 2015, www.telegraph.co.uk/finance/newsbysector/banksandfinance/insurance/12013418/Allianz-to-end-its-investment-in-coal.html.

“social license.”²⁰ Firms are so motivated because the social license can be enforced in very real ways. It can be enforced by an enhancement or destruction of the firm’s reputation, by putting pressure on regulators to more vigilantly enforce existing regulations, by the filing of citizen suits, by lobbying for tighter regulations, and by market pressures such as boycotts.²¹ The authors found that pulp and paper mill firms in the region they studied were generally highly motivated to stay ahead of environmental regulations so that they could remain in the public’s good graces.²²

The need to leverage economic and values-based motivations for environmental improvement as part of a governance system fundamentally alters the role of the government and the private sector in environmental protection. Marian Chertow and Daniel Esty noted:

One of the central challenges for environmental policymakers is to keep pace with the important elements of institutional realignment that are occurring in society. Notably, the role of government is narrowing, the private sector’s responsibilities are broadening, and nongovernmental organizations, from think tanks to activist groups, are increasingly important policy actors.²³

Marc Allen Eisner has pointed out:

Future gains in environmental quality may be impossible without a fundamental reconsideration of regulatory design. This reconsideration must take the form of incorporating advances in corporate self-regulation, associational regulation, and standards into the regulatory system and thinking creatively about how public policies can be used to reinforce incentives or compensate for their absence.²⁴

Daniel Fiorino noted that the European literature on social-political governance is asking the question:

How can dynamic, complex, and diverse social-political systems be governed more democratically and effectively? Their answer is to think in terms of entirely new conceptions of governance, owing to the limits of traditional, hierarchical ideas about governance in a rapidly changing world. For these writers, “the growing complexity, dynamics, and diversity of our societies, as ‘caused by social, technological and scientific developments,’ puts governing systems under such new challenges that new conceptions of governance are needed.

Social-political governance involves new patterns of interaction among government and others in society. These patterns are not temporary, but are built into the structures and processes of governance. Distinctions between the public (the state, regulatory agencies) and the private (society, mar-

kets) are blurred as the boundaries between them become more fluid and permeable. Government acts not *on* but *with* nongovernmental and commercial entities. There is a shift from governance as one-way traffic toward two-way traffic [if we are to expect people to take on responsibility they must know why, how, they must have information, they must have a role in design and oversight] in which ‘aspects, qualities, problems, and opportunities’ of those governing and of those being governed are considered.²⁵

II. The Importance of Supply Chain Management

One of the critical economics-based environmental behavioral drivers today involves corporate management of its supply chain. While a given product’s materials may have several intrinsic environmental impacts, the supply chain that brings the materials together creates further complexities and is more often than not responsible for the majority of negative externalities affecting the environment.²⁶ The complex and indirect nature of these issues is what has led organizations, such as Business for Social Responsibility, to call upon companies to integrate sustainable practices into every aspect of their operations, creating “a comprehensive set of policies, practices, and programs that are integrated into business operations, supply chains and decision-making processes throughout the company . . .”²⁷

Supply chain requirements are derived from a number of sources including the adoption of pre-existing certification programs such as the Forest Stewardship Council’s sustainable forestry certification program²⁸ and the Marine Stewardship Programs certification for sustainable fisheries.²⁹ They may also be based on codes of conduct developed by an individual company, by industry associations, such as the Electronic Industry Citizenship Coalition,³⁰ or by international organizations, such as the Food and Agriculture Organization (“UN”) Code of Conduct for Responsible Fisheries.³¹

25. D. FIORINO, THE NEW ENVIRONMENTAL REGULATION 161–62 (2006) (citations omitted) (emphasis in original).
26. See Daniel Mahler et al., *A Product Lifecycle Approach to Sustainability*, SUPPLY CHAIN MGMT REV., Nov. 2012, at 50, 51, <https://www.atkearney.com/documents/10192/677510/SCMR.Product.Lifecycle.pdf/7f65a321-ce59-41da-bf7a-6c86f3e1b6bb>; see also Arnie Bawden, Natural Capital—Understanding Supply Chain Impacts, TRUCOST, <http://www.trucost.com/blog/127/BlackBerry/natural-capital/supply-chain> (last visited Sept. 14, 2016); *Good Sourcing*, McDONALD’S, <http://corporate.mcdonalds.com/mcd/sustainability/sourcing.html> (last visited Sept. 12, 2016).
27. Lalita Kumari, *Corporate Social Responsibility: Conceptualisation and Potential Benefits for Firms Implementing*, 2 INT’L J. MARKETING & TECH. 221, 221 (2012).
28. See *Mission and Vision: Protecting Forests for Future Generations*, FOREST STEWARDSHIP COUNCIL, <https://us.fsc.org/mission-and-vision.187.htm> (last visited Nov. 25, 2015).
29. See *Marine Stewardship Council*, MARINE STEWARDSHIP COUNCIL, <https://msc.org> (last visited Nov. 25, 2015).
30. See *Conflict Materials*, ELEC. INDUS. CITIZENSHIP COAL., www.eiccoalition.org/initiatives/conflict-free-sourcing-initiative/ (last visited Nov. 25, 2015); see also *Environmental Sustainability*, ELEC. INDUS. CITIZENSHIP COAL., www.eiccoalition.org/initiatives/environmental-sustainability/ (last visited Nov. 25, 2015).
31. See *Code of Conduct for Responsible Fisheries*, FISH & AGRIC. DEP’T, <http://www.fao.org/docrep/005/v9878e/v9878e00.htm> (last visited Sept. 20, 2016).

20. N. Gunningham et al., *Social License and Environmental Protection: Why Businesses Go Beyond Compliance*, 29 LAW & SOC. INQUIRY 307, 308, 339 (2004).
21. *Id.* at 319–20.
22. *Id.*
23. MARIAN R. CHERTOW & DANIEL C. ETSY, THINKING ECOLOGICALLY: THE NEXT GENERATION OF ENVIRONMENTAL POLICY 6 (1997).
24. M.A. EISNER, GOVERNING THE ENVIRONMENT: THE TRANSFORMATION OF ENVIRONMENTAL REGULATION 282 (2007).

Finally, supply chain requirements may be developed by individual companies or commercial sectors to address particular supply chain issues, or to address a broad set of environmental issues important to the companies' bottom line.

A key study conducted by Professors Michael Vandenberg found that:

Of the seventy-four firms included in the study [of private supply chain contracting] across all eight sectors [studied], 53 percent impose environmental supply-chain requirements. The extent of supply-chain contracting is even more impressive when examined from the perspective of total sales. Of the \$2.8 trillion in total sales represented by the seventy-four firms in the study, firms that impose environmental supply-chain requirements account for \$2.2 trillion, or more than 78 percent of the total. In short, environmental supply-chain contracting is remarkably widespread among the firms in the sectors studied.³²

Professor Vandenberg has observed:

In some cases this new form of private governance transfers pressures created by public entities, but in many cases it bypasses public entities altogether, transferring demands for social amenities directly from the citizens of one country to the firms operating in another. This private governance exists as a network of private standards and agreements that influence the behavior of firms on issues sovereign states are unwilling or unable to address.... At least in theory, the growth in environmental private contracting provides a means to ameliorate the environmental harms from international trade. Private environmental contracting is not a panacea, and it is only one element of private governance.³³

This background on green supply chain management is important in thinking about the role of private environmental regulation and enforcement in the context of deforestation. Because the scale of the deforestation problem is so massive, it is important that a full range of tools including regulations, social pressure, and internal economics as reflected in green supply chain management arrangements are deployed to address the issue.

III. The Deforestation Problem in Brief (Supply-change.org)

According to National Geographic, forests still cover about 30% of the Earth's surface, but we are losing forest cover equivalent in size to the state of Delaware each year.³⁴ Agriculture (oil palm, beef, and soy) and forest products make up a significant portion of the demand, and place pressure on forest resources. More than 70% of all deforestation and two-thirds of the deforestation in Indonesia can

be attributed to these commodities, according to the World Resources Institute.³⁵

As indicated by one major organization's commitment on deforestation and forest stewardship, "nearly ninety percent of terrestrial biodiversity is found in forests."³⁶ One billion people rely either partially or entirely on forests for their livelihoods, including many of the world's poor.³⁷ Forests continue to be lost at rates that have remained roughly the same for the past twenty years, especially in the biodiversity rich tropical zone.³⁸ About 25 to 30% of global greenhouse gas emissions result from deforestation.³⁹

IV. The Growing "Zero Deforestation" Movement

The last five or so years have seen a dramatic increase in corporate and governmental commitments to end deforestation that result either through direct action of an organization or that is caused by the actions of its suppliers.⁴⁰ There are two principal approaches to zero deforestation, "zero NET deforestation" and "zero deforestation." There are also two additional important concepts, "High Conservation Value Forests" ("HCVFs") and "High Carbon Stock" ("HCS") forests that play an important role in zero deforestation discussions. These issues are discussed in more detail below.

A. Zero Net Deforestation

The World Wildlife Fund ("WWF") has championed the concept of zero net deforestation. At the 9th Conference of the Parties on Biological Diversity in May 2008, sixty-seven countries pledged support for WWF's zero net deforestation by 2020 proposal.⁴¹ WWF's approach distinguished zero net deforestation from zero deforestation, noting:

Zero net deforestation acknowledges that some forest loss could be offset by forest restoration. Zero net deforestation is not synonymous with a total prohibition on forest clearing. Rather, it leaves room for change in the configuration of the land-use mosaic, provided that the net quantity, quality and carbon density of forests is maintained. It recognizes that, in some circumstances, conversion of forests in one site may contribute to the sustainable development and conservation of the wider landscape (e.g., reducing livestock grazing in a

32. M. Vandenberg, *The New Wal-Mart Effect: The Role of Private Contracting in Global Governance*, 54 UCLA L. REV. 913, 926-36 (2007) (footnotes omitted).

33. *Id.* at 970.

34. See *Deforestation Facts, Deforestation Information, Effects of Deforestation*, NAT'L GEOGRAPHIC SOC'Y, <http://environment.nationalgeographic.com/environment/global-warming/deforestation-overview/> (last visited Sept. 6, 2016).

35. See *Forests and Landscapes in Indonesia*, WORLD RES. INST., <http://www.wri.org/our-work/project/forests-and-landscapes-indonesia> (last visited Nov. 25, 2015).

36. NESTLÉ COMMITMENT ON DEFORESTATION AND FOREST STEWARDSHIP, NESTLÉ 1 (2013), www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/commitment-on-deforestation-2013.pdf.

37. *Id.*

38. *Id.*

39. Christopher Matthews, *Deforestation Causes Global Warming*, FOOD & AGRIC. ORG., www.fao.org/newsroom/en/news/2006/1000385/index.html (last visited Oct. 22, 2015).

40. See discussion *infra* Part VI.

41. WORLD WILDLIFE FUND, ZERO NET DEFORESTATION BY 2020 1, http://d2ouvy59p0dg6k.cloudfront.net/downloads/wwf_2020_zero_net_deforest_brief.pdf (last visited Oct. 22, 2015).

protected area may require conversion of forest areas in the buffer zone to provide farmland to local communities).⁴²

WWF's definition does not allow conversion of primary or natural forests into fast growing plantations.⁴³ WWF chose the 2020 time line because the organization saw the time frame as achievable with a 10% annual reduction of the then current rate of deforestation and it would allow eight years to allow reducing emissions from deforestation and forest degradation ("REDD") mechanisms to be implemented.⁴⁴

B. Zero Deforestation

Zero Deforestation is typically a more restrictive definition that may preclude conversion of forest areas. Zero deforestation may also be referred to as 'Zero Gross Deforestation' or 'Deforestation-Free' pledges. Because the elements of zero deforestation commitments vary, it is important to look at the specific contours of each commitment to understand what Zero Deforestation means.

C. "High Conservation Value Forests"

High Conservation Value Forests ("HCVFs") are defined by the Forest Stewardship Council (the organization that certifies sustainably harvested forests worldwide) as "forests of outstanding and critical importance due to their high environmental, socio-economic biodiversity or landscape values."⁴⁵ HCVFs comprise the crucial forest areas and values that need to be maintained or enhanced in a landscape and are found within a wide range of forest conditions (largely intact to largely fragmented).⁴⁶ Some activities can take place within HCVFs, but those activities cannot adversely affect the Forest's conservation value. Several no deforestation policies include a commitment to protecting HCVFs.

D. "High Carbon Stock" Forests

Golden Agri-Resources ("GAR") (the second largest palm oil producer in the world), the Forest Trust, and Greenpeace developed the methodology for protecting High Carbon Stock ("HCS") forests.⁴⁷ HCS distinguishes natural forests from degraded lands with only small trees, scrub, or grass remaining.⁴⁸ Greenpeace describes the HCS approach as "a breakthrough for plantation and consumer companies who are committed to no deforestation, from development or

in their supply chain."⁴⁹ The system "allows prevention of greenhouse gas emissions to sit alongside existing guidance on biodiversity conservation and will help conserve ecologically viable areas of natural forest."⁵⁰ Importantly, the system is also able to "identif[y] degraded lands on which it is possible to continue the expansion of oil palm plantations, subject to usual legal and FPIC requirements."⁵¹ Golden Agri-Resources has committed to protect both HCVF and HCS forests.⁵²

E. Other Key Issues Related to Deforestation

Zero deforestation policies may also address other areas of concern, including: eliminating clearing on carbon-rich peat lands; decreasing the use of fires for clearing; respect for indigenous land rights; obtaining free, prior, and informed consent from local communities; production only on legal lands; eliminating use of forced or slave labor; and committing to transparency regarding their production practices.⁵³

V. Approaches to Reducing Deforestation in Brief

Deforestation is being addressed in a wide variety of ways, including national legislation, funding programs such as REDD+ and Payment for Ecosystems Services ("PES") programs, legislation that holds importers of illegally harvested timber criminally liable in the importing country, such as the Lacey Act in the United States,⁵⁴ and through carbon offset programs, among other initiatives. However, the deforestation problem is widely recognized as so immense that it likely will require action on many fronts to significantly curb deforestation.⁵⁵ Voluntary zero or zero net deforestation programs are playing an increasingly important role in the effort to substantially slow down deforestation. The next section outlines some of the more prominent of these programs concluding with the Consumer Goods Forum program that likely has the broadest reach of the efforts.

42. *Id.* at 3.

43. *Id.*

44. *Id.*

45. *High Conservation Value Forests (HCVF)*, WORLD WILDLIFE FUND, http://gfn.panda.org/practical_info/basics/sound_forest/certification/forest_certification/hcvf/ (last visited Oct. 22, 2015).

46. *Id.*

47. See GOLDEN AGRI-RES. & SMART, HIGH CARBON STOCK FOREST STUDY REPORT 4 (June 2012), www.goldenagri.com.sg/pdfs/misc/High_Carbon_Stock_Forest_Study_Report.pdf.

48. *Identifying High Carbon Stock (HCS) Forest for Protection*, GREENPEACE 1 (2013), www.greenpeace.org/international/Global/international/briefings/forests/2013/HCS-Briefing-2013.pdf.

49. *Id.* at 2.

50. *Id.*

51. *Id.*

52. *Id.*

53. Sarah Lake & Elizabeth Baer, *What Does It Mean When a Company Commits to Zero Deforestation*, WORLD RESOURCES INST. (May 4, 2015), www.wri.org/blog/2015/05/what-does-it-really-mean-when-company-commits-zero-deforestation.

54. 16 U.S.C. §§ 3371–78. **The Lacey Act is a 100+ year-old statute that criminalizes importation of wood products if the products include lumber harvested in violation of the law of the country of origin.** The law is one of the few that reaches beyond national laws to create a crime. In 2008, it was amended to make it illegal to import wood in any form into the United States if it has been harvested in violation of the law in the country of origin. Both the EU and Australia have adopted laws that are analogous to the Lacey Act. See *Fact Sheet: Are You Ready for the Lacey Act?*, WORLD RESOURCES INST. (Dec. 22, 2009), <http://www.wri.org/blog/2009/12/fact-sheet-are-you-ready-lacey-act>.

55. *Global Fight to Stop Deforestation Failing on Many Fronts Says WWF Report*, WORLD WILDLIFE FUND (June 8, 2015), http://www.wwf.org.uk/about_wwf/press_centre/?unewsid=7604.

VI. Corporate Response to Deforestation

The following vignettes describe some of the voluntary commitments major companies have made related to deforestation.

A. Archer Daniels Midland

Archer Daniels Midland (“ADM”) is a global food processing and commodities trading company headquartered in Chicago, Illinois. In March 2015, ADM committed to No Deforestation of High Carbon Stock forests or High Conservation Value Forests, no development on peatlands, regardless of depth, and no exploitation of people and local communities in its palm oil supply chain.⁵⁶ Suppliers were required to submit compliance plans by the end of 2015.⁵⁷

B. Asia Pulp and Paper

Asian Pulp and Paper (“APP”) is an Indonesian company with operations in Indonesia and China that sells tissue, packaging, and paper in 120 countries. APP, which had once been referred to as the “poster child” of deforestation, adopted a deforestation policy after this reputation cost the company, by one estimate, 100 customers, especially in the EU and U.S., and the threat of more customer losses in Japan.⁵⁸ APP is perhaps the first producer to ask for independent, public reported analysis of how it is fulfilling its deforestation-free goals. These goals include protecting natural forests, including High Conservation Value Forests and High Carbon Stock forests, improved peatland management, social and community engagement, ceasing to cut and mill mixed tropical hardwoods, and assuring its suppliers support responsible forest management.⁵⁹

C. Cargill

Cargill is a multi-national grain trading and agri-business company that is the largest privately held company in the United States. Cargill has committed to building a traceable and transparent palm oil supply chain firmly committed to: no deforestation of high conservation value (“HCV”) lands or high carbon stock (“HCS”) areas; no development on peat; and no exploitation of rights of indigenous peoples and local communities.⁶⁰ Cargill has also committed to a goal

of halving deforestation resulting from its activities by 2020 and ending it completely by 2030 across its entire agricultural supply chain.⁶¹

D. Colgate-Palmolive

Colgate-Palmolive is an American multi-national company that sells household, health care, and personal care products. Colgate has committed to:

- a. Obtaining verification that pulp and paper materials from high priority countries are of low risk of coming from controversial sources contributing to deforestation.
- b. Increasing the purchase of physical Certified Sustainable Palm Oil and Palm Kernel Oil where possible each year, and continuing to purchase GreenPalm Certificates to cover the remaining percentage of their requirements, gradually phasing out the need for the purchase each year.
- c. Requiring additional independent verification that the palm oil supply to Colgate does not come from areas where High Carbon Stocks and High Conservation Value Forests were deforested; fire was used for clearance; and peat lands were developed into plantations or drained.
- d. Procuring soy and soy derivatives that are not linked to deforestation by 2017.
- e. Requiring all applicable tallow suppliers to be in compliance with the “Minimum Criteria for Industrial Scale Cattle Operations in the Brazilian Amazon Biome” by 2017.⁶²

E. Consumer Goods Forum

The Consumer Goods Forum (“CGF”) was formed in 2009 as a result of the merger of the Global Social Compliance Program, the Global Food Safety Programme, and another trade organization. CGF includes many of the World’s most prominent transnational companies including Wal-Mart, TESCO, Unilever, Pepsico, Nestle, The Coca-Cola Company, 3M, Henkel, Mitsubishi, and many more.⁶³ Together, the 400 member companies employ ten million people and have gross revenues of more than \$2.5 trillion. CGF’s mission is “[b]ringing together consumer goods manufacturers and retailers in pursuit of business practices for efficiency

56. See ADM, OUR COMMITMENT TO NO-DEFORESTATION 1–4 (2015), <http://www.adm.com/en-US/company/Documents/ADM%20No%20Deforestation%20Policy.pdf>.

57. *Id.*

58. See Raz Godelnik, *Asia Pulp & Paper Finally Commits to End Deforestation in Indonesia*, TRIPLE PUNDIT (Feb. 7, 2013), www.triplepundit.com/2013/02/asia-pulp-paper-indonesia-deforestation/.

59. See Darragh Ooi, *Asia Pulp and Paper’s No Deforestation Policy Continues as It Issues Its Third Sustainability Roadmap “Vision 2020” Update*, ASIA PULP & PAPER (June 4, 2013), www.asiapulppaper.com/news-media/press-releases/asia-pulp-and-papers-no-deforestation-policy-continues-it-issues-its-third.

60. See *Deforestation*, CARGILL (2016), www.cargill.com/news/issues/deforestation/index.jsp; see also CARGILL, CARGILL POLICY ON FORESTS 1 (2015), <http://www.cargill.com/wcm/groups/public/@ccom/documents/document/na31891866.pdf>.

61. See *Deforestation*, *supra* note 60.

62. See *Our Policy on No Deforestation*, COLGATE WORLD CARE (Mar. 2014), www.colgate.com/app/Colgate/US/Corp/LivingOurValues/Sustainability/Deforestation.cvsp.

63. See *History of The Consumer Goods Forum*, CONSUMER GOODS FORUM (2016), <http://www.theconsumergoodsforum.com/about-the-forum/our-history>; see also *Our Members*, CONSUMER GOODS FORUM (2016), <http://www.theconsumergoodsforum.com/abouttheforum/ourmembers>.

and positive change across our industry benefiting shoppers, consumers and the world without impeding competition.”⁶⁴

The CGF deforestation goal is to mobilize the organization’s members to help achieve ‘zero net deforestation’ by 2020, working through member companies and with governments and NGOs.⁶⁵ The organization has pledged to “develop specific, time bound and cost-effective action plans for the different challenges in sourcing commodities like palm oil, soya, beef, paper and board in a sustainable fashion.”⁶⁶ CGF has developed two supply chain guidelines to assist their members in achieving the organization’s goal, one for palm oil and the other for soya.

CGF notes in its deforestation policy that zero net deforestation is not achieved through the conversion of primary or natural forests into fast growing plantations. However, CGF does recognize that zero ‘net’ deforestation acknowledges that some forest loss could be ‘offset’ by forest restoration, a concept rather like ‘no net loss of wetlands’ in the United States.⁶⁷ CGF also points out that the zero net deforestation policy does not totally prohibit forest clearing.⁶⁸ Land use changes can occur under the policy if the net quantity, quality, and carbon density of forests is maintained.⁶⁹

The zero net deforestation goal set by CGF is a voluntary commitment but it is embedded in the sustainability reporting of member companies and has become part of the information used by the Dow Jones Sustainability Index and FTSE for Good.⁷⁰ Because these are very visible commitments, they expose the companies to significant reputational or brand risk should the commitments not be met. Further, because the CGF commitments are widely known in the forestry NGO community, the commitments are carefully scrutinized.⁷¹

CGF sees both its no net deforestation goal and its goal to phase out hydro-fluorocarbon (“HFC”) refrigerants as important to market transformation needed to support more sustainable outcomes.⁷² This starts with setting goals, then with activities that begin to drive movement in the markets and ultimately results in market changes that make sustainability both less expensive and achievable.⁷³

In 2012, CGF, along with the U.S. government, founded the Tropical Forest Alliance (“TFA”) that operates as an

independent non-profit organization.⁷⁴ TFA’s mission is to serve as “a marketplace for ideas and initiatives to tackle tropical deforestation, a repository of best practices and a forum where partnerships between governments, business and civil society can be forged. TFA 2020 also brings entities together to share information on actions they are taking and identify gaps to fill.”⁷⁵ The formation of TFA introduces an interesting element of collaborative environmental management into the effort to significantly reduce deforestation.

F. Nestle

Nestle is a multi-national food and beverage company with its main office in Switzerland. Nestle has committed to ensuring that all of its raw materials sourced from forest areas including pulp and paper, timber, palm oil and soya:

- Have not led to deforestation;
- Have not led to loss of high conservation values; and
- Have led to the creation of shared value for society and local communities.⁷⁶

Nestle has established a three year time line for suppliers to show material progress and five years to demonstrate compliance.⁷⁷ Nestle will use independent third party verification schemes periodically reviewed by the company.⁷⁸ Nestle also has adopted “cut-off” dates established by organizations such as the Forest Stewardship Council for ending sourcing from plantations and farms converted from forests.⁷⁹

64. See *Our Mission*, CONSUMER GOODS FORUM (2015), <http://www.theconsumergoodsforum.com/about-the-forum/our-mission>.

65. See *Deforestation Resolution*, CONSUMER GOODS FORUM (2015), www.theconsumergoodsforum.com/sustainability-strategic-focus/sustainability-resolutions/deforestation-resolution.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Interview with Ignacio Gavilan, Director of Sustainability, The Consumer Goods Forum, June 21, 2015 (on file with author).

71. See Bustar Maitar, *Palm Oil Giant Commits to Zero-Deforestation*, GREENPEACE, <http://www.greenpeace.org/usa/palm-oil-giant-commits-to-zero-deforestation/> (last visited Sept. 14, 2016); see generally GREENPEACE, *THE TIME BOMB IS TICKING: CALL FOR ZERO DEFORESTATION TO PROTECT THE CLIMATE 5* (2008), <http://www.greenpeace.org/international/Global/international/planet-2/report/2008/10/the-climate-bomb-is-ticking.pdf>; cf. Helen Davidson, *Greenpeace Urges Procter & Gamble to Reject Harmful Palm Oil Practices*, GUARDIAN, Feb. 27, 2014, <https://www.theguardian.com/environment/2014/feb/27>.

72. *Our Mission*, *supra* note 64.

73. Interview with Ignacio Gavilan, *supra* note 70.

74. See *Objectives*, TROPICAL FOREST ALL. 2020 (2016), <https://www.tfa2020.org/about-tfa/objectives/>.

75. *Id.* The founding Partners of Tropical Forest Alliance 2020 were the Government of the United States and The Consumer Goods Forum (“CGF”). TFA 2020 was born out of discussions between these two entities before, and during, the Rio+ 20 Conference in June 2012. Since June 2015, the World Economic Forum is host to the Secretariat of the Tropical Forest Alliance 2020. Current TFA 2020 Partners include the Governments of the Republic of Indonesia, Republic of Liberia, the Netherlands, Norway, the United Kingdom and the United States; Althelia Ecosphere, Anthrotecht-Treestyle, Cargill, the CGF, Daemeter Consulting, General Mills, Grupo Éxito, Marfrig Global Foods S.A., Marks and Spencer, McDonald’s, Mondelez International, Nestlé, Permian Global Advisors LLP, Poligrow Colombia Ltd., PricewaterhouseCoopers LLP, Terra Global Capital, Unilever and Wilmar; and NGOs including: Amigos da Terra—Amazônia Brasileira, CDP, Climate Policy Initiative, Code REDD, Conservation International, Earth Innovation Institute, Flora & Fauna International, Forest Stewardship Council, Forest Trends, Global Canopy Programme, Governor’s Climate & Forest Fund, IDH Sustainable Trade Initiative, Imaflora, National Wildlife Federation, Proforest, Programme for the Endorsement of Forest Certification, Rainforest Alliance, SNV Netherlands Development Organisation, Solidaridad Network, Sustainable Agriculture Network, The Nature Conservancy, The New York Botanical Garden, Tropenbos International, We-Forest, Wildlife Conservation Society, World Agroforestry Center (“ICRAF”), World Resources Institute, World Wildlife Fund, and Zoological Society of London. See *Partners*, TROPICAL FOREST ALL. 2020 (2016), <https://www.tfa2020.org/about-tfa/partners/>.

76. NESTLÉ, NESTLÉ RESPONSIBLE SOURCING GUIDELINES: FRAMEWORK FOR FOREST-BASED MATERIAL 2–3, <http://www.nestle.com/asset-library/Documents/Media/Statements/2012-October/Nestlé%20Responsible%20Sourcing%20Guidelines%20for%20Forest-based%20Materials%20October%202012.pdf> (last updated Oct. 29, 2012).

77. See NESTLÉ, NESTLÉ COMMITMENT ON DEFORESTATION AND FOREST STEWARDSHIP 2 (Feb. 2013), http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/commitment-on-deforestation-2013.pdf.

78. *Id.*

79. *Id.*

G. Wilmar International

Wilmar International, headquartered in Singapore, is one of the world's largest agri-business groups and the world's largest palm oil company. In 2013, it committed to a policy that included no deforestation, no exploitation, and no peatland development in any of its businesses:

Wilmar will not engage in the development of High Carbon Stock (HCS) forests, High Conservation Value (HCV) or peat areas, nor knowingly source from suppliers engaged in the development of those landscapes. Wilmar will work with suppliers and provide support to rapidly shift development away from these areas.

....

This Policy applies to new areas developed post 5 December 2013; and our commitment towards this position remains.

....

Our Policy will not affect our purchase of oil from suppliers who had previously developed tracts of peatland (subject to them applying best management practices), or from smallholders. We have already begun to engage many of our suppliers to see how we can help them meet the requirements of our Policy.⁸⁰

VII. NGO Viewpoints

While activist organizations have been critical of some of the no deforestation commitments, many have been actively involved in developing standards for no deforestation commitments, promoting the adoption of these commitments and auditing at least some of the commitments. For example, the Forest Heroes campaign is a global effort to protect the world's forests.⁸¹ Their philosophy is that activists, local communities, and individual citizens acting in their countries have the power to ensure a living future for the world's forests, and they are working to build a powerful movement to ensure it happens.⁸² Forest Heroes has been supportive of corporate zero deforestation pledges such as the pledge made by Cargill, observing that, "Cargill's commitment to cut deforestation across all commodities has the potential to be a transformative move in the fight against climate change."⁸³ Further, the organization noted that "Cargill is doing the

right thing by announcing it will take steps to protect forests wherever they are threatened."⁸⁴

Forest Heroes has focused on some of the largest donut companies—Tim Hortons, Dunkin' Donuts, and Krispy Kreme—in their campaign to reduce deforestation from palm oil production. Interestingly, all of the companies identified in the landmark *Deforestation Doughnuts*⁸⁵ report have committed to zero-deforestation sourcing.⁸⁶

Greenpeace, while on one hand focusing on publicizing corporate involvement in deforestation, has supported corporate zero deforestation commitments. The organization stated:

Companies can make an impact by introducing zero deforestation policies and cleaning up their supply chains. That means holding their suppliers accountable for producing commodities like timber, beef, soy, palm oil and paper in a way that has a minimal impact on natural forests and the climate.

Companies can also introduce paper procurement policies that set ambitious targets to maximize use of recycled wood, pulp, paper and fiber in their products and ensure that any virgin fiber used is certified by a third party certification system such as the Forest Stewardship Council.

But these corporations haven't taken action on their own.

That's why we're investigating, exposing and confronting environmental abuse by corporations. And thanks to your actions, major companies are changing their ways.⁸⁷

Rainforest Action Network ("RAN") focuses on forests and climate. One of the organization's current focus areas is the use of palm oil in snack foods.⁸⁸ It has published a report on the issue identifying leaders in the field and urging laggards to adopt policies that will reduce the impact of palm oil on forests.⁸⁹ RAN also commented on the 2013 audit by Rainforest Alliance of APP's zero deforestation commitment, stating:

Despite APP's response to the Rainforest Alliance evaluation in the form of an "Action Plan," RAN's conclusion is that it's still too soon to resume business with APP. APP needs to implement its FCP policy, the new Action Plan and address the findings and gaps found in the evaluation and

80. See WILMAR, CLARIFICATION ON MEDIA'S MISREPORTING ABOUT WILMAR'S "NO DEFORESTATION, NO PEAT & NO EXPLOITATION" POLICY 1, <http://www.wilmar-international.com/wp-content/uploads/2014/03/Clarification-on-Medias-Misreporting-about-Wilmars-No-Deforestation-No-Peat-No-Exploitation-Policy.pdf> (last visited July 15, 2016); see also *Policies*, WILMAR (Sept. 2013), <http://wilmar-demo.weebly.com/policies.html>.

81. *A Global Movement to Save the World's Forests*, FOREST HEROES, <http://www.forestheroes.org> (last visited July 15, 2016).

82. See *About Us*, FOREST HEROES, <http://www.forestheroes.org/about-us/> (last visited July 15, 2016).

83. Press Release, Forest Heroes, Breaking: Cargill CEO Announces Major Action on Forests (Sept. 23, 2014), <http://www.forestheroes.org/breaking-cargill-ceo-announces-major-action-on-forests/>.

84. *Id.*

85. *Deforestation Doughnuts*, FOREST HEROES, www.forestheroes.org/deforestation_doughnuts/ (last visited Nov. 25, 2015).

86. See Allison Aubrey, *Sweet: Dunkin' Donuts and Krispy Kreme Pump Up Pledge on Palm Oil*, NAT'L PUB. RADIO (Sept. 18, 2014, 4:33 PM), <http://www.npr.org/sections/thesalt/2014/09/18/349562067/sweet-dunkin-donuts-and-krispy-kreme-pump-up-pledge-on-palm-oil>; Press Release, Tim Hortons, Tim Hortons Remains Committed to Sustainable Palm Oil Production (2015), <https://www.timhortons.com/ca/en/corporate/news-release.php?id=8259>.

87. *Solutions to Deforestation*, GREENPEACE, www.greenpeace.org/usa/forests/solutions-to-deforestation/ (last visited Oct. 30, 2015).

88. RAINFOREST ACTION NETWORK, TESTING COMMITMENTS TO CUT CONFLICT PALM OIL. 2015: THE YEAR TO DRIVE CHANGE—PROGRESS REPORT 2 (2015), www.ran.org/sf20scorecard.

89. *Id.*

joint NGO report in a way that demonstrates satisfactory and verifiable positive progress on the ground.⁹⁰

The Rainforest Alliance is an international NGO that works on biodiversity and sustainable livelihood issues. Its mission is “to conserve biodiversity and ensure sustainable livelihoods by transforming land-use practices, business practices and consumer behavior.”⁹¹ The Rainforest Alliance operates a certification program focused on sustainability—“Rainforest Alliance Certified.”⁹² The Rainforest Alliance works with APP to conduct third party audits of APP’s commitments. It also supports the creation of Zero-Net Deforestation Zones,⁹³ noting that net-zero deforestation zones help “communities that are dependent on farming and forests in the [Amazonian] region counteract deforestation and forest degradation, as well as enhance their carbon stocks, through sustainable management of farms and forestland.”⁹⁴

VIII. Observations and Conclusion

Strong national laws that limit deforestation and protect high value resources together with consistent and strong enforcement must remain the bedrock of international efforts to protect forests and maintain their ecosystem values, especially their carbon sequestration values. These laws need to be supplemented by efforts such as REDD+ that bring new resources to the effort to limit deforestation and protect the interests of local communities. However, the scale of the deforestation problem, the political power that has been associated with especially agriculture driven deforestation, the time scales needed to fully implement programs such as REDD+, and the fact that in many areas of the world enforcement efforts are often found wanting even if there are strong national laws, mean that more needs to be done.

It is in this context that other drivers of behavior beyond regulation and enforcement are beginning to play a very important, one might almost be able to say dramatic, role. Driven by changing societal values reflected in consumer demands, investor concerns, and issues raised by the financial community, there has been a flood of zero deforestation pledges involving soya, beef, palm oil, and pulp and paper in the last five or so years. Companies have begun to see bottom line value in maintaining their customer base and in reducing risk by changing their practices.

It is important to understand the specific nature of no deforestation commitments, with ‘zero deforestation’ being the preferred approach of several NGOs because it may limit land conversion more so than pledges of zero ‘net’ deforestation. It is also important to look at the details of the pledges for their impact on indigenous peoples and local communities to judge the justice impact of the commitments.

Just as with many environmental issues, the views of NGOs on zero and zero net deforestation pledges vary significantly. The World Wildlife Fund originated the zero net deforestation approach to try to drive rapid change while gaining the support of a broad range of businesses. Other NGOs have helped develop other approaches to limiting deforestation, such as Greenpeace working with the Forest Trust and the company Golden Agri-Resources High Carbon Stocks protection commitments, or the Forest Stewardship Council with their High Conservation Value Forests standard. While certainly not unanimously supportive of corporate commitments to zero deforestation, this area does reflect an interesting and fairly broad effort in collaborative environmental management. It is not entirely surprising that collaboration is occurring in this area. The stakes are very high on both sides. From an environmental perspective, deforestation must be dramatically slowed and eventually reforestation will be needed to address critical biodiversity climate issues. From the companies’ side, there is increasingly high risk to their reputations and their brands.

Now that commitments have been made, the challenge ahead is related to monitoring, reporting, and compliance. One concern here is that organizations like the Forest Stewardship Council that can provide verification of some of the commitments such as High Conservation Value Forests do not have sufficient capacity to help verify the large number of commitments that are now being made. Only a small percentage of the world’s forests have been certified as sustainable by FSC, limiting the ability of companies to rely on FSC certification as an indication of compliance. Some NGOs have been working with specific companies to help evaluate the companies’ compliance with their commitments. This may help assure that the commitments are carried out.

While commitments are no guarantee of compliance, the fact that so many NGOs have been involved in this process means that scrutiny of commitment implementation is likely to be high. Further, reputational risk does not disappear once a commitment has been made. In fact, the risk may actually increase once a commitment has been made, especially given the fact that breaches in commitments can be rapidly communicated through social media. As a result, reputational risk and brand integrity should help drive monitoring and compliance with the commitments. Further, these companies are driven to ensure their suppliers comply with the companies’ policies in order to protect the companies’ reputation.

90. Press Release, Rainforest Action Network, Rainforest Action Network Responds to Rainforest Alliance Evaluation of Asia Pulp and Paper’s Progress With Its Forest Conservation Policy Commitments (Feb. 4, 2015), www.ran.org/rainforest_action_network_responds_to_rainforest_alliance_evaluation_of_asia_pulp_and_paper_s_progress_with_its_forest_conservation_policy_commitments.

91. *About Us*, RAINFOREST ALL. (2016), <http://www.rainforest-alliance.org/about>.

92. *Id.*

93. *See Climate Projects*, RAINFOREST ALL. (2016), <http://www.rainforest-alliance.org/work/climate/projects/nzdz>; *Engage Your Forest Products Business*, RAINFOREST ALL. (2016), <http://www.rainforest-alliance.org/business/forestry/sourcing/independent-evaluations/asia-pulp-paper>.

94. *Net-Zero Deforestation Zones (NZDZ)*, RAINFOREST ALL. (2016), <http://www.rainforest-alliance.org/work/climate/projects/nzdz>.

Today, 75% of palm oil is subject to no deforestation commitments, a dramatic change over a matter of just a few years.⁹⁵ This figure points out the power of corporate commitments in fairly quickly addressing an important sustainability challenge. It demonstrates the value of an integrated

sustainability strategy that combines the important strengths of regulatory regimes with changing societal values and the power of corporate supply change commitments in tackling difficult environmental issues.

95. See Robert Hii, *Zero Deforestation Commitments the First Step Towards Certified Palm Oil*, HUFFINGTON POST, June 08, 2015, www.huffingtonpost.com/robert-hii/zero-deforestation-commitments-the-first-step-towards-certified-palm-oil_b_7503308.html.