



December 2, 2022

To: Melissa Gallant, Sustainable Landscapes Analyst, U.S. Department of State & Christine Dragisic, Foreign Affairs Officer, U.S. Department of State

Submitted electronically via www.regulations.gov

Re: Request for Stakeholder Input on Options for Combating International Deforestation Associated With Commodities (87 FR 63142)

Dear Melissa Gallant and Christine Dragisic,

This letter responds to the request by the Department of State for stakeholder input on options for combating international deforestation. The FACT Coalition (“FACT”) submits this comment as a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.

The FACT Coalition commends the Biden administration for its interest in combating deforestation abroad. In particular, FACT supports the administration’s interest in working with Congress to pass legislation that would enable a whole-of-government approach to tackling deforestation. To make the most out of a whole-of-government strategy, however, the administration must consider every element of illegal logging and deforestation, in particular the means by which criminals finance and launder illicit proceeds from these activities.

While the FACT Coalition abstains from many of the broader questions raised in the State Department’s Request for Information, and would instead refer State Department officials to comments by our members – such as the Environmental Investigation Agency – we strongly encourage the administration to more holistically address the role that illicit finance plays in enabling and rewarding illegal logging and deforestation abroad. To this end, this letter provides two recommendations narrowly targeted at reducing the role of U.S. financial institutions and markets in facilitating the flow of the financial proceeds of environmental crimes, including illegal logging and deforestation, to and from source jurisdictions. These recommendations include:

- 1) Ensuring that U.S. financial institutions do not finance or profit from illegal deforestation in foreign nations or the sale of commodities from illegally deforested land by covering financiers as covered entities under any proposed deforestation related due diligence requirement, and

- 2) Making environmental crimes, including illegal logging and deforestation, U.S. predicate offenses for money laundering.

Deforestation and Illicit Finance

U.S. financial institutions play a large role in promoting illegal deforestation through their investments and other financing activities. U.S. based financiers have lent and contributed billions in financing to clients and investments with connections to deforestation.¹ Between 2016 and 2020, doing so has allegedly profited over a half a billion dollars for U.S.-based financiers including BlackRock, Vanguard, JPMorgan, and Bank of America.

These financing practices include connections not only to deforestation but specifically *illegal* deforestation. In 2020, Articulation of the Indigenous People of Brazil (APIB) and Amazon Watch published a report detailing how six major U.S. financial institutions invested more than \$18 billion dollars in companies “linked to conflicts on Indigenous lands, illegal deforestation, land grabbing, the weakening of environmental protections, and the production and export of conflict commodities.”²

Once committed, these environmental crimes generate staggering profits for criminals. According to the Financial Action Task Force, environmental crimes, with illegal logging chief among them, generate up to \$281 billion in illicit proceeds each year.³ Moreover, “most of the proceeds, particularly with illegal mining and illegal logging, are believed to eventually find their way into the international financial system.” These high profits create great demand for financial secrecy to launder and store illicit proceeds.

Current U.S. Vulnerabilities in its Illicit Finance Framework vis-a-vis Environmental Crimes

With its outsized role in providing financial secrecy, the United States and its financial markets are an attractive location to stash the illicit profits of illegal logging and deforestation. The 2022 Financial Secrecy Index from the Tax Justice Network ranked the U.S. as the foremost provider of financial secrecy.⁴ The United States’ own Treasury Secretary, Janet Yellen, echoed this message at the 2021 Summit for Democracy when she commented that “the best place to hide and launder ill-gotten gains is actually the United States.”⁵ The U.S. \$10 trillion private investment and the \$50 trillion real estate markets offer a particularly convenient way for deforestation’s profiteers to hide wealth. Both markets lack comprehensive,

¹ *Deforestation Dividends*, Global Witness, October 2021.

<https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/#what-we-found>

² Sue Branford, Thais Borges, and Diego Rebouças, “Brazilian and international banks financing global deforestation: Reports,” November 2020.

<https://news.mongabay.com/2020/11/brazilian-and-international-banks-financing-global-deforestation-reports/>

³ *Money Laundering from Environmental Crime*, Financial Action Task Force, July 2021.

<https://www.fatf-gafi.org/media/fatf/documents/reports/Money-Laundering-from-Environmental-Crime.pdf>

⁴ “Financial Secrecy Index 2022,” Tax Justice Network. <https://fsi.taxjustice.net/>

⁵ Janet Yellen, “Remarks by Secretary of the Treasury Janet L. Yellen at the Summit for Democracy,” U.S. Department of the Treasury, December 2021. <https://home.treasury.gov/news/press-releases/jy0524>

commonsense anti-money laundering requirements that would prevent anonymous cash from reaching the U.S.

Unlike the United States, other jurisdictions have money laundering frameworks that are well-suited to the challenge that environmental crimes and global illicit finance pose. Many countries expressly recognize crimes committed on foreign territory as predicate offenses for money laundering cases, affording their courts jurisdiction over money laundering cases that relate to harms such as offshore environmental crimes.⁶ In some cases, such as that of the Netherlands' money laundering laws, countries may recognize foreign crimes as predicate offenses even without "the element of double criminality."⁷ Recognizing foreign crimes as predicate offenses without a requirement of double criminality may offer these countries increased ability to pursue money laundering cases against transnational environmental criminals.

The United States' own Financial Crime Enforcement Network (FinCEN) has also recognized the growing connection between illicit finance and environmental crimes like illegal logging and deforestation. A 2021 notice from the agency calls attention to "an upward trend in environmental crimes and associated illicit financial activity," and provides guidance for financial institutions to report suspicious activity related to environmental crimes. As a result, any whole-of-government approach to environmental crimes such as illegal logging and deforestation must take into account this upward trend and provide the tools to address it.

Over the summer, the FACT Coalition convened dozens of activists and experts for a virtual convening wherein participants affirmed the need to adopt reforms to counter illicit finance's role enabling and laundering the profits of environmental crime.⁸ The 2022 International Anti-Corruption Conference, to be held in Washington D.C. this December, demonstrates this interest further with its particular focus on overcoming corruption in the race against the climate crisis. Twelve of the conference's approximately ninety sessions all focus on the connections of climate change, environmental crime, and corruption.⁹ It is increasingly clear that civil society activists, other countries, and the U.S.' own financial crime agency are pressing for greater policies to address the intersection of environmental crimes and illicit finance.

⁶ James Wingard and Maria Pascual, *Following the Money: Wildlife Crimes in Anti-Money Laundering Laws*, Legal Atlas. https://www.legal-atlas.com/uploads/2/6/8/4/26849604/following_the_money__feb__11_.pdf

⁷ *Money Laundering from Environmental Crime*, Financial Action Task Force, July 2021. <https://www.fatf-gafi.org/media/fatf/documents/reports/Money-Laundering-from-Environmental-Crime.pdf>. Relaxing double criminality requirements is important because it would allow U.S. jurisdiction in cases where environmental crimes statutes may not perfectly overlap.

⁸ Christopher Boose, "Convening Report - Illicit Finance and Environmental Crimes: Identifying Shared Priorities," the FACT Coalition, July 2022.

<https://thefactcoalition.org/report/convening-report-illicit-finance-and-environmental-crimes-identifying-shared-priorities/>

⁹ "Conference Agenda #IACC2022," International Anti-Corruption Conference, 2022.

<https://hopin.com/events/international-anti-corruption-conference-2022-uprooting-corruption-defending-democratic-values-84a93061-f7c7-43f0-b4a1-955ff27e9e30/registration>

Recommendations

In light of the role that illicit finance plays in enabling and laundering the profits of illegal logging and deforestation, FACT offers the following two recommendations:

1) **Including Financiers as Covered Entities Under Any Proposed Deforestation Related Due Diligence Requirement (Response to Question 19)**

The FACT Coalition urges the administration to ensure that U.S. financial institutions do not finance or profit from illegal deforestation in foreign nations or the sale of commodities from illegally deforested land. To achieve this, the administration should support the inclusion of U.S. financiers connected to illegal deforestation in the scope of those parties regulated to limit or remove specific commodities grown on illegally deforested lands from agricultural supply chains.

This answer should not, however, be interpreted to argue against including financiers as covered entities in approaches that seek to limit commodities grown on *legally* deforested lands. This question lies beyond the scope of this letter.

2) **Including Foreign Environmental Crimes, Including Foreign Illegal Logging and Deforestation, as a Predicate Offense for Money Laundering**

At present, U.S. money laundering rules do not explicitly include environmental crimes against foreign nations as specified unlawful activities.¹⁰ This lack of explicit inclusion creates ambiguity over whether illegal logging and deforestation in other countries may serve as predicate offenses for money laundering charges in the United States.

The administration should work with Congress to pass legislation that would include foreign environmental crimes, including illegal logging and deforestation (i.e. deforestation in violation of the laws of the country in which the deforestation is occurring), as a “specified unlawful activity” under Section 1956(c)(7)(B) of title 18 of the United States Code.

Conclusion

The FACT Coalition commends the Biden administration for its interest in combating deforestation abroad and its commitment to pursuing a whole-of-government approach. We believe that any approach would be incomplete without consideration of the role that illicit finance plays in enabling and rewarding illegal logging and deforestation abroad. We urge the administration to work with Congress to reduce the involvement of U.S. financial institutions in illegal deforestation and address vulnerabilities in the U.S. illicit finance framework.

¹⁰ *United States Mutual Evaluation Report*, Financial Action Task Force, December 2016. <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html>

Thank you for the opportunity to comment on this notice. Should you have any questions, please feel free to contact Ian Gary (igary@thefactcoalition.org) or Christopher Boose (cboose@thefactcoalition.org)

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