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VIA ELECTRONIC SUBMISSION

Hon. Antony Blinken, Secretary, U.S. Department of State

Melissa Gallant, Sustainable Landscapes Analyst, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Global Change

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Docket No. 2022-22541

Re: Comments of the Institute of Shortening and Edible Oils Request for Stakeholder Input on Options for Combating International Deforestation Associated With Commodities, 87 FR 63142 (October 18, 2022)

Dear Secretary Blinken:

The Institute of Shortening and Edible Oils (ISEO) appreciates the opportunity to provide comments to the Department of State regarding its Request for Stakeholder Input on Options for Combating International Deforestation Associated With Commodities.

Introduction

ISEO submits these comments on behalf of U.S. refiners who produce 95 percent of domestic edible fats and oils from the following commodities: U.S. grown soybean, U.S. grown corn, U.S. grown cottonseed, U.S. grown canola, U.S. grown sunflower, U.S. grown safflower, U.S. produced lard, tallow, and wheat germ, as well as imported commodities such: olive, palm, palm kernel, coconut, canola and sunflower) used for baking, frying, cooking and also as ingredients in a wide variety of foods and personal care products from confections to cosmetics to renewable energy sources.

Specifically, as it relates to this request for comment, ISEO members import palm oil into the U.S. mainly from Indonesia and Malaysia and import some soy into the U.S. from South American countries such as Brazil, Argentina, and Paraguay.

ISEO members have been working for over a decade to create more sustainable palm oil and soy supply chains. While each member company is currently on its own journey and timeline, we collectively seek to end deforestation and work in good faith with the Biden Administration to address this important issue by leveraging the significant knowledge and efforts made by our members to date.

Many ISEO companies that import soy and palm oil already have deforestation commitments in place and are actively engaged in sustainably sourcing their raw materials. ISEO members are using a variety of tools to achieve these goals including through monitoring efforts, direct farmer engagement and sourcing, using sustainable certification programs and also participating in commodity-specific organizations, such as the Roundtable on Sustainable Palm Oil and the Round Table on Responsible Soy Association.



In addition to undertaking sustainability commitments, many ISEO members are also working to enhance traceability of their supply chains. When evaluating traceability, it is important to consider several factors that may differ by commodity, for example, the physical setup of manufacturing or further processing, as well as distribution and transport and the extent of comingling, which is common within the supply chains for soy and palm oil. As such, members have sought practical methodologies for evaluating supply chains for sustainability and social issues for both commodities. While there are a variety of factors at play, further complexities are present in the case of commodities that are grown and/or produced by smallholder farmers operating in remote locations, which is the case for palm oil and soy. A second major complicating element is that the challenges of differing views of sovereign nations on important environmental issues cannot be solved by companies only, but require intergovernmental engagement. Extraterritorial regulation also remains a sensitive topic that may have unintended consequences.

Despite these challenges, ISEO members recognize the importance of addressing commodity-driven deforestation and remain committed to working collaboratively with Congress, governments, NGOs, and the private sector toward that end. Moreover, we seek to be a resource as the Department of State continues to develop its report and make regulatory and legislative recommendations to President Biden next year.

Further to these objectives, we provide the following additional comments in response to the Department of State's request for stakeholder input.

Demand-Driven Deforestation Policies Should be Specific to Each Covered Commodity

We appreciate that the Department of State recognizes that varying dynamics may range from country to country for the soft commodities in which it has an interest in better understanding. In addressing how to combat demand-driven deforestation, however, the Department should also consider the differences of each commodity, their affiliated supply chains, and the on-the-ground realities unique to each origin country. As a general matter, the underlying approach should be commodity-specific.

Based on our experiences sourcing a variety of edible oils in different parts of the world, we have found that what works in one supply chain may require adjustments to work in another. Taking into account the complexities of different supply chains and situations in origin countries, a one-size-fits-all approach to address an issue as complicated as deforestation is likely to prove inappropriate, trade disruptive, and asymmetrical. While we cannot speak for all covered commodities the Department seeks to understand, we can attest that generally South American soy supply chains differ greatly from Southeast Asian palm supply chains in many aspects including the nature of and factors contributing to the underlying concerns contributing to deforestation. Similarly, Southeast Asia palm oil supply chains differ from those in other origin countries and regions, such as Papua New Guinea or Latin America.

The Department of State should work with the impacted industries to understand the various soft commodities it seeks to cover given the unique differences between each supply chain and the countries in which they originate. Such public-private engagement with impacted industries will better ensure that the Department fully understands the commodity and the unique supply chain implications in which it seeks to regulate.



Government-to-Government Engagement and Partnerships are Essential

Efforts of the producing countries of the covered commodities in question should be acknowledged, and bolstered through government-to-government collaboration and U.S. foreign assistance to support national capacity building and good governance where such support is needed. We urge the Department to recognize the role of the U.S. market in driving transformation in the supply chains of these countries that is required to address deforestation. To further support these efforts, assistance and recognition from the U.S. is needed for the countries of origin.

In addition to undertaking a holistic federal effort to understand the dynamics, progress, and opportunities of each producing country, the Department should also develop programs and purposely seek opportunities to strengthen these partnerships. Moreover, the Department should take a partnership approach when identifying legal and practical impediments to addressing deforestation or identifying potential regulatory or legislative actions to address these concerns.

Incentive-Based Measures are An Important Prong of an Effective Approach

More generally, and as previously noted, when it comes to combatting widespread global issues like deforestation, ISEO recommends that the Department pursue incentive-based measures, such as technical assistance, or a whole-of-government approach that involves all stakeholders and provides an opportunity to address concerns before penalizing actions are taken.

Import Prohibitions Should be Used as a Last Resort

ISEO strongly discourages the use of punitive and/or extraterritorial measures, such as an import prohibitions, to address deforestation. Especially when used in isolation, such measures can not only have significant unintended consequences, such as the inadvertent exclusion of compliant goods, but also may fail to address underlying concerns for which they were imposed. U.S. foreign policy and global development goals should discourage companies from adopting a “cut and run” approach to suppliers, and simultaneously encourage effective remediation with clear objectives and outcomes for resolution.

Import prohibitions are difficult to implement narrowly and often are overreaching in enforcement – this is particularly so when the subject product is a raw material or component used in numerous finished goods spanning multiple industries, resulting in significant trade disruption if not narrowly tailored. This is all the more important vis-à-vis our sector, given the important need to bolster global food security.

Meaningfully and sustainably addressing the underlying issues for which an import restriction may be imposed, such as deforestation in this case, requires action on the part of national stakeholders, such as governments and local industry. In contrast, an import prohibition may seek to address harm that has already taken place, or may inadvertently redirect trade or resources. If used at all, such prohibitions should be a measure of last resort after deficiencies are identified and failure to demonstrate progress made in good faith toward clearly defined objectives is established. Moreover, they should be carefully crafted taking into account various factors and considerations relevant to the trade flow in question and be narrowly tailored to ensure the prohibition covers only those products that are in violation.



Current Import Ban Enforcement Procedures Must be Improved Before Expanding Use of this Trade Tool

Import bans have been effective in the context of prohibiting the importation of forced labor-made goods, so it is understandable that there is interest in utilizing such tools to combat deforestation. To the extent that import bans are considered at all as means to discourage commodity-driven deforestation, reliance on existing enforcement procedures as presently implemented under existing law by U.S. Customs and Border Protection (CBP) would be misguided without careful review and modernization. Based on our experience, implementation of any ban should mandate a transparent process for identifying and detaining violating entries and also establish clear criteria for the facilitation of compliant merchandise.

Some ISEO members have experienced first-hand challenges with the enforcement of import prohibitions from CBP through the issuance of Withhold Release Orders (WROs) on specific producers of Malaysian palm oil based on forced labor allegations. The WRO detention process has proven long, confusing, and costly, characterized by overly-broad enforcement frustrating the entry of compliant merchandise with no connection to the producers identified in the WRO. Finding the process confounding, and in some cases impossible, some importers and producers of out-of-scope merchandise have abandoned the U.S. market altogether, further underscoring the need for CBP WRO process improvements. For these reasons, ISEO members continue to seek clear guidance and instructions and have requested specific modifications to enable the facilitation of compliant merchandise into the U.S. market.

For example, CBP to date has not identified what information and documentation is needed to demonstrate due diligence was conducted to establish goods are compliant, or outside the scope of a given WRO when a shipment has been detained. ISEO requests that when CBP stops a shipment the agency provide an importer with the specific evidence upon which it is relying for detention and also identify specific information required to secure release. It is very difficult for an importer to refute an allegation without the benefit of knowing or understanding the claim and evidentiary requirements.

Moreover, CBP does not presently share important information with importers, including as noted above, the specific evidence relied upon for targeting a shipment and detaining merchandise. Doing so, however, would enable importers to undertake actions, including remediation, and also allow for a more targeted and transparent approach to establishing compliance. In order to increase engagement and work towards achieving the overall goal of creating more sustainable palm oil and soy supply chains, CBP should be more transparent with importers on processes related to shipments and import bans. A more transparent process will allow both parties to address the underlying concerns requiring the need of an import ban.

For all these reasons, it is critical for the Department of State to understand that targeted enforcement matters when using a highly-disruptive trade tool like an import ban. Current procedures implementing existing bans, specifically CBP's WRO enforcement process, lack transparency and narrow focus. In understanding these current challenges, the Department will be better informed to create a more transparent and narrowly tailored process for deforestation. To that end, industries seek a process that is clear, transparent, predictable and also inclusive by bringing all parties to the table – including origin governments and industry.



The Focus Must be on Illegal, Not Legal, Deforestation, but Subject to that Caveat, Harmonization and Alignment with Existing Measures or Consensus-Based Instruments Should be Considered

It is important for the Administration to focus on illegal deforestation, while working with exporting countries to strengthen their own laws and enforcement. Within such measures on illegal deforestation, the Department should aim for harmonization with existing measures developed by consuming countries and consult consensus-based international instruments where relevant

For example, in developing a definition for deforested lands, the Department should consider, on a commodity specific basis, definitions provided in local, origin-country laws as well as definitions of terms (e.g. forest) set forth by international organizations, such as the United Nations Food and Agriculture Organization. Moreover, definitions should be consistent with U.S. international obligations.

Finally, in identifying the scope of covered entities, application of any measure, regulation or law designed to combat commodity-driven deforestation should be applied in the broadest terms, covering the entirety of supply chain actors within a given commodity and country through complementary responsibilities clearly defined. Comprehensive application will ensure that accountability for compliance flows in all directions and that responsibility is balanced from origin-country producers to individual consumers.

Conclusion

Thank you for your consideration of these comments regarding the assessment of various approaches to combat commodity-driven deforestation. ISEO stands ready as a resource and seeks continued engagement and dialogue with the Department and the Biden Administration to better understand and address this multilayered, yet critical issue.

Sincerely,

Kailee Tkacz Buller

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President and CEO
Institute of Shortening and Edible Oils