THE EU’S PALM OIL & DEFORESTATION RESOLUTION: IS IT BAD LEGISLATIVE WORK?
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On April 4, 2017, the European Parliament (EP) approved a Resolution by 640 votes to 18, with 28 abstentions. The adopted text carries the title: “Palm Oil and Deforestation of Rainforests” (henceforth “the Resolution”).

The purported overall goal of the Resolution is new regulation on the importation and use of palm oil in the European Union (EU) to avoid deforestation in the tropics.

To achieve this, various measures are proposed, most importantly the ban of palm oil in biofuels, switching to a single EU-wide sustainability certification and allowing only palm oil thus certified to be imported after the year 2020.

Despite its declared goal to better protect the earth’s natural patrimony, the Resolution disregards the needs and well-being of dependent communities in the producer countries. By adopting it - with an overwhelming majority - European MPs have decided they must show their hands in the heart of palm producer nations. With their vote, they have driven out truth and objective facts and instead rubber stamped an action that promises to revert small oil palm farmers to abject poverty while denying them Europe as a marketplace.

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Published: 29/5/2017
Received: 26/5/2017
Accepted: 29/5/2017
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“Alternative Facts” Have Reached Europe’s Highest Assembly Introduction

The text of the adopted Resolution¹ is riddled with fuzzy science made up of half-truths², incorrect inferences, and ethically questionable working standards.

Just a few examples:

"Deforestation produces carbon equivalent to 25% of the EU’s fossil fuel emissions”

"Peatland fires turned Indonesia into one of the largest contributors to global warming on Earth."

"Critically endangered species have been undergoing an observed, estimated, inferred, or suspected population size reduction of more than 80%.”

This is pseudo-science presented as accepted research results. These statements completely ignore the methodological difficulties in accurately measuring things like “25% of the EU’s fossil fuel emissions”, or “deforestation” on a global scale. The “observed, estimated, inferred, or suspected” loss of biodiversity speaks for itself.

With a lot of goodwill, such proclamations may be attributed to sloppy report drafting by the ENVI, the EP’s Committee on the Environment, Public Health, and Food Safety. But there are other possible explanations.

Different Shades of Illegality

Much more severe, however, are false claims that are the foundation on which the recommended actions of the Resolution rest. Without those, the edifice would collapse like a pierced soufflé.

One crass example is this passage from letter E. of the Resolution:

“whereas nearly half (49 %) of all recent tropical deforestation is the result of illegal clearing for commercial agriculture and this destruction is driven by overseas demand for agricultural commodities, including palm oil, beef, soy, and wood products; whereas it is estimated that the illegal conversion of tropical forests for the purposes of commercial agriculture produces 1.47 gigatonnes of carbon each year – the equivalent of 25 % of the EU’s annual fossil fuel-based emissions.”

For the bold statements in the previous paragraph, the Resolution cites as a source a publication from the NGO Forest Trends entitled: “Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations.”

Upon closer inspection of this document, numerous fundamental questions emerge. For instance, it turns out that “recent” means the period between 2000 and 2012. No explanation is given for why this particular time frame was chosen. As anyone with fleeting experience in statistics knows, the choice of the reference period can have a decisive influence on the outcome.

What about the words “tropical deforestation”? The Forest Trends report explains in its glossary that the term means: “The conversion of forests to other land uses that results in the loss of tree cover to below 51 percent.” But 51 percent of what? And how are “the tropics” exactly delimited?

In any event, the report includes countries like Brazil and Paraguay and cites extensive deforestation for soy and cattle, respectively. If those commodities constitute a big problem, as the report itself states, how then does the European Parliament justify singling out palm oil? An inconsistency, to say the least.

However, the worst offense comes to light when analyzing the 49% of illegal clearing for commercial agriculture. Bear in mind that this number lies at the heart of the justification the EP puts forth for its Resolution.

That notwithstanding, even the Forest Trends report cautions in several provisos that the numbers should not lead the reader to jump to conclusions. For example, in chapter 2.1 (page 11), under numeral 1. The report observes that determining illegality in many countries poses difficulties and concludes:

“These complex legal issues are not discussed in depth in this report, but there are general rules of statutory interpretation that can be used to resolve such contradictions.”

Unfortunately, the authors shed no light on the question which “general rules of statutory interpretation” they summoned for help.

Be that as it may: the end-result is somewhat mind-boggling. In the image below take a closer look at the third text box from the left: “commercial deforestation that was likely illegal”.

Likely or Not?

Moreover, in the text explaining this formula one can read that already the percentage of forest loss due to commercial agriculture is an estimate. In other words, the methodology employed is this: take measured global forest loss (which is bound to be a flawed figure to begin with), then compound that number by applying an estimated percentage of land used for “commercial” agriculture (does that mean that smallholder clearing for subsistence agriculture is somehow excluded from the calculation?) plus a percentage of “likely” illegality and you arrive at the figure 49%. If that appears a daring statistical operation, it’s because it is.

This number - more or less pulled from thin air - then finds its way into the EP Resolution in the wording of “nearly half of all illegal clearing is driven by palm oil, beef, soy, and wood products.”

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Against this background, it may just be a detail that the even the people from Forest Trends put the numbers for Malaysia anywhere between a high-end estimate of 3.5 million hectares and a low-end estimate of ...zero!

**How Many Are a Multitude?**

This example is by no means the only nor the worst disingenuous use of data in the Resolution adopted by the EP on April 04. Another serious infringement is Recommendation No. 27 of the Resolution. It states that only 2% of the companies dealing in palm oil can trace the palm oil they trade to its source.

The text of the Resolution quotes as a source the following document: “Progress on the New York Declaration on Forests – Eliminating Deforestation from the Production of Agricultural Commodities.”¹ The statistics contained in this report are in turn based on work published by the Carbon Disclosure Project (CDP), a self-proclaimed UK charity that aims at disclosing greenhouse gas emissions; CDP data have been contested in various ways⁵: “Realizing zero-deforestation: Transforming supply chains for the future”.⁶

Plowing through these difficult to read documents reveals that the CDP report in fact only analyses 171 companies. Out of this tiny sample, the EP makes “the companies dealing in palm oil.”

But wait, there’s more. The document quoted by the EP Resolution does not even state that 2% of those companies that in fact had been surveyed can trace the palm oil they trade to its source.

Instead, and somewhat confusingly, the report says that 2% of palm oil companies can trace back to the production unit “Forest”.

It also states that a full 39% of palm manufacturers and retailers are able to trace back to the specific processing units. This compares to only 6% of beef companies and 7% of soy companies. As this finding works in favor of the palm industry, it receives no mention in the Resolution.

These examples reveal that large parts of the EP Resolution are untenable and basically meaningless. One can only speculate how the inner workings of the only directly elected body of the EU can result in something like this. Plain carelessness and an embarrassingly

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unscientific approach are probably the most well-meaning explanations that can be conceived.

Add to the above bureaucratic gobbledygook like "stresses the necessity to mainstream gender in national forest policies"; thinly veiled protectionist ideas like "ensure that EU Common Agricultural Policy (CAP) supports the goal of putting an end to deforestation" (read: subsidies to European rapeseed and sunflower farmers); or feel-good platitudes of the motherhood and apple pie variety like "Making sure that palm oil in the EU has not given rise to economic, social and environmental problems."

None of this does anything to disperse the feeling one gets when reading the Resolution text: either naïve laymen are working in the Environment, Agriculture, Trade, and Development committees of the EP. Alternatively, those who drafted the text pursue ulterior motives.

What the Resolution Means and What Happens Next

Despite justified concern over the fuzzy logic, false statements and unfounded conclusions in the Resolution, it is important to understand the decision and lawmakers processes of the European Union.

The fact that the EU Parliament on April 4, 2017, adopted that Palm Oil and Deforestation Resolution by no means signifies that any of...
the proposed measures have been written into law. In fact, far from it.

In the EU, only the European Commission, its executive organ made up of 28 commissioners (one for each member country, nominated by the respective home governments) has the right for legal initiative. A parliamentary Resolution is supposed to suggest to the Commission to propose new legislation.

What that means is that now, with the Resolution adopted in Parliament, the ball is in the Commission’s court. It may or may not decide to take it and run with it. If it does propose specific legislation on the palm oil and deforestation issue, the EU Parliament together with another body, the European Council composed of ministers from member states, will have to vote for the proposed legislation.

This entire process tends to be rather lengthy. At this point, it already seems unlikely that - should the Commission decide to initiate legislation - the process will be concluded within this legislative term ending in 2019. Then a new Parliament plus a new Commission will come in.

When that day comes, the composition of both bodies could be rather different from what it is now. Brexit by then probably will have materialized. With the defeat of Marine Le Pen in France’s presidential election on May 07, 2017 the danger of Frexit (France leaving the EU) has been averted for the time being. However, Grexit is not off the table either and more than just a few observers even consider “QuItaly” a distinct possibility.

Another mechanism is likely to work in favor of palm oil: the principal of political discontinuity. It means that each incoming Commission evaluates the pending initiatives brought before its predecessor. It then decides on whether those initiatives will be pursued further or not. This principle is laid down in Article 39 of the Framework Agreement between the European Parliament and the European Commission. It states that:

“The Commission shall proceed with a review of all pending proposals at the beginning of the new Commission’s term of office, in order to politically confirm or withdraw them, taking due account of the views expressed by Parliament”.

The current Commission under President Juncker at the beginning of its tenure reviewed around 450 proposals and decided to withdraw a significant number of them.

To summarize: given the political realities in the national governments of several EU member states (see the conclusion for an example from Germany) the current Commission very well may either decide not to bring forward a legal initiative in line with the Palm Oil and Deforestation Resolution or the new incoming Commission may choose to withdraw such a proposal.

What the Palm Oil Community Can Do

Although it is far from clear what, if anything, will come off the Resolution, the international palm oil community should not stand idly on the sidelines.

Malaysia’s Plantation Industries and Commodities Minister Mah Siew Keong is right in expressing disappointment over the vote. Reuters quotes him as saying: "We are very disappointed. We plan to go to European parliament to give us a chance to address the lawmakers (on) why we think this Resolution is not fair to palm oil."

Generally speaking, the flexibility with the truth displayed in the Resolution runs counter best practices in public administration. It, therefore, cannot be the basis of lawmaking. The palm oil community should investigate what possibilities for formal legal action exist.

Apart from that three venues to fight the Resolution are available:

1) **Lobbying national governments:** ultimately, because of the composition of the Commission and the Council of Ministers, the opinions formed on the level of member states are decisive.

2) **Lobbying EU institutions,** primarily Commission and Parliament: typically

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during the lawmaking process the Commission opens up a consultation period in which all stakeholders affected by the legal initiative can present their views. It is important that statements be made early and are professional and on a solid technical base.

3) General PR work: for the time being it is probably best to keep a low profile. It seems that the palm oil and deforestation issue is not a top priority in the public debate among EU citizens (with France, Belgium and to some extent Italy being somewhat of an exception).

Conclusions

Europe as we know it is at a crossroads. In times where many EU citizens have grown weary if not outright suspicious of the Union’s institutions, it is an outrage that the European Parliament should adopt the Palm Oil and Deforestation Resolution.

Making laws based on biased opinion instead of objective fact will not restore the trust the EU needs to survive.

The Committee work that went into drafting the Resolution and the text itself do not adhere to acceptable standards of legislative work. Lawmaking must not be misguided by sloppy research and false data. This resolution is full of it.

As bad as this is, there are at least three promising angles to counter the Resolution.

First, the extremely poor craftsmanship of the report opens it up for attack. This should be taken advantage of during the consultation process that now follows. Educating lawmakers and other stakeholders in the process should be a priority.

Secondly, the Resolution simply may not make it past the Commission. Or, if it does, get rejected by the Council of Ministers. In the governments of several member countries more balanced opinions on palm oil than those expressed by the EP can be found.

There is, for example, an interesting precedent from Germany. In November 2016, the Green Party made a motion very similar to the one on which the EP Resolution is based. However, it was voted down in the parliamentary development committee. Opponents of the proposal cite the better carbon footprint of palm oil compared to other oils and the economic opportunities for smallholders as reasons for voting ‘no’.9

Third, it is unclear how hot the entire issue is for the ultimate sovereign, the European consumer. There surely is a vocal minority in the form of NGOs and some firebrand MPs and politician who continue to lambast palm oil and portray it as the incarnation of all evil in this world, from cancer to climate change.

Nevertheless, palm oil is not really front and center in the mind of the public. This was confirmed in the scant coverage the Resolution received in mainstream media.

Interestingly, the same is true even for the Facebook page of the European Parliament itself. According to one post there, the pressing issues to be voted on during the April plenary session were: Brexit, cleaner cars, medical devices and waiving visa requirements for Ukrainians.

Palm oil and deforestation were not mentioned.

9 https://www.bundestag.de/presse/hib/201611/482936