SOAPS AND SHAMPOOS: PROPOSALS TO REFORM REGULATIONS IN THE UNITED STATES PERSONAL CARE MARKET TO DECREASE DEFORESTATION FROM PALM OIL IMPORTS

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I. INTRODUCTION

Imagine unwrapping a brand-new lipstick from the local beauty store. One is compelled to buy it because of the rave reviews for its moisturizing and color-retaining benefits. The deep red or bronze color is strikingly prominent on the lips and instantly the viewer is hooked. Imagine testing out a new shampoo with beautiful packaging of leaves and bright floral colors, labeled as "all-natural." The viewer is excited to try it in an effort to reduce chemical toxins from your life but nervous it may not work as well as the salon-quality shampoo. At the first wash, the user is more than pleased by how well it lathers in the hair, something the user was not expecting for an all-natural product. The simple answer to how these personal care products upholds its reputation is defined by one small ingredient known as palm oil.[1]

Palm oil is a vegetable oil that is known for being a key component of numerous global products including biofuel, food, and personal care products.[2] Palm oil is in the same family of vegetable oils as sunflower, canola, safflower, coconut, soy,

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[1] *Palm oil in the North American Consumer Market*, FRIENDS OF THE EARTH (2017), https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/legacy/Issue_Brief_2_-_Palm_oil_in_the_North_American_consumer_market.pdf.

[2] *Id.*

rapeseed, and olive oil.[3] However, due to its versatility and cheap cost of production, it is the most widely consumed vegetable oil on the planet.[4] Currently, the United States ("U.S.") has the largest profiting beauty and personal care product market and a large portion of those products contain palm oil.[5] The desire for personal care products and even "organic" or "all-natural" products in the U.S. has led to an increased importation of products containing palm oil.[6] The downside to this highly sought-after vegetable oil is that mass production of it comes at the cost of extensive deforestation and excessive release of greenhouse gases ("GHGs").[7]

This note will begin by informing on the current trends of palm oil consumption globally and then more specifically, the trends in the U.S.'s personal care product market. Further elaboration will explore the effects of global and national demand on source countries such as Indonesia and Malaysia. Some of the effects of the demand on these countries will include illegal encroachment, improper farming techniques, and illegal forest clearing. Lastly, the focus will shift to address how the U.S. has fallen short on its effort to curb deforestation and what policy and/or legislative actions can be taken. These actions include modified efforts adopted from other developed nations, such as the European Union ("E.U."), that will likely contribute to an overall reduction of deforestation and release of GHGs subsidized by the U.S.'s personal care product market.

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[3] *8 Things to Know About Palm Oil*, WORLD WILDLIFE FUND, https://www.wwf.org.uk/updates/8-things-know-about-palm-oil (last visited Feb. 13, 2023).
[4] *Id.*
[5] Friends of the Earth, *supra* note 1.
[6] Olivia Young, *Palm Oil in Cosmetics: Env't Impact and Sustainability Concerns*, TREEHUGGER (Oct. 26, 2021), https://www.treehugger.com/palm-oil-cosmetics-5206444.
[7] *Id.*

II. BACKGROUND OF PALM OIL

A. Early Geographic History

Although today palm oil is predominantly sourced from Indonesia and Malaysia, it actually has its roots in West Africa.[8] As early as the 1500s, palm fruit was processed by hand from indigenous wild palm groves in Guinea.[9] It began its use as a food source for enslaved people being transported by European colonizers but later grew as a commodity for trade with the British when the Atlantic slave trade was outlawed in 1807.[10]

By the time of the Industrial Revolution, the British began to discover the versatility of palm oil.[11] As palm oil researcher, Josie Phillips describes, it became the lubricant that quite literally "greas[ed] the wheels of the Industrial Revolution in Europe."[12] The demand further increased as palm oil was found to be a cheaper substitute for animal-based fatty wax that was used in soap and candle making due to its lather in soaps and lack of odor when burning candles.[13] While the increased demand benefitted West African economies, it also caused significant problems as the production process could not keep up with the demand.[14] Processing was still primarily done by hand and production was often unreliable due to the uncontrolled growth of the palm groves.[15] Eventually, this led British businessman, William Lever, to create plantations to

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[8] Josie Phillips, *An Illustrated History of Indus. Palm Oil*, CHINA DIALOGUE (Feb. 18, 2021), https://chinadialogue.net/en/food/illustrated-history-of-industrial-palm-oil/.
[9] *Id.*
[10] *Id.*
[11] *Id*.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*

increase supply.[16] This multinational operation grew into what is known today as, Unilever—one of the world's largest consumer goods companies.[17]

Lever's growth of palm oil plantations later led to Dutch businessmen creating palm oil plantations in Southeast Asia by introducing the plant to the island of Java in Indonesia.[18] There it was found to grow more fruitfully than in West Africa and ultimately led to Indonesia and Malaysia being today's largest exporters of palm oil in the world producing eighty-five percent of the world's supply.[19]

B. Palm Oil Uses in the World Today

The use of palm oil has expanded since its first introduction into the global market in the 1800s. Today, in addition to southeast Asia, palm oil is sourced from other tropical regions including countries that border the Amazon Rainforest such as Brazil, Colombia, and Ecuador where tropical conditions enhance soil fertility to maximize the yields of production.[20] Two types of oils are extracted from a single palm fruit: Crude Palm Oil ("CPO") and Palm Kernel Oil

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[16] Dr. Josephine Tierney, *Report of Scoping Survey of the Lever Brothers' Plantations in the Solomon Islands and the Congo, 1900-1930,* UNIV. OF LIVERPOOL (Dec. 2021), https://royalafricansociety.org/wp-content/uploads/2022/05/University-of-Liverpool-Scoping-Report-Lever-Bros-Plantations-in-the-Congo-and-Solomon-Islands-1900-to-1930.pdf.
[17] *Id.*
[18] *Id.*
[19] *Palm Oil and Biodiversity*, IUCN ISSUE BRIEF (June 2018), https://www.iucn.org/resources/issues-brief/palm-oil-and-biodiversity.
[20] Kirstie A. Goggin & Denis J. Murphy, *Can Palm Oil Be Produced Without Affecting Biodiversity?,* FRONT. FOR YOUNG MINDS (July 7, 2020), https://kids.frontiersin.org/articles/10.3389/frym.2020.00086.

("PKO").[21] Each of these types have a specific purpose for global demand.[22]

CPO is from the fleshy, pulp part, known as the mesocarp, that sits just under the outer layer of the fruit.[23] This type of palm oil is predominantly used as biofuel in regions such as Indonesia, India, and the EU.[24] Biofuel is a source of fuel typically composed of biological products such as vegetable oil or animal fat commonly used to replace fossil fuels in order to reduce GHG emissions.[25]

PKO is derived from the stone or seed of the palm fruit.[26] This type of palm oil is predominantly used in personal care products and food because of its high vitamin E content, emollient properties, and its ability to be a solid at room temperature.[27] Imports for PKO occur most heavily from the EU and India, whereas the U.S. only makes up approximately two percent of PKO imports.[28] However, while this two percent seems relatively low, it is a 485 percent increase in the last decade and with the Food and Drug Administration's ("FDA") ban on trans-fat, there is a possibility this percentage will continue to rise.[29]

The importance of differentiating between the two types lies in the facts of processing costs. For every ten tons of CPO produced,

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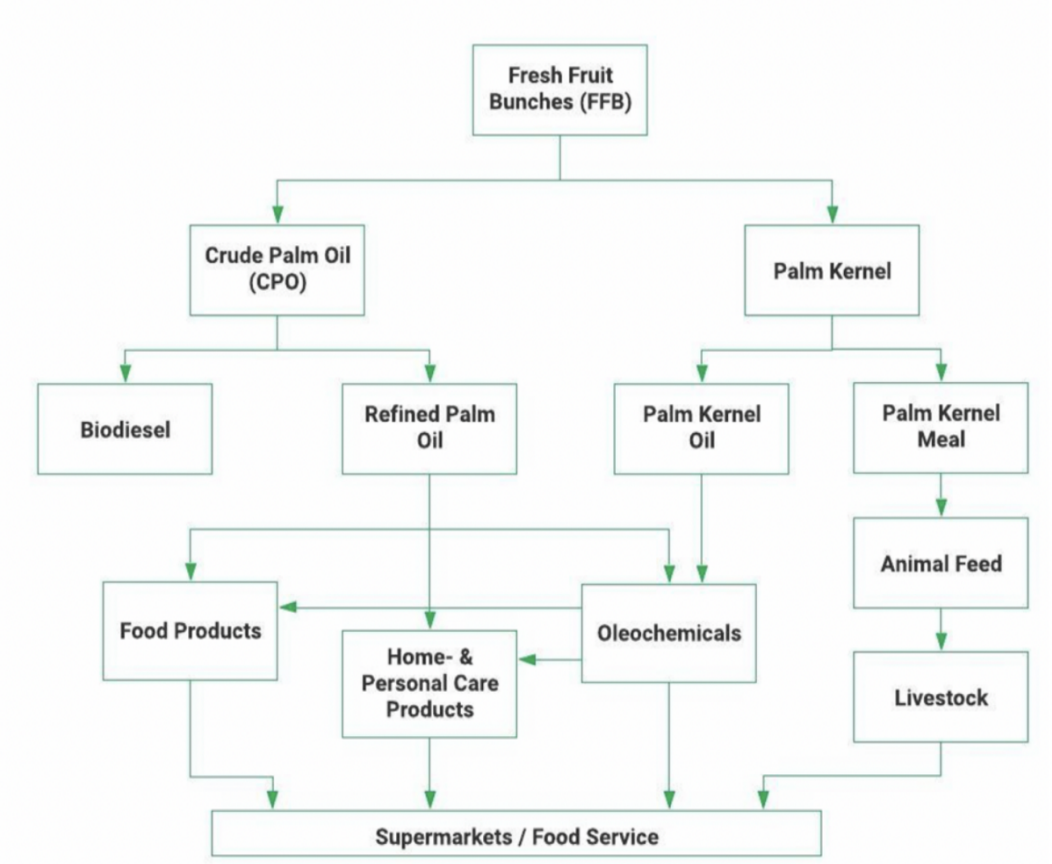
[21] Mark Gregory, *Palm Oil Production, Consumption and Trade Patterns: The Outlook From an EU Perspective,* FERN (May 2022), https://www.fern.org/fileadmin/uploads/fern/Documents/2022/Palm_oil_production_comsumption_and_trade_pattern.pdf.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] Suren Rangaraju, *10 years of EU Fuels Policy Increased EU's Reliance on Unsustainable Biofuels*, TRANSPORT & ENV'T (July 2020), https://www.transportenvironment.org/wp-content/uploads/2021/08/Biofuels-briefing-072021.pdf.
[26] Gregory, *supra* note 21.
[27] Goggin & Murphy, *supra* note 20.
[28] Gregory, *supra* note 21.
[29] *Id.*

one ton of PKO is produced.[30] Therefore, when advocating for policy change and reduction of consumption in the U.S.'s personal care market, the focus is on reducing PKO consumption, because it is more costly and more widely consumed in the U.S.[31] The following chart indicates the supply chain of palm oil from the point of harvesting to specific purpose consumption.[32]

[30] Orinola Gbadebo-Smith**,** *An Investor's Guide to Palm Oil*, TOPTAL FIN., https://www.toptal.com/
finance/market- research-analysts/palm-oil- investing (last visited Feb. 17, 2023).
[31] Gregory, *supra* note 21.
[32] *FMCGs, Retail Earn 66% of Gross Profits in Palm Oil Value Chain*, CHINA REACTION RESEARCH (July 15, 2021),
https://chainreactionresearch.com/report/palm-oil-value-chain-deforestation/.



Source: Chain Reaction Research, based on Byerlee, Falcon and Naylor (2018), "The Tropical Oil Crop Revolution."

III. HOW PALM OIL LED TO INCREASED DEFORESTATION

A. Domestic Consumption and Production of Palm Oil

Countries that produce the most significant amounts of palm oil are developing nations because they import their palm oil in order to sustain their growing economies. [33] However, some of the largest consumption of palm oil actually originates from the source countries themselves.[34] According to reports from 2020, Indonesia—the world's largest producer— had the largest consumer market for palm oil.[35] When combined with the second and third largest consumers, India and China, the three consumers account for forty-five percent of global consumption.[36] Currently, the use of palm oil in these countries is attributed to their food industries for cooking oil, however, Indonesia is working towards expanding their use of biological content for biofuel from thirty-five percent to 100 percent in the coming years. [37] These numbers are important because upon closer inspection, we see how source countries such as Indonesia and Malaysia are meeting these high demands for global consumption and how that consumption is directly linked to deforestation.[38]

In Asia, there are two methods of producing vegetable oil.[39] Specifically in Indonesia, the first and most profitable method is through private, state-owned, or corporate plantations and the second is through smallholders.[40] Smallholders are independent farmers whose production occurs on less than twenty-five hectares, where one hectare equals 2.45 acres, and who typically yield less oil

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[33] Goggin & Murphy, *supra* note 20.
[34] Gregory, *supra* note 21.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*

than state-owned plantations.[41] Historically, smallholders are indigenous people who owned and/or maintained the farmland before selling it or losing it to state-owned or corporate plantations.[42] Today, around sixty percent of global production is derived from corporate plantations compared to forty percent across three million smallholders in Indonesia.[43]

Although it seems smallholders would have a greater desire to preserve their own forestland, dominion of land from corporations has led to a land battle between smallholders and corporations where the ultimate effect has led to increased environmental impact.[44] When corporations move to acquire land for plantations, they are most often pushing indigenous people or other smallholders off their land.[45] This leads to land disputes whereby corporations are expected to profit share with the local communities by the Indonesian government, but many do not.[46]

> Smallholders usually do not have their own palm oil mills, and therefore they send their harvest to mills owned by larger plantations. These larger mills need sourcing from smallholders in order to cover the costs of capital-intensive operations. With a yield of approximately [twenty] percent, production per hectare can be 3.5 MT, making it approximately [ten] MT per smallholder. Consequently, with a palm oil price of USD 754 per MT

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[41] *As a smallholder Gaining Certification Changes Everything*, RSPO, https://rspo.org/as-a-smallholder/.
[42] Ari Anggara et al., *'The promise was a lie: How Indonesian Villagers Lost Their Cut of the Palm Oil Moom*, MONGABAY (May 23, 2022), https://news.mongabay.com/2022/05/the-promise-was-a-lie-how-indonesian-villagers-lost-their-cut-of-the-palm-oil-boom/.
[43] *Id.*
[44] Pablo Pacheco, *Governing Sustainable Palm Oil Supply: Disconnects, complementarities, and antagonisms between state regulations and private standards*, 14 REGUL. & GOVERNANCE 568 (2020).
[45] *Id.*
[46] *Id*.

> (2020), the average income for a smallholder is approximately USD 7,540 per year.[47]

This land-grabbing and production dominance leads many smallholders to illegally encroach on forestland in order to get a share of the industry or even sustain their own families.[48] Furthermore, in order to keep up with competitor yields, smallholders will typically not use best practices with planting material or management techniques thus contributing to the overall increased release of GHGs and deforestation.[49] Meanwhile, corporations who wish to avoid these land disputes will employ the same route as smallholders and encroach on forestland and peatland with the goal of using the timber from the forests to advance the costs of plantation setup.[50]

These facts and figures demonstrate how countries interact on the global market, and while that is an important aspect of economic development, it comes at the cost of the world's most extensive biodiversity.[51] Currently, Indonesia's 18,000 islands house the third largest area of rainforest just after the Amazon and Congo River Basin and is considered "the most species rich country on earth…with more species of mammal than any other nation," approximately 515 mammals.[52] However, due to the daily burning of trees that house ten percent of the world's known plant species, twelve percent of mammal species, and seventeen percent of all known bird species, this rich biodiversity is seeing a drastic decrease in its native mammals making Indonesia the world's leader of

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[47] China Reaction Research, *supra* note 32.
[48] Pacheco, *supra* note 44.
[49] *Id*.
[50] *Id*.
[51] *Indonesia's Rainforests: Biodiversity and Endangered Species*, RAINFOREST ACTION NETWORK, https://www.ran.org/indonesia_s_rainforests_biodiversity_and_endangered_species/#:~:text=Incredibly%2C%20with%20just%201%20percent,of%20all%20known%20bird%20species (last visited Feb. 17, 2023).
[52] *Id.*

threatened species (135, one-third of all its native species).[53] All of these impacts are a direct result of palm oil production.[54] As of right now, palm oil is the leading cause of orangutan extinction where production is estimated to cause 1,000-5,000 orangutan deaths per year.[55] It is also the cause of critically endangered species such as the Sumatran tigers and rhinos.[56] This environmentally destructive practice for global trade is on the rise and will continue to damage forestland as demand increases and a lack of accountability for more socio-environmental conscious efforts from corporations remains.

B. Foreign Consumption of Palm Oil

Palm oil consumption varies around the world in quantity and purpose. As to quantitatively, in 2020, India imported $5.1 billion worth of oil, China imported $4.1 billion, Pakistan imported $2.1 billion, and both the E.U. and the United Kingdom ("U.K.") imported $5.4 billion.[57] As to qualitatively, the primary drivers of consumption are biofuel in the E.U., India, and China. [58] In the food and personal care market, it is the U.S.[59] Each of these countries' high economic reliance comes at a direct and heavy impact to the environment.[60]

In the E.U., palm oil is primarily used for biofuel in order to reduce GHG emissions.[61] While the switch from fossil fuels to biofuel appears to be the more environmentally friendly shift, it has paradoxically come at a substantial cost for the world's eco-

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[53] *Id.*
[54] *What's Wrong With Palm Oil?*, ORANGUTAN FOUND. INT'L, https://orangutan.org/palmoil/#:~:text=What's%20wrong%20with%20Palm%20Oil,lotion%2C%20makeup%20and%20much%20more! (last visited Feb. 13, 2023).
[55] *Id*.
[56] *Id*.
[57] Gregory, *supra* note 21.
[58] *Id.*
[59] *Id.*
[60] China Reaction Research, *supra* note 32.
[61] *Id.*

systems.[62] The Indirect Land Use Change ("ILUC") is an evaluation of how land use changes as a result of economic demand for a single crop for more than one reason.[63] For example, forest land may be converted into agricultural land to increase the supply of a crop for biofuel instead of the crop's current use, for example, food supply. According to a brief from the E.U. Transport and Environment Department, when food crops are used for biofuel, the life cycle of the fuel supply chain must be considered by weighing the ILUC.[64] When the ILUC is factored into the equation of how much or how little environmentally unsustainable emissions are released, not just from use of biofuel but also production, it has been discovered that "all vegetable oil based biodiesel has more emissions than fossil diesel.[65] The more recent report showed emissions are particularly high for palm and soy oil that have three and two times the emissions of fossil diesel respectively."[66] In fact:

> Since 2011, E.U. drivers have burned around 39 Mt [39 million tons] of palm and soy biodiesel together, which emitted around 381 Mt CO2eq [the equivalent of 381 million tons of carbon dioxide emissions] . . . This is three times more than what would have been emitted if EU drivers would have used fossil diesel instead. The significant increase in the share of crop-based biofuels in 2020 shows the negative impacts of [ten] years of EU fuels policy and highlights the need to adopt stricter safeguards in EU policy.[67]

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[62] *10 years of EU Fuels Policy Increased EU's Reliance on Unsustainable Biofuels*, TRANSP. & ENV'T (July 2021), https://www.transportenvironment.org/wp-content/uploads/2021/08/Biofuels-briefing-072021.pdf.
[63] *Indirect Land Use Change (ILUC)*, EUR. COMM'N (Oct. 17, 2012), https://ec.europa.eu/commission/presscorner/detail/en/MEMO_12_787.
[64] Transp. & Env't, *supra* note 62.
[65] *Id*.
[66] *Id*.
[67] *Id*.

In essence, there is little benefit for the E.U. to continue its usage of palm oil. Currently, the EU is using palm oil as biofuel to help decrease its GHG emissions, but the effects are staggeringly negative towards the environment and global warming.[68] It is important to note that the ILUC factor is where deforestation comes into play in addition to the GHG emissions released from the deforestation itself.[69] At this rate, as the consumption of palm oil continues, the level of global warming and deforestation will only continue with it.

Comparatively, in the U.S., palm oil consumption increased as a result of the Food and Drug Administration ("FDA") banning partially hydrogenated oils known as trans-fat in 2015.[70] This is a highly influential move on behalf of the U.S. regarding palm oil because when trans fats were banned, a new ingredient was needed that would have the same properties as trans fat such as being solid at room temperature.[71] This is where palm oil could be beneficial. Palm oil has the chemical composition to be a solid at room temperature which is a key component of foods such as pizza dough, biscuits, ice cream, margarine, and packaged bread.[72] With the cheap cost of production, it was an easy transition for the U.S. to import palm oil instead of trans fat, but that was only the start to what has become an even more significant problem today.[73]

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[68] *Id.*
[69] Indirect Land Use Change (ILUC), *supra* note 63.
[70] Lael Goodman, *FDA Bans Trans Fats: What Does This Mean for Palm Oil Consumption in the U.S.?*, UNION OF CONCERNED SCIENTISTS (June 26, 2015), https://blog.ucsusa.org/lael-goodman/fda-bans-trans-fats-what-does-this-mean-for-palm-oil-consumption-in-the-us-761/.
[71] *Id.*
[72] *Which Everyday Products Contain Palm Oil?*, WWF, https://www.worldwildlife.org/pages/which-everyday-products-contain-palm-oil.
[73] Goodman, *supra* note 70.

IV. HOW THE DEMAND FOR "CLEAN" CONSUMER PRODUCTS INCREASED THE DEMAND FOR PALM OIL IN THE U.S.

Greenwashing is a national phenomenon whereby products are labeled "organic," "all-natural," "biodegradable," or "eco-friendly."[74] However, many of these products actually contain endocrine-disrupting chemicals ("EDCs") — ingredients known to be detrimental to human health and the environment.[75] The detriments to human health can range anywhere from skin irritations to hormone disruptions that can affect fertility.[76] Greenwashing occurs in all types of household products such as soaps, food, detergents, and cleaning products.[77]

Due to the dangers posed by these products, the FDA should be stepping in to regulate their production more heavily. However, it appears as if the FDA is taking little to no action in regulating these products because of their supposed "natural" ingredients. A large part of what allows companies to label their products natural is the fact that they use substances that are derivatives of natural resources such as palm oil.[78] Since palm oil is a substance naturally derived from the environment instead of being manmade, companies can label their products as natural.[79] The products are actually not natural since palm oil undergoes a process that

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[74] Louis Marmon, *What is Greenwashing?*, ADVANCE ESG (Jan. 20, 2022), https://www.advanceesg.org/what-is-greenwashing/?gclid=Cj0KCQiA14WdBhD8ARIsANao07iGAUVkwUW-mAs_R2ked4_rTRD286fqbWH-D27DaFDQybhycJdk91oaAv8XEALw_wcB.
[75] *Id*.
[76] *Endocrine-Disrupting Chemicals in the Home*, MADE SAFE (Aug. 26, 2021), https://madesafe.org/blogs/viewpoint/endocrine-disrupting-chemicals-in-the-home?gclid=Cj0KCQiA14WdBhD8ARIsANao07h7r0VqJnTQVhmcUZgLHn_4CXxwdUbPLw0x74zm_ZhhvBV_ejECrCUaAnyzEALw_wcB.
[77] *Id*.
[78] Marmon, *supra* note 74.
[79] *Id*.

chemically alters the oil to release toxins that are later considered EDCs.[80]

The use of palm oil often goes unnoticed in household and personal care products because it is being disguised under alternative names, such as, being labeled as natural.[81] Most consumers are unaware of this greenwashing effect and causes them to believe they are using clean products, when in actuality they are not.[82] This is the danger of the U.S.'s contribution to the palm oil industry. As the demand in the personal care market for organic and natural products increases, the need for palm oil importation will also increase.[83] This appears to be a growing trend in the U.S. contribution to deforestation.[84]

V. GLOBAL APPROACH TO REDUCING DEFORESTATION FROM PALM OIL

In the last seven years, global efforts to reduce deforestation from palm oil have grown.[85] The biggest contributor to this increased effort is attributable to the United Nation's Paris Climate Conference ("COP21") in 2015 that led 196 nations to create the Paris Climate Agreement.[86] The goals of the Paris Climate

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[80] Ashley Schaeffer Yildiz, *Palm Oil's Dirty Secret: The Many Ingredient Names For Palm Oil*, RAINFOREST ACTION NETWORK (Sept. 22, 2011), https://www.ran.org/the-understory/palm_oil_s_dirty_secret_the_many_ingredient_names_for_palm_oil/?gclid=EAIaIQobChMI89vP_Kz3_AIVTMSGCh0QnwChEAAYASAAEgJQDvD_BwE.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Greenwashing Tactic #2: No Proof*, PALM OIL DETECTIVES (Oct. 22, 2021), https://palmoildetectives.com/2021/10/22/greenwashing-tactic-2-no-proof/.

[85] Gabi Jonikas, *What is the Paris Climate* Agreement, SOCIAL IMPACT MOVEMENT BLOG (Aug. 3, 2021), https://socialimpactmovement.org/what-is-the-paris-climate-agreement/?gclid=CjwKCAiAleOeBhBdEiwAfgmXf3WDYfX5YIHMNk1nXPygA6MxyOcI62113qxyTVJjaq40OYnC1a19yxoCHykQAvD_BwE.

[86] *Id.*

Agreement include maintaining global temperature, moving towards more environmentally sustainable infrastructure, decreasing emissions, and ultimately removing those emissions from the air once more advanced technology becomes available to do so.[87] Despite the provisions of the Paris Climate Agreement being overbroad, the United Nations created a framework to assist countries in their efforts to achieve new environmental goals.[88] This framework is known as Reducing Emissions from Deforestation and Forest Degradation ("REDD+") and the program created to implement REDD+ is known as the United Nations Collaborative Effort for Reducing Emissions from Deforestation and Forest Degradation ("UN-REDD Programme").[89]

The REDD+ framework follows three phases: Phase 1- Readiness, Phase 2- Implementation, and Phase 3- Results-based Finance ("RBF").[90] Moving through each phase, the contributing country will first, create national strategies, action plans, and/or policy reform that will then be implemented as technology becomes available.[91] Once the implementation has taken place and the strategy or action plan is established as an appropriate course of conduct, RBFs will occur whereby the contributing country will supply the necessary finances to carry out the action plans.[92] These RBFs will subsequently be verified, measured, and reported to quantify and qualify the effectiveness of each strategy.[93]

Phase 1 of REDD+ is carried out by each party to the Paris Agreement submitting what is known as a Nationally Determined

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[87] *Id*.
[88] Jennifer Laughlin, *Guidelines on Free, Prior and Informed Consent*, UN-REDD+ PROGRAMME (Jan. 2013), https://www.uncclearn.org/wp-content/uploads/library/un-redd05.pdf.
[89] *Id.*
[90] *Warsaw Framework for REDD+*, UNITED NATIONS CLIMATE CHANGE, https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd?gclid=EAIaIQobChMIsIrinYn1_AIV7f_jBx30dwMtEAAYASAAEgLUIfD_BwE (last visited Feb. 13, 2023).
[91] *Id*.
[92] *Id*.
[93] *Id*.

Contribution (NDC).[94] Recently, 193 countries who signed on to the Paris Agreement have submitted at least their first NDC and 151 have updated their first NDC.[95] To get a taste of what an NDC entails, here are some examples from contributing countries:

> **Chile.** Currently Chile has plans to reach peak emissions throughout its economy no later than 2025. To obtain this goal, it is working with its private sector and creating carbon budgets to reduce the emissions.[96]
> **Panama.** Plans are in place for Panama to reach its increased emissions target reduction of eleven-and-a-half percent by 2030 and it aims to restore 50,000 hectares of national forests.[97]
> **Rwanda.** Rwanda was the first country in Africa to revise its initial NDC, . . . [its] goal to cut emissions by thirty-eight percent by 2030. It will pursue reductions across key sectors of its economy and has… [established] a system of indicators to track adaptation in water, agriculture, [and] land and forestry[.][98]

The goals these contributing countries set out are admirable. They aim to address some of the largest sectors of environmental impact depending on the needs and uses of the country's economies.[99] However, many of these NDCs seem to have over-generalized goals or poorly defined terms that would place certain economic conduct or products within their markets as such those that contribute to deforestation resulting from palm oil.[100]

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[94] *All About the NDCs*, UNITED NATIONS CLIMATE CHANGE, https://www.un.org/en/climatechange/all-about-ndcs#:~:text=So%20far%2C%20all%20193%20Parties,some%20cases%2C%20insufficient%20political%20commitment (last visited Feb. 15, 2023).
[95] *Id*.
[96] *Id*.
[97] *Id*.
[98] *Id*.
[99] Anna Aberg et al. *Raising Climate Ambition at COP26*, CHATHAM HOUSE (Oct. 5, 2021), https://www.chathamhouse.org/2021/10/raising-climate-ambition-cop26/02-increasing-ambition-ndcs.
[100] *Id.*

Nevertheless, the E.U. in particular has gone so far as to implement new policies and regulations for their corporations and the products they import that specifically relate to their hand in palm oil deforestation.[101] The E.U.'s goals are not over-generalized as to the percent of carbon emissions sought to be reduced in the next decade, rather, they focus on what will achieve those carbon emission goals.[102] This is extremely important because it could pave the way for other nations, such as the U.S. to adopt valuable policies regarding palm oil deforestation.

Under a new draft regulation, the European Commission—the E.U.'s executive branch of government—has proposed new policies that will entirely prevent products from entering their market that cause legal and illegal deforestation and degradation.[103] The steps to ensure this goal are specific and get to the heart of environmental impact because they focus on sustainable sourcing, transparency in supply chains, mandatory reporting to government agencies for products brought into the E.U. market, and partner with source countries to better communicate forestry and agricultural practices.[104] The European Commission has explained:

> The Regulation sets mandatory due diligence rules for operators which place specific commodities on the E.U. market that are associated with deforestation and forest degradation–soy, beef, palm oil, wood, cocoa and coffee . . . Its purpose is to ensure that only deforestation-free and legal products (according to the laws of the country

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[101] Bo Li et al. *How a New EU Regulation Can Reduce Deforestation Globally*, WORLD RES. INST. (April 5, 2022), https://www.wri.org/insights/eu-deforestation-regulation#:~:text=Under%20the%20proposed%20EU%20regulation,allowed%20into%20the%20EU%20market.

[102] *Id.*

[103] *Id*.

[104] *Questions and Answers on new rules for deforestation-free products*, EUR. COMM'N (Nov. 17, 2021), https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_21_5919/QANDA_21_5919_EN.pdf.

> of origin) are allowed on the E.U. market. Operators will be required to collect the geographic coordinates of the land where the commodities they place on the market were produced…to ensure that only deforestation-free products enter the E.U. market . . . A benchmarking system operated by the Commission will identify countries as presenting a low, standard or high risk of producing commodities or products that are not deforestation-free or in accordance with the legislation of the producer country. Obligations for operators and authorities will vary according to the level of risk[.][105]

One of the most effective strategies in the E.U new draft regulation pertains to the supply chain, a primary problem for countries that import palm oil.[106] By collecting the geographic location of where the product originated, authorities are able to follow and monitor the forestry practices of that specific supplier.[107] The E.U's new draft regulation could be effective in providing surety that palm oil is produced sustainably because it ensures the practices of the suppliers along the supply chain are environmentally friendly.

The E.U. banning products resulting from illegal and legal deforestation is another important key aspect of their plan for two reasons: (1) it eliminates deforestation concerns entirely and; (2) smallholders and corporations in source countries who supply palm oil through legal deforestation will not have heavy competition against illegal suppliers.[108] The first aspect is a pivotal move by the E.U. because, while other countries may move towards only importing legally deforested palm oil, the E.U. rejects all palm oil derived from any deforestation.[109] The second aspect aids in decreasing deforestation because oftentimes smallholders and corporations that source palm oil from legal deforestation may lose

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[105] *Id*.
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id*.

out on customers to those suppliers who employ illegal deforestation.[110] This in turn could cause those smallholders and corporations to cut corners and engage in unsafe and unsustainable practices for the environment as well as their plantation workers.

The E.U.'s model stipulates action plans on various economic levels ranging from corporate to governmental policy regulation.[111] The ingenuity behind this model that should encourage other nations to adopt it lies within the small detail that, not only does this regulation reduce emissions by at least 31.9 million metric tons of carbon emissions to the atmosphere every year, it will actually lead to economic savings of €3.2 billion annually.[112] Other countries should aim to emulate the E.U's multi-level strategy in regards to their environmental contribution to deforestation because the strategy protects the environment, forests, biodiversity, and national economies.

VI. PROBLEMS WITH U.S. APPROACH TO REDUCING DEFORESTATION FROM PALM OIL

A. The U.S.'s Contribution to Palm Oil Deforestation

It has already briefly been discussed how the U.S. uses palm oil in its economy for food and common household products. To know the impact of the personal care industry, it is first important to know what constitutes a personal care product. Personal care products include makeup, perfumes, hair care (coloring or styling products), sunscreen, toothpaste, and products for bathing, nail care, and shaving.[113] Given the wide range of products, there are a

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[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] Dominique Petruzzi, *Brand value of the leading personal care brands worldwide in 2022*, Statista (Oct. 12, 2022), https://www.statista.com/statistics/273236/brand-value-of-the-leading-personal-care-brands-worldwide/#:~:text=Leading%20players,invest%20in%20eco%2Dfriendly%20practices.

multitude of companies that align with each of these products, many of which manufacture across more than one category.[114] To see how the U.S. has a hand in it all, it is important to see who the top personal care product companies are worldwide and which of those are incorporated in the U.S. In other words, how much money is the U.S. gaining from its own personal care brands?

Based on statistical data from 2022, the top brands for personal care products worldwide, in order of value, were L'Oréal Paris, Lancôme (L'Oréal), Pampers (Procter & Gamble), Colgate (Colgate-Palmolive), Gillette (Procter & Gamble), Estee Lauder, Garnier (L'Oréal), Clinique (Estee Lauder), Shiseido, Dove (Unilever), Nivea (Beiersdorf), Bath & Body Works, Huggies (Kimberly-Clark), Maybelline (L'Oréal), and Pantene Pro-V (Procter & Gamble).[115]

To break this down in terms of numbers, of the top fifteen personal care brands, nine different companies are represented and of those nine companies, five are multinational U.S. based corporations.[116] Looking even closer, it is clear how prevalent each of these brands are in the average American home and therefore, how prevalent palm oil is in the average American home. For instance, if a home contains Colgate toothpaste, Ajax or Palmolive dish soap, or Irish Spring body soap the home contains palm oil under the name sodium lauryl/eth sulfate—also a known endocrine-disrupting chemical.[117] If a home contains Bath & Body works soaps, lotions, or any other body product, the home contains palm oil, under the name cetyl alcohol—a PKO derivative.[118] This list

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[114] *Id.*
[115] *Id*.
[116] *Id*.
[117] Ashley Schaeffer Yildiz, *Palm Oil's Dirty Secret: The Many Ingredient Names For Palm Oil*, RAINFOREST ACTION NETWORK (Sept. 22, 2011), https://www.ran.org/the-understory/palm_oil_s_dirty_secret_the_many_ingredient_names_for_palm_oil/?gclid=EAIaIQobChMI89vP_Kz3_AIVTMSGCh0QnwChEAAYASAAEgJQDvD_BwE.
[118] *Cetyl Alcohol*, CHEMICAL SAFETY FACTS (Oct. 14, 2022), https://www.chemicalsafetyfacts.org/chemicals/cetyl-

follows a similar pattern for the other companies, Proctor & Gamble, Kimberly-Clark, and Estee Lauder. Most common products that contain palm oil amongst these other brands are lipsticks, lotions, body washes, laundry detergents, and even over-the-counter medications such as Prilosec delayed-release capsules.[119] As noted before, palm oil is heavily present in these products because it acts "as a thickener and emulsifier to help maintain a desirable consistency and smooth texture."[120] However, its presence is easily overlooked on ingredients labels due to the variety of names it can be marketed under such as Elaeis Guineensis, Stearic Acid, Steareth -20, and Sodium isostearoyl lactylaye, just to name a few.[121]

Any effort to reduce or eliminate the use of palm oil in household products could be seen as futile given the vast number of products that contain the vegetable oil. Even though the U.S. is only the ninth largest consumer of palm oil worldwide, its growth from the first recorded domestic consumption in 1965 to now is staggering.[122] In 1965, the U.S. only consumed 23,000 MT of palm oil in contrast to last year where it consumed 1.715 million MT.[123] A comparative analysis of global consumption for palm oil may make the U.S. seem not to be a large contributor to palm oil deforestation. For example, while the U.S. consumed 1.715 million MT, the EU consumed 5.3 million MT.[124] However, a different story is revealed by the fact that the U.S. houses the largest grossing

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alcohol/#:~:text=Made%20from%20vegetable%20oil%20(such,%2C%20chemical%20intermediates%2C%20and%20plasticizers.

[119] PRILOSEC, NDA report (2004). https://www.accessdata.fda.gov/drugsatfda_docs/label/2005/19810s082lbl.pdf.

[120] *Id*.

[121] *Questions and Answers on New Rules for Deforestation-free Products*, EUR. COMM'N (Nov. 17, 2021), https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_21_5919/QANDA_21_5919_EN.pdf.

[122] *Palm Oil Domestic Consumption by Country in 1000 MT*, INDEX MUNDI, https://www.indexmundi.com/agriculture/?commodity=palm-oil&graph=domestic-consumption (last visited Feb. 15, 2023).

[123] *Id*.

[124] *Id*.

revenue personal care industry.[125] In 2021, revenue created by the personal care industry in the U.S. was 80.2 billion U.S. dollars, the highest in the world.[126] With such a large personal care industry in the U.S., and with a heavy increase in consumption over the last fifty-eight years, the question becomes, what is the U.S. doing about its contribution to palm oil deforestation?

B. How the U.S. Law Currently Addresses Palm Oil Deforestation and The Problems These Laws Pose

When the Paris Climate Agreement was effectuated in 2015, the U.S. was not initially a party under the Obama administration but was later removed under the Trump administration.[127] However, under the Biden administration, the U.S. re-entered the Paris Climate Agreement and submitted its first NDC after rejoining in April 2021.[128] This NDC follows a similar style to other country's NDCs by stating lofty goals of emissions reduction and even coastline restoration. In the NDC there is mention of maintaining and restoring forestlands, however, it is unclear if this is in reference to forestland within the U.S. borders or forestland in which U.S. corporations have stake in outside U.S. borders such as Indonesia and Malaysia.[129] From a global contribution perspective, the U.S. seems to have almost no plans in place to address domestic consumption levels of palm oil or even deforestation at all. Looking at the U.S.'s approach nationally, it can be broken down into three categories: governmental, corporate, and social.

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[125] Statista Research Dept, *Revenue of the Beauty & Personal Care Market Worldwide by Country in 2021*, STATISTA (Aug. 22, 2022), https://www.statista.com/forecasts/758635/revenue-of-the-cosmetics-and-personal-care-market-worldwide-by-country.
[126] *Id*.
[127] *The United States Nationally Determined Contribution*, UNFCC (April 15, 2021), https://unfccc.int/sites/ default/files/NDC/2022-06/United%20States%20NDC%20April%2021%202021%20Final.pdf.
[128] Climate Watch, *NDC Enhancement Tracker*, CLIMATE WATCH, https://www.climatewatchdata.org/2020-ndc-tracker (last visited Aug.31, 2023).
[129] UNFCC, *supra* note 127.

1. Governmental

The U.S. has taken very few steps in comparison to the steps taken by other nations' governments to reduce deforestation from palm oil production. In 2021, a bill was passed known as the End Palm Oil Deforestation Act ("Deforestation Act").[130] The goal of this bill is to require any palm oil product for biofuel, food, or personal care to be certified sustainable before being brought into the U.S. market, a somewhat similar approach to the E.U.'s regulation.[131] However, unlike the E.U.'s regulation, this bill falls short on achieving its ultimate goal. The certification granted for a sustainable palm oil product through the Deforestation Act will be gained through a nongovernmental organization ("NGO"), unlike the E.U., where it is granted through governmental regulation.[132]

The problem with this bill is that different organizations that certify palm oil as sustainable such as the Roundtable on Sustainable Palm Oil ("RSPO"), the Orangutan Alliance, or Palm Done Right, all have varying degrees of requirements that would qualify the products they review as sustainable. In fact, it has been discovered that certain NGOs such as the RSPO allow its members to place the RSPO label on their products even though the product is not technically certified as sustainable, the corporation is merely a member.[133] The result of this practice is tricking consumers into believing the products contain sustainably sourced palm oil.[134] There is nothing in the bill to suggest that the certifying NGOs themselves will meet quality standards the U.S. is aiming to achieve

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[130] End Palm Oil Deforestation Act, H.R. 5863, 117th Cong. (2021).
[131] *Id*.
[132] *Id*.
[133] Jkaybay, *Palm Oil Certifications*, THE GREEN STARS Project (Sept. 19, 2021), https://greenstarsproject.org/2021/09/19/palm-oil-certifications-best-worst/.
[134] *Id*.

or that there is a baseline standard the U.S. government will enforce on the certifying NGOs.[135]

The second bill that seeks to address palm oil deforestation is the FOREST Act of 2021.[136] This bill tackles another key component of the E.U.'s regulation: supply chains.[137] A large focus of the FOREST Act is ensuring that supply chains provide palm oil products that result from legal logging practices and not illegal deforestation.[138] It goes even further to make deforestation a part of financial crime laws, which would allow the U.S. to prosecute individuals who use proceeds from deforestation to fund criminal activity.[139] A positive aspect of this bill is that it proposes a step-by-step process to achieve the goals it sets out, however, the biggest downside is that it is yet to be passed let alone heard in both the House and the Senate. The likelihood of the bill passing both the House and the Senate is slim largely due to the fact that as of its proposal date "no Republican senators have signed onto the measure, while one Republican out of 212 in the House so far is supportive."[140]

A final attempt by the U.S. government to tackle the issue of palm oil deforestation comes from the U.S. Renewable Fuels Standards Program ("RFS") and Palm Oil proposed by the U.S. Environmental Protection Agency ("USEPA").[141] This program

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[135] Deforestation Act, *supra* note *130*.
[136] FOREST Act, S. 2950, 117th Cong. (2021).
[137] *Id*.
[138] *Id*.
[139] *Id*.
[140] Richard Cowan & Fathin Ungku, *U.S. Congress Democrats Target Palm Oil, beef trade in deforestation bill*, Reuters (Oct. 6, 2021), https://www.reuters.com/world/us/us-congress-democrats-target-palm-oil-beef-trade-deforestation-bill-2021-10-06/.
[141] *The U.S. Renewable Fuels Standards Program and Palm Oil*, U.S. EMBASSY & CONSULATES IN INDONESIA, https://id.usembassy.gov/our-relationship/policy-history/embassy-fact-sheets/the-u-s-renewable-fuels-standards-program-and-palm-oil/ (last visited Feb. 17, 2023).

comes about from the U.S.'s goal to reduce its GHG emissions through the increased use of biofuel.[142] Through this program,

> the law establishes different categories of renewable fuels and the level of GHG reductions they must meet in order to qualify as renewable. Under the law USEPA conducts scientific "lifecycle" analyses of the production and use of these fuels to determine if they meet established GHG reduction thresholds. As part of the RFS program, USEPA is working toward a final lifecycle analysis of transportation fuels produced from palm oil, as well as other transportation fuels. This is a complex issue, and in addition to a fact-finding trip to Indonesia and Malaysia, USEPA is seeking extensive information to make the most informed decision possible.[143]

The positive component of this program is that it is a governmental act to regulate the palm oil being imported as opposed to a nongovernmental act, however, the drawbacks outweigh the benefits. The biggest drawback is that this program only seeks to address reduction of palm oil when used for biofuel, however, the use of palm oil for biofuel is significantly smaller than its use in food and personal care.[144] Furthermore, the assessments conducted to qualify palm oil as a renewable source do not meet the GHG emission reductions thresholds, making it an even less valuable commodity for the U.S. to consider importing because it will not reduce emissions as anticipated.[145]

All three of these legislative acts are commendable because they attempt to address a decades long problem, however, they

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[142] *Id*.
[143] *Id*.
[144] Farzad Taheripour & Wallace E. Tyner, *US biofuel production and policy: implications for land use changes in Malaysia and Indonesia*, BMC Biotechnology for Biofuels and Bioproducts (Jan. 18, 2020), https://biotechnologyforbiofuels.biomedcentral.com/articles/10.1186/s13068-020-1650-1.
[145] Statista Research Dept, *Supra* note 125.

ultimately fall short of accomplishing their goal because they do not address the biggest component of palm oil consumption in the U.S., the personal care industry. Comparing these legislative acts to the E.U.'s regulation, it is clear to see that a more aggressive and successful approach would be to eliminate palm oil being sourced from *any* form of deforestation instead of solely focusing on illegal deforestation. Furthermore, it would be more beneficial to focus on regulating the quantity and quality of palm oil being used in personal care products through governmental action. Governmental action over nongovernmental action would help to provide uniformity across all corporate imports for palm oil from the U.S. based multinational corporations involved in the personal care market. This lack of federal uniformity is where the governmental approach to palm oil deforestation falls short.

2. Corporate

As demand for more transparency and environmentally safe practices increases from shareholders and consumers, corporations have taken it upon themselves to make greater efforts towards sustainability.[146] Two of the major household personal care corporations, Procter & Gamble and Colgate-Palmolive, have detailed their plans to source palm oil sustainably.[147]

After a battle with shareholders over a desire to cease deforestation practices for wood pulp and palm oil, P&G established their Forestry Practices Report.[148] Within this report, P&G details their action plan to reduce deforestation by eliminating conversions of intact forestlands ("IFLs") that may also be designated High

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[146] Off. Of Chief Counsel, Div. Corp. Finance U.S. SEC, *Re: The Procter & Gamble Company — Shareholder Proposal Submitted by the Green Century Equity Fund*, https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2022/greenp&g071822-14a8.pdf (last visited Feb. 13, 2023).
[147] *Forestry Practices Support Supplement*, Procter & Gamble (June 7, 2021), https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2022/greenp&g071822-14a8.pdf.
[148] Shareholder Proposal, *supra* note 146.

Conservation Value ("HCV") and High Carbon Stock ("HCS") areas.[149] These HCV and HCS areas are known for having "critical or important environmental, cultural, ecological, or landscape values" and "forests…areas of high biodiversity and carbon in tropical regions."[150] Furthermore, by 2021 the corporation committed and achieved 100 percent RSPO certified status for all of the palm oil it sources.[151]

Similarly, Colgate-Palmolive decided to step into the ring and take initiative for more sustainable palm oil practices. In 2007, the corporation sought to obtain 100 percent RSPO certified palm oil, have stricter supply chain monitoring, and move towards deforestation-free sourced palm oil.[152] The implementation program took place after obtaining membership with the RSPO, much like P&G.[153] While these action plans seem productive on the surface, behind the curtain they may not actually hold up to what they claim. For example, P&G sources most of its wood pulp from Canada.[154] Wood pulp is used in all of P&G's paper and toiletry products. Production of wood pulp comes at the expense of extensive forest clearing and logging, a practice shareholders have strongly urged P&G against which P&G claims to abide by.[155]

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[149] Forestry Practices, *supra* note 147.
[150] *Id*.
[151] *Id*.
[152] *Colgate-Palmolive Palm Oil Implementation Plan*, COLGATE-PALMOLIVE (July 2022), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjirMXR__f9AhVxsjEKHQ6dDWgQFnoECAsQAQ&url=https%3A%2F%2Fwww.colgatepalmolive.com%2Fcontent%2Fdam%2Fcp-sites%2Fcorporate%2Fcorporate%2Fen_us%2Fcorp%2Flocale-assets%2Fpdf%2Fcolgate-palm-oil-implementation-plan-2022.pdf&usg=AOvVaw0exux0bD9h12svEoWFKf91.
[153] *Id*.
[154] Shelley Vinyard, *Deflect, Distract, & Ignore: P&G's Greenwashing Continues*, NRDC (Mar. 30, 2021), https://www.nrdc.org/experts/shelley-vinyard/deflect-distract-ignore-pgs-greenwashing-continues#:~:text=In%20their%20shareholder%20rebellion%2C%20investors,deforestation%2C%20intact%20forest%20degradation%2C%20and.
[155] *Id*.

However, a closer look at the definition of forestry terms in Canada reveal a slightly less heroic course of action on behalf of the two corporations. In Canada, logging and forest clearing is only considered "deforestation" if the trees that are logged are not replanted.[156] This means that P&G can clear hundreds of hectares of boreal forestland and maintain their claim to "deforestation free" products as long as they replant the trees.[157] The Canadian government does not hold P&G to any higher standard either because it maintains that their logging practices do not disturb the habitat of native species or contribute to soil erosion or true deforestation, despite clear evidence otherwise.[158]

Although it is favorable that multinational corporations like P&G and Colgate-Palmolive are taking it upon themselves to partake in deforestation-free practices, there are many uncertainties that make the average consumer question whether or not their palm-oil-containing product is a result of deforestation. One uncertainty can be seen in the fact that the RSPO has two different versions of their trademark that members can place on their products.[159]

> If a product carries the "mixed" version of the RSPO Trademark, it means the product is RSPO-certified using the Mass Balance (MB) supply chain system. This means that sustainable palm oil from certified sources is monitored administratively in the chain but is mixed with conventional palm oil. It is indeed true that, in this case, the consumer does not have the full guarantee that the product physically contains sustainable palm oil. The

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[156] *Id*.
[157] *Id*.
[158] *Deforestation in Canada: Key Myths and Facts*, GOV. OF CANADA, https://www.nrcan.gc.ca/our-natural-resources/forests/wildland-fires-insects-disturbances/deforestation-canada-key-myths-and-facts/13419 (last visited Feb. 17, 2023).
[159] *Is it True That a Product With the RSPO Trademark May Not Actually Contain Any Sustainable Palm oil?*, RSPO (Oct. 16, 2017), https://askrspo.force.com/s/article/Is-it-true-that-a-product-with-the-RSPO-Trademark-may-not-actually-contain-any-sustainable-palm-oil.

> purchase of this product does advance the production of sustainable palm oil, but for practical or economic reasons, the sustainable oil itself may have ended up elsewhere.[160]

Looking at this fact poses the question of why many P&G and Colgate-Palmolive products do not contain any RSPO trademark on their packaging if the two corporations take pride in their palm oil being deforestation-free, a result of the RSPO membership and certification. If the practices these companies are engaged in show significant reduction of deforestation overtime, it will be an ideal foundation for policy change enforced on all corporations by the EPA or even the FDA. These corporations can work alongside smaller corporations and lawmakers to develop an easily adoptable model to reduce deforestation resulting from palm oil.

3. Social

Outside of laws and corporate ownership over deforestation practices, social movements and organizations have taken the position to stand in the gap of where lawmakers and corporations fall short.[161] Journals, NGOs, and environmental experts such as the RSPO, Rainforest Action Network, Green Matters, the Environmental Working Group, Green Peace, and Go Conscious Earth, have taken it upon themselves to inform Americans about the products they use and how companies and government agencies fail to disclose the climate crises caused by deforestation.[162] For example, in 2020, several plaintiffs including the Center for Biological Diversity, Humane Society International, Natural

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[160] *Id*.
[161] *Our Mission*, EWG, https://www.ewg.org/who-we-are/our-mission. (last visited Jun. 4, 2023).
[162] World Rainforest Fund, *Rainforest Organizations,* WORLD RAINFOREST FUND, https://www.worldrainforest.org/rainforest-organizations.html (last visited Aug.31, 2023).

Resources Defense Council, Inc., and the Humane Society of the United Sates filed a petition for injunctive relief against Secretary of the U.S. Department of the Interior, David Bernhardt, and U.S. Fish and Wildlife Service requesting seven species of pangolin (a cousin of the anteater) be granted protection under the Endangered Species Act.[163] Their petition outlines several key reasons as to why these pangolin species should qualify as endangered and one of those specific reasons states, "habitat destruction further threatens pangolin survival . . . In pangolins' Asian habitat, logging and the conversion of forests to fiber and palm oil plantations are causing major habitat loss and increased poaching."[164] While this a narrowed focus of the effects of deforestation, this type of social activism is one step in the right direction to curbing palm oil deforestation. Without these movements and organizations, consumers and shareholders would not have the information needed to advocate for the changes we have seen thus far from large corporations and increased EPA acknowledgement.

No matter the impact that occurs within corporations and social movements, it may be difficult for Americans to see any dramatic shift in the U.S.'s contribution to deforestation from palm oil until laws are reformed and stronger ones created. The solution to deforestation may require an "all-hands-on-deck" approach involving the most powerful government agencies in this arena: the Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and the Securities and Exchange Commission (SEC).

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[163] Trial Pleading, Ctr. for Biological Diversity v. Bernhardt, No. 1:20-cv-00165 (D.D.C. Jan. 22, 2020).
[164] *Id*.

VII. HOW U.S. LAWS COULD BE CHANGED TO REDUCE OR ELIMINATE PALM OIL IN PERSONAL CARE PRODUCTS

A. Laws in Existence Today

The EPA, FDA, and SEC are the most substantial sources of environmental regulation just short of the legislative authority of Congress itself. In order to impose new regulations on multinational corporations, stricter laws need to be in place that will apply to every corporation dealing with palm oil. The U.S. has gone too long taking a hands-off approach and even their NDC does not address reform for a significant contributor of American-caused deforestation, which is the personal care industry.[165]

As it stands, the EPA does not have any laws regulating the import of palm oil or the type of palm oil, sustainably sourced or not, except for those imports pertaining to biofuel.[166] The RSF program that monitors the emission levels of certain types of fuel ruled out palm oil as an alternative to petroleum because it did not meet the twenty percent reduction in GHG emissions standard.[167] While many Americans view this as a win for the deforestation campaign, it does little to tackle the bigger palm oil battle in the personal care industry.[168]

The FDA is a regulating agency appointed by the federal government to oversee the use, import, export, and safety of products in food, drugs, and cosmetic products in the U.S.[169] Year after year the FDA reevaluates purity and potency standards for drugs and food to ensure the health and safety of what Americans

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[165] UNFCC, *supra* note 127.
[166] *Whoo hoo! The U.S. Env't Protection Agency ruled on Friday that palm oil does not meet the U.S. renewable fuels standard*, BORNEO PROJECT (Feb. 2, 2012), https://borneoproject.org/the-u-s-environmental-protection-agency-ruled-on-friday-that-palm-oil-does-not-meet-the-u-s-renewable-fuels-standard/.
[167] *Id*.
[168] *Id*.
[169] *FDA Mission* (Mar. 8, 2018), https://www.fda.gov/about-fda/what-we-do.

are consuming.[170] However, since 1938 the FDA had no reform to its involvement in cosmetics or personal care products until last year.[171] The reform that is taking place addresses important areas of personal care products such as stricter monitoring for ingredient safety, accountability from companies for consumer grievances, mandatory recalls, and allergen labeling.[172] While it is important for the FDA to be cracking down on cosmetic safety for consumers, one thing it is still missing in its regulatory authority is monitoring of environmentally dangerous ingredients in personal care products.

Currently, any product coming into the U.S. that is not classified as a "drug" or "food" by the FDA does not need FDA approval to enter the market.[173] As long as the product, or any ingredient therein, is not considered misbranded, containing a color additive, adulterated because of a microbial contaminant, or at risk of containing tissue with bovine spongiform encephalopathy, it is not regulated or inspected by the FDA.[174] The extent of regulation that occurs is through an Import Alert list for certain cosmetic products.[175] If there is a trend for companies or products to engage in FDA violations, then these products will have a higher chance of inspection.[176] Still, outside of this list and these specific safety concerns, the FDA does not address any forms of danger imported products pose to the environment. Interestingly, the FDA states on their website regarding cosmetic importers, "any violation of applicable U.S. laws and related regulations may result in a cosmetic being detained."[177] What makes this statement interesting is that we

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[170] *Id*.
[171] *FDA Regulatory Framework for Cosmetics Gets Major Overhaul*, COOLEY (Jan. 6, 2023), https://www.cooley.com/news/insight/2023/2023-01-06-fda-regulatory-framework-for-cosmetics-gets-major-overhaul.
[172] *Id*.
[173] U.S. Food & Drug Admin., COSMETICS IMPORTERS (2022), https://www.fda.gov/cosmetics/cosmetics-international-activities/cosmetics-importers.
[174] *Id*.
[175] *Id*.
[176] *Id*.
[177] *Id*.

already know the U.S. does not have laws pertaining to the management, regulation, or use of imported palm oil, therefore, the FDA has even less reason to consider regulating palm-oil-containing personal care products if there is no federal law with which to enforce it.

Once again, the U.S. would benefit from adopting a similar model that the E.U. employs when regulating personal care products by inspecting the impact certain ingredients have on the environment as well as consumer health safety. As of last year, the E.U. has banned or limited more than 1,600 chemicals from personal care products that enter their market that affect consumers *and* the environment.[178] In comparison, the FDA currently only bans nine ingredients and only for human safety concerns.[179] Furthermore, the Environmental Working Group's partner SkinDeep—an NGO dedicated to transparency in consumer products— noted, "EWG found in our Skin Deep database hundreds of products available for sale in the U.S. since 2020 that contain ingredients the EU no longer permits. Skin Deep details ingredients of concern in more than 87,000 personal care products."[180] This is a staggering comparison not just for the health and safety of Americans but for the health and safety of forestland across the globe.

The last arena for potential change in environmental laws to decrease deforestation lies in the hands of the SEC. The SEC is responsible for protecting investors by ensuring U.S. corporations do not engage in actions such as insider trading, fraud, and other illegal business practices set forth by their laws.[181] Last year, they created a special task force known as the Climate and ESG Task

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[178] Lillian Zhou & Julia Martiner, *Personal Care Product Chemicals Banned in Europe but Still Found in U.S.*, ENV'T WORKING GROUP (Oct. 2022), https://www.ewg.org/news-insights/news/2022/10/personal-care-product-chemicals-banned-europe-still-found-us#:~:text=The%20EU%20and%20other%20countries,chemicals%20from%20personal%20care%20products..

[179] *Id*.

[180] *Id*.

[181] *About the SEC*, SEC (Nov. 22, 2016), https://www.sec.gov/about.

Force.[182] The goal of this task force is to police corporate environmental, social and governance ("ESG") disclosures.[183] ESG disclosures are reports made by corporations that detail the environmental, social, corporate governance impact of their products, services, and practices.[184] Since its creation, the task force has worked hard to investigate and bring to light corporations that have frauded or misled investors into thinking they were investing in sustainable practices that were actually false.[185] For example, in the task force's complaint against company, Vale, "the iron ore producer deceived investors about the safety of its dams before one collapsed in 2019…. The collapse killed 270 people and caused 'immeasurable environmental and social harm.'"[186] Without the investigation of the task force, this wrong may have gone unaccounted for by the company.

The work of this task force is a step in the right direction for corporate accountability over deforestation problems the U.S. contributes to today. However, even though it seeks for more accountability over environmental impact, there are still "loopholes" the corporations can utilize to avoid the accountability shareholders and investors are desiring from the corporations they support.[187] One instance of this can be seen from a proposal brought by shareholder, Green Century Equity Fund, to the board of directors at P&G to "adopt a policy on deforestation and degradation . . . from primary forests by 2030 in alignment with international goals, and report on progress in implementing the policy by disclosing its comprehensive

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[182] Andrew Ramonas, *Recent SEC Enforcement Hints at Looming Crackdown on ESG Claims*, BLOOMBERG LAW (Aug. 10, 2022), https://news.bloomberglaw.com/securities-law/recent-sec-enforcement-hints-at-looming-crackdown-on-esg-claims.

[183] *Id*.

[184] *ESG Reporting 101: What You Need To Know*, WORKIVA, https://www.workiva.com/resources/esg-reporting-101-what-you-need-know#:~:text=ESG%20reporting%20is%20all%20about,whose%20values%20align%20with%20theirs. (last visited Feb. 20, 2023).

[185] Ramonas, *supra* note 182.

[186] *Id*.

[187] Shareholder proposal, *supra* note 146.

primary forest footprint as soon as practicable and on an ongoing basis."[188]

The focal point of this proposal centered on wood pulp sourced from Canada's forests but in P&G's response, the board of directors addressed both wood pulp and palm oil since both contribute to deforestation.[189] While P&G eventually created their Forestry Practice Report, available to investors, this proposal was ultimately denied from being part of the proxy material available at P&G's annual shareholder meeting.[190] Proxy material consists of documents, including shareholder proposals, that a board of directors looks over when determining corporate practice and matters to be voted on.[191] P&G was allowed to exclude this proposal from the proxy material because of the SEC's Rule 14a-8(i)(7) that states, "[the rule] permits the exclusion of a shareholder proposal from a company's proxy materials if the proposal 'deals with a matter relating to the company's ordinary business operations.'"[192] The Board of Directors argued that their wood pulp's process is part of the company's "ordinary business operations" and therefore cannot be dictated by shareholders.[193] Furthermore, it was ruled that the shareholders were not in as qualified of a position as the directors to solve this issue at a shareholder meeting.[194] What makes this rule such a big deal is that it shows, so long as a corporation can argue their palm oil production or imports are part of their "ordinary business operations," their fiduciary duty to their shareholders to employ environmentally safe practices is not implicated.

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[188] *Id*.
[189] *Id*.
[190] *Id*.
[191] LISA FAIRFAX, BUSINESS ORG.: AN INTEGRATED APPROACH 199 (2019).
[192] Shareholder proposal, *supra* note 146.
[193] *Id*.
[194] *Id*.

B. *How These Laws Can be Modified to Better Address Palm Oil Deforestation*

Governmental regulation is a key component to curbing deforestation caused by the U.S. personal care industry. As it stands today, corporations lack a higher authority for accountability over their products and practices due to existing laws and regulations that shield them from liability.[195] By enforcing strict laws and heavy penalties through governmental regulation, corporations may be more inclined to reevaluate their environmental practices.

Looking again at the E.U.'s regulation, there are major benefits to adopting a similar model to reform the laws that currently exist in the U.S. relating to palm oil and the personal care market. These new laws would target actions and business practices carried out by corporations large and small. The first reform would be for the SEC to impose laws that require any company to submit a standardized form detailing the supply chain from which they sourced the palm oil. The inspection requirements described on the form will have to comply with EPA laws that assess the sustainability of the palm oil.

Currently, most U.S. corporations do not produce or cultivate the palm oil they use in their products, so they rely on suppliers to relay information regarding the sustainability of the oil.[196] This can come at the cost of loss of transparency about whether or not the deforestation-free oil has been mixed with deforestation oil or if proper free, prior, and informed consent (FPIC) was obtained from indigenous peoples where the palm oil is cultivated.[197] The EPA laws would need to have a strict requirement that the palm oil is free from deforestation and proof of that be shown through an FPIC signed off by the source country's government and the palm oil supplier. Having the source country sign off on the FPIC would help to ensure compliance with local government regulation regarding cultivation practices.

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[195] *Id*.
[196] Shareholder proposal, *supra* note 146.
[197] RSPO, *supra* note 159.

The next reform would come from FDA action. The FDA would need to reassess the quality of the palm oil being imported and potentially cap how much palm oil a company could use in a single product or limit the percentage of their products that may contain palm oil. This would help to drastically reduce the amount of palm oil being used in personal care products and could push for discovery of a more sustainable and equally safe ingredient to replace palm oil in current products. By requiring FDA inspection before entering the market, there could be better regulation of only importing palm oil that meets many consumers' and shareholders' demands for environmentally safe palm oil. Overall, violation of any of these laws and regulations would lead to penalties and cessations of operations until compliance is met for repeat offenders.

VIII. CONCLUSION

The personal care industry in the U.S. seems to fly under the radar of government regulation in reducing its contribution to deforestation and GHG emissions caused by palm oil production and importation. Deforestation is primarily addressed concerning biofuel but it's already clear that biofuel is not the U.S.'s primary use of palm oil.[198] Therefore, focusing on biofuel is a less effective means of addressing the problems of palm oil in the American consumer market. Notwithstanding the EDCs released from poor manufacturing methods, palm oil itself is not harmful to those who use it in everyday personal care products.[199] However, the extent to which it is used throughout all personal care products, and the extent to which the demand for it will increase as the personal care market increases, will only affect the forests of source countries even more.

True accountability of U.S. brands in the personal care market needs stricter regulation and the enforcement needs to be from a source with enough power to see to the adherence of these legal reforms such as state and federal government. Without such

[198] Gregory, *supra* note 21.
[199] Yildiz, *supra* note 80.

enforcement, the forests, biodiversity, and indigenous peoples of third-world economies will continue to suffer. Meanwhile, the pockets of American corporations will remain enlarged, and the array of products in American households containing the world's most famous vegetable oil, even larger.