

Responding to rising legal risks in the food supply chain

Companies in the food sector are facing a new wave of regulatory and legal actions in major markets, especially the U.S. and EU, exposing unprepared companies to new legal liabilities, investor actions and reputational harm – and leading businesses to reassess how they engage with their supply chain. The implications are being felt across many core business functions.

Procurement

Without action, companies face **supply chain disruption** due to new import bans focused on eradicating deforestation and forced labour. For example:

- U.S. Forced Labor Import Ban – 19 U.S.C 1307;
- Pending EU provision on deforestation-free supply chains, as part of EU Biodiversity Strategy for 2030.

Finance

Environmental reporting duties are increasing dramatically:

- Significant requirements from the new EU Corporate Sustainability Reporting Directive plus the incoming SEC and federal contracting climate reporting requirements in the U.S.
- New global requirement for major companies to report impacts and dependencies on nature agreed at UN Biodiversity Conference (COP15).

Sales

Marketing efforts are being challenged by **rising greenwashing** charges from stakeholders, including direct litigation. For example:

- Corporate Accountability Lab v. The Hershey Company and The Rainforest Alliance;
- International Labor Rights Forum v. Bumble Bee Foods, LLC.

Governance and Risk

Board duties are expanding rapidly to include issues such as climate change and biodiversity, yet research from New York University shows only 6-7% of board members of major companies have requisite climate expertise.

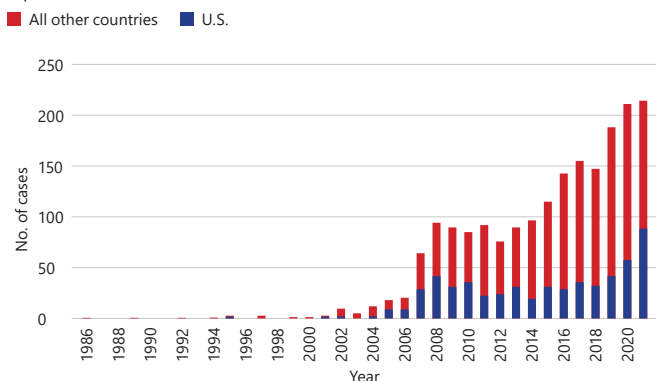
The numbers: increasing ESG litigation around the world

These trends are increasing attention on food companies from enforcement authorities around the world:

- Research from the London School of Economics (LSE) shows the cumulative number of climate change-related cases brought against companies **has more than doubled since 2015** (figure 1).
- New analysis from the WBCSD also uncovers an **expanding scope and scale of legal jurisdiction**.

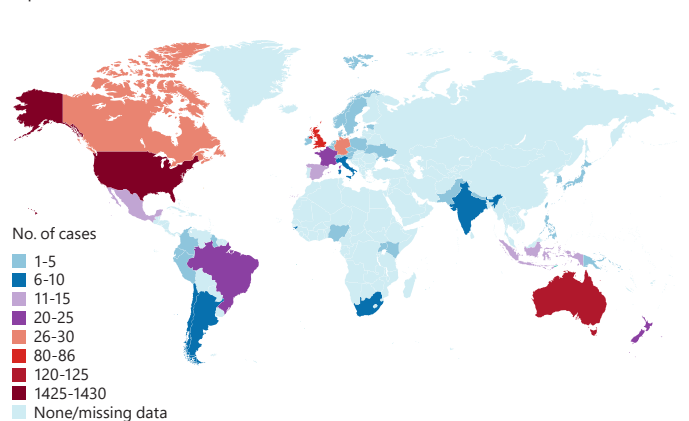
- Cases are **reaching much further down the supply chain** and encompassing broader legal interpretations, including 'soft laws' such as TCFD and multilateral biodiversity and climate conventions.
- Majority of cases are filed within major jurisdictions such as U.S., EU and Brazil (figure 2), but in many of these cases companies are being sued for actions taking place in a **wide range of different countries within their supply chains**.

Figure 1.1. Total climate change cases over time, U.S. and non-US (up to 2022)



Source: 'Global trends in climate change litigation', The Grantham Institute, LSE, 2022

Figure 1.2. Number of climate litigation cases around the world, per jurisdiction (up to 2022)



Looking ahead: how companies are taking steps to get ahead of risks

- As the risk of inaction grows ever greater, companies are collaborating with peers to proactively mitigate these risks.
- Key focus areas for new solutions include:
 - Developing **legal repositories to track developments** and advise when they become material;
 - Increasing **resources on the ground** and **pulling key supply chains together** to build and share evidence of best practice;
 - **Clarifying competition law** to reduce collaboration risk.
- Expert practitioners are also on hand at WWF and WBCSD to support company leaders, for example:
 - **The Dynamic Risk Assessment** process, in collaboration with KPMG, expands traditional risk assessment methodologies to provide a deeper understanding of how risks connect to each other and model the velocity with which they will likely diffuse within the food sector.
 - **The Net Zero, Nature Positive, and Equity toolkit** will provide Chief Risk Officers and Chief Financial Officers with dedicated resources and recommended actions to effectively embed major ESG themes into their strategy, risk management, targets, governance and reporting processes.