

FCC and EUDR

Dear FCC Member,

This paper is to advise you of the effect of the European Union Deforestation Regulation (“EUDR”) and those of you trading cocoa under our contract terms, be it beans or products. It is provided on a non-reliance basis and is not legal advice. Please note that this is an interim statement from the FCC concerning EUDR. The EU has yet to advise of the details of the implementation of what it requires in regulating its marketplace relating to deforestation. As we do not know how the implementation is to occur, we are unable to finalise a comprehensive review on the contracts for those trading in cocoa. Therefore, at this stage we not only recommend members to remain particularly vigilant in trading forward but also to evaluate the possible consequences of not being compliant at the relevant time.

Introduction

Following a proposal for a regulation to prevent products associated with deforestation and forest degradation that took place after 2020 from being placed on the EU market, the EU Deforestation regulation officially entered into force on 29th June 2023.

There is a transition period from the date of entry into force of eighteen months – so is effective from 30th December 2024.

Commodities affected are: cattle, cocoa, coffee, oil palm, rubber, soya and wood.

For our industry, this means that cocoa beans and products can only be imported into or exported from the EU if they comply with the following three criteria:

- (i) they have not been produced on land deforested or degraded after 31st December 2020 (geolocational);
- (ii) they have been produced in accordance with the legislation of the country of production; and
- (iii) they are covered by a ‘due diligence’ statement – this statement has to confirm that ‘due diligence’ was carried out and that no, or only negligible, risk of deforestation or degradation was found at an “adequately conclusive and verifiable” level.

Note that item (ii) above covers more than just deforestation related compliance and refers to laws applicable in the country of production including, but not limited to:

Land use rights; environmental protection; forest related rules; labour rights; third-party rights; human rights protected under international law; rights of indigenous people; and tax, anti-corruption and trade/custom regulations.

All this means that cocoa beans and products that have already been procured may already need to meet these requirements – to the extent that they are imported into the EU after 30 December 2024.

Discussions continue with the EU over the treatment of goods currently held in bond (i.e. not yet imported) in the EU as well as the products procured between June 2023 and December 2024 given the shelf-life of the products and the impact this regulation has on stocks.

Effect on implementation of EUDR

The submission of the ‘due diligence’ statement, which includes geolocation information is a requirement of the shipment for imports (customs procedure ‘release for free circulation’) and exports (custom procedure ‘export’) and the consignment for transactions with the EU market.

Operators must make available additional data if audited by one of the EU member states’ competent authorities.

Importers bringing relevant goods to sell in the EU market, or operators exporting goods, will need to provide the following data to the EU:

Data to be reported into EU Traces per Bill of Lading

- Country(ies) of production;
- Farmers and farms involved in production;
- Geolocations of all plots contributing to the Bill of Lading;
- Due Diligence statement;
- Product and volume being imported with data or time range it was produced; and
- Name, email and address of business/person(s) who supplied the goods and the counterparty(ies) to whom the goods are to be sold.

Data to be available upon request for audit by EU Competent Authorities

- Adequately conclusive and verifiable information that the relevant products are deforestation-free / do not come from degraded land and have been legally produced locally;
- Volume contributed by farmers with a season or capacity check;
- Risk assessment measures – including supply chain mapping and areas of potential traceability risk and mixing; and
- Risk mitigation measures – including risk management practices, reporting, internal control and audit function to check compliance.

Summary

For those who may have been unaware, the consequences of this legislation are immense. This legislation not only affects EU cocoa imports direct from producing countries but also all cocoa products and chocolate imported into the EU. As such, this reaches well beyond the EU, due to the global, intricate and sophisticated supply chain of cocoa products that underpins cocoa product imports into the EU. All market participants will be directly affected.

The consequences for not complying with EUDR are likely to be extremely punitive for the importing companies found to be in contravention, so members may wish to exercise caution in trading forward, at least until matters are made clearer by the EU on how the regulation will actually be implemented.

Given the true international nature of cocoa trading, relying on buying cocoa for destinations outside of the EU may not be sufficient to avoid having to comply with the requirements of the EU.



N. de Wasseige, FCC Chairman

18th December 2023