

Voluntary Report – Voluntary - Public Distribution

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Report Name: European Institutions Finalize Deforestation-Free Supply Chain Regulation

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Report Highlights:

On December 6, 2022, the Council of the European Union and European Parliament concluded negotiations on the EU's Deforestation-Free Supply Chain Regulation. The current text is going through a legal review but is now de-facto final and is expected to be formally adopted in the coming months. To sell any of the covered products in the EU or export them from the EU, business operators will be required to provide extensive information about the product's origins, including the precise location(s) and general time of production. Products sourced from standard- or high-risk origins must comply with additional risk assessment and mitigation procedures.

Disclaimer: The information contained in this report is based on a preliminary review of the current text of the Regulation and should not be viewed as a definitive reading of the rules in question or of its implications for U.S. agricultural trade interests. Import approval for any product is subject to local rules and regulations as interpreted by Member State officials at the time of product entry.

General Information

On November 17, 2021, the European Commission published [a legislative proposal](#) for a new Regulation on “making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation.” The Commission’s objective is to curb deforestation and forest degradation that is linked to European consumption and production of select agricultural products.

On December 6, 2022, after a long legislative process, the European Parliament and the Council of the European Union reached a political agreement on the proposal. The [final text](#) agreed upon by the co-legislative bodies is now *de-facto* final and is expected to be formally adopted in the coming months.

Speaking after the announcement of the deal, Frans Timmermans, European Commission Executive Vice-President for the European Green Deal said, “Today’s political agreement on the EU’s deforestation law marks an important turning point in the global fight against deforestation. As we make the green transition in the European Union we also want to ensure that our value chains become more sustainable as well. Combatting deforestation is an urgent task for this generation, and a great legacy to leave behind for the next.”

This report outlines the compliance requirements included in the final Regulation. Please note the text is currently undergoing a legal review but is not expected to change significantly. For more information about the EU Commission’s original proposal, please see GAIN Report: [EU Commission Proposes Rules to Curb Deforestation Linked to Agricultural Production](#).

Scope of the Proposal

The Regulation establishes rules for a list of commodities identified as the main drivers of agricultural expansion leading to deforestation and forest degradation: cattle, cocoa, coffee, palm oil, rubber, soy, and wood. The Council and Parliament added a range of products derived from these commodities such as charcoal, tires, printed books, and preserved and prepared meat from cattle to the scope of the Regulation.

Annex I of the Regulation outlines the list of commodity categories and derived products that contain, were fed, or were made using commodities covered by the Regulation. The full list of these products, with CN¹ codes, can be found in Attachment 1 of this report.

¹ The Combined Nomenclature (CN) code is 8 digits long and is defined at the European level. It is composed of the six digits of the Harmonized System (HS) code along with two additional digits used for the statistical monitoring of intra-community trade as well as for exports from the EU.

Definitions

Parliament and the Council adopted different definitions for ‘forest’, ‘deforestation’, and ‘forest degradation’ than what the Commission originally proposed. These definitions were a significant point of contention between the institutions during the negotiations. Please find below some of the final definitions that were adopted. Please note that all definitions can be found in Article 2 of the text.

- ‘forest’ means land spanning more than 0.5 hectares (1.24 acres) with trees higher than 5 meters (16.4 feet) and a canopy cover of more than 10 percent, or trees able to reach those thresholds *in situ*, excluding land that is predominantly under agricultural or urban land use;
- ‘forest degradation’ means structural changes to forest cover, taking the form of the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land and the conversion of primary forests into planted forests;
- ‘deforestation’ means the conversion of forest to agricultural use, whether human-induced or not;
- ‘deforestation-free’ means (a) that the relevant products contain, have been fed with or have been made using, commodities that were produced on land that has not been subject to deforestation after December 31, 2020, and (b) in case of relevant products that contain or have been made using wood, that the wood has been harvested from the forest without inducing forest degradation after December 31, 2020;
- ‘relevant legislation of the country of production’ means the laws applicable in the country of production concerning the legal status of the area of production in terms of: land use rights, environmental protection, forest-related regulations including forest management and biodiversity conservation, where directly related to wood harvesting, third parties’ rights, labour rights, human rights protected under international law, the principle of free, prior and informed consent, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples, tax, anti-corruption, trade and customs regulations

Third-Country Benchmarking

The Regulation establishes a country benchmarking system through which the EU Commission will assess the risk that countries, or parts thereof, produce relevant commodities and products that contribute to deforestation. The system will apply to EU Member States and any third countries exporting covered products to the EU.

Following the benchmarking assessment from the Commission, countries will be classified in one of three categories: ‘high-risk’, ‘low-risk’, or ‘standard-risk.’ Upon the entry into force of the Regulation, all countries will begin with a designation of standard risk. The Commission will then identify which countries, or parts thereof, present either a low- or high-risk. The list of all low- and high-risk countries will be published through implementing acts no later than 18 months from the Regulation’s entry into force.

The Commission's assessment will be primarily based on three criteria:

- rate of deforestation and forest degradation,
- rate of expansion of agricultural land for relevant commodities,
- production trends of relevant commodities and of relevant products.

The assessment may also consider other criteria listed in the Regulation such as:

- Information provided by the country concerned as well as by regional authorities concerned, operators as well as NGOs and third parties, including indigenous peoples, local communities, and civil society organizations, with regard to the effective covering of emissions and removals from agriculture, forestry and land use in the nationally determined contribution (NDC) to the United Nations Framework Convention on Climate Change.
- Agreements and other instruments between the country concerned and the Union and/or its Member States that address deforestation and forest degradation and facilitates compliance of relevant commodities and products with the requirements of this Regulation and their effective implementation.
- Whether the country concerned has national or subnational laws in place, including those in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to tackle deforestation and forest degradation, and to avoid and sanction activities leading to deforestation and forest degradation, and in particular whether sanctions of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation are applied.
- Whether the country concerned makes relevant data available transparently, and, if applicable, the existence, compliance with, or effective enforcement of laws protecting human rights, the rights of indigenous peoples, local communities, and other customary tenure rights holders.
- Sanctions imposed by the UN Security Council or the Council of the European Union on imports or exports of the commodities and products listed in Annex I.

Following its assessment, the Commission will formally notify countries of the result of the benchmarking exercise. Countries will be able to provide the Commission with additional information regarding measures in place to prevent deforestation and forest degradation.

Due Diligence Obligations Based on Benchmarking Risk Level

The Regulation introduces due diligence obligations for business operators selling relevant commodities and products in the EU market or exporting them from the EU. The due diligence requirements differ based on the risk-level of the country of origin or parts thereof.

Operators are defined as “any natural or legal person who, in the course of a commercial activity places relevant products on the Union market or exports them from the Union market.”

Operators will need to submit a due diligence statement that must be available to competent authorities electronically. It should confirm that due diligence was carried out and no or only negligible risk was found. The due diligence template (Annex II of the Regulation) can be found in Attachment 2 of this report.

For all products within the scope of the Regulation, operators will need to collect and keep the following information, accompanied by evidence, for 5 years:

- (a) Description, including the trade name and type of the relevant products as well as, in the case of relevant products that contain or have been made using wood, the common name of the species and their full scientific name; the product description shall include the list of relevant commodities or products contained therein or used to make those products;
- (b) Quantity (expressed in net mass or, when applicable, volume, or number of units) of the relevant products;
- (c) Identification of the country of production and, where relevant, parts thereof;
- (d) Geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as date or time range of production. Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included. Any deforestation or forest degradation in the given plots of land shall automatically disqualify all products and commodities from those plots of land from being placed and made available on the market or exported therefrom. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept; for all other products of Annex 1, the geolocation shall refer to the plots of land.
- (e) Name, email and address of any business or person from whom they have been supplied with the relevant products;
- (f) Name, email and address of any business or person to whom the relevant products have been supplied;
- (g) Adequately conclusive and verifiable information that the relevant products are deforestation-free;
- (h) Adequately conclusive and verifiable information that the production of relevant commodities has been conducted in accordance with the relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.

Additionally, for products sourced from high-risk or standard-risk countries or sub-regions of origin, operators will have to carry out a risk assessment and implement risk mitigation procedures based on Articles 10 and 10a of the Regulation. The risk assessment will need to establish whether there is a risk that the products do not comply with the Regulation. This risk assessment is based on 14 criteria outlined in the Regulation. Please see Attachment 3 for more information. For products where there is a risk of noncompliance, the operator will need to carry out export risk mitigation procedures and measures to reach no or negligible risk of deforestation or forest degradation before being able to sell the products in the market.

Documentary Checks to Ensure Compliance

Based on this Regulation, the competent authorities of the EU Member States will carry out documentary checks at the border to assess whether the operators are complying with the information requirements outlined above.

The rate of checks carried out by the competent authorities is based on the risk level of the country or sub-region of origin:

Risk level of country of origin	Rate of checks
Low-risk	Cover at least 1% of the operators
Standard-risk	Cover at least 3% of the operators
High-risk	Cover at least 9% of the operators as well as 9% of the quantity of each of the relevant products

The Regulation stipulates that the rate of checks (e.g., 3 percent of operators) must be met separately for each of the relevant commodity categories (beef, palm, wood, rubber, cocoa, coffee, soy) in the scope of the Regulation. For low- and standard-risk origins, the mandated rate of checks will be conducted only on the business operators, whereas high-risk origins require checks on both the operators and their relevant traded products (e.g., chilled beef).

Next Steps and Entry into Force

The text of the Regulation is currently undergoing a legal review but is not expected to change significantly. It is expected to be formally adopted through votes in the Parliament and Council sometime in the spring of 2023. Following formal adoption, the text will be published in the Official Journal of the European Union and enter into force 20 days thereafter. The Commission is required to complete its benchmarking assessment of all countries within 18 months from the Regulation's entry into force; most of the requirements related to due diligence and the obligations of business operators will apply at that time.

Attachments:

[Final Annex I - Deforestation Regulation \(Attachment 1\).pdf](#)

[Final Annex II - Deforestation Regulation \(Attachment 2\).pdf](#)

[Article 10 - Deforestation Regulation \(Attachment 3\).pdf](#)