

Our position

Recommendations for deforestation-free products in the EU



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The American Chamber of Commerce to the EU (AmCham EU) welcomes the proposed regulation to ensure that products marketed in and exported from Europe are deforestation-free. To be successful, the legislation must avoid a one-size-fits-all approach. Instead, it must create a framework that not only reduces deforestation rates but also helps achieve sustainable transformation of global supply chains on the ground. Specifically, the traceability and physical chain of custody requirements outlined in the proposal need to be risk-based and adapted to the specificities of the different commodities, as well as consider their individual logistics and market functioning attributes.

Introduction

In November 2021, the European Commission released the deforestation-free products regulation. The different agricultural commodities included in the scope of the proposal face unique challenges linked to their specific attributes, local environments and applications. In recent years, company voluntary actions and medium-term commitments have greatly improved current controls and information on what is happening on farm. Businesses continue to work towards deforestation-free supply chains. To augment their efforts, the Commission's proposal must give consideration to commodities' traceability, chain of custody, border control and product scope.

Key elements for review

Traceability

While most operators and traders have committed to and are working towards full traceability for their direct supply chains to farm and plantation, this does not mean that a commodity can be explicitly linked to a plot of land all the way through the supply chain. Collecting information on geolocation coordinates of all plots of land where commodities and products are produced and moving this data with the physical product all along the direct and indirect supply chain is much more challenging than assumed in the proposed legislation. This is especially true given the multitude of farmers and supply chain participants of all sizes – both private and public – that are involved in the value chain. To cover the whole supply chain, both direct and indirect, different approaches must be used depending on the nature of the commodity. Furthermore, the EU and producing countries must coordinate to help establish traceability systems for indirect suppliers that include consistent and updated registration of farmers and their ownership of land.

Due Diligence Obligations

Due diligence obligations should be placed on the manufacturer or importer of products as they are best positioned to know what is in their products and how they are manufactured. This would avoid redundancy and unnecessary burden on economic operators that are further down the supply chain. In addition, the extension of operators' obligations to large traders in article 6.5 under Obligation of Traders should be deleted.

Chain of custody

Moreover, the draft regulation contains a request for operators and traders 'to avoid the risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring'.¹ However, this would lead to the segregation of commodities and products along the whole supply chain from farm up to the EU operator or trader. There is a large number of farmers and supply chain participants

¹ 'Proposal for a Regulation on the making available commodities and products associated with deforestation', in *European Commission*. November 2021, viewed on July 2022,

of all sizes, as well as sizable volumes of commodities and products to be collected, stored, transported, processed into semi-finished products and shipped at different times from producing countries. It would represent an enormous challenge to avoid mixing these products at scale given current logistic capacity and infrastructure. This would in turn substantially increase costs both at origin and destination, put the EU food and feed chain resilience at risk, leave farmer communities behind and do little to address deforestation worldwide. Again, a commodity-by-commodity approach is needed so these factors can be studied in detail to avoid unintended consequences.

Border controls

The draft regulation states that for high-risk commodities and products, ‘competent authorities should perform the necessary checks on the due diligence statements that are issued by operators per shipment. In order to perform this, competent authorities would suspend the release for free circulation of the commodity or product by three working days, which could be extended if competent authorities require additional time’.² However, in a continuous process supply chain, a suspension of the release for free circulation by three working days or more would significantly disrupt trade flows and the supply of essential foods to the market.

Instead of the above process, an audit would prevent both the need for a suspension and the logistical bottleneck that would arise from checks or suspension per shipment. Under such a system, all operators’ due diligence systems would be checked for compliance with the regulation unlike the risk-based checks proposed by the Commission, which would only cover a percentage of operators and volumes.

Third Party Certification/Schemes

Third-party certification schemes can play an important role in a company’s due diligence processes and compliance. The European Commission should develop guidelines for minimum standards and quality control of third-party verification schemes. Schemes that meet such criteria and have proven to be effective could be considered for more formal recognition as mechanisms that contribute to compliance in the context of the future review of the Regulation under article 32.

Products in scope

The proposal’s scope should remain as currently envisaged by the Commission. Increasing the scope to include, for example, palm oil-derived products such as soaps and cosmetics would greatly increase the proposal’s complexity, the impact on border processes and the volume of goods moved through the border. The EU should focus on ensuring its processes are fit for purpose within the original scope before seeking to enlarge it. If a larger scope were to be adapted in the future, a review clause of the customs and other processes would be essential well in advance of amendment.

Conclusion

To ensure the legislation successfully reduces deforestation, the proposed regulation must consider products’ unique purposes, characteristics and supply chain features. This requires a sector-specific approach with technical solutions for each commodity that is proportionate and implementable for operators and traders. Furthermore, provisions related to **traceability and chains of custody must be efficient and workable, and adapted to the structure, functioning and maturity of different supply chains**’ transition to sustainability. The legislation must **bring along all actors in the supply chain** and allow for collaboration with producing countries via partnership agreements or others to make resources for compliance available to farmers, farmer

² ‘Proposal for a Regulation on the making available commodities and products associated with deforestation’, in *European Commission*. November 2021, viewed on July 2022, https://environment.ec.europa.eu/system/files/2021-11/COM_2021_706_1_EN_ACT_part1_v6.pdf

cooperatives and government agencies. Lastly, the Commission should ensure harmonisation and consistency with other due diligence frameworks – especially the draft directive on Corporate Sustainability Due Diligence and the Corporate Sustainability Reporting Directive – **to avoid additional burdens for companies.**