

EU PROPOSAL FOR A REGULATION ON DEFORESTATION-FREE PRODUCTS CAOBISCO STATEMENT

- CAOBISCO supports the EU harmonised framework proposed to tackle global deforestation and welcomes the objective of the European Commission proposal for a Regulation on deforestation-free products which aims to minimise consumption of products coming from supply chains associated with deforestation or forest degradation and, has the ambition to increase EU demand for and trade in legal and 'deforestation free' commodities and products.
- The Regulation should be a part of a smart mix of measures, with both demand-side measures and supply-side measures needed, to address global deforestation.
- CAOBISCO members are already taking steps to mitigate and minimise the risk of deforestation in their supply chains through dedicated programmes. While these voluntary initiatives have allowed progress towards deforestation-free supply chains, the challenge of deforestation, forest degradation, and forest conversion remains.
- CAOBISCO urges the EU to ensure coherence and consistency of this Regulation with the other relevant EU initiatives, in particular with the EU proposal for a Corporate Sustainability Due Diligence Directive.
- CAOBISCO is in favour of building on existing certifications and standards and encourages the creation of robust national traceability systems as a mandatory condition for companies to fulfil their due diligence obligations. Existing private initiatives need to be accompanied by harmonised due diligence systems to identify, address and report on risks of deforestation with a view to achieving greater supply chain transparency and traceability.
- At producer country level, national government-mandated sector-wide traceability and enhanced transparency – through an effective farmer registration system – should be promoted and linked to a verification of minimal standards that uphold environmental sustainability, particularly forest protection. This would help streamline compliance with due diligence requirements.
- The proposed Regulation raises questions on the applicability of the Regulation obligations and how implementable they are in practice, considering the specificities of the six commodities and derived products in scope. In particular:

1. SCOPE OF THE REGULATION

CAOBISCO takes note of the inclusion of chocolate imports and exports in the scope and would welcome additional clarity on the reasons behind this. CAOBISCO would like to raise attention to some of the challenges this may pose towards finding workable solutions that will help achieve the objectives of this Regulation.

CAOBISCO supports the development of practical sector specific guidelines for the implementation of this Regulation to further define the role and responsibilities of stakeholders across supply chains, prior to the entry into force of the Regulation. Key commodity-specific measures should be defined in these guidelines.

The legislation should also take into account the issue of proportionality of requirements, the risk of exposure to deforestation and forest degradation, as well as the appropriate actions companies are expected to take depending on their involvement in an impact.

2. BENCHMARKING SYSTEM

CAOBISCO welcomes the implementation of a three-tier benchmarking system aiming at incentivising countries to ensure stronger forests protection and governance, facilitating trade and better calibrating enforcement efforts with legal certainty. The country-level benchmarking system should be tailored to sub-national level (e.g., administrative region).

The EU developed a series of six assessment criteria to implement the benchmarking system (Article 27); no methodology nor scientific source was provided, and the weight of each criterion should be clarified.

The benchmarking system should not lead to a withdrawal from agricultural supply chains in countries where there is a risk of deforestation and/or forest degradation. The benchmarking system should be developed in close collaboration with producer countries, through inclusive dialogue and bilateral partnership agreements between the EU and producer country governments to enhance capacity building at origin and to help develop enabling environments towards the eradication of deforestation. A specific time frame and clear indications should be included to review and/or renew the country benchmarking list.

CAOBISCO supports the consideration of the WTO requirements and compliance, and the inclusion of other existing instruments, agreements and/or development assistance. The EU should consider providing financial and technical support and coordination for existing regional, national, and sub-national partnership initiatives, multi-stakeholder processes and supply chain traceability systems, in collaboration with the private sector.

3. DUE DILIGENCE

Due diligence requirements should create a level playing field for all companies, while ensuring consistency with other European policies, as well as existing initiatives and existing ambitious sustainability conditions in trade and investment agreements (e.g., sustainability chapters of Free Trade Agreements and the EU proposal for a Directive on Corporate Sustainability Due Diligence). There is a need for greater coherence between EU policies in different areas, such as trade, agriculture, environment, and development.

Enhanced traceability and implementable traceability commodity-specific requirements are needed to conduct deforestation-free checks. Geolocation requirements should be adapted to the different supply chains' specificities and to the use of existing standards and certifications.

A wide range of existing tools and approaches could be generalised and upscaled to ensure geolocation and traceability and avoid duplication of efforts and administrative burdens among traders and operators. Established initiatives and activities by local governments should be reflected in the Due Diligence process, e.g., Cocoa Forest Initiative (CFI).

Due diligence should provide legal space for a holistic approach. CAOBISCO welcomes the possibility to adopt risk mitigation measures (Article 10), but questions if this is not contradictory with the risk assessment scenario where an operator would not be able to demonstrate that the risk of non-compliance is negligible. The EU Commission should further define how a 'negligible risk' for non-compliance, in the context of risk assessment, can be achieved, and should clarify how mitigation measures in response to an identified non-negligible risk could prevent import or export bans.

4. CONTROLS

On the obligations to perform checks, competent authorities will check, on an annual basis, 15% of the operators and non-SME traders, as well as 15% of the quantity of relevant commodities and products produced in high-risk countries, and 5% in other countries. Additional clarifications should be provided on how the 5% and 15% quotas will be defined and applied to select the respective samples.

The Regulation provides the possibility of access to justice (Article 30) to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Regulation. The implementation of this provision should ensure legal certainty for businesses and avoid confusions, exposure of companies to increased reputational risk, administrative burdens, and sequestration of goods by customs.

5. TIMELINE

It is foreseen that ‘two years’ after the entry into force, necessary impact assessments will be conducted to ‘broaden the scope’ of the Regulation. Clarifications on the foreseen extension of the scope to other commodities and on the ‘additional trade facilitation tools’ should be provided.

It may be difficult to fill in the due diligence obligations if the list of low and high-risk countries is adopted within the first five years after the date established in Article 36. CAOBISCO advises to approve a realistic timeline to enable companies to develop effective due diligence systems and to allow competent authorities to develop the risk-based plans for checks. Furthermore, the assignment of risk to countries under the benchmarking system should be provided within six months after the entry into force of the Regulation, as this will support companies in the development of their risk assessment and mitigation measures within the due diligence systems.

CAOBISCO is the Association of the Chocolate, Biscuits & Confectionery Industries of Europe. We represent more than 12,000 European chocolate, biscuits and confectionery manufacturing companies, 99% of which are SMEs. The sector is a major player in the European economy, with over 225, 000 direct employees and an annual turnover of over €42 billion.