NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

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Implementation of the EU Deforestation regulation

MARKET INTELLIGENCE REPORT

Summary

- The EU Deforestation Regulation, which remains controversial amongst some non-EU countries including at the WTO, has entered into force. The measure aims to reduce the EU's contribution to global deforestation by banning the sale of specific products associated with deforestation (beef, cocoa, coffee, palm oil, rubber, soya and wood).

- From December 2024, EU and non-EU producers must provide geolocation coordinates for the places of production for all products in scope of the regulation to demonstrate that they were not produced on land deforested since 31 December 2020.

- Although New Zealand will likely be designated low-risk under the EU's forthcoming benchmarking process, this designation will not reduce the compliance burden for exporters to provide geolocation data to European importers. Under the current product scope, this burden will fall most heavily on New Zealand's beef sector. However, some exporters of wood products, and smaller enterprises selling products such as, coffee and chocolate to the EU will also be impacted.

- The products and ecosystems covered by the regulation will be reviewed within 2 years. This may lead to an expansion in the commodities and/or ecosystems captured under the regulation.

Report

The European Commission initially proposed the [Deforestation Regulation] in November 2021. Following the [ordinary legislative procedure] in the European Council and Parliament, it formally entered into force on 29 June 2023 and operators will have to comply from December 2024. The aim of the regulation is to promote deforestation-free supply chains. The EU defines 'deforestation-free' as not containing (select) commodities produced on land subject to deforestation after 31 December 2020. Both EU and non-EU producers are subject to the regulation.

The regulation targets beef, wood, cocoa, coffee, palm oil, rubber, and soya, as well as certain derived products such as hides, furniture, paper, and chocolate. The selection of products within the scope of the regulation is based on the extent to which their consumption in the EU contributes to deforestation globally. For instance, palm oil and soya (80% of which is used for animal feed), collectively account for two thirds of EU-driven deforestation, in terms of EU consumption.

The Commission is developing a benchmarking system to classify countries as either low, standard or high risk (of deforestation), which it aims to publish in early 2024. This determination will be based on the rates of deforestation and agricultural expansion, production trends, and international commitments such as those enshrined in Nationally Determined Contributions (NDCs) under the Paris Agreement. Input from countries will be requested by the Directorate-General for the Environment (DG ENV) in late 2023, and officials from the Ministry for Primary Industry are already preparing a dossier to support New Zealand's country benchmarking assessment.

As a condition of placing in-scope products on the EU market, operators must provide due diligence statements to demonstrate their commodities are deforestation-free and have been produced in accordance with the relevant laws of the country of origin. This will involve the EU operators analysing the geolocation data provided by producers against reference satellite maps and, for standard or high-risk countries, conducting risk assessments and documenting any risk mitigation steps where risks are identified.

Acknowledging that roughly a third of global deforestation takes place lawfully, the measure covers both legal and illegal deforestation. It also covers deforestation and forest degradation i.e., both the conversion of natural or planted forests to agricultural uses (deforestation), and the conversion of natural forests to planted forests (forest degradation). Legal challenges in cases of non-compliance can be brought by any 'natural person', increasing the prospect of litigation.

The Commission recently published a set of [frequently asked questions (FAQs)] and will also provide further guidelines on implementation at a later date. To support compliance checks, the EU's Joint Research Centre is currently designing a global reference map of forest cover ("EU Forest Observatory").

The guidelines will likely address the interplay between plots, polygons, and the due diligence statements. Based on current proposals, one due diligence statement may cover many plots of land, include aggregate geolocations, contain an option to declare 'in excess', and grant flexibility to exporters to make deforestation-free claims on behalf of several suppliers. It is not yet clear if this flexibility will be extended to beef producers.

In addition to the consignment by consignment due diligence there is an annual reporting obligation on the operator regarding the due diligence system they operate. There has been some progress in limiting the duplication of due diligence requirements. Economic operators should be able to fulfil their deforestation-free requirements by including the required information when reporting under other relevant acts such as the the Corporate Sustainability Reporting Directive (CSRD) or related proposal on Corporate Sustainability Due Diligence (CSDD) currently being negotiated between the European Parliament and Council.

The Commission is mandated to conduct a review of the new regulation before 30 June 2025 and provide a report to the European Parliament and Council. This report will include consideration for extending the scope of the regulation to other ecosystems with high carbon stocks and high biodiversity value such as grasslands, peatlands and wetland. The report must also address the further extension of the definition of 'forest degradation', and look at the need for additional trade facilitation tools, including recognition of certification schemes. A first review of the list of products within the scope of the regulation must also be carried out before 30 June 2025, and thereafter at regular intervals of at least every five years.

There is ongoing discussion regarding how to treat the removal of some trees – alien species such as wilding pines – for biodiversity purposes. Wood products derived from harvesting of planted forests which are then replanted will not be subject to the regulation.

Implications for New Zealand

New Zealand is primarily exposed to the regulation through its beef exports. Added challenges for the New Zealand context are that beef cattle farms can cover large areas of land (reaching 1500 hectares in certain areas) and many farms will not have contiguous plots so relating them to a single geolocation may pose difficulties. Cattle can move across several locations generating multiple geolocation points for a single animal's production cycle (which for cattle is defined as from birth date to slaughter date). There is also some confusion in the FAQs as they say that cattle 'establishments' can use a single point of geolocation coordinate rather than a polygon, but also that grazing lands have to be covered, which may imply more than a single point. Officials are engaging with the Commission in Brussels to ascertain what the specific geolocation requirements will be once the regulation comes into effect.

Compliance with the new regulation will require the ability to efficiently collate significant quantities of geolocation data and integrate it with exporters' information systems. Elements of the data may exist or are being collected for other reasons (e.g. biosecurity traceability, farm planning, or estimating vegetation on farms). Nevertheless, bringing it all together could be a significant challenge for some exporters.

Cattle may also graze on plantation forests that have been harvested in New Zealand, which is considered deforestation under the regulation unless they are to be replanted, i.e. the predominant use remains forest. Noting the retrospective aspect of the regulation, if cattle are currently grazing on land where a pine plantation has been harvested since 31 December 2020 and not replanted, the beef derived from these cattle will not be permitted to enter the EU after December 2024.

At least one European meat importer is in contact with a New Zealand-based meat processing company (and possibly other similar companies in other supplying countries) to query how it intends to work with EU importers who submit the due diligence paperwork. However, detail on implementation is yet to be released by the Commission, which prevents a policy response being formulated.

It is likely that countries that do not have significant deforestation, such as New Zealand, will be designated as "low risk" under the regulation. This will simplify the due diligence process and reduce the inspection rates they are subject to from EU member states' authorities. However, exporters will still be required to provide the same geolocation data that exporters from high risk countries have to provide to demonstrate the deforestation-free status of their goods. The EU does not consider low risk to be equivalent to no risk, hence producers from low risk countries are subject to the same compliance burden as producers from high risk countries, indicating their zero tolerance approach towards deforestation.

Reactions from EU and non-EU countries

This regulation is likely to impact non-EU countries more than EU countries given the EU mostly imports the affected products – notably soy, palm oil, coffee and cocoa.

This regulation has been subject to regular discussion and scrutiny in the WTO including the Council for Trade in Goods and the Committee on Trade and Environment, where several members have urged the EU to prioritise multilateral cooperation and account for the needs and capacities of developing countries in its efforts to tackle deforestation. The benchmarking of countries based on deforestation risk, and the consequent inevitability of differential treatment, has been raised as a potential violation of WTO ‘most favoured nation’ rules.

Several countries responsible for a significant proportion of the global supply of in-scope products have been particularly vocal, and a range of other developing countries have expressed their ‘serious concerns’ in a recent letter delivered through WTO channels.

Important questions remain for all stakeholders about the regulation, such as how and when countries engage in the benchmarking process and how countries, including EU member states, are going to implement the regulation in practice. There are also concerns about the definition of plots and geolocation more generally, especially as it applies to beef.

In addition to beef it is possible that the regulation will negatively impact small enterprises that have established niche markets in Europe such as coffee and chocolate suppliers. When importing the coffee or cocoa beans into New Zealand to produce their products, these operators will need to ensure their supply chains can provide the necessary geolocation information to satisfy the EU importer’s due diligence requirements.

New Zealand and many other countries share the EU’s objectives and have made domestic and international commitments to combat deforestation and forest degradation.

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