Report on the implementation of the EU Unfair Trading Practices Directive beyond the EU

Ecuador

Contents

Executive Summary 3

1. Introduction 4

2. Methodology 4

3. The dynamics of the cocoa sector 5
- **3.1. The cocoa market in Europe** 5
  - 3.1.1. Regulations and standards for entering the European market 6
- **3.2. The State of Ecuador's cocoa sector** 7
  - 3.2.1. How does the Ecuadorian cocoa supply chain work? 7

4. Key features of the UTP legislation 9

5. Findings 10
- **5.1. Unfair trading practices: what is affecting cocoa exporters from Ecuador** 10
  - 5.1.1. Black unfair trading practices (prohibited, whatever the circumstances) 10
  - 5.1.2. Grey unfair trading practices (prohibited only, if not agreed beforehand in clear and unambiguous terms between the parties) 11
  - 5.1.3. Trading practices identified by suppliers as unfair which are not banned by the Directive 12
  - 5.1.4. Other challenges faced by Ecuadorian cocoa producers beyond UTPs 12
- **5.2. The enforcement authorities in the EU** 13
  - 5.2.1. Additional measures taken by Member States relevant to Ecuadorian exporters 13
  - 5.2.2. Are Ecuadorian suppliers aware of the complaints and alternative dispute resolution mechanisms available to them? 14

6. Conclusions 15

7. Recommendations 17

Executive Summary

The cocoa sector is marked by significant power imbalances and faces numerous social and environmental challenges, including exploitative trade agreements and controversial labour practices. The European Union (EU) is the largest importer of cocoa and a key global policy setter. To address unfair trading practices (UTP) in the agri-food supply chain, the EU adopted Directive 2019/633, aimed at providing minimum protection for agri-food suppliers, including those outside the EU.

However, after two years of full implementation of the Directive by Member States, there have not been significant changes in business practices. Following a webinar to explain the UTP directive to exporters in Ecuador, researchers conducted a series of interviews with exporters and producers' organisations in Ecuador, as well as with European authorities responsible for receiving such claims to determine to which extent this Directive has protected cocoa exporters and producers to the EU.

Participants in the webinar and interviews were largely unaware of the UTP Directive, placing exporters at a disadvantage relative to importers. This lack of awareness extends beyond non-EU exporters; annual reports from enforcement authorities in Germany, Belgium, and the Netherlands indicate that only a few complaints are received each year. A 2024 survey conducted by the Joint Research Centre (JRC) and the Directorate-General for Agriculture and Rural Development revealed that only 38% of respondents were aware of the UTP Directive, while 57% were unaware of their national enforcement authorities. This highlights the urgent need for more effective enforcement of the Directive and for the Commission to invest in awareness-raising efforts both within Europe and beyond its borders.

While the EU's UTP Directive is a positive step, its benefits are not fully realized by non-EU suppliers due to insufficient awareness and support. This study recommends targeted initiatives to enhance awareness, provide legal support, and ensure comprehensive enforcement to abolish unfair trading practices.

1. Introduction

In 2019, the European Union adopted Directive (EU) 2019/633 to address unfair trading practices (UTP) in business-to-business relationships within the agricultural and food supply chain[1]. The Directive also extends protection to non-EU suppliers, provided the buyer is located within the EU.

It is essential to evaluate how effectively the Directive protects suppliers outside the European Union, as non-EU suppliers are often at a disadvantage in trade relationships with large, powerful EU buyers. This study will focus on Ecuador's cocoa sector.

The cocoa sector in Ecuador accounts for 9% of global cocoa production, making Ecuador one of the world's leading cocoa producers. In 2023[2], the European Union, Ecuador's largest trading partner, imported $352 million worth of cocoa and cocoa products. As the world's largest importer of cocoa (60% of global imports) and the top consumer of chocolate[3], the EU plays a pivotal role in shaping global standards and policies for sustainable cocoa production and trade.

This research evaluates the impact of UTPs on stakeholders in Ecuador's cocoa supply chain, particularly given the significant trade relationship with the EU. It also explores stakeholders' awareness of Directive (EU) 2019/633 and their ability to benefit from its protections, focusing on access to legal resources and complaint mechanisms. Additionally, it assesses the presence of UTPs in Ecuador's cocoa supply chain as outlined in the Directive, while identifying other challenges not covered by the regulation.

The report concludes with policy recommendations for improving protections for Ecuadorian suppliers. Its findings will contribute to the European Commission's final evaluation of the UTPs Directive, to be published in November 2025.

2. Methodology

The findings of the present report are based on qualitative research. Through an exploratory approach the study aimed to collect evidence to respond to the following research questions:

- Do the forbidden UTPs laid out in the Directive still take place in the cocoa supply chain in Ecuador? If so, how could they be remedied?
- Do other UTPs affect the cocoa exporters, in particular those that are not included in the directive?
- Are cocoa exporters able to file a complaint when they are victims of a UTP?

The following methods were used: (1)Desk research, relying on available statistics and studies such as the results of surveys on UTPs from the JCR, (2) organising a webinar with Ecuadorian cocoa exporters, civil society organisations and other groups, and (3) in-depth interviews with experts in the cocoa sector and EU enforcement authorities.

1 https://eur-lex.europa.eu/eli/dir/2019/633/oj

2 Swiss Platform for Sustainable Cocoa. Produced in the south – consumed in the north. Retrieved from https://www.kakaoplattform.ch/about-cocoa/cocoa-facts-and-figures#:~:text=In%20the%20last%20cocoa%20season,followed%20by%20Ecuador%20with%209%20%25

3 https://www.eeas.europa.eu/delegations/un-rome/cocoa-chocolateand-not-only_en?s=65

3. The dynamics of the cocoa sector

The cocoa sector exemplifies an hourglass market, where power is concentrated among a few large exporters, importers, and processors, creating an imbalance in the distribution of risk and value across the supply chain. Millions of smallholder farmers face economic exploitation, while global cocoa giants—Barry Callebaut, Olam, Nestlé, Mondelez, Mars, Hershey, Lindt, and Ferrero—dominate the market. Brands and retailers capture 90% of total margins, leaving cocoa farmers and exporters with less than 7.5%[4].

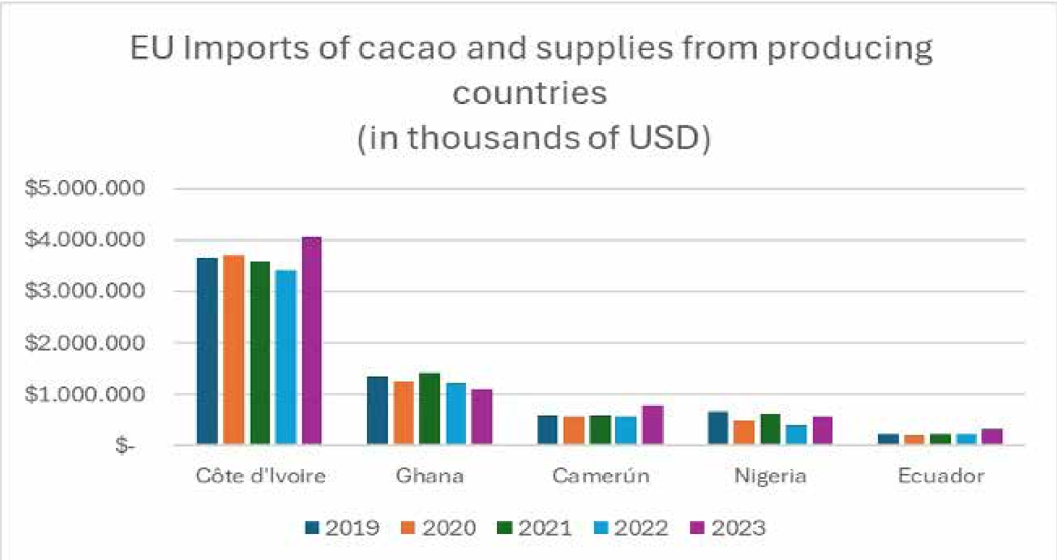
World production for the 2023/2024 crop has been affected in the main producing countries, with production shortfalls of more than 20%, a poor harvest caused mainly by climate change, and the ageing of the trees, which in turn has led to increased susceptibility to disease. These reductions in estimated harvest quantities, estimated at a reduction of 467,000 tonnes in Côte d'Ivoire and 448,000 tonnes in Ghana, have led to an explosive price increase, especially in the first months of 2024[5].

3.1. The cocoa market in Europe

The European chocolate market was worth 42 billion euros in 2022 and is expected to grow by 4.8% by 20275. Europe is the world's largest importer of cocoa and cocoa derivatives with 58% of global imports[6]. It also plays a role as a trading hub for cocoa and chocolate products.

On the other hand, Europe continues to import cocoa beans from other supplier countries around the world. Imports increased between 2019 and 2023, as a result of higher exports from Ecuador (4.3% per year) and Guinea (47% per year).

Illustration 1: EU cocoa and supplies imports by producing countries. Source, UNCOMTRADE



This highlights how important the cocoa sector is for the European industry. At the same time it gives a special responsibility to the EU to catalyse progress in the sector, given its economic weight as the largest importer of cocoa and a major consumer of chocolate. The EU plays the role of a global regulator, so it is vital to take a global supply chain approach to enforcement.

4 https://www.cbi.eu/market-information/cocoa/what-demand

5 Cocoa Market Report March ICCO, 2024

6 International Cocoa Organization (ICCO) (n.d.). Cocoa Daily Prices. Retrieved from https://www.icco.org/statistics/

3.1.1. Regulations and standards for entering the European market

Selling cocoa to the EU is subject to a number of requirements, particularly in relation to food safety. **Relevant analyses prior to export** are crucial in order to comply with all the requirements established by the EU.

As any other food product, cocoa must not exceed the maximum residue levels (MRLs) for pesticides and other contaminants which must be absent or within the tolerable limits included in the EU 396/2005 regulation.

Although cadmium limits are not established for cocoa beans, they are established for processed cocoa products. There is continuous monitoring by companies to ensure that cocoa beans do not have high levels of cadmium. The Regulation (EU) 2023/915 is in place to address maximum limits for cadmium in certain foodstuffs.

The EU 178/2002 and EU 852/2004 regulations address **traceability and safety standards. For exporters of organic cocoa and chocolate**, they must additionally comply with the standards set according to the EU regulation 2018/848.

In 2023, the **new EU regulation on deforestation** EU 2023/1115 (EUDR) entered into force to address the worrying loss of forests worldwide. The EU adopted the Corporate Sustainability Due Diligence Directive (CS3D) in 2024 to promote social and economic sustainability.

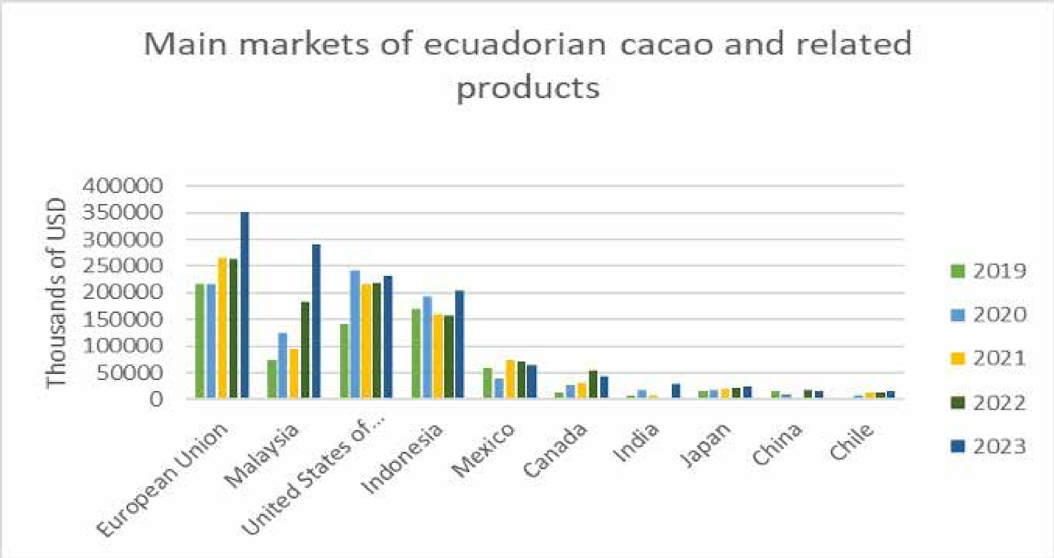
Cost of compliance

Regulations regarding quality, health, and environmental standards have significantly increased compliance costs over the past decade. These standards necessitate more complex risk assessment and management systems, placing the financial burden primarily on producers. As a result, cocoa exporters and importers face immense pressure, as they operate with narrow profit margins and leave little room for error in product compliance. Non-compliance often leads to claims that impose costs and responsibilities solely on sellers, further worsening their position in the market.

3.2. The State of Ecuador's cocoa sector

Ecuador is the world's third-largest cocoa producer, with approximately 400,000 people engaged in the cocoa value chain. In 2023, Ecuador exported 352,000 tonnes of cocoa and derivatives, significantly contributing to the global chocolate industry[7]. The European Union is Ecuador's largest trading partner, with the primary buyers being **the Netherlands, Italy, Germany, Belgium, and Spain**.

Illustration 2: Main markets of Ecuadorian cocoa: Source of data Banco Central del Ecuador



3.2.1. How does the Ecuadorian cocoa supply chain work?

Cocoa is produced in 22 of Ecuador's 24 provinces, and **most of the production is collected by intermediaries which are in charge of fermenting (not systematically done) and drying the beans, then, they are sold to exporting companies. In some cases this process is carried out by organisation of producers.**

Key actors in the cocoa supply chain include:

Agricultural producer: In Ecuador there are around 189,000 production[8] units currently growing cocoa, of which **80% of cocoa production comes from small producers (<20 ha)**.

The **intermediaries** - These include small traders, wholesalers, and transporters who manage the logistics, quality assessment, and pricing at farm gates or collection centres. **There are an estimated 400-1,000 intermediaries in Ecuador, often working on commission for large traders or corporate subsidiaries**[9].

Cocoa exporters - Roughly **40 companies export cocoa beans, and 16 focus on cocoa derivatives** (both semi-processed and processed). Exporters primarily target international markets and must adhere to stringent quality standards.

Supporting actors include promoters of production, agricultural extension services, and certifying bodies for standards like Fairtrade, organic, and environmental certifications.

7 LatinAmerican Post (2024). https://latinamericanpost.com/economy-en/ecuadors-cocoa-farmers-advocate-for-fair-trade-amid-global-price-surge-on-valentines-day/

8 https://knowledge4policy.ec.europa.eu/sites/default/files/VCA4D%20Ecuador%20cocoa%20November%202021-3.pdf

9 IDB (2023). Strategies to Strengthen Ecuador's High-Value Cacao Value Chain. Retrieved from https://publications.iadb.org/en/strategies-strengthen-ecuadors-high-value-cacao-value-chain

The majority of small producers rely on intermediaries who negotiate prices and assess quality at the collection points. Typically, two levels of intermediaries exist: small traders who buy directly from farmers and wholesalers who resell to exporters.

Most of the production is destined for export. **About 90% is exported as cocoa beans. Only 5% is industrialized (mainly for export), and a further 5% goes to artisanal processing.**

While Ecuador is a major exporter, only 7% of cocoa exports8 come through small producer organizations. Traceability remains a major challenge in the value chain due to the large number of actors. Despite efforts by public and private authorities to implement traceability systems, technical and resource limitations have hindered success. This poses significant challenges, particularly with upcoming EU regulations on traceability for imported cocoa.

The exporter sector and market

Cocoa exporters in Ecuador consolidate export-ready lots, with the majority of large exporters being members of ANECACAO. Transnational companies like Barry Callebaut, Cargill, Nestlé, and Olam have established operations in Ecuador, drawn by the high production volumes. These **transnationals now account for 29% of the country's cocoa exports, while national companies handle about 66% of exports** (according to data from SENAE - Servicio Nacional de Aduana del Ecuador).

Between 4% and 6% of exports are managed by small operators and producer associations, which focus on high-quality cocoa, often with organic or sustainability certifications. Some specialize in the Criollo or national variety and oversee the entire production process, including fermentation and post-harvest treatments.

For semi-processed cocoa products, **73% of exports are handled by national companies, while international companies manage 27%.** In the chocolate sector, national producers have significantly **grown their presence, now accounting for 71% of exports, compared to 29% by transnationals**. This sector has become a key area of growth for Ecuadorian industries.

4. Key features of the UTP legislation

The agricultural and food products covered by the new rules only relate to B2B (business-to-business) transactions. The agricultural and food products covered by the UTP Directive are listed in the Annex I of the TFEU[10] and other products processed for use as food using such products.

The Directive aims to protect farmers and small to medium-sized suppliers by establishing a legal framework that prohibits certain unfair trading practices (UTPs). It applies to sales in which at least one party is established in the EU. Recognizing that non-EU suppliers are also vulnerable to UTPs, the Directive extends the same protections to them as it does to EU suppliers selling into the EU, thereby preventing UTPs from being shifted to unprotected suppliers outside the EU. However, it is important to note that the Directive only applies to non-EU suppliers who sell directly to buyers in the EU, excluding those who use intermediaries based outside the EU[11].

EU Member States were required to transpose the Directive into national law for implementation before May 1st, 2021. Each Member State has designated an enforcement authority. The Enforcement Authority can initiate and conduct investigations. It has the power to publish decisions and issue compliance notices. Penalties may be imposed in the event of non-compliance, and the parties involved may be prosecuted for such non-compliance.

According to the report on the implementation of the Directive published by the Commission (2024)[12] Member States' protective measures are at a very high level and they apply national rules that go beyond the practices prohibited by the Directive.

10 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016EN01&from=EN

11 AGRINFO (2023). Unfair trading practices in the food supply chain. Retrieved from https://agrinfo.eu/book-of-reports/unfair-trading-practices-eu-survey-of-food-suppliers/

12 Commission delivers report on the implementation of EU rules against unfair trading practices in the food supply chain

5. Findings

5.1. Unfair trading practices: what is affecting cocoa exporters from Ecuador

This section presents the results of the live survey conducted during the webinar and findings from in-depth interviews with cocoa exporters. The survey received responses from 11 Ecuadorian cocoa exporters supplying the EU market.

Key findings

- None of the participants in the webinar and interviews **had any knowledge of EU Directive 2019/633**.
- They were **not aware either of the existence of an enforcement authority in each Member State or of mechanisms for filing a complaint** in the event of an unfair trading practice.
- **Unfair trading practices continue to exist in commercial relations between Ecuadorian cocoa exporters and EU buyers**, causing inconvenience to Ecuadorian exporters. From the "black list", the following practices were detected: delays on payments from their buyers of more than 30 days but no more than 60 days and last minute cancellations were a problem when the cancellation occurs only 15 days in advance; Unilateral changes in their contracts coming from the buyer have frequently taken over the risk of loss and deterioration from their buyers; victim of commercial retaliation; take over costs of examining customer complaints. And from the "grey list" : return of unsold products is the only practice experienced by participants.
- **The "fear factor" is prevalent among Ecuadorian exporters.** Interviewed cocoa exporters appreciated that the Directive protects confidentiality in complaint cases, addressing concerns about buyer retaliation. However, some respondents expressed apprehension that revealing their identity could negatively impact their relationships with buyers. This fear may reduce the likelihood of filing complaints, similar to trends observed among European agri-food suppliers. Annual reports from enforcement authorities indicate that suppliers are often reluctant to complain due to this fear of retaliation, which jeopardizes their long-term and future relationships with buyers.

5.1.1. Black unfair trading practices (prohibited, whatever the circumstances)

Later interviews demonstrated that some exporters had to pay the buyer when quality issues arose, **such as organic non-compliance and weight differential due to humidity loss during transportation**.

- During the interviews, a representative from one of Ecuador's major cocoa cooperatives and other exporters reported **that a buyer in Italy transferred all risk related to pesticide contamination two years after the cocoa was sold**. The issue arose when the cocoa was processed by one of the buyer's customers, who found pesticide contamination during testing. The buyer asserted that the contamination originated in Ecuador, without considering other potential factors or sources along the supply chain.
- Another cocoa exporter reported issues with weight adjustments. The exporter explained that they typically sell under FOB (Free on Board) terms, at which point the cargo is weighed and loaded onto the vessel, transferring the risk to the buyer. However, during the weeks at sea, cocoa can dry out and lose weight. **If this occurs, buyers deduct the missing weight on the next invoice**, usually adjusting the price by 2% to 3%, which can amount to a significant loss. Many exporters have stopped selling to Europe due to this issue.

It is important to report on these practices that occur in the cocoa supply chain. However, **these payments are more related to non-compliance of the actual transaction and would not qualify as UTP under the current Directive**.

It is important to note th**at exporters often lack the resources to defend themselves in Europe** and gather additional evidence, which can be costly. Consequently, they typically accept the costs associated with non-compliance.

Refusing to provide a written supply agreement if requested

None of the respondents had experienced a **refusal by the buyer to confirm a supply agreement in writing**, despite the supplier's request nor a misuse of trade secrets by the buyer.

The interviewed respondents supported this finding. One cocoa exporter stated that if a buyer refused to provide a written and signed contract, he would terminate the commercial relationship. **Typically, Ecuadorian exporters operate under the contractual framework established by the Federation of Cocoa Commerce (FCC)**.

Requiring the supplier to pay for the deterioration or loss of a product once it has passed into the buyer's ownership

Three participants out of eleven reported being victims of commercial retaliation by buyers.

When disagreements arise between exporters and buyers, respondents indicated a preference for resolving issues directly through dialogue. Some acknowledged that filing complaints with authorities is challenging for exporters due to the risk of commercial retaliation from buyers. **Many Ecuadorian exporters rely on a limited number of buyers and feel compelled to accept their conditions to maintain these commercial relationships**.

Requiring a supplier to pay for the cost of customer complaints

Only 1 participant mentioned they have had to take over costs of examining customer complaints frequently while 2 participants said this has happened exceptionally.

During interviews, a cocoa exporter shared an issue with a shipment in Amsterdam, **where he had to personally hire an inspector to resolve the problem at his own expense**. He noted that such issues are common when exporting to the EU, leading him, like many others, to reduce export volumes to the region.

5.1.2. Grey unfair trading practices (prohibited only, if not agreed beforehand in clear and unambiguous terms between the parties)

Returning unsold products to the supplier without paying for them

Five participants out of eleven have experienced the return of unsold products, primarily due to quality issues, deterioration, or contamination that violates organic certification standards.

It's important to note that participants' positive responses may be attributed more to product returns due to non-compliance with contractual parameters (such as quality, contamination, or lack of organic certification) rather than unsold products being returned.

The participants have not experienced any of the other practices included in the grey list: Charging a supplier for the stocking, displaying or listing of their products; Requiring a supplier to pay for the costs of promotions; Requiring a supplier to pay for advertising costs; Requiring a supplier to pay for marketing costs; Requiring a supplier to pay for the fitting out of premises

This may be mainly because **the participants were exporters of raw materials rather than finished products such as chocolate, and this type of activity may not be applicable to their activities**.

5.1.3. Trading practices identified by suppliers as unfair which are not banned by the Directive

Exporters cannot normally rely on long-term contracts.

According to the president of ANECACAO (National Association of Cocoa Exporters and Industrialists of Ecuador), long-term contracts are not feasible in the cocoa sector, highlighting the power imbalance where buyers dictate terms, leaving exporters unable to set conditions. She emphasized that selling cocoa relies heavily on trust, a sentiment echoed by other interviewees who stressed the importance of strengthening business relationships to secure cocoa sales.

One of the producer-exporters interviewed agreed that **there should be a regulatory body to deal with the issue of long-term contracts**. The recent cocoa price problem has brought challenges that may affect the time frame of the contract between the exporter and the buyer. Many exporters have stopped signing long term fixed price contracts to avoid losses. However, **he agrees that this should be reviewed further to ensure a long term and sustainable business**.

This perspective aligns with comments from a cocoa civil society spokesman, who noted that exporters typically face a seasonal contract and payment system, **perpetuating their market fragility**. In contrast, large buyers often secure long-term contracts with major brands, which risks transferring vulnerability down to producers and creating unfair trading practices.

The consequences of failure to comply with the EU standards

Once cocoa arrives in Europe, exporters must compensate EU buyers or occasionally accept the return of products if they fail to meet contract specifications, such as quality issues or weight discrepancies from moisture loss during transport. These practices do not qualify as UTP under the current Directive, as they fall within the normal transaction framework.

However, contract specifications sometimes exceed European standards. For instance, some contracts specify maximum cadmium levels for cocoa, despite regulations only applying to finished chocolate products, complicating compliance for exporters. Interview participants noted that managing cadmium levels has become increasingly challenging, raising concerns about the extent to which buyers can impose cadmium requirements beyond EU standards without engaging in unfair trading practices.

Additionally, when such issues arise, Ecuadorian exporters often lack the resources or representation in the EU to gather evidence or monitor the situation effectively.

5.1.4. Other challenges faced by Ecuadorian cocoa producers beyond UTPs

There are different issues in the cocoa supply chain that are out of the scope of this study but should be considered in further research.

Costs of implementing all EU regulations

Interviewees agreed that one of big challenges they have is adapting their products to the requirements of different European Legislation such as the new Regulation (EU) 2023/1115 on deforestation-free products, the Corporate Sustainability Due Diligence Directive or the certification for organic under the Regulation (EU) 2018/848. These challenges are more notorious for smallholder farmers that do not have enough financial resources to comply. As mentioned above, the costs of implementing all those regulations are usually borne by the producers, and not recognized by the buyer.

Pressure to maintain prices despite the soaring market prices

The unusual increase in the market prices put a lot of pressure on cocoa exporters. With prices negotiated in advance, in 2024 a lot of exporters were forced to comply with the contracts with prices much inferior to the current market prices. In free market economies like Ecuador, **producer organisations had to buy cocoa beans at a higher price from farmers, only to sell them at a lower price to exporters, meaning that they were forced to sell under their cost of production.**

5.2. The enforcement authorities in the EU

5.2.1. Additional measures taken by Member States relevant to Ecuadorian exporters

Non-distinction between perishable and non-perishable

Countries such as Belgium, Hungary and Slovakia do not distinguish between perishable and non-perishable goods. **This non-differentiation allows the issue of late payment to be addressed, where a 30-day payment period for all agricultural and food products is applied**.

This measure is vital for cocoa exporters, as cocoa is classified as a non-perishable product. Eliminating this distinction would enable cocoa exporters to assert their rights in cases of payment delays exceeding 30 days. While many exporters do work with advance payments, some still experience delays beyond this period.

Short term cancellations

The Directive prohibits the short-term cancellation of perishable agri-food products, and 24 Member States have established a 30-day minimum notice period. If there were no distinction between perishable and non-perishable goods, cocoa exporters could file complaints regarding last-minute cancellations. Participants indicated that such cancellations still occur, often with only 15 days' notice.

Assessing imbalances in contractual relations

Member States have implemented **General Clauses to assess imbalances in contractual relationships**. For instance, the Czech Republic has enacted a provision that prohibits negotiating or enforcing terms that create a significant imbalance in the rights and obligations of contracting parties to the supplier's detriment. This mechanism is vital for Ecuadorian exporters who depend on one or a few EU buyers, as it helps them avoid imbalances in these relationships. As noted, exporters often comply with buyer requests and absorb costs to maintain their commercial ties.

Inspection of food products immediately after delivery by the seller

In Germany under the Commercial Code (Section 377), the buyer must inspect the goods immediately after delivery by the seller, insofar as this is practicable in the ordinary course of business, and to notify the seller without undue delay if a defect is found. If the buyer fails to comply with this obligation and nevertheless claims a refund or penalty, this may constitute undue payment within the meaning of Section 16 of the Agricultural Contracts Act.

These available mechanisms could be further explored to see whether it would be useful to address the issue of cocoa being returned to the Ecuadorian supplier or the Ecuadorian supplier making payments to the EU buyer for non-compliance with EU standards (such as pesticide contamination in cocoa on arrival in the EU).

5.2.2. Are Ecuadorian suppliers aware of the complaints and alternative dispute resolution mechanisms available to them?

Exporters reported awareness only of **the Federation of Cocoa Commerce (FCC) mechanisms for filing complaints related to contracts adhering to its guidelines**, a point confirmed by the President of ANECACAO during the interview. However, interviewees indicated that exporters rarely utilize FCC mediation services due to associated legal costs and the need for representation in London.

The FCC is the leading contract authority within the cocoa trade. Companies use its standard contracts to benefit from the contractual platform. At the same time, the FCC offers **service of arbitration to parties** as a form of dispute resolution . The seat of the arbitration proceedings is England and the laws of England and the provisions of the Arbitration Act 1996 or of any other statutory modification or re-enactment thereof shall be the applicable procedural law[13].

Even though there are different ways to reach out to enforcement authorities, there are still many barriers to overcome to place a claim.

Lack of promotion of the directive

The enforcement authorities contacted stated that **they had not received a complaint from a non-EU supplier. Moreover, their efforts to contact these suppliers and inform them about the Directive and the mechanisms were non-existent.**

The results of the webinar and interviews clearly showed that **Ecuadorian cocoa exporters are not aware** of the existence of enforcement authorities and the mechanisms available to file complaints.

Language barrier

Suppliers must understand the legislation of the countries to which they export to defend their rights. However, language barriers pose a significant challenge. For instance, while enforcement information is typically available in English, websites for German, French, and Italian authorities are often only in their native languages. A representative from Germany's enforcement authority mentioned efforts to create an English version of their site. Additionally, when contacting Italian authorities, not all staff are fluent in English.
When revising complaint forms, many authorities, including those in Germany, Italy, and the Netherlands, do not provide English versions. This lack of language support can hinder non-EU suppliers without representatives fluent in the local language from filing complaints.
A cocoa exporter emphasized the need for information in Spanish for clarity in the Italian legislative process; otherwise, at least an English version would facilitate understanding.

Lack of a representant in Europe to follow up the claim

The primary issue facing Ecuadorian cocoa exporters is the lack of support when problems arise. When a quality or quantity claim is made after the cargo reaches Europe, **exporters often struggle to defend themselves**. To avoid commercial retaliation, they frequently have to accept measures imposed by the buyer, which often include economic compensation.

Interviewees noted that pursuing a complaint process can be costly and time-consuming. As the president of ANECACAO highlighted, exporters are at a disadvantage compared to buyers. **They must invest in having representatives in the buyer's country and conduct due diligence to address potential malpractice.** Consequently, they prefer to maintain current commercial relationships, comply with all requirements, and bear the associated costs rather than engage in a legal process that could harm their reputation.

13 FCC. https://www.cocoafederation.com/the-fcc/about-the-fcc/

Dialogue as a first alternative to solve problems with customers before filing a complaint

Exporters selling to one buyer in the EU have found it easier to maintain a relationship of trust and avoid unfair trading practices than those selling to several buyers. On the other hand, **exporters are only dependent on that buyer, which could open the door to accepting practices or conditions in order to maintain the commercial relationship.** This leads them to opt for dialogue as a first step to solve any problem.

When faced with an unfair trading practice, respondents indicated that **their first step would be to discuss the issue with their buyers to seek a resolution**. If this approach failed, they would then file a complaint with the enforcement authority, resulting in the termination of their relationship with the buyer. This aligns with the observation from the German representative, who noted that suppliers often prefer to resolve issues directly with buyers before escalating them to authorities, which decreases the likelihood of complaints being reported.

6. Conclusions

Limitations

While some practices between cocoa exporters and EU buyers have been identified, there is limited information on the transactions and contracts between the parties. This information is vital for enforcement authorities to analyse and determine if unfair trade practices have occurred. Reporting such details is essential for further research and understanding of the supply chain dynamics.

Additionally, interviews were conducted with a limited number of exporters and stakeholders, which may restrict insight into other practices within the supplier-buyer trade relationship. This report cannot conclusively assess the impact of unfair trade practices on other actors in Ecuador’s cocoa supply chain, especially producers, who are often considered the weaker link.

Further research is needed, particularly focusing on other supply chains where unfair trade practices may be more evident.

The UTP Directive only offers protection to exporters, leaving out producers

Ecuador's cocoa export sector primarily consists of large companies and established cooperatives with the experience, resources, and infrastructure to meet EU export standards. Typically, producers are not exporters; they are paid by intermediary companies, sometimes involving multiple intermediaries. Exporters assume contractual liability and are responsible in the event of issues.

Given the complexity of the cocoa supply chain, it is essential to delineate the responsibilities of suppliers and EU buyers concerning quality, contamination, and other matters. Additionally, since the directive addresses international business, it may not directly benefit producers. Further research is needed to assess how the protections afforded to exporters could positively impact producers.

Ecuadorian cocoa exporters are not informed about the Directive and available enforcement mechanisms

Ecuadorian exporters are completely unaware of the Directive and its related components, such as the responsible authorities in each EU Member State and the available complaint mechanisms. Additionally, there is significant confusion between various regulations that cocoa exporters and producers must comply with, including the EUDR and CSDDD, leaving exporters uncertain about how to enforce their rights. Data from EU authorities indicate that only a few claims are received annually in some countries (e.g., Germany and Belgium), suggesting either a lack of awareness of the Directive within the EU or ineffective implementation.

The UTPs banned by the Directive are still occurring between Ecuadorian cocoa suppliers and their buyers in the EU.

There are a number of different unfair trade practices that occur between the suppliers of cocoa in Ecuador and the buyers in the EU that can be covered by this Directive. If the suppliers have sufficient information on the application of this Directive, they would be able to compile the necessary documentation to file a complaint.

From the black list: delays in payment by their buyers of more than 30 days but not more than 60 days; last-minute cancellations with 15 days' notice; unilateral changes in contracts by the buyer; suppliers continue to be victims of commercial retaliation and suppliers assume the cost of examining customer complaints.

Additional trading practices which are not banned by the Directive are experienced as unfair

Another practice linked by interviewees to the grey area of returning unsold products involves the return of items due to non-compliance with contract parameters, such as quality, contamination, and organic certification. Ecuadorian exporters bear the risk of loss and deterioration from buyers due to pesticide contamination and weight adjustments. As noted in the findings, these practices currently do not qualify as UTPs under the Directive, highlighting the need for mechanisms to address them, either through the UTP Directive or other means.

Additionally, exporters often cannot rely on long-term contracts, which poses another challenge. Other issues outside the scope of this study, such as the cost of complying with EU regulations and the pressure to maintain prices despite market increases, also require further research.

Mechanisms available would be used as a last resource

The interview results suggest that the UTP Directive could serve as a valuable tool for cocoa exporters to manage supply chain complexity by reducing the number of actors and enhancing control. However, **the cocoa exporters interviewed indicated they would view complaint mechanisms as a last resort, often preferring to terminate their commercial relationships with buyers. While a resolution from EU authorities may end unfair commercial practices and impose fines on buyers, some Member States do not offer a form of compensation such as restoration of damages, to sellers, necessitating further legal action and incurring additional costs and time.**

According to the Commission's report on the UTP Directive's implementation, 10 Member States nullify contract terms, while others like Finland and Ireland provide restitutionary measures. Only Finland, France, Malta, and Romania offer compensatory measures under specific circumstances.

7. Recommendations

Urgent need to raise awareness of UTP Directive

- The first step is to raise awareness of the UTP Directive and provide legal support for non-EU suppliers. This could be done similarly to how information is shared regarding regulations and standards for cocoa exporters aiming to sell in the European Union. This will enable non-EU suppliers to understand the mechanisms for ensuring their rights are respected, enhancing transparency in supply chains and preventing larger buyers from exerting undue power.
- **European authorities must play a more active role in establishing contacts with authorities from non-EU countries** in order to exchange information. This could be done through embassies, trade fairs, international events such as the World Cocoa Conference etc. and provide legal advice when necessary.
- **Enforcement authorities should proactively engage with non-EU suppliers** (especially in sectors where exporters are likely to be victims of unfair trading practices) to ensure that they are aware of the Directive and the protections it offers so that suppliers can file complaints.
- **Government bodies and trade associations from Ecuador** should keep abreast of all EU regulations and requirements, as well as the benefits and mechanisms available to exporters.
- **The involvement of local NGOs is crucial for educating their beneficiaries** about compliance rules and the mechanisms available to protect and enforce their rights. In Ecuador, some cooperatives and associations collaborate with NGOs on certification and standards. It is essential to organize information sessions to help these stakeholders defend themselves against unfair practices.

Improve mechanisms to file a complaint that are in place

- Enforcement authorities should **improve the mechanisms** and their websites to make them available at least in English so that non-EU suppliers have easier access to information.
- **Harmonisation of mechanisms between enforcement authorities**, such as complaint forms and remediation measures. This would be useful for suppliers to have a clearer and more certain approach to dealing with this process.

Practices that could be covered by the Directive

- **Non-distinction between perishable and non-perishable goods** can help to address issues like buyer payment delays of more than 30 days or short term cancellations. This practice should cover all agri-food products without distinction between perishable and non-perishable products. 11 Member States apply stricter rules for payment delays. Countries such as Belgium, Slovakia and Hungary do not distinguish between perishable and non-perishable products and apply a 30-day payment period to all agri-food products.

- **General clause to address imbalances in contracts:** Consider introducing a general clause to assess and prevent contractual imbalances. Some member states have already prohibited contractual terms that create significant imbalances in rights and obligations, which harm the supplier. This approach can address broader power asymmetries in transactions and offer greater protection to vulnerable suppliers.

- **Review of existing practices:** Examine practices like the lack of long-term contracts, which should at least be considered a "grey" practice. Not having secure, long-term agreements increases fragility in the supply chain, negatively impacting exporters and cocoa producers, and leading to instability across the value chain.

Additional mechanisms

- **Contracts for cocoa exports must be adapted to comply with the Directive** to mitigate the risk of unfair practices between parties. This adaptation could involve referencing the UTPs Directive within the contracts. Additionally, EU authorities could create an official model contract format for free download, which would clarify acceptable conditions at the European level. Furthermore, contracts from the International Chamber of Commerce or those following the Federation of Cocoa Commerce (FCC) standards should include a reference to the UTPs Directive.
- Given that most sellers do not have a representative in Europe to oversee their interests when a problem arises, it would be beneficial for sellers if **enforcement authorities could provide an impartial person** to inspect cargo on their behalf when issues occur, to avoid unilateral abusive conclusions
- It might be useful to have an **EU trade office that could help small sellers to negotiate** fair contracts with buyers, or an impartial actor when a problem arises in order to counter the costs of legal representation for the exporter in the buyer's country.
- **Payments made by exporters to buyers or the return of products due to non-compliance** with clauses relating to EU standards on organic farming or cadmium levels should be addressed by the UTP Directive or other mechanisms to avoid abuse of power in the name of compliance. It would be useful to consider mechanisms for the buyer to bear the cost of compliance where the abuse of power can be demonstrated.

Further research on the application of the EUDR and CSDDD

The findings of this study highlight the challenges faced by cocoa producers and exporters in Ecuador regarding the implementation of legislations such as the EUDR and the CSDDD. Further research is necessary to assess the future impact of these legislations on various actors within the cocoa value chain and other products from non-EU countries.
It is crucial to enhance support for actors outside the European Union to ensure proper implementation of EU legislation and to guarantee that the relevant benefits contribute to the welfare of all stakeholders in the supply chain, especially the most vulnerable actors.