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

Ecuador

Contents

Executive Summary

The cocoa sector is characterised by significant power imbalances and still faces numerous social and environmental challenges, including exploitative trade agreements and controversial labour practices. The European Union (EU) plays a crucial role as both the largest importer of cocoa and a global policy setter. Recognizing the need to address unfair trading practices (UTPs) in the agri-food supply chain, the EU adopted Directive 2019/633 to provide a minimum level of protection for agri-food suppliers, including those outside the EU.

However, after two years of full implementation of the Directive by member countries, there have not been significant changes in business practices. Following a webinar to explain the unfair trade practices 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 against unfair trading practices.

Participants from the webinar and interviews were unaware of the UTPs Directive. This leaves the exporter in a weak position vis-à-vis the importer. This lack of knowledge is not limited to exporters outside the EU. According to the annual reports of the enforcement authorities of countries such as Germany, Belgium or the Netherlands, only a few complaints are received each year. The results of a survey (2024) carried out by the Joint Research Centre and the Directorate-General for Agriculture and Rural Development of the European Commission, covering all Member States and target suppliers, showed that only 38% of respondents were aware of the UTPs Directive, while 57% of respondents were unaware of national enforcement authorities. This underlines the need for more effective enforcement of the Directive and for the Commission to invest resources in awareness-raising across Europe and beyond its borders.

While the EU's Directive on UTPs is a positive step, its benefits are not fully realised by non-EU suppliers due to lack of awareness and support. The study recommends targeted efforts to improve awareness, legal support, and comprehensive enforcement to ensure fair trading.

1. Introduction

In 2019, the EU adopted the **Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain**[1], which introduces a minimum level of protection for agri-food suppliers (farmers, livestock breeders, companies and processors) against abusive trading practices to redress the balance of power in contractual relationships where buyers (industry and large retailers) tend to exercise a dominant power. The Directive also aims to protect suppliers located outside the EU, if the buyer is located in the EU.

After almost 2 years of full implementation of this Directive by member States, the Fair Trade Advocacy Office (FTAO) wants to determine to which extent this directive also protects non-EU suppliers. Non-EU suppliers are likely to be vulnerable to unfair trading practices and at the same time could be less likely to have the information or legal support to contact enforcement authorities in the country where their buyer is based[2].

Several studies[3] have been carried out on unfair trade practices in the supply chains of various commodities (bananas, mangoes, cashew nuts) being sold to the EU, highlighting the negative impact on producers in the Global South. However, there is insufficient evidence on the application of the Unfair Trading Practices Directive in the relationship between non-EU suppliers and EU buyers covered by this legislation.

To address this issue, it is relevant to develop more in-depth studies to explore whether non-EU suppliers who trade with the EU are benefiting or not from the Directive. It is crucial to look at specific value chains where non-EU suppliers could be more vulnerable to these types of practices and see how to empower them to make use of the Directive.

This study analyses a practical case for the Ecuadorian cocoa sector. Ecuador is one of the world's leading cocoa producers, accounting for 9% of global production. The main market for Ecuadorian cocoa is the European Union, which is the largest trading partner for Ecuadorian cocoa products and derivatives and accounted for 352 million dollars of cacao and value-added products in 2023[4].

The European Union is the world's largest importer of cocoa, accounting for 60% of global imports, and is the largest consumer of chocolate[5]. This gives the EU the responsibility to address challenges and a key role as a policy and global standard setter to improve sustainability of cocoa production and trade.

Given the commercial relationship between the Latin American country and the European region, the challenges the sector faces, and the lack of sufficient evidence on the application of the Directive, this research will assess whether unfair trade practices affect stakeholders in the cocoa supply chain from Ecuador and whether the Directive in tackling UTPs.

The study aims to determine the extent to which stakeholders are aware of the Directive and can effectively benefit from it by having easy access to legal information about their rights and tools to make a complaint. The study also presents findings on whether the unfair trade practices listed in the UTPs Directive are taking place in the cocoa supply chain in Ecuador, as well as other problematic practices for cocoa exporters that are not covered by the Directive. The report concludes with recommendations to policy makers and companies.

The findings of this report will serve as input to the Commission's final draft evaluation of the UTPs Directive, which is expected to be published in November 2025.

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

2 FTAO, OXFAM, SOMO, IFOAM, TRAIDCRAFT (2019). The Unfair Trading Practices Directive: a transposition and implementation guide. Retrieved from https://fairtrade-advocacy.org/wp-content/uploads/2019/07/The-Unfair-Trading-Practices-Directive.pdf

3 Feedback Global (2015) - Food Waste in Kenya; Oxfam Deutschland e.V. (2013) - Mango with Blemishes; Banana Link & FTAO (2015), Banana value chains in Europe and the consequences of Unfair Trading Practices

4 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

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

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, particularly those that are not included in the Directive?
- Are cocoa exporters able to file a complaint when they are the victims of a UTP?
- Desktop research, organising a webinar and in-depth interviews were chosen as methods to achieve the objectives of this study.

2.1. Desktop research:

Desktop research involved reviewing available statistics and studies on the importance of the cocoa market on a global, European and Ecuadorian scale. Data on international trade in the cocoa sector was also collected in order to have an understanding of the importance of trade relations between the European Union and Ecuador.

The results of the surveys on unfair trading practices[6] carried out by the Joint Research Centre (JRC) and the European Commission's Directorate-General for Agriculture and Rural Development in all Member States and target suppliers have been revised to better understand how the Commission has been assessing the effectiveness of the measures taken by Member States. Although the survey results include respondents from other countries, the results do not specify which countries.

To gain an insight into additional practices implemented by Member States, the report on the implementation of the Directive on unfair trading practices (UTP) in the food supply chain launched by the European Commission was included in the desktop research.

Information on enforcement authorities (particularly in Germany, Italy, the Netherlands, Belgium and Spain) was collected by reviewing their websites to examine the mechanisms available for filing complaints and their annual reports.

2.2. Webinar on the UTPs Directive with cocoa exporters from Ecuador & in-depth interviews with cocoa exporters

In order to explore whether cocoa exporters are aware of the UTP Directive and whether the practices contained in the Directive occur in the cocoa value chain, a webinar was organised in collaboration with ANECACAO (National Association of Cocoa Exporters and Industrialists of Ecuador)[7] to better explain the directive, the unfair trade practices and the means to submit a complain.

ANECACAO, is an association of 35 members (mainly cocoa exporters - most of them exporting to the EU) that promotes the welfare and development of the cocoa producing and exporting sector in the country. Other exporters not belonging to ANECACAO were also invited.

6 https://datam.jrc.ec.europa.eu/datam/mashup/FOODCHAIN_UTP_4/
7 https://anecacao.com/anecacao/

The total number of participants was 25, including 11 Ecuadorian cocoa exporters supplying the EU market. The rest of the participants were from consultancies, academia, the import sector from the EU, public administration, civil society organisations and others. A live survey was launched during the webinar. The webinar began by asking only exporters to complete the survey.

In-depth online interviews were conducted with 8 Ecuadorian cocoa exporters supplying the EU market, 4 of which participated in the webinar (see Annex). The study did not include Ecuador-based transnationals exporting to the EU. The interviews provided respondents' views on further details of the application of the UTPS Directive, as well as other challenges with EU trading practices and their demands for respect of their rights.

The number of participants and interviewees was relevant to the research and enabled all relevant aspects to be covered in order to contribute to the objectives of the study. The qualitative and empirical data and reflections gathered from the interviewees contributed to the development of the conclusions and recommendations.

2.3. Informal exchanges with experts & contact with enforcement authorities

3 Informal exchanges with experts in the cocoa sector (see annex), were conducted to gather information on the specificities of the sector, in particular for Ecuador, and the dynamics of the actors and requirements for cocoa exporters to the EU.

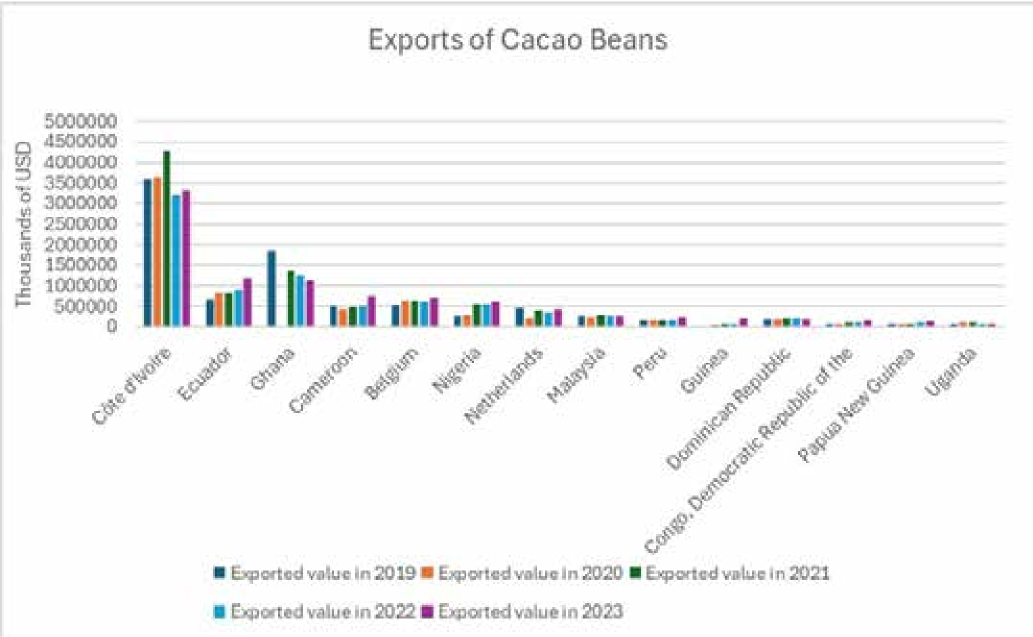
Email exchanges with enforcement authorities from Germany, Italy, Netherlands, Belgium and Spain (see annex) were developed to find out if they had any contact with or complaints from non-EU suppliers and to provide further relevant information on the mechanisms available.

3. The dynamics of the cocoa sector

3.1. The global market

More than 99% of the world's cocoa comes from developing countries. Cocoa exports are dominated by West African countries, which account for around 54% of cocoa beans exports. However, in 2023 Ecuador took over the second place of cocoa beans exports reaching over 1.17 billion USD (see Illustration 1).

Illustration 1: Cocoa exports by country. Source, UNCOMTRADE



Yet the cocoa sector is an example of an hourglass market where power remains concentrated in the hands of the big players. There are millions of smallholder farmers and only a few exporters/importers and processors. The world's largest cocoa players are Barry Callebaut, Olam, Nestlé, Mondelez, Mars, Hershey, Lindt and Ferrero. 90% of total margins go to brands and retailers, while cocoa farmers and exporters receive less than 7.5% of total margins[8].

The sector experiences imbalances in the distribution of risk and value along the supply chain, leading to economic exploitation. Furthermore, social and environmental problems, including climate change, deforestation and land degradation; unbalanced power dynamics and exploitative trade agreements affect the cocoa sector. Multi-billion-dollar industry continues to be implicated in labour exploitation and child labour[9].

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[10].

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

9 https://riskmap.fairtrade.net/commodities/cocoa; Oxfam België/Belgique, 2024. The Living Income Differential for cocoa: futures markets and price setting in an unequal value chain. https://oxfambelgique.be/publications/living-income-differential-cocoa-futures-markets-and-price-setting-unequal-value-chain

10 Cocoa Market Report March ICCO, 2024

At the beginning of 2023, cocoa was priced at USD 2789 per tonne, closing in December at USD 4196. However, the price explosion came in February 2024, when the price reached a peak of 6,500 USD/tonne[11].

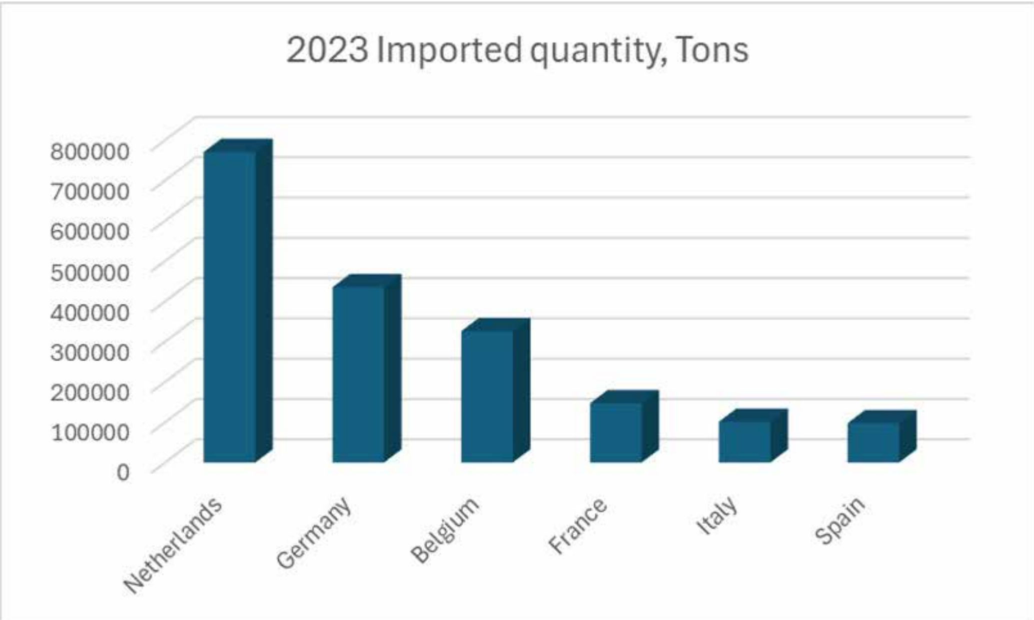
In April 2024, the price of cocoa soars and increases by more than 250%, reaching a record high of 12,261USD/T[12]. The month of May, however, contrasts with a drastic fall in price, with a 40% drop to around 8100USD/T. Such large price variations show above all that the market is highly speculative, but also that the lack of liquidity of buyers has caused them to refrain from buying cocoa beans, pushing the price down[13].

3.2. The cocoa market in Europe

The European chocolate market was worth 42 billion euros in 2022 and is expected to grow by 4.8% between 2022 and 2027[5]. Europe is the world's largest importer of cocoa and cocoa derivatives with 58% of global imports[14]. It also plays a role as a trading hub for cocoa and chocolate products.

The Netherlands (770 000 tonnes) is the largest cocoa importer of Europe but is also the largest in the world. In Europe, it is followed by Germany (435 000 tonnes), Belgium (325 000 tonnes), and France (147 000 tonnes). Switzerland is also considered as an important global hub as many of the largest cocoa and chocolate companies have trading offices in this country[15].

Illustration 2: Main importers of cacao beans in Europe. Source, UNCOMTRADE



European countries are also big consumers of chocolate. On average Europe consumes around 5kg per capita per year, however this amount is even higher in countries such as Germany and Estonia where consumption is 9.1 and 8.3kg per capita respectively.[16]

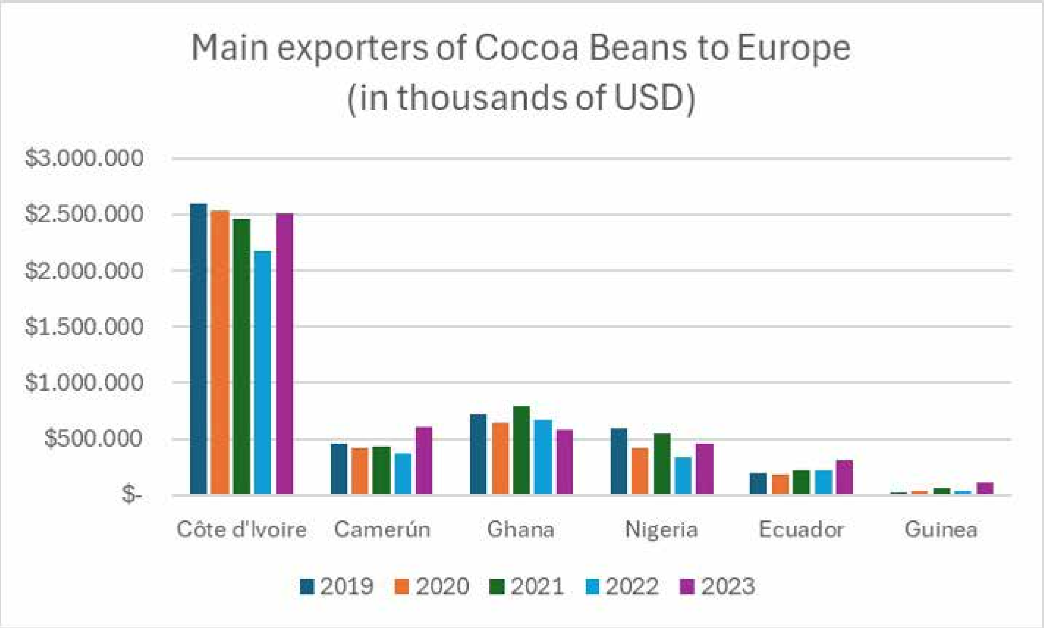
West Africa is the world's main supplier of cocoa beans to Europe. The main suppliers are Côte d'Ivoire, Ghana, Cameroon and Nigeria. Ecuador ranks fifth in cocoa exports to the

11 Comprender el espectacular aumento de los precios del cacao, Christophe Eberhart, 2024
12 El precio del cacao se dispara y aumenta más de un 250% en el último año, superando los 11.000 dólares la tonelada SER 100, 2024
13 El cacao cae desde su récord mientras los operadores huyen de un mercado en crisis, El Productor, 2024
14 International Cocoa Organization (ICCO) (n.d.). Cocoa Daily Prices. Retrieved from https://www.icco.org/statistics/
15 https://www.cbi.eu/market-information/cocoa/what-demand
16 https://www.cbi.eu/market-information/cocoa-cocoa-products/tree-bar/market-potential

EU. The illustration 3 shows the value in imports for the year 2023 on Cocoa and cocoa preparations.

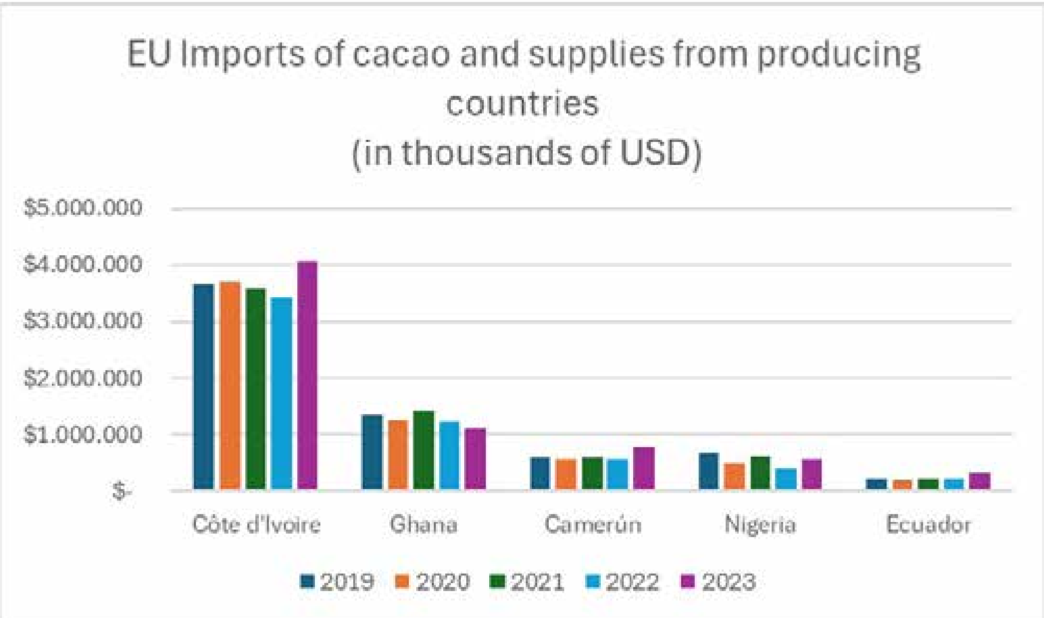
However, the volume of imports from West Africa is decreasing. The main reason is attributed to a decrease in the production of cocoa beans in West Africa.

Illustration 3: EU cocoa imports by country of origin. Source, UNCOMTRADE



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

Illustration 4: 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.

3.2.1. Regulations and standards for entering the European market

Selling cocoa to the EU is subject to several requirements, particularly in relation to food safety.

As any other food product, cocoa must not exceed the maximum residue levels (MRLs) for pesticides, or contaminants such as mycotoxins, Aflatoxins, Salmonella, E.Coli and Listeria, 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 such as dark chocolate, milk chocolate and cocoa powder, so there is continuous monitoring by companies to ensure that cocoa does not have high levels of cadmium. In 2023, the EU replaced Regulation (EC) No. 1881/2006 on maximum limits for certain pollutants with Regulation (EU) 2023/915 on maximum limits for cadmium in certain foodstuffs.

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

The **new EU regulation on deforestation** EU 2023/1115 also known as EUDR, which entered into force on 29 June 2023, is a crucial measure 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.

It is essential to control the traceability of the product and carry out the relevant analyses prior to export in order to comply with all the requirements established by the EU.

Cost of compliance

However, all these regulations also involve the costs of compliance with quality, health and environmental standards, which have increased significantly over the past decade. Standards lead to more formal and complex methods of monitoring quality, such as risk assessment and risk management systems. The costs of implementation, compliance and certification fall mainly on producers. This puts a lot of pressure on cocoa exporters and importers, who have very little margin for error when it comes to product compliance, often leading to claims that in most cases can result in costs or responsibilities being borne entirely by the seller.

3.3. The State of Ecuador's cocoa sector

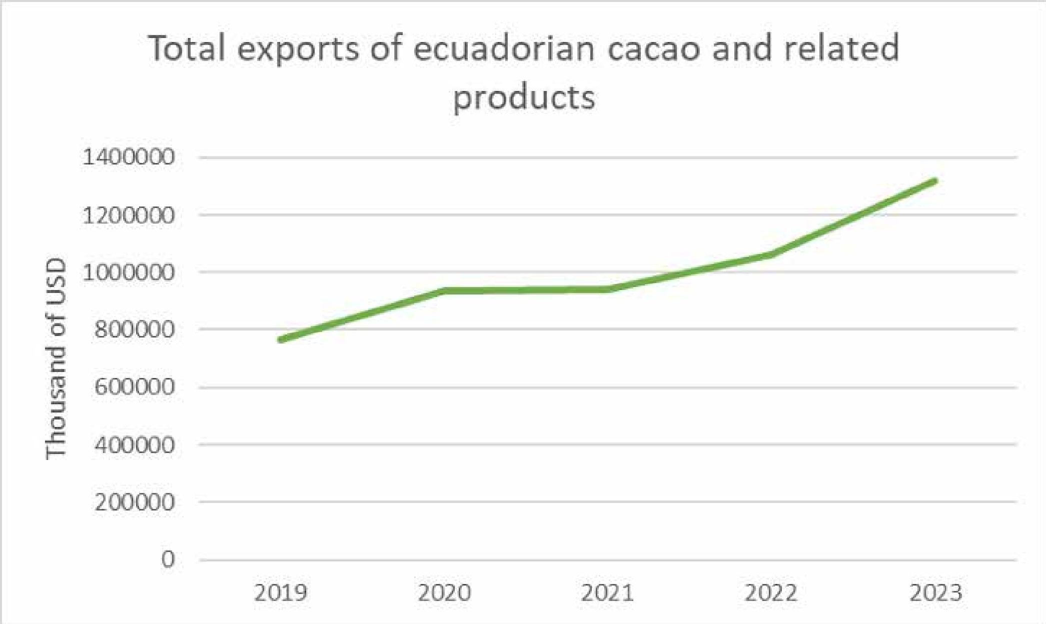
Ecuador is the country of origin of cocoa, as evidenced by the discoveries made in the Palanda region (Zamora Chinchipe), which have scientifically proven that the inhabitants of the Mayo Chinchipe Marañon culture used cocoa in drinks more than 5500 years ago, 1200 years before the Olmecs in Mesoamerica. Although these discoveries are recent, they show that the importance of cocoa for Ecuador goes beyond mere agricultural production and is woven into the very fabric of the nation's identity.

The country is the world's third-largest cocoa producer, reflecting the commitment of around 400,000 people involved in the cocoa value chain. In 2023 alone, Ecuador exported 352,000 tonnes of cocoa and derivatives, making a significant contribution to the global chocolate industry[17].

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

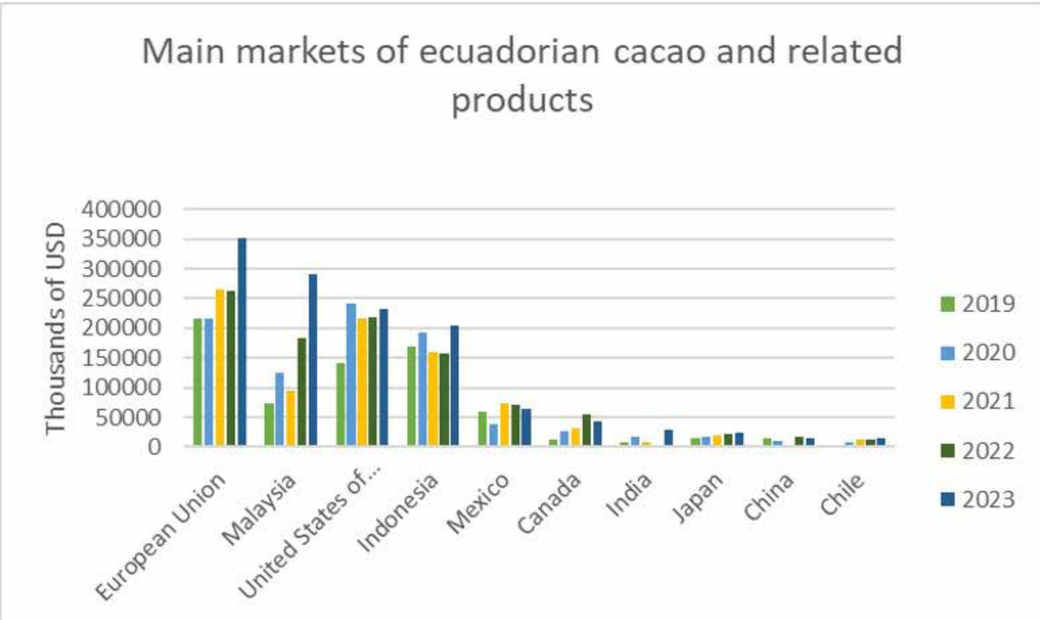
Over the last 10 years, cocoa production in Ecuador has increased steadily. Exports of cocoa and cocoa products have also increased in recent years, exceeding $1 billion for the first time in 2022 and reaching $1.32 billion in 2023.

Illustration 5: Total exports of Ecuadorian cacao and related products. Source of data Banco Central del Ecuador



Moreover, Ecuador is the quintessential producer of fine aromatic Arriba Cocoa (63% of the world's production)[18]. Fine flavoured "Arriba" cocoa is of superior quality and is sold at higher prices but it makes up less than 15% of the market[19]. The fine flavour cocoa reaches a premium segment of chocolatiers that are looking for a more fruity and aromatic chocolate. According to the Central Bank of Ecuador, the European Union is Ecuador's largest trading partner. The main buyers are the **Netherlands, Italy, Germany, Belgium and Spain.**

Illustration 6: Main markets of ecuadorian cacao: Source of data Banco Central del Ecuador



18 Ecuador, Land of Chocolate

19 Centre for the Promotion of Imports from developing countries (CBI) (2023). What is the demand for cocoa on the European market?. Retrieved from https://www.cbi.eu/market-information/cocoa/what-demand#:~:text=Many%20of%20the%20largest%20global,and%20France%20at%20103%2C000%20tonnes

Europe imports most of the fine flavour cocoa from Ecuador, 89 000 tonnes in 2021. And this amount has been growing at 4.3% per year (2018-2022).

In Ecuador, independent producers have benefited from the price increases, paying up to 500 USD per quintal (100 pounds - 45.45kg). However, this has not been the case for producer cooperatives that have negotiated their prices in advance and have been forced to honour contracts to the detriment of producers. Producers on the other hand are tempted to sell outside the organisation in order to obtain better prices and take advantage of this exceptional opportunity.

3.3.1. 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 oversee fermenting (not systematically done) and drying the beans, then, they are sold to exporting companies. In some cases, this process is carried out by organisations of producers.

The main actors are producers, intermediaries (transport, storage and commercialisation), processors, exporters and final consumers (markets). In addition, there are indirect actors such as promoters of production, support services (agricultural extension) and certifiers that support cocoa production, certification (Fairtrade, organic and environmental) and direct commercialisation[20].

The first actor of the supply chain is the **agricultural producer.** In Ecuador there are around 189,000 production[21] units currently growing cocoa, of which 80% of cocoa production comes from small producers.

The **intermediaries** collect cocoa from the vast majority of small producers and negotiate prices and bean quality at farm gate or collection centres in nearby towns. The estimated number of cocoa intermediaries in Ecuador is between 400 and 1000 entities, who usually work on commission for large traders or subsidiaries of national corporations[22]. **There are at least two traders in the intermediary chain between the farmer and the exporter, the small traders and the wholesalers**. The small traders deal directly with the farmers and the wholesalers resell to the exporters, who are other types of intermediaries at the international chain level.

Most of the production is destined for export. **About 90% is exported as cocoa beans, 5% is industrialised** (mainly for export, but also for the domestic market), and a further **5% is destined for artisanal processing.**

Cocoa exporters consist of around 40 main companies exporting cocoa beans, and 16 exporting cocoa derivatives, both semi-processed and processed. They are the most important cocoa collectors, and their product goes to the external market subject to compliance with international quality standards. It is estimated that only **7% of cocoa exports are through small producer organisations**[22].

There are **three main types of certifications:** Fairtrade, organic and environmental. Obtaining different types of certification helps to access new markets. On the other hand, certification can represent an important cost to implement and a barrier for producers who do not have it and wish to export. Producers and associations work to acquire certification in order to gain access to an international market or to increase the confidence of certain buyers in their product[22]. Currently with the high prices of the cacao market, customers are less willing to pay premiums for certifications, which is discouraging organisations that are making efforts to keep the certification systems in place.

20 Avadí A., Temple L., Blockeel J., Salgado V., Molina G., Andrade, D., 2021. Análisis de la cadena de valor del cacao en Ecuador. Reporte para la Unión Europea, DG-INTPA. Value Chain Analysis for Development Project (VCA4D CTR 2016/375-804). https://knowledge4policy.ec.europa.eu/sites/default/files/VCA4D%20Ecuador%20cocoa%20November%202021-3.pdf

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

22 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 traceability of cocoa in Ecuador has remained a challenge due to the numerous actors operating in the value chain. Public and private authorities have tried to promote traceability systems for cocoa, but they have not succeeded. Public institutions lack the technical capacity and resources to regulate the operation in the cocoa value chain, which represents a challenge in view of the upcoming EU regulations that also affect those supplying the EU market from outside Union.

The exporter sector and market

Cocoa exporters consolidate lots suitable for export. Most large exporters are members of ANECACAO. The transnationals present in Ecuador participate partially in ANECACAO. In recent years, they have begun to export more cocoa than national exporters. Currently, **about 66% of exports are carried out by national companies.** For more than a decade, **many cocoa transnationals such as Barry Callebaut, Cargill, Nestlé and Olam** have established themselves in Ecuador, attracted by the large volumes produced, which currently **account for 29% of the country's exports** (according to data from SENAE - Servicio Nacional de Aduana del Ecuador).

On the other hand, **between 4% and 6% of exports are made through small operators and associations** that sell smaller volumes of cocoa, but of **higher quality, with organic or sustainability certifications.** Some specialise in the production of the Criollo or national variety. Such operators have an integrated model as they manage quality control throughout the chain, especially fermentation and post-harvest treatment.

For **semi-elaborated products, 27% are exported by international companies and 73% by national companies.** National producers have increased their share of chocolate exports, accounting for 71%, while transnationals account for 29%, a particularly important area of development in 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[23] and other products processed for use as food using such products.

The aim of the Directive is to protect farmers and small and medium-sized suppliers by providing a legal framework to prohibit certain unfair practices. The Directive applies to sales where at least one of the parties to the transaction is established in the EU. Furthermore, as non-EU suppliers are equally vulnerable to UTP, the Directive offers the same protection to them as to EU suppliers selling into the aiming to prevent the diversion of UTPs to unprotected suppliers outside the EU. It should be noted that the Directive only applies to suppliers outside the EU who sell directly to a buyer in the EU and not through an intermediary based outside of the EU[24].

One of the conditions for the regulation to apply is that the **annual turnover of the buyer should be higher than the annual turnover of the supplier** at the time the contract is concluded[25]

The directive differentiates two lists of practices: "black" and "grey". Black practices are prohibited under all circumstances while grey practices are allowed only if both the buyer and the supplier have agreed on them beforehand[26].

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)[27] Member States' protective measures are at a very high level, and they apply national rules that go beyond the practices prohibited by the Directive.

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

24 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/

25 Directive (EU) 2019/633

26 Unfair trading practices in the food chain

27 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

The following section presents the results of the live survey conducted during the webinar and the findings from the in-depth interviews with cocoa exporters.

Key findings

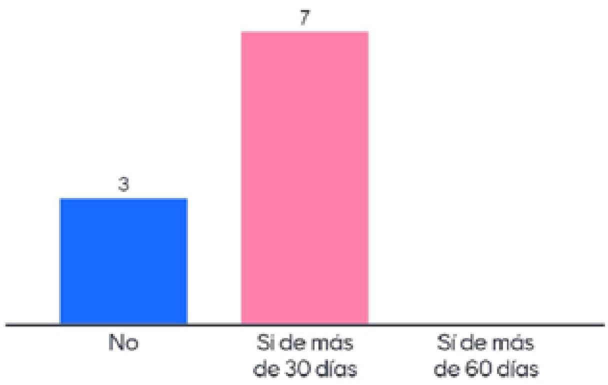
- None of the participants in the webinar and interviews had **any knowledge of the EU Directive 2019/633.**
- They were **not aware either of the existence of an enforcement authority in each Member State or of mechanisms for filing a complaint** in the event of an unfair trading practice.
- **Unfair trading practices continue to exist in commercial relations between Ecuadorian cocoa exporters and EU buyers,** causing inconvenience to Ecuadorian exporters. From the "black list": delays on payments from their buyers of more than 30 days but no more than 60 days; 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 also present among Ecuadorian exporters. **Interviewed Cocoa exporters** welcomed the fact that the Directive protects confidentiality in the event of a complaint in order to address the fear of retaliation by the buyer. However, as mentioned by some respondents, **they fear that if their identity were to be revealed at some point, this could have some impact on the relationship between supplier and buyer.** This could reduce the likelihood of a complaint being made in the first instance, as is the case for European agri-food suppliers. According to the annual reports of the enforcement authorities, they seem to be reluctant to make a complaint because of the fear factor. Suppliers fear any form of retaliation from the buyer and do not want to risk their long-term and future relationship.

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

Late Payment: paying later than 30 days or later than 60 days

- 7 participants of 11 mentioned they have experienced **delays on payments from their buyers of more than 30 days** but no more than 60 days

Do you have late payments from your buyers?



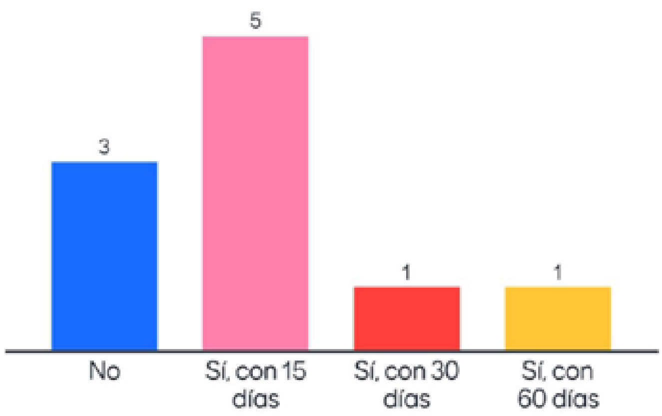
On the other hand, respondents indicated that they had not experienced this practice, but that there could be cases where payments were made after 60 days.

In most cases, exporters work with advance payments from the buyer. Usually, this advanced payment is about 50%, however we cannot say that this is always the case. Exporters and buyers would need to agree to these terms at the start of their negotiations. This advance payment is used by the exporter to prepare the order (buying the cocoa to producers, fermenting and drying process). The buyer usually takes a sample of the cocoa lot when it is ready and takes it to laboratories for testing to check that it meets the required standards for export. In some cases, this analysis is made abroad.

Cancelling of orders at short notice (less than 30 days)

- Although cacao beans are not considered to be a perishable product, 5 participants mentioned that **last minute cancellations** were a problem when the cancellation occurs only 15 days in advance, for 1 participant it was a problem 30 days in advance, for 1 participant it was a problem 60 days in advance.

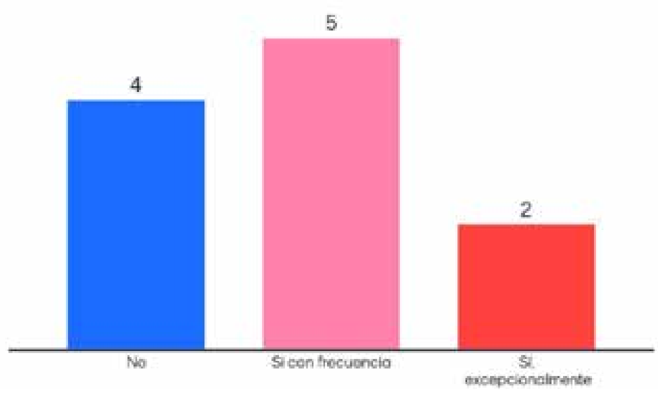
Is short notice cancellations a problem for you?



Making unilateral changes to a supply agreement

- 5 participants answered they **frequently have had unilateral changes in their contracts coming from the buyer**, for 2 participants mentioned this happens exceptionally

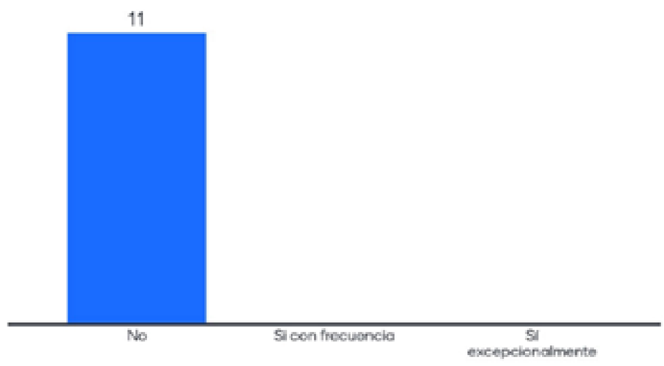
Has there been unilateral changes to the contract by the buyer?



Requiring payments from the supplier that are not related to the product

- The 11 cocoa exporters that participated mentioned they **have not had to make payments not related to a specific transaction**

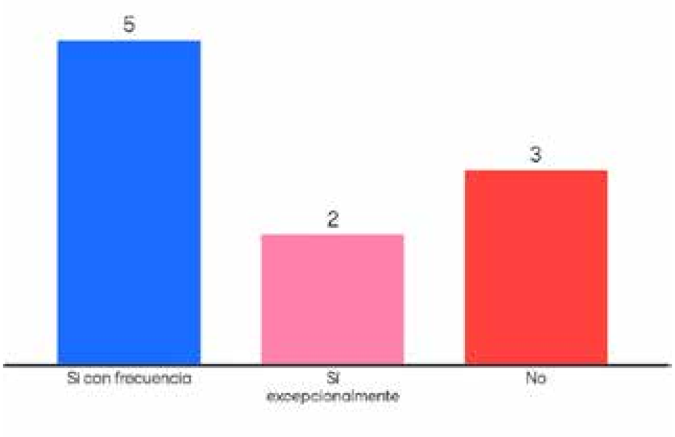
Have you made payments to your buyers not related to a specific transaction?



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

- 5 participants **have frequently taken over the risk of loss and deterioration from their buyers**. For 2 participants this has happened exceptionally and for 3 respondents this has not been an issue.

Have you assumed the risk of loss and damage to the products sold?



Later interviews demonstrated that some exporters had to pay to 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 of one of the main cocoa cooperatives in Ecuador as well as other cocoa exporter mentioned that one of their **buyers in Italy transferred all the risk of cocoa contaminated with pesticides two years after the goods were sold**. The problem was detected once the cocoa was processed by one of its customers. The buyer did some tests and discovered that it was contaminated with pesticides. The buyer claimed to the supplier that the contamination happened in origin, without considering other factors or sources along the supply chain that could have contributed to that contamination.

  According to the exporter, samples of the lot were sent to the buyer in Italy for analysis before the cocoa was exported, as agreed. The Italian certifier stated that the European customer had no problems at the processing plant, the problem was at source. The responsibility fell on the producer and therefore the exporter. Although the exporter provided evidence, the cocoa was declared conventional, and the exporter had to repay the organic differential.

- Issues on **weight adjustment were also reported during the interview with another cocoa exporter**. The exporter explained they usually sell to customers on FOB terms (Free on Board), the cargo is weighted and charged into the vessel. At this point the risk is transferred to the buyer. As the ship takes a few weeks to arrive in Europe, the cocoa tends to dry out and lose weight due to the time spent at sea. If this happens, **buyers charge for the missing weight on the next invoice.** The price adjustment is usually 2% or 3% of the invoice and this represents a significant amount of money. Many people have stopped exporting to Europe because of this problem.
  Cocoa, like other commodities such as coffee or tea, requires specific temperature, humidity/moisture and ventilation conditions during transport. If they become too damp, they risk becoming mouldy. But they can also dry out and lose flavour if the humidity is too low. At the time of container packing, 6-8% is the water content and this translates in an equilibrium moisture content of 75-85[28].

28 German Insurance Association. Container Handbook. Retrieved from https://www.containerhandbuch.de/chb_e/scha/index.html?/chb_e/scha/scha_17_06.html

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.**

Nonetheless, it should be borne in mind that exporters do not always have the resources to defend themselves in Europe and provide further evidence, which would be more costly, so they usually just accept the cost of 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

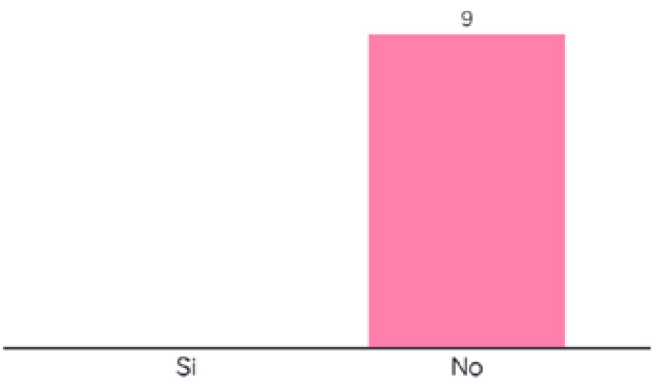
Refusal by the buyer to confirm a supply agreement in writing

The interviewed respondents agreed with this finding. Even one cocoa exporter mentioned that if a buyer refused to provide a written and signed contract, he would not continue the commercial relationship. Normally exporters from Ecuador sell under the contractual and operational framework of the Federation of Cocoa Commerce (FCC).

Acquiring, using or disclosing the supplier's trade secrets

- None of the participants have experienced their buyer misusing trade secrets.

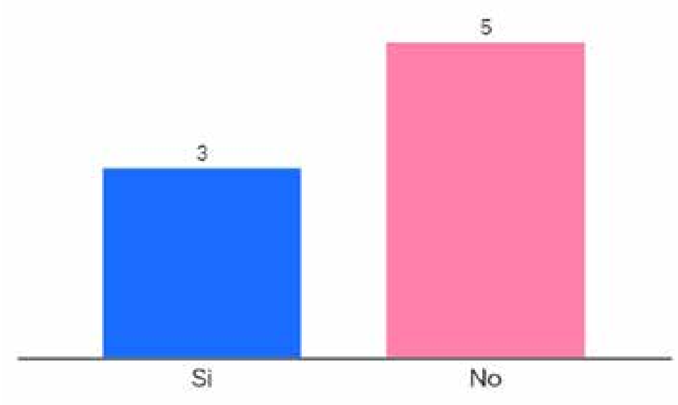
Has your buyer misused trade secrets?



Carrying out (or threatening) commercial retaliation when a supplier exercises their rights under this Directive

- 5 participants responded they have been **victim of commercial retaliation** by the buyer

Have you suffered from commercial retaliation?

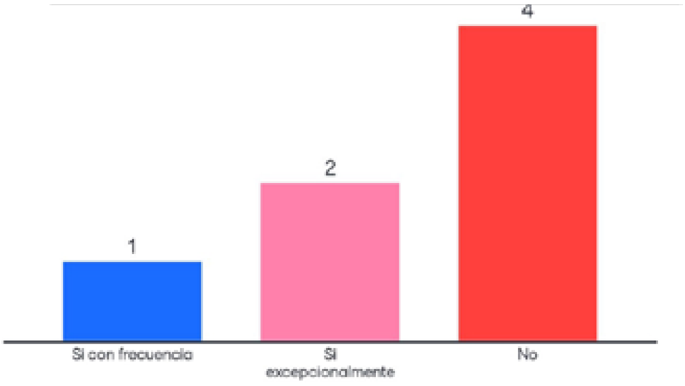


If there was a disagreement between the exporter and the buyer, respondents mentioned that they always preferred to try to resolve the issue directly through dialogue. Some agreed that it is difficult for exporters to file complaints with the competent authorities because the buyer may take commercial retaliation. It was mentioned that some Ecuadorian exporters depend on a few buyers and feel obliged to accept the buyers' conditions in order not to lose the commercial relationship.

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

Have you taken on the costs of examining your buyer's customer complaints?



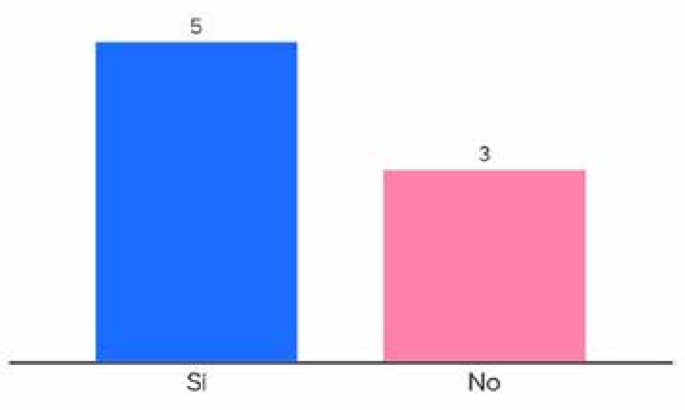
During the interviews, one of the cocoa exporters mentioned that he once had a problem with a customer's shipment in Amsterdam, where he had to hire an inspector at his own expense to go through the problem. According to the exporter, this is a very common problem when exporting cocoa to the EU and as a result he has decided to reduce his volumes to the region, as other exporters have done recently.

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

- 5 participants responded they have experimented with the **return of unsold products**. The main reasons for this have been related to the quality of the product, deterioration or contamination not allowed by compliance with organic certification

Have you experienced the return of unsold products?



In this result, it is important to mention that the positive response of the participants may be due more to a **return of the product due to non-compliance with the parameters (quality, contamination, non-compliance with organic certification) established in the contract** than to a case of 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 possible in the sector.** This is a problem that clearly shows that the buyers have the power, and the exporter cannot usually set any conditions on the relationship.
She mentioned that **selling cocoa is more a matter of trust**. This is in line with what the other interviewees mentioned about focusing on strengthening the business relationship and securing the sale of cocoa.

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 echoes comments made by the cocoa civil society spokesman. Typically, cocoa exporters are offered a seasonal contract system and a seasonal payment system. This tends to **maintain the fragility of the sellers' market power.** The big buyers tend to have long-term contracts with the big brands. The supplier does not have the same kind of longevity with the buyer, and this can be a risk to **transfer the vulnerability to the farm level**, becoming an unfair trading practice.

The consequences of failure to comply with the EU standards

Once the cocoa arrives in Europe, if the cocoa does not meet the specifications of the contract (quality issues such as non-compliance with organic standards, weight differences due to moisture loss during transport), cocoa exporters have to pay the EU buyers or sometimes receive the product back. This practice cannot be considered as UPT under the current Directive as it corresponds to the pure sense of the transaction.

However, sometimes the contract specifications go beyond the European standards. For example, in some cases maximum levels of **cadmium** for cocoa could be specified in the contract, even though the regulation applies to finished chocolate products, making it more difficult for exporters to comply.

During the interviews, participants mentioned that controlling cadmium had become a bit of a hassle. This raises the question of the extent to which buyers can exercise their right to demand certain levels of cadmium above EU requirements without committing an unfair trading practice.

Moreover, when these practices do occur, Ecuadorian exporters cannot always count on having the resources or a representative in the EU to provide evidence or follow the case closely.

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. As an example, the premium price for organic cacao beans is 300USD/tonne over the market price, however, according to an interviewed producer organization, with the implementation of the new regulation 2018/848 the cost increased to 450USD/tonne, this cost is currently assumed by the producer. The same is happening with all the other regulations and voluntary certifications. There are more tasks to be done to comply with the EU market, but there is no economic compensation to justify this extra work. Selling outside the EU is currently more attractive and less complicated for exporters that are expanding their markets to less regulated markets like Asian and Middle East markets.

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´s organisations had to buy cocoa beans at a higher price to farmers to sell them at a lower price to exporters, **this means that they were forced to sell under their cost of production**. Most producer´s organisations had to renegotiate prices, however in some cases they had to assume losses until the contracts were adapted. Companies usually put a lot of pressure to maintain negotiated prices, which could also be considered as an unfair trade practice.

5.2. The enforcement authorities in the EU: Are non-EU suppliers able to access complaint mechanisms available at national level?

In April 2024, the Commission published a report on the implementation of the Unfair Trading Practices Directive by the Member States. The report highlights that the **27 Member States have designated one or more enforcement authorities** to enforce the prohibition of unfair trading practices at national level. The Member States have chosen administrative authorities. Most have chosen to give them the main enforcement powers. Eleven Member States have given them to a competition authority, six to a food market authority, five to their ministry of agriculture, two to an authority responsible for combating unfair commercial practices in the agri-food sector, two to a government body within the ministry of economy and finance and one to a consumer and market authority. Some have given a court some of the enforcement powers set out in the Directive.

The Commission has facilitated the establishment of the UTP Enforcement Network ("the Network"). The Network consists of representatives of national enforcement authorities who meet to discuss the application of the Directive on the basis of annual reports from Member States. It also aims to ensure a common approach to the application of the rules set out in the Directive and the exchange of best practices. The Enforcement Network may also issue recommendations.

The European Commission cooperates with Member States' enforcement authorities through **meetings to discuss new cases, exchange experiences, best practices** and share relevant information on implementing the Directive.

Member States' Enforcement Authorities must submit an **annual report** with data on complaints and investigations carried out during the previous year.

5.2.1. Enforcement mechanisms available

Mechanisms set up by the national enforcement authorities are available by electronic means as well as on web sites.

Individual suppliers, producer organisations or other supplier organisations and associations of such organisations are entitled to complain to the designated enforcement authority. It is **possible to make a complaint using an online form, by telephone or by post.**

Member States **have provided instruments to ensure confidentiality and protection of the identity of the complainant.** This may be requested by the supplier specifying the information or documents for which additional protection is required. In other cases, the enforcement authorities may take the initiative to apply this measure.

The German enforcement authority has set up an anonymous whistleblower system. This allows individuals or companies who are affected by, or have knowledge of unfair trading practice, to pass this information on to the authority anonymously, thereby reducing the 'fear' of negative consequences (e.g. concern for their job or supplier relationship).

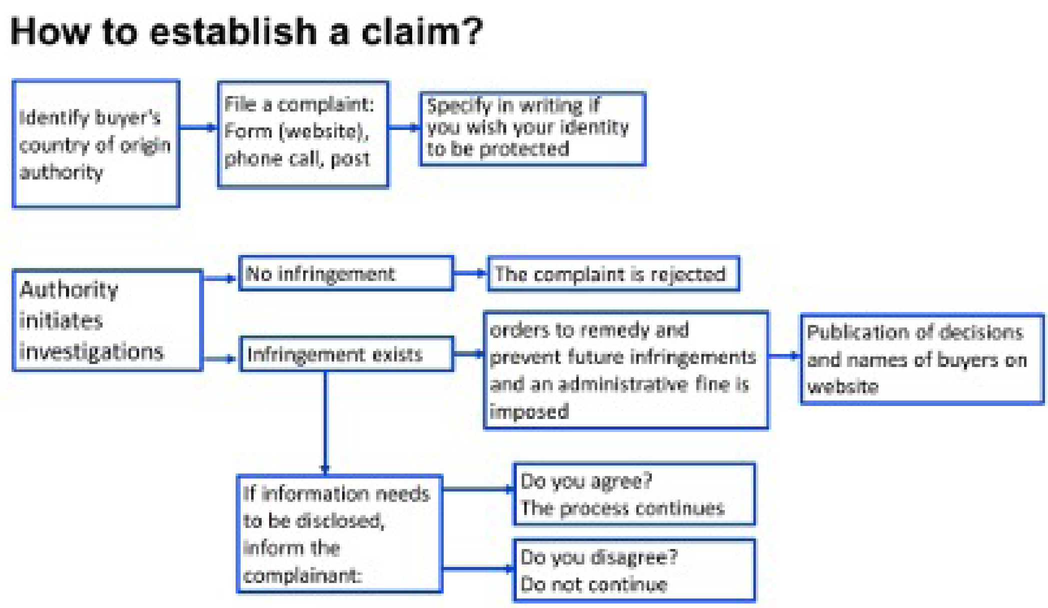
In the Netherlands, if suppliers would like to protect their personal data, they can report through the Intelligence Unit.

Poland has made this procedure stricter, where the identity and information of the complainant is always kept confidential unless the complainant agrees to disclosure.

In Spain, the law has provisions for the protection of the identity of the complainant even during the judicial process.

Other **Member States provide for the possibility to discontinue the procedure if its continuation would lead to the disclosure of confidential information.** This will inform the complainant accordingly. The further course of action can then be decided by the complainant: If he or she agrees to the disclosure of the information, the procedure may continue; if he or she does not agree, it will be terminated.
Enforcement authorities also have the power to initiate an investigation on their own initiative if they suspect unfair trading practices, and they also have monitoring powers.

Chart 1. Enforcement mechanisms foreseen by the Directive.



The procedure is generally the same in all Member States, but some Member States may apply additional measures according to their respective national laws.

Where an infringement is proven, **enforcement authorities can apply a range of enforcement measures, sanctions, remedies and commitments.** Financial penalties are the most common measures available to national enforcement authorities.
At the end of every procedure, enforcement authorities have the power to **publish the decisions taken.**

Administrative, judicial enforcement and alternative dispute resolution

Measures and enforcement mechanisms can be considered as administrative enforcement. For some Member States, measures and enforcement mechanisms explicitly refer to both administrative and judicial enforcement.

In France, the administrative authority can issue injunctions and administrative fines, while the court can issue injunctions, remedies and civil penalties.

In Belgium, the enforcement authority informs complainants about the possibility of resolving individual disputes by referring them to the general online mediation platform Belmed.

Since January 2022, in the Netherlands, suppliers can also contact the Dutch Foundation for Consumer Complaints Board (in Dutch: De Geschillencommissie) for the dispute settlement. The Dutch Foundation for Consumer Complaints Boards specifically adjudicates disputes between suppliers and buyers.

5.2.2. Differences in implementation: additional measures taken by Member States relevant to Ecuadorian exporters

Non distinguish 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, for example Belgium and Hungary apply a 30-day payment period for all agricultural and food products.

This measure is crucial for cocoa exporters as cocoa is considered a non-perishable product. Removing this distinction would allow cocoa exporters to assert their rights when faced with payment delays of more than 30 days. Although some exporters work with advance payments most of the time, the results show that some exporters still have payment delays of more than 30 days.

Short term cancellations

The Directive prohibits the short-term cancellation of perishable agri-food products. 24 Member States have introduced the 30-day period as a minimum standard.

If there were no distinction between perishable and non-perishable products, cocoa exporters would be able to complain if they experienced last-minute cancellations. As shown in the results, participants indicated that last-minute cancellations still occur with only 15 days' notice.

Assessing imbalances in contractual relations

Member States have introduced **General Clauses for the assessment of wider imbalances in the contractual relations between parties of a transaction**. For example, the Czech Republic has implemented an additional black practice that prohibits negotiating or enforcing contractual terms that create a significant imbalance in the rights and obligations of the contracting parties to the detriment of the supplier. Poland has introduced a general clause according to which "Practices involving the unfair use of the contractual advantage of a buyer over a supplier or a supplier over a buyer are prohibited. The use of contractual advantage shall be unfair if it is contrary to good conduct and threatens or undermines a vital interest of the other party. Contractual advantage is the existence of a significant disproportion in the economic potential of a buyer as compared to a supplier or of a supplier as compared to a buyer."

This mechanism is relevant for Ecuadorian exporters who are dependent on one or a few EU buyers and wish to avoid any imbalance in their relationship. As mentioned above, sometimes the exporter would comply with some of the buyer's requests and bear costs in order to maintain the commercial relationship.

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).

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

The exporters reported that they were only aware of the **Federation of Cocoa Commerce (FCC)'s mechanisms for filing a complaint for contracts that follow the guidelines of this organisation**. This was confirmed by the President of ANECACAO during the interview. However, interviewees mentioned, exporters do not often use the services of FCC mediation, mostly because this will incur lawyer costs and require representatives 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[29].

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 tha**t Ecuadorian cocoa exporters are not aware** of the existence of enforcement authorities and the mechanisms available to file complaints.

Language barrier

To defend their rights **suppliers must understand the legislation** in the countries where they are exporting to. One of the limitations to file a complaint is the **language,** as a representative of a cocoa cooperative mentioned during the interview. The information of the enforcement authority is normally available in English, however, for example the website from the German, French or Italian authorities are only available in their native language. The representative of the enforcement authority of Germany has explained that they are working on building an English version of the website. Moreover, when trying to reach out to the Italian authority by phone not all the staff could speak fluent English.

When revising the **form to file a complaint, not all the authorities offered at least an English version** (e.g. Germany, Italy and The Netherlands), meaning if the non-EU supplier does not count with a representative that speaks the language of the member state where the buyer is located could be a big challenge to file a complaint. The representative of a cocoa exporter stated that if they were to file a complaint with the Italian authority, they would like to have the information in Spanish so that they could better understand any legislative process. If not, at least English could make the process easier.

Lack of a representant in Europe to follow up the claim

The lack of support when a problem arises is the main issue that Ecuadorian cacao exporters must face. Once a claim of quality or quantity arises when the cargo is in Europe, the **exporters usually do not find a way to defend themselves properly, hence, to avoid commercial retaliation**, they have to accept the measures set by the buyer, which usually can include economic compensation.

Interviewees mentioned that going through a complaint process could be costly and time consuming. The exporter is always at a disadvantage vis-à-vis the buyer, as the president of ANECACAO pointed out. **They need to make an investment to have someone in the other country and do due diligence in case of malpractice**. **They would often prefer to**

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

maintain their current commercial relationships, comply with all the requirements and bear the costs, rather than go through a legal process that might somehow affect their image as exporters.

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 experiencing an unfair trading practice respondents agreed that the **first step would be to talk to the buyers and try to find a solution**. If this did not work, they would file a complaint with the enforcement authority and the relationship with their buyers would end. This is in line with what the representative from Germany mentioned, that they have found that suppliers prefer to deal with the buyer first before going to the authority, thus reducing the possibility of receiving complaints.

6. Conclusions

Limitations

Although some practices have been identified in the relationship between cocoa exporters and EU buyers, there is limited information available on the transaction and the contracts between the parties. This information is crucial for enforcement authorities to analyse and determine whether an unfair trade practice has occurred. However, reporting this information is essential as it provides scope for further research and analysis of what happens in this supply chain.

In addition, the interviews were conducted with a limited number of exporters and other stakeholders, which may also limit access to information on additional practices that are occurring in the supplier-buyer trade relationship.
This report cannot conclude on the impact of the unfair trade practices on the rest of the actors in the cocoa supply chain in Ecuador, on producers who are generally recognised as the weaker link in the chain.
Further research is needed, with a focus on other supply chains where unfair trade practices would be more evident.

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

Ecuador's cocoa export sector is mainly made up of large companies and some cooperatives of producers that have been in business for a number of years and have the experience, resources and infrastructure to meet the cocoa export standards required by the European Union.

Normally, the producer is not the exporter; in this sense, the producer is paid by the intermediary company that exports, and sometimes there is even more than one intermediary. The exporter is usually the actor who assumes the liability of the contract and is responsible in the event of a problem. Nevertheless, the cocoa supply chain involves several actors and it is crucial to understand its complexity in order to enforce any legislation. It is important to understand where the supplier's responsibility ends and where the EU buyer's responsibility begins when dealing with issues such as quality, contamination, etc.

Also, as dealing with international business, the directive will not be able to benefit the producers directly. Additional research would be needed to determine to what extent the protection it offers to exporters can have a positive impact on producers.

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

It is clear that Ecuadorian exporters are totally unaware of the directive and everything related to it, such as the authorities of each member state and the mechanisms available for lodging a complaint. Moreover, there is a lot of confusion between the different regulations that cocoa exporters and producers are obliged to comply with, such as the EUDR and the CSDDD. Therefore, exporters do not know how to enforce their rights. Information gathered from EU authorities shows that in some cases few claims are received each year (e.g. Germany and Belgium), suggesting that either the Directive is not known in the EU, or it is not effectively applied.

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

There are several different UTPs 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 that still occurs, and which was linked by the interviewees to the grey practice of returning unsold products, relates to the return of the product due to non-compliance with the parameters established in the contract (quality, contamination, non-compliance with organic certification). Ecuadorian exporters assume the risk of loss and deterioration from their buyers due to pesticide contamination and weight adjustment. As mentioned in the findings section, this could not be qualified as a UTP under the current Directive; however, there is a need to find mechanisms to address these practices rather through the UTP Directive or other means.
Another practice not included in the lists has been identified, was the fact that exporters cannot normally rely on long-term contracts. Exporters also face other challenges which are outside the scope of this study, but which most need to be addressed in further research, such as the cost of complying with all EU regulations and the pressure to maintain prices despite market price increases.

Mechanisms available would be used as a last resource

The results of the interview gave rise to the idea that the UTPs Directive could be an important tool for cocoa exporters to manage the complexity of the supply chain in order to reduce the number of actors and exert greater control over it. However, the cocoa exporters interviewed would use the complaint mechanisms as a last resort, after which they would prefer to terminate the commercial relationship with their buyer. A resolution by the EU authorities will end the unfair commercial practice and fine the buyer. However, in some Member States there will not be any restoration of the damage done to the seller, which will require a further legal action by the seller, incurring in additional costs and time-consuming processes. According to the Commission's report on the implementation of the UTP Directive 10 Member States provide for contract terms to be nullified, others such as Finland and Ireland provide for restitutionary measures and only Finland, France, Malta and Romania provide 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 in the same way that information is shared about the regulations or standards that cocoa exporters need to comply with in order to export their product to the European Union. This will allow non-EU suppliers to understand the mechanisms available to ensure their rights are respected, increasing transparency in supply chains and avoiding the use of power by larger buyers.

- **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 that are more sensible to be victims of unfair trading practices to make sure they are aware of the Directive and the protections it offers so 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 important to inform their beneficiaries** not only about the rules they need to comply with, but also about the mechanisms that can protect them and enforce their rights. Some cooperatives and associations in Ecuador collaborate with NGOs on certification and standards to be complied with, and it is important to organise information sessions on how to 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 is important to address issues like the black practice of 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.

- **Consider adding a general clause to assess imbalances in contractual relations.** For example, some Member States have introduced a prohibition on negotiating or enforcing contractual terms that create a significant imbalance in the rights and obligations of the contracting parties to the detriment of the supplier to address wider imbalances in contractual relations between the parties to a transaction.

- Further examination of the six 'grey' practices. For instance, not having **long-term contracts** should be considered as at least a 'grey' practice, to mitigate the fragility in the value chain that can affect exporters and have consequences for cocoa producers as well.

Additional mechanisms

- **Contracts for cocoa exports will have to be adapted to the Directive**. Otherwise, there will still be a high risk of unfair practices within the contracts between the parties. This could be done through referencing the UTPs Directive in the contract. The EU authorities could also work on official model contract format to be available for free download to users. The official format could also help to avoid doubt as to whether conditions will be accepted at European level. Moreover, the contracts from the International Chamber of Commerce or under the Federation of Cocoa Commerce (FCC) standards could include a reference about 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 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

It is important not to overlook the results of this study in reference to the challenges that cocoa producers and exporters in Ecuador are facing in relation to the implementation of other legislations such as the EUDR and the CSDDD.

It will be necessary to carry out further studies on the impact that these legislations may have in the future for the different actors of the cocoa value chain and other products from countries outside the European Union.

It is essential to reinforce the support to the actors outside the European Union for the correct implementation of the EU legislation and to ensure that the relevant benefits are reflected for the welfare of the actors, especially the most vulnerable ones.

8. Annexes

Profile of participants - Webinar 27 June 2024 - Via ZOOM		
Perfil participantes	**Sector**	**N° of participants**
Member association	Cocoa producers	1
Owner	Chocolate importer	1
Consultant	Consultancy office	2
General manager	Export of cocoa beans, derivatives and finished products	5
Exporter	Cocoa bean trader and exporter.	1
General manager	Purchase and wholesale of organic cocoa	3
Producer	Sale of cocoa	2
Sector Specialist	Public insitution	1
Assistant	Foundation	1
Technician	Agribusiness	1
Processes manager	NGO	1
Staff	Network that represents all Faritrade certified organizations	2
Trader	Broker	1
Researcher	Academia	1
Undentified	Undentified	3
Total		**26**

Interviews with cocoa exporters				
Date of interview	**Name**	**Organisation**	**Role**	**Activity**
05-Jun	Juan Touma	Hacienda San Jose	Exports manager	Producer & exporter
20-Jun	Freddy Cabello	UNOCACE	General Manager	Second grade cocoa producers' and exporters' association
04-Jul	Christopher Acosta	Global- Cocoa Ecuador S.A.S	Gerente comercial	Export of cocoa beans and semi-processed cocoa products, and finished products
03-Jul	Carmen Aspiazu	Ristokcacao	Jefe de exportaciones	Cocoa buyer
04-Jul	Ma.Luisa Bustamante	Nueva lechugal	Producer	Cocoa seller
05-Jul	Larry Vera	Maquita	Gerente Comercial	Export of cocoa beans and semi-processed cocoa products
10-Jul	Luis Javier Meza Cabrera	UOPROCAE	Quality assurance	Export of cocoa beans
22 Jul	Andres Guzman	Hacienda Victoria	General Manager	Producer and exporter
26 Jul	Jenny Samaniego	Conexion Chocolate	Founder	Chocolate producer - exporter
Interviews with cocoa experts				
Date of interview	**Name**	**Organisation**	**Role**	**Activity**
08-Jul	Merlyn Casanova	ANECACAO	President	Association of cocoa exporters
09-Jul	Antonie Fountain	VOICE Network	Managing Director	Spokesperson for civil society in cocoa
19-Jul	Jon Walker	Fairtrade International	Senior Advisor Cocoa	

Member States enforcement authorities contacted				
Country	**Has received complaints from non-EU suppliers**	**Has been in contact with non-EU suppliers**	**Website available in other languages**	**Mechanisms (ex. form) available in other languages**
The Netherlands	No	No	No	No
Spain	No	No	No	No
Belgium	No	No	Yes	Yes
Germany**	No	No	No	No
Italy	No	No	No	No

*Information requested via email and by visiting websites
**video-call with staff