



## **AHEC Comment on EU Deforestation Regulation**

### **Summary**

AHEC supports the new EU Deforestation Regulation (EUDR) in principle and notes that the need to develop mechanisms to avoid discrimination against smaller producers and SMEs is clearly stated in the preamble to the law. As currently drafted the EUDR requirement for “geolocation” to a “plot of land” would create a severe technical barrier to trade for the majority of small non-industrial forest operators and suppliers of hardwood lumber in the United States. But this barrier could be removed with just a minor amendment to the text of the EUDR involving introduction of a more inclusive definition of a “plot of land”. The alternative definition of “plot of land” proposed by AHEC would better reflect the reality of forest ownership around the world, help ensure EUDR is more equitable for smaller producers and SMEs, and encourage more widespread adoption of innovative jurisdictional-based certification frameworks. It would help to guarantee long-term secure and sustainable supplies of diverse hardwoods from smallholders in the United States and around the world, so that they continue to play an important role in reducing environmental impact and enhanced carbon storage in joinery, furniture, and other European product applications.

### **Support in principle**

In principle the EU Anti Deforestation legislation, first published as a draft regulation in November and now nearing the final stages of the EU law-making process, is a law that the U.S. hardwood sector would wish to support since:

- It aims to remove the products from deforested land from the EU market and makes clear in the preamble that “agricultural expansion drives 90% of global deforestation” .
- It is built on the concept of risk-based due diligence pioneered by AHEC in the Seneca Creek studies and which was the foundation of the EU Timber Regulation (EUTR), extending this powerful concept to control trade beyond timber to include agricultural commodities most implicated in deforestation.
- The need to develop mechanisms to avoid discrimination against smaller producers and SMEs is clearly stated in the preamble to the law.

### **Geolocation only issue of concern and with minor amendment would be a major strength**

The so-called “geolocation” requirement as currently stated under Article 9 of the draft Regulation would present a very significant technical obstacle to market access for American hardwood products that rely primarily on low intensity harvesting of small-scale family-owned forests.

However, just a minor adjustment to definitions would transform the “geolocation” requirement from a barrier into a mechanism encouraging innovative forms of risk-based jurisdictional certification.

**The problem definition: “plot of land”**

Article 9 sets out the information that operators must collect to “demonstrate that products are free of deforestation and forest degradation and produced in accordance with the relevant legislation of the country of production”. This includes “geolocation of all plots of land where the relevant commodities that the relevant product contains or has been made using were produced, as well as data or time range of production”. If a regulated product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different “plots of land” must be collected. A “plot of land” is defined in the draft Regulation as “within a single real-estate property”.

The requirement for geolocation is likely to be little or no obstacle for products from larger industrial or state forest operations, particularly plantations where each harvest produces a consistent species and grade of timber - i.e. where individual harvests are sufficiently large and/or homogeneous to pull together commercial consignments of the specific wood species and grades demanded by their EU customers.

However, a specific technical obstacle arises where there is harvesting of a diverse forest with highly fragmented ownership. These are exactly the conditions that prevail in the U.S. hardwood sector where more than 90% of supply is from low-intensity harvests of diverse semi-natural forest by non-industrial owners, mainly individuals and families. Each harvest produces only a small volume of timber, and that small volume is so diverse that it is destined for different mills and a wide range of applications. Each individual “plot of land” makes only a very small and transient contribution to the supply base.

Because harvest volumes from each plot of land are so small, a typical hardwood mill needs to purchase logs from several hundred forest owners each year within a 25 to 150 mile radius. The following year, that same mill will purchase from a different set of several hundred owners.

**Example: 400 timberland transactions per year and mixing logs cannot be avoided**

A typical example is a company operating three sawmills in Indiana with annual production of around 30 million board feet (71,000 m<sup>3</sup>), including a lot of quartersawn White Oak and thick Red Oak and White Oak, along with Walnut. This one company averages about 400 timberland transactions per year and does not anticipate purchasing timber from those same landowners again, as the ownership will almost certainly change before there is additional mature timber to harvest from those properties again.

The logs delivered to the mill, even from a single harvest, comprises different species, different sizes – both in terms of diameter and length – and different colours and textures. The mill must sort logs according by species, grade, length, width, and thickness on an accumulation basis until a bundle quantity is collected. One bundle will gradually accumulate from numerous shifts using many different parcels of logs. There may be over 100 sort combinations on the green (pre-drying) sawmill grading line alone. The wood may be sawn in a variety of ways for different markets and customers; plainsawn or flatsawn, quartersawn, or rift sawn.

Under the current draft legislation, even a small U.S. hardwood mill would likely be under an obligation to provide a list of at least several tens, and probably hundreds, of geolocations to identify the “plots of land” from which wood in each individual consignment might be derived. An exporter operating a concentration yard – purchasing from a range of sawmills and where additional sorts are often made to ensure each customer is supplied with wood of specific grain, quality, size, and colour

– will be required to provide a list of several hundred, perhaps even thousands, of plots of land with each consignment.

In practice, linking all these geolocations with individual consignments would quickly overwhelm the management systems of even the largest most sophisticated companies, let alone the relatively small, often family-run, enterprises that predominate in the U.S. hardwood sector.

If the regulation is adopted in its current form, the only American hardwood lumber likely to be available to EU buyers will be the around 10% of production from state-owned forest and the few areas of large industry lands. Log exports will be less affected, and in fact will be encouraged at the expense of lumber exports as the need for sorting and grading is much less.

### **Resolution: an equitable definition of “plot of land”**

This problem could be resolved for American hardwoods if the terminology surrounding “plot of land” were to be amended so that it is less discriminatory for small-scale non-industrial forest operations in diverse hardwood forests.

AHEC believes the regulation’s current definition of a “plot of land” as a “single real estate property” is inappropriate and will lead to discrimination against forest products from countries, like the U.S., where real estate is largely owned in small parcels by individuals, and favour products from countries, mainly in tropical and boreal forest regions, where ownership of all, or most, forest land is vested in the state and therefore is effectively a “single real estate property”.

Whereas for US hardwoods, each individual consignment delivered to the EU will require a record of hundreds of different geo-locations according to the current definition, in countries where all land is vested in the state, numerous consignments may be assigned to a single “plot of land” (i.e. all forestland owned by the state in the country, or at least in a single province).

AHEC firmly believes that rather than linking the geolocation data to a “single real estate property”, the definition of “plot of land” should aim to accommodate the wide range of forest ownership situations that occur in supply regions for regulated products. It should take account that in many countries there is no concept of “real estate” (which typically applies only to private property that can be bought and sold) in the context of forest lands primarily vested in the state or occupied by Indigenous Peoples. Particular care must be taken to ensure that the definition provides for equitable treatment of products sourced from smallholders, Indigenous Peoples, and local communities on the one hand, and large industry or state-owned forest on the other.

**Therefore AHEC recommends that the definition of “plot of land” be revised to read "an area of land delineated for geolocation and traceability purposes that consists of a single integrated management unit or, in the context of smallholders and local communities, a single jurisdictional area<sup>1</sup> or cooperative association, or in the context of Indigenous Peoples, a single tribal area or reservation".**

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<sup>1</sup> Note that a “jurisdictional area” is defined by the International Association of Prosecutors as “an area within a country having a system of criminal law and jurisdiction which is separate from another area or areas within that country or in which by reason of its being a state, province or territory in a federation is operated a system of criminal jurisdiction which is separate from that operated in another area within that country.” (Constitution International Association of Prosecutors, September 2016 (Dublin) [https://www.iap-association.org/getattachment/Resources-Documents/IAP-Constitution/IAP\\_Constitution\\_September-2016\\_Dublin\\_20162411.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documents/IAP-Constitution/IAP_Constitution_September-2016_Dublin_20162411.pdf.aspx))

