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Lynn L. Bergeson (LLB): Hello and welcome to *All Things Chemical*, a podcast produced by Bergeson & Campbell (B&C[®]), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week, I sat down with my colleague, L. Claire Hansen, a Legal Intern here at B&C and a Regulatory Analyst for The Acta Group (Acta[®]), B&C's consulting affiliate, to discuss the European Union (EU) Deforestation Regulation, otherwise known as EUDR. With its fast-approaching December 30, 2025, effective date, U.S. product exporters to the European market whose goods contain one of seven commodities -- including cocoa, coffee, cattle, palm oil, soy, wood, or rubber, and those products made from them, are listed in Annex 1 -- need to be keenly aware of this regulation and prepare to comply. I discuss with Claire the basic requirements of the regulation, who is in scope, the cost of noncompliance, and how best to prepare for the December 2025 effective date. Now, here's my conversation with Claire Hansen.

Claire, it is great to have you in the studio. We had a very successful, well-attended webinar a week or so ago on this important topic. Before we get to the EUDR and what it means to our listeners, maybe you can tell our listeners a little bit about yourself and your background.

L. Claire Hansen (LCH): I'd love to, Lynn. Thank you. I received my JD (doctor of law degree) recently from the American University Washington College of Law, and I've been clerking for this firm on and off now for about four years. While at American University, I was on the business law review, and I got to research some cutting-edge business law issues and even developed a symposium on environmental social governance, or ESG, as we in the community well know. I was also part of the Entrepreneurship Law Clinic at American University Law School, where I got to work closely with small business manufacturers developing global trade chains.

LLB: That makes you uniquely well suited to work in the space that we occupy, the intersection of law, business, chemicals, policy, and science. Let's talk a little bit about the EUDR. We

have been speaking about it quite a lot here at Acta and B&C. As I noted in my introductory remarks, we had a very well-attended webinar on August 5, which has been posted on our website. The topic was the EUDR. This soon-to-be effective program is, to my eye, Claire, not getting as much play here in the United States as I would have expected. The deadline for its effective date for a lot of our listeners is December 30 of this year. As you, I'm sure, will be telling our listeners, it is in effect now, but its practical application is about to be experienced much more broadly. Help us understand what is the EUDR, when does it become effective, and what that means, and what should U.S. entities know about it, and why should they care about it?

LCH: Very interesting that the EUDR has not been getting as much airtime in the United States as it apparently is getting in the EU. I think a lot of that is simply because a lot of people in the United States just don't think that the EUDR applies to them, which unfortunately is not necessarily the case. I think some of it may just be a fundamental misunderstanding of the regulation. I think there are also a number of competing business and regulatory obligations for businesses that are currently in effect right now, so something that is going into effect in four months is maybe not as top of mind.

LLB: Right. Although there are many distractions here in the United States. We have, and we'll talk a little bit about PFAS (per- and polyfluoroalkyl substances), and PFAS is not unrelated to EUDR at a very high conceptual level. But at a very real level, this fast-approaching December deadline has real application. Can you help us understand a little bit about who ought to be concerned and why?

LCH: Yes. Anyone who manufactures products that they are looking to sell to the European market or export from the European market is within scope of the EUDR, specifically, anyone who manufactures one of the seven commodities. As you mentioned, Lynn, coffee, cocoa, cattle, palm oil, soy, rubber, and wood are all within scope. To determine whether or not you are fully in scope, you're going to want to check Annex 1. And as you said, it becomes effective on December 30, 2025.

LLB: It's important, I think, for our listeners to understand it's those commodities and products derived from them. You said cattle. We're not talking about exporting cows to Europe. We're talking about any derivative product, like leather goods -- which is a big market -- from U.S. exporters into the EU and EU entities exporting out of the EU. This Annex 1 -- I think you'll talk about a little bit later -- but it's a very, very, very integral part of the EUDR. If your product code is not listed in Annex 1, even though you might otherwise be considered part of that commodity grouping, you don't have to worry about EUDR for now. Because the list is not static; it's very inclusive now. But if, again, you are exporting a product from the United States to the EU and fall within one of those seven commodity groupings, it's important to also know that you need to be listed in Annex 1 to be in scope.

LCH: Yes.

LLB: You mentioned that this is part of a growing trend of due diligence laws, which are especially popular in the EU, but to a certain extent, here too. I categorize these as kind of value chain governance programs designed to change behavior -- corporate purchasing, and distribution, and manufacturing habits -- by reaching beyond the national laws in which the country sponsoring the legislation might otherwise have immediate impact to influence. Can you tell us a little bit about what some of the controversy is with regard to EUDR as a value chain governance restriction?

LCH: Yes. Some of the issues that have given regulated entities a little bit of pause is just that the deforestation regulation goes beyond the boundaries of Europe. This is something that I think regulated entities are really struggling to navigate because they're having to adhere to regulatory landscapes that they're not used to necessarily dealing with. And I think that's part of why here in the United States, a lot of manufacturers don't necessarily know or are not aware of the fact that the EUDR may apply to them.

LLB: I think one of the aspects of what we'll talk about in terms of a due diligence statement, or a DDS, is the need to certify that the entity that you are, that's part of your supply chain, is compliant with all local laws and restrictions, which is a form of a governance program that some expect not so much to be borne by the private sector as much as the enforcement authorities within each of the states or regions that are part of a supply chain. So that DDS component is just an area of discussion that people are talking about. Part of our job here on *All Things Chemical* is to raise the issues that are part of the conversation right now. And as the EUDR is yet another value chain governance program, I think it's important to just speculate and think a little bit about how you go about certifying the compliance of a trading partner with the local laws that that entity is subject to in a country of origin, for example. It's an interesting topic and one that is generating controversy both here in the United States and elsewhere.

LCH: Yes. I think first, in order to understand the obligations of the DDS, it's really important for people to understand where they fall in the EUDR, mostly whether they are an operator or a trader, because your requirements are going to be slightly different under those two different categories.

LLB: My understanding is that traders are held to a slightly less rigorous standard than an operator?

LCH: Yes.

LLB: What is the difference between an operator and a trader under the EUDR?

LCH: An *operator* is a company that places a relevant commodity -- one of the seven listed commodities. Then again, that has to be on Annex 1. Anyone who places that commodity or product on the EU market or exports that product from the EU. That is how they categorize an operator. And then they categorize a *trader* as any company that makes one of the relevant products available on the EU market without being the first to place that product on the EU market or to export it from the EU market.

LLB: Got it.

LCH: That's going to be most relevant to many of our listeners here in the United States who may not be importing their products directly to the EU, but whose downstream suppliers may be putting their products on the EU market.

LLB: Maybe you can help us understand what some of the consequences are come 2026 of not adhering to these requirements. Is this something that is more aspirational, to follow the EUDR, but there's no real consequence for not observing the requirements? Is that the case, or are there real consequences for failing to supply a DDS, for example? Is that a prerequisite for importing products into the EU if you're a U.S. exporter?

LCH: If you are a trader, you do have slightly less reporting obligations, so you can depend on or rely upon a DDS from an upstream supplier. If you are an operator, you have to guarantee that all of the information from any upstream suppliers is completely accurate. The EUDR does not have any sort of *de minimis* or --

LLB: -- volume threshold?

LCH: -- volume threshold, or even just -- there's a certain level of acceptability of where we might not know the answer to some of these questions. And the EUDR doesn't really recognize that threshold in any capacity.

LLB: Some might consider it kind of a strict liability regulation.

LCH: It is a very strict requirement. And then in terms of consequences of noncompliance, they are rather strict. If you do not have a DDS and you are required to have one under the EUDR, then you may not import your goods to the EU or sell your goods from the EU. So that's a very strict --

LLB: Yes, that's pretty severe.

LCH: Yes.

LLB: That can take you *out* of business.

LCH: Yes. For those of you who may be upstream suppliers and you're like, "The EUDR doesn't apply to me." In some cases, that might be true, but if one of your downstream suppliers or one of your downstream purchasers would like to put your product on the European market, if you do not supply the necessary data that they need to be able to fill out a DDS, then that downstream purchaser will no longer be able to realistically purchase your supplies to put them on the European market.

LLB: And as I understand it too, Claire, there are monetary penalties that attach?

LCH: There are monetary penalties. There are maximum monetary fines of no less than four percent of EU turnover. There is the possibility of confiscation of both goods and revenue generated from the product, and you could be excluded from public procurement funding. And that's not to mention at all the reputational implications of noncompliance.

LLB: Right, which are not to be underestimated.

LCH: No.

LLB: Maybe we can back up a minute and talk about deforestation writ large. Why is this an issue? What is this EUDR intending to achieve?

LCH: The EUDR has a relatively lofty goal of reducing the level that the EU is contributing to overall deforestation globally. That's to protect both biodiversity, which is important to -- the EU has stated that that's something that's important to everyone within the EU, and then also to promote the reduction of greenhouse gas emissions.

LLB: Got it. As I understand it, the EUDR doesn't necessarily replace but augments significantly the EUTR (EU Timber Regulation). It's not as though some of these requirements, or the

concept, of EUDR is new. The EUTR was implemented a number of years ago, and this greatly expands that by including commodities other than timber or wood, as we refer to it here.

LCH: Yes, and the reporting obligations are much more stringent under the EUDR than under the EUTR.

LLB: As I understand it too, the EUDR was intended to go into effect last year, but there was a bit of a reprieve at the last minute, correct?

LCH: Yes, there was. There were many, many entities, including the United States, that reached out to members of the European Commission (EC), which was in charge of implementing the EUDR and requested an extension. Part of that was just that there were a lot of data that regulated entities didn't have access to that they would have liked to have had access to prior to the regulation going into effect. Originally, the regulation was supposed to go into effect December 30, 2024. I think about a week before its implementation, the EC said, "No, we're going to delay this a year."

LLB: Whew!

LCH: Yes, that was kind of a global relief for many of the regulated entities all around the world. This was in part because the Biden Administration reached out and requested a two-year extension. The EC said, "We're going to give a one-year extension," because a number of the high-risk, low-risk, and standard-risk countries had yet to be identified, and so all of the countries were just given a standard level of risk. Now, as of April of this past year, we do know what the high-risk, low-risk, and standard-risk countries are. I'm not going to name them all here because there are too many countries to name. But they can be found on the EUDR high-risk, low-risk, and standard-risk countries.

LLB: I think we made a copy or made available the link to the press release that the EC released in April when the four -- is it four countries? -- that were identified as high risk were identified?

LCH: Yes.

LLB: What countries are those?

LCH: Those countries are Russia, Belarus, Myanmar, and North Korea.

LLB: As I understand it, exports -- if you have a product that falls within scope of the EUDR that is sourced from those jurisdictions, those are *per se* prohibited?

LCH: They are subject to higher regulatory scrutiny. A higher percentage of the products that come from the high-risk countries will be subject to those checks, whereas products from low-risk countries receive very few checks in comparison.

LLB: Understandably so. They're not prohibited if you're high risk. You're saying that they're subject to greater enforcement risk. But would they be confiscated at the border as being noncompliant because they're from a high-risk area?

LCH: That really depends on whether or not the goods were harvested from those countries. If timber, for example, were harvested from Belarus, it's not necessarily that you couldn't

import that good. You would just have to demonstrate that the company that is importing that product is engaged in initiatives to reduce deforestation, and so there's just a much higher due diligence threshold to demonstrate compliance. It's not that it's absolutely prohibited. It *may* be prohibited if the EU determines that your deforestation reduction actions are not sufficient. It's not prohibited, but it's definitely --

LLB: It adds an element of business uncertainty that is intended, I think, to be an action-forging consequence, but also could cause someone to discontinue purchasing from a source that it hasn't made that requisite demonstration of trying to have a level of activities that don't contribute to deforestation aligned with the goals of the law. Correct?

LCH: Yes. And I think that there could be many manufacturers or harvesters of the raw goods who move their efforts to another country entirely, possibly --

LLB: -- which is probably a goal of the EUDR.

LCH: To some extent, yes. Right.

LLB: I mean if you're trying to influence business activities to discontinued deforestation consequences, then a logical outcome of that is to have the offending operations move. Right?

LCH: Yes. Another really important aspect of the EUDR is that you have to be compliant with the laws of the country from which the goods were harvested. That plays a little bit of a role in terms of how countries were listed as low-risk, standard-risk, or high-risk; it's just based on the level of regulation that already exists within the country. So there could be countries that change their regulations in an effort to become more compliant with the EUDR so that they have stricter deforestation standards or stricter benchmarking requirements. And for any of the countries that are reducing benchmarking requirements or that are reducing the level of transparency of greenhouse gas emissions, or any of the benchmarks that are listed under the EUDR, that's something that could cause that country to be listed as from low risk to standard risk or from standard risk to high risk. So that's just something to be aware of.

LLB: They're fascinating to me because they really are action-forging value judgments regarding a country's ability to pivot to activities that are deemed by the EU to cause deforestation. So certifying compliance with local laws and restrictions -- I don't know how you do that, but I know we talk a little bit more about that in our webinar. But the concept is just fascinating, to be imposing these compliance checks not on the government, which is its historic role, but rather on the private sector to ensure that trading partners and stakeholders writ large are all compliant. It's a fascinating shift in law, and regulation, and public policy that is much more prevalent, certainly, in the EU than it is elsewhere in the world.

LCH: Yes, but that's not to say that it doesn't occur elsewhere in the world. For example, the [U.S.] Toxic Substances Control Act (TSCA) [Section] 8(a)(7) reporting requirements for PFAS, those are going to be held primarily by the private sector. The reporting obligations will of course go to the government.

LLB: The reported information, right?

LCH: The reported information.

LLB: But it will be also publicly available.

LCH: And it will be publicly available. But this is -- the EUDR's due diligence requirements may be the first of their kind for these specific commodities. But due diligence of this nature is not new for the regulated community.

LLB: No, it's a great segue into my next question, which -- you talked during the webinar about looking at these requirements in a way that is most favorable to the country initiating these regulations -- how do we make lemonade from lemons? I think what you talked about was a lot of people are like, "Oh my God. Here's another very significant regulation that is likely to impose significant due diligence and other reporting obligations on U.S. exporters into the European market if you're in scope."

But there are upsides to this, right? You alluded to that a minute ago, Claire, when you said the TSCA 8(a)(7) reporting obligation really requires that U.S. entities that are importing products know if there is a PFAS component to that product, and to engage in due diligence activities commensurate with TSCA Section 8, to figure out whether there are PFAS in your product that is imported, which has inspired *much* more communication between and among product manufacturers and their upstream suppliers, which personally I think is a good thing and part of a growing trend to really understand what's in your product, who's using it, where did the product components come from. To some extent, EUDR is just an extension of that logic, correct?

LCH: Yes, yes. I think there are a number of reasons why these regulatory compliance goals are coming out from a number of governmental entities, whether it's from the EU or whether it's from the United States or Canada. I think some of that is so that countries have a better sense of how to achieve some of their greenhouse gas emissions goals for 2050, or so that countries can be better aware of how to meet various sustainability goals as they've stated they would like to have them, and even so that countries can be compliant with the Paris Climate Accord, which is mentioned in the EUDR.

LLB: I'm sure it is, yes. It's, again, one of those overarching goals that drives so many of the EU's regulatory initiatives in the environmental area.

LCH: Exactly. I think just having access to greater data so that countries can better report out their compliance with some of these goals has been some of the driving force behind gaining supply chain transparency writ large. But going back to your question about how to make lemonade from lemons, I think we can look at some of these regulatory fact-finding requirements as just another burden, or we can look at them as an opportunity. While some of the TSCA -- actually the TSCA 8(a)(7) requirement has an 11-year lookback period, so it wouldn't even be an overlap with the EUDR in terms of your dates and deadlines.

The more that you have to go back to your supply chains and work with your supply chains to determine whether or not your products are -- meet the requirements to be sold in whatever country --

LLB: -- particular jurisdiction, right?

LCH: It's just really important to know your supply chain, both upstream and downstream. The European deforestation regulation sets out a really clear standard for companies to know their upstream and downstream suppliers and where any of these commodities may come into contact or may become part of the product that they are wishing to sell.

LLB: I think that's a very important point, that supply chain transparency is here to stay. We've seen countless examples of that in our practice here. Right at the beginning of the pandemic in 2020 and 2021, the PBT (persistent, bioaccumulative, and toxic) rules came out, which means any imported product that contained any of the five PBT chemicals had very specific restrictions that limited market access here in the United States. You've already mentioned PFAS, the ability to know what your products contain as an imported product. If there's any PFAS -- as defined under the U.S. restriction -- you need to know that for purposes of 8(a)(7) reporting. Significant new use rules (SNUR) under TSCA, they are coming out fast and furious, and that's unlikely to change going forward. Any product that is being marketed globally but imported into the United States -- and with EUDR, exported *to* the EU -- knowing each and every component in that product is essential. Knowing your suppliers, establishing a dialog with them, ensuring that you're on the same page, establishing contract terms and provisions that reflect that shared understanding. Those are all just new business normal conditions.

LCH: Yes. And something that we have worked with, not just in the firm here, but something that I think is just shared across the regulated community as a whole, is just sometimes working with upstream suppliers and getting upstream suppliers to respond to some of these reporting requirements can be --

LLB: -- frustrating.

LCH: Frustrating or tricky. And under the EUDR, if the companies wish to continue selling their products to the markets they are currently selling them to, they better respond to some of these requests for information. Otherwise, they will not be able to continue selling their products downstream. It's almost an incentive for all of these suppliers to work together and communicate with each other to a greater degree than I think some of the other previous regulatory requirements have.

LLB: Agree. There are many interesting discussions going on in the literature regarding the EUDR. Will it work? Will it disproportionately disadvantage smaller entities in any of these supply chains involving the seven commodities at issue? Is it right to be hoisting due diligence and compliance obligations onto the private sector, away from enforcement authorities in the countries where these products are manufactured? They're all very interesting questions that are likely to be answered over the next several years. I would imagine the EUDR will be tweaked by the EC in response to what's working, what's not. The commodity list might expand, unlikely to contract.

LCH: I think it's unlikely to contract, but some of the specific products listed in the annex could change.

LLB: Exactly, exactly. Well, if you were sitting down with a client, Claire, and the client asked, "What do you suggest I do to become well situated to comply with the December 30, 2025, deadline?" what would you tell them?

LCH: First and foremost, it's important to know your supply chain. Know where your products are coming from. For manufacturers that are located solely in the United States, it's important to know where your products are going *to*, because not everyone necessarily knows that their products could be going to the European market. This gives them the opportunity to learn where their products may fall within the supply chain, within the global supply chain.

- LLB:** If I were suggesting materials for clients to review, I would be pointing them to our EUDR webinar.
- LCH:** Yes. Actually, within that, there was a list of resources that I believe we published alongside that webinar. And those resources are kind of your Bible to understanding the EUDR. It lists -- if you have any questions about whether or not your product is in scope or out of scope, there's a very useful but lengthy FAQ (frequently asked questions) that can help manufacturers and suppliers understand what is in scope or what is not in scope, to a better degree than just the EUDR on its own, which is a little broad and is a little bit more vague.
- LLB:** We listed the FAQ that came out in April. I think the webinar presentations themselves are excellent. Your presentation is excellent. Our colleague from EPPA. Preferred by Nature also has a really extraordinarily detailed overview of how EUDR works. We list, as I already mentioned, the EC press release identifying the four high-risk countries, and of course, the all-important Annex 1.
- LCH:** Yes, which is at the end. For those of you who are looking for Annex 1 and may be having trouble finding it, it is at the end of the EUDR. If you just scroll all the way down to the bottom, you will find Annex 1. It's very important. By and large, I'm sure someone has taken it and put it into a freestanding link. Yes, as a freestanding thing. But if you're looking for it, just know that it's inherently a part of the EUDR language.
- LLB:** It's important because you can have a commodity that is in fact derived from wood, for example, but if it's not listed in Annex 1, you're out of scope. Can you give an example of that, Claire?
- LCH:** We actually had someone during the EUDR webinar reach out and ask if tallow was a relevant product under the EU commodity. There are only ten specific products listed under cattle. While various types of meat are listed, and definitely leather -- leather is a big one -- it does not appear as though tallow in and of itself is listed as a relevant commodity.
- LLB:** Tallow as a frequent component of soap would be important for companies that are manufacturing soap products here in the United States containing tallow. But if it's not listed in Annex 1, you're out of scope. You don't have to worry about it.
- LCH:** Same thing with milk. Milk is not listed.
- LLB:** Clearly a product of cattle.
- LCH:** Well, not necessarily. It's not just cattle, but yes, any milk that comes from cattle is not in scope.
- LLB:** Got it. Those are two of many examples where you really need to be mindful of what is listed specifically in Annex 1 before determining whether you are further engaged in or need to be engaged in compliance for EUDR purposes.
- LCH:** Yes. Another aspect that came up a lot on the webinar in terms of the questions that we were asked was is packaging in scope, and --
- LLB:** Like cardboard packaging, which is a wood product?

LCH: Yes, any type of packaging. Really the way to answer that question is whether or not the packaging is the product. If you're selling a bunch of cardboard boxes to Amazon, for example, to sell -- so that they can distribute their products in packages later, the people who are using your products as packaging would not be required to report, but you would be required to report because the package *is* the product.

LLB: Right, got it.

LCH: But if you are just using a cardboard box to ship coffee in, for example, then the cardboard box would be out of scope. And this is the same for wood pallets or other -- typically, the shipping products are made out of wood.

LLB: Right. I recall that as being a very important change in the FAQ that was articulated in April this year. Everyone breathed a collective sigh of relief when packaging that falls into the commodity of wood or timber is out of scope if it's used as packaging only and is not the product itself.

LCH: Yes. Right.

LLB: Got it. Good tip. Anything else you think our listeners should be aware of as they struggle to come on completely aware of EUDR and determine whether or not it applies to their export operations?

LCH: As noted earlier, I think it's really important that anyone who may fall under the scope of the EUDR just pays attention to the regulation because it could shift. Countries that are listed as low risk or standard risk or high risk, those designations could change going forward. As we discussed earlier, the products themselves could change. They could either broaden, or some of the commodities, it could turn out that they weren't substantially contributing to deforestation, and so they could be removed from Annex 1.

LLB: Any shot at all, this is going to get kicked down the road again, to a 2027 effective date?

LCH: From my understanding, no. That has to do with the way that the European Council regulatory actions are. The way that it works is that it's already been kicked down the road once or twice -- it's already been kicked down the road twice. If it were going to be kicked down the road again, the entire initiative would have to be reintroduced.

LLB: Oh dear.

LCH: And there's already been so much work.

LLB: Right. Not likely to happen.

LCH: I think it's very unlikely to happen. Right. Is it possible? Technically, but very, very unlikely, just given the amount of work, and due diligence, and time that the EC has spent implementing this.

LLB: Yes, this has been a work in progress for years.

LCH: Yes.

LLB: So possible but not probable.

LCH: Yes.

LLB: Claire, it's been a delight chatting with you. Thank you for sharing your insights on the EUDR. I would point people to our webinar materials: the slides, the recording, the listing of Annex 1, and the other materials that we've already noted. It should give you a pretty good sense of what's in your future if you are exporting some of these products. We urge you to take a look at what's online. If you have any questions at all, give Claire a call.

Thank you, Claire, for joining us today. We really appreciate your insights.

LCH: Happy to be here. Thank you, Lynn.

LLB: Thank you. My thanks again to Claire for speaking with me today about the EUDR and why it is so impactful on U.S. exporters to the EU. While this is an EU regulation, it has broad application around the world.

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