



## **GREENWASHING: TRADE FINANCE AND THE AGRI-SECTOR**

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**Trade finance and the agricultural sector together have an important role to play in tackling climate change and the rise of green and sustainability linked trade finance instruments is a natural and very welcome development.**

However, as these products have surged in popularity, so too have risks of greenwashing, which hurts investors as well as those companies engaged in genuinely sustainable activities or financings.

Until recently, there have been relatively few consequences for companies that engage in greenwashing. That is changing and we are now seeing an increase in regulatory activity. A package of EU regulations and directives relating to sustainable finance,

including the EU taxonomy<sup>1</sup>, the recently enacted CSRD<sup>2</sup>, and the proposed Green Claims Directive<sup>3</sup>, already provide tools for holding companies to account for their sustainability and green claims. In addition, there are increased transparency and due diligence requirements facing the agri-sector, for example, under the new EU Deforestation Regulation<sup>4</sup>.

In a significant recent development, the UK Financial Conduct Authority (**FCA**) announced plans to publish rules to tackle greenwashing. Its proposals include a general 'anti-greenwashing' rule to apply to all regulated firms, including those providing trade finance products. The FCA's consultation on its plans closed in January 2023 and its policy statement is expected in Q3 of 2023. Swiss financial regulator FINMA has also expressed its aim to clamp down on greenwashing ("*ecoblanchiment*") with a focus on the Swiss asset management sector<sup>5</sup>. Other jurisdictions are implementing similar rules.

### How can the agri-sector reduce the risk of greenwashing accusations in trade finance?

Until there are clear rules and market standards to regulate sustainable trade finance instruments, market participants should exercise caution over greenwashing risks.

Some guidance is available from the Loan Market Association (**LMA**). It publishes guidelines with principles for selecting and calibrating targets in sustainability linked loans (**SSILs**),<sup>6</sup> which are increasingly used in the agri-trading sector for trade finance and working capital purposes. Sustainability targets embedded in these products should be selected extremely carefully to ensure that they are material, robust and meaningful.

In May 2023, the LMA published draft clauses for SSILs. This is the first time the sustainable loan market has seen

an attempt to create standardised wording for products including, for the first time, the concept of 'declassification'. One of the aims is to help protect the legitimacy of the sustainable loan market by reducing the risk that loans are susceptible to greenwashing claims.

Despite the boom in the SSIL market, there is little market guidance on the use of other trade finance instruments which may be linked to, or include, sustainability goals and criteria. For example, in the agri-sector, banks may issue letters of credit with sustainability linkages. These instruments may require the underlying goods to be certified under various sustainability standards, for example, palm oil certified under the RSPO Certification scheme<sup>7</sup> or cotton certified under the Better Cotton Initiative<sup>8</sup>.

Aside from setting robust and meaningful sustainability targets and complying with any specific guidance, traders should beware of making broader sustainability assertions in relation to their trade finance products. It is crucial to ensure any claims can be backed up. Discussions and cooperation with banks in the sector are an integral part of the process, however, traders should take care not to rely on a financier's own sustainability frameworks when making sustainability or green assertions about a trade finance product or underlying goods.

We recommend the following:

- **Ensure** any green or sustainability-related claims are specific and verifiable.
- **Be cautious** of making broad claims about the 'sustainability' of financed commodities, or your business. The way some banks label them may not necessarily match investor or regulator views of sustainable or green products. If the goods being financed are certified under

specific sustainability standards, limit any claims you make to your compliance with those standards.

- **Check** that your sustainability claims can be backed up. Have processes in place to ensure that financed goods comply with any sustainability standards you are asserting in your loan or other trade finance documents and that compliance can be verified.
- **Check** the internal verification process for sustainability assertions made in your business. Does the relevant legal, marketing or business team have the necessary information and authority to make them? Should C-suite review be mandatory?
- **Be aware** of any voluntary guidelines that your lender and other stakeholders may expect you to follow. For example, for loan products which incorporate sustainability incentives, the LMA's voluntary principles require KPIs relating to sustainability to be material, robust, ambitious and meaningful.
- **Get specific advice** on the wording of any sustainability assertions you make.
- **Review** how legal liability is allocated in the event of a greenwashing claim. For example, who is liable in the case of fraud or error in the sustainability criteria or certification process?

For further information please contact:



#### JASON MARETT

Senior Associate, Geneva

T +41 (0)22 322 4840

E jason.marett@hfw.com

1 Regulation (EU) 2020/852 and amending Regulation (EU) 2019/2088 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852>)

2 [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en)

3 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0166&from=EN>

4 [https://environment.ec.europa.eu/topics/forests/deforestation/deforestation-free-products\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/deforestation-free-products_en)

5 [https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmittelungen/20211103-finma-aufsichtsmittelung-05-2021.pdf?sc\\_lang=en&hash=7F911020E829EA5910FF903AF851B2F3](https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmittelungen/20211103-finma-aufsichtsmittelung-05-2021.pdf?sc_lang=en&hash=7F911020E829EA5910FF903AF851B2F3)

6 <https://www.lma.eu.com/sustainable-lending/documents#sustainabilitylinked-loan-principles140>

7 <https://rspo.org/as-an-organisation/certification/>

8 [https://bettercotton.org/wp-content/uploads/2023/04/SA-ASP\\_Assessment\\_2023\\_P.pdf](https://bettercotton.org/wp-content/uploads/2023/04/SA-ASP_Assessment_2023_P.pdf)



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