

Exceptions

Explanatory Document

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1 Purpose

FLOCERT is authorized to grant exceptions from Fairtrade Standard requirements in line with the Fairtrade International Exceptions Policy. This Explanatory Document describes exception types and the process. It lays out the conditions based on which FLOCERT decides whether or not to grant an exception request.

2 Area of Application

This document applies to certified customers applying for an exception or derogation and to all Certification staff at FLOCERT.

3 Process

If you want to apply for an exception, please get in touch with your contact person at FLOCERT who will handle your request. You will have to fill in an application form and pay an administrative fee with your next annual invoice. FLOCERT will inform you of the result of your request (approval or denial, conditions, duration) within two weeks after you have officially submitted your request. During your next audit, FLOCERT will check that you have complied with the conditions linked to the exception.

An exception decision cannot be appealed.

4 Category A exceptions: generally accepted deviations from base rules

In the following scenarios exceptions may be granted by FLOCERT¹. The decision whether or not an exception request is granted will be mainly based on the conditions described below. Please note that there might be additional circumstances (like recurrence of the same exception topic, non-compliance with conditions of previously granted exceptions) leading to a denial of an exception request.

4.1 Retro-certification²

Retro-certification is converting a product bought under ordinary conditions (non-certified) from a Fairtrade certified producer or conveyor into a Fairtrade certified product by paying the Fairtrade price and premium. Retro-certification may also be applied if the producer / trader gets its Permission To Trade shortly (maximum 12 months) after the product had been sold / bought.

FLOCERT may approve requests for retro-certification under the following circumstances:

You were not able to originally purchase the product as Fairtrade.

And if following conditions are met:

- It is a temporary measure (e.g. related to the launch of a new product, product from a newly certified producer bought before certification of the producer).
- You provide the calculation of the price shortfall (= Fairtrade Price– price paid) and the balance owing (= price shortfall x quantity / volume bought + Fairtrade Premium x quantity / volume bought) in the application form.
- Together with the application form you provide
 - documentary evidence for the consignment (purchase contract with producer, bill of lading / airway bill / delivery note as applicable, invoice)
 - proof of payment for the consignment that you originally bought as non-Fairtrade.
- There will be a long-term benefit to Fairtrade producers.

¹ Please note that in other situations (e.g. non-FT product in food composite products, flower bouquets) you may need to apply for an exception with the responsible NFO.

² Systemic retro-certification of the following products is allowed by the respective Fairtrade Product Standard and therefore not considered an exception: tea of the *camellia sinensis* plant, sugar and fresh fruit.

Once the request has been approved, you have to ensure the following:

- Comply with the conditions laid out in the granting letter.
- Notify the supplier of the retro-certification and the amount owed and ask for an invoice for the same.
- Pay the amount owed within the normal payment terms. This amount must include the Fairtrade Premium owed.
- Include retro-certified volumes in the quarterly transaction reporting to FLOCERT.

4.2 Product Compensation

Product compensation is converting a product bought under ordinary conditions (non-certified) from a non-certified supplier, into a Fairtrade certified product by purchasing the equivalent quantity and quality from a Fairtrade certified source at a later date, which is then used as a non-certified product.

FLOCERT may grant a request for product compensation under the following circumstances:

- You are not able to source the product in question as Fairtrade certified due to reasons beyond your control (e.g. drought or other natural disasters, strikes, war, or similar).
- Planning for purchasing the product in question as Fairtrade was not possible e.g. due to new product launch, supply shortage; contracts not fulfilled by suppliers, but Fairtrade product needed in the market.
- Retro-certification is not possible
- As part of a corrective measure proposal to correct a negative mass balance discovered during an audit, but only under the following conditions:
 - a. The request for an exception (product compensation) can only be a part of the corrective measure suggestion. The corrective measure suggestions thus need to take additional measures into account, especially with regards to measures to be taken in order to prevent a similar situation to reoccur
 - b. The compensating purchase cannot be conducted within the regular workflow deadlines for submission of objective evidence (i.e. 4 months for producers and 45 days for traders), due to large volumes, seasonality of the product or quality aspects ('like for like').

And if following conditions are met:

- You will be able to source the product in question as Fairtrade certified in sufficient quantities within the timeline defined by FLOCERT (max. one year) not only to make compensation but also to fulfil the ongoing product needs.
- You cannot produce the final product without the product input in question.
- In case of composite products: The total Fairtrade content of the affected composite product still reaches the minimum threshold of 20 %.

Once the request has been approved, you have to ensure the following:

- Comply with the conditions laid out in the granting letter.
- Inform your customer(s) about the product compensation.
- Purchase the compensating Fairtrade certified product until the date indicated in the granting letter (within max. one year).
- The Fairtrade certified product purchased at the later stage is of the same kind and quality as the non-Fairtrade product used (like for like).
- Keep documentary records to enable the product compensation transactions to be audited and to demonstrate traceability.

4.3 Food composite ingredients

Exceptions for the use of a non-certified ingredient in place of a certified ingredient in food composite *ingredients* are granted by FLOCERT. The same type of exception for food composite *products* is granted by the responsible National Fairtrade Organization (NFO). However, it is not necessary to request an exception with FLOCERT and with the NFO. Therefore, please check with your supplier / buyer if an exception has already been requested.

FLOCERT may grant this exception³ in line with the Fairtrade Trader Standard requirement 2.2.4:

- a) Supply shortage: You provisionally cannot source Fairtrade ingredients for reasons beyond your control, e.g. drought or other natural disasters, strikes, war or similar.
- b) Inadequate quality: The quality of Fairtrade ingredients available causes insurmountable technical problems.
- c) New standard⁴: If sourcing problems persist after 2 years of publication of a new product standard.
- d) Unavailable ingredient: The ingredient or derivative in question for which a Fairtrade standard exists is currently not sold / processed by any trader as Fairtrade. A list of unavailable Fairtrade ingredients is published on the [Fairtrade website](#). Note: FLOCERT will not invoice an exception fee in this case.

Special cases

- If you produce food composite ingredients and use these in the manufacturing of a consumer ready product that you produce on behalf of a licensee, the exception request needs to be addressed to the responsible National Fairtrade Organization (NFO).
- If your request is related to the following⁵, the decision will be taken by Fairtrade International's Exception Committee. Therefore, you need to direct your request to Fairtrade International's Exception Committee (exceptions@fairtrade.net).
 - a) Transitioning ingredient: You cannot fully source an ingredient as Fairtrade although the ingredient is generally available and being sold / processed as Fairtrade. However, volumes are insufficient for your needs. You need to have an agreed written plan for the ingredient to become 100% Fairtrade.
 - b) Provenance: For ingredients holding a provenance certification (e.g. Appellation d'origine contrôlée, Denominación de origen, etc.) you have to indicate the ingredient claiming provenance as an exception on the back of the pack.

Once the request has been approved, you have to ensure the following:

- Comply with the conditions laid out in the granting letter.
- Inform your customer(s) about the exception.
- After the period the exception has been granted for you provide evidence that Fairtrade ingredients are now in use.

4.4 Physical traceability for composite products

FLOCERT may grant exceptions for physical traceability for composite products in line with Fairtrade Trader Standard requirement 2.1.7 under following circumstances:

The composite product contains physically traceable and non-physically traceable ingredients.

And if following conditions are met:

- You prove that traceability is lost due to technical reasons.
- You comply with the conditions laid out in the granting letter.

This type of exception will be valid for a maximum of 1 year.

³ In the Fairtrade Trader Standard referred to as *Type I* exceptions.

⁴ When a new product standard is published, an exception of 2 years is automatically granted to all current Fairtrade traders to allow time for sourcing the new ingredient.

⁵ In the Fairtrade Trader Standard referred to as *Type II* exceptions.

4.5 Overtime and rest day exceptions: Hired Labour Standard

FLOCERT may grant exceptions regarding overtime and rest days in line with Hired Labour Standard requirement 3.5.10 and under following circumstances:

You face an exceptional circumstance (e.g. peak production periods or changing weather conditions) requiring a deviation from overtime or rest day regulations.

And if following conditions are met:

- You hand in the exception request and it is approved before the actual overtime or rest day exception occurs.
- Your request does not exceed the maximums defined in the Hired Labour Standard (max. 14 hours of work per day **OR** max. 72 hours of work per week **OR** max. 18 continuous working days without rest).
- Your request is not in contradiction with national legislation⁶.

Once the request has been approved, you have to ensure the following:

- Comply with the conditions laid out in the granting letter.
- Compensate overtime at a premium rate as defined in the Hired Labour Standard.
- Agreed and legally stipulated lunch and work breaks are observed.
- Maintain adequate records to verify compliance.

This type of exception will be valid for a maximum of 12 weeks per calendar year.

4.6 50% Cash distribution of Fairtrade Premium Money in Hired Labour

FLOCERT may grant exceptions if you want to use 50% of the Fairtrade Premium for cash distribution in line with the Hired Labour requirement 2.1.20 and under following circumstances:

You face an exceptional circumstance like a majority of migrant workers in the work force that cannot benefit from Fairtrade Premium projects or an emergency situation.

And if following conditions are met:

- You hand in the exception request and it is approved before the actual cash distribution takes place.
- You comply with all requirements regarding Fairtrade Premium expenditure.
- Cash distribution is allowable under national legislation.

Once the request has been approved, you have to ensure the following:

- Comply with the conditions laid out in the granting letter.
- Maintain adequate records to verify compliance.

⁶ In case local legislation requires approval from the authorities, the approval needs to be handed in with the exception request. If approval is not yet confirmed by authorities, proof of the request to the authorities needs to be handed in.

4.7 Mining in protected areas

FLOCERT may grant exceptions for mining in protected areas in line with requirement 3.2.21 of the Fairtrade Standard for Artisanal and Small-scale Mining.

And if following conditions are met:

- Mining in protected areas has already been taken place with the relevant permissions before applying for Fairtrade Certification.
- You hand in the exception request together with your application for Fairtrade certification.
- Together with your exception request you hand in evidence of authorization from the relevant authority, an environmental impact assessment, an environmental mitigation plan and evidence that you have been operating with a legal permit and under the monitoring of local authorities for at least five years.

Once the request has been approved, you have to ensure the following:

- Comply with the conditions laid out in the granting letter.
- Maintain adequate records to verify compliance.

4.8 Maximum land size for wine grape producers and Cane Sugar (SPO)

FLOCERT may grant exceptions for SPOs in line with requirement 1.1.2 of the Fairtrade Fresh Fruit Standard, requirement 1.1.1 of the Fairtrade Cane Sugar Standard and under following conditions:

In case local legislation, production and processing methods, soil fertility or other product and regional circumstances require a larger cultivation area for the Fairtrade crop, you can apply for an exception to the certification body before including larger members.

The following conditions need to be met:

- Not more than 15 % of members have a land size above 30 hectares
- The maximum size of the land where members cultivate Fairtrade product cannot be higher than 100ha in any case
- Cane sugar: the organization requesting an exception is based in Belize, Fiji, Mauritius or Paraguay

The organization presents proof that the inclusion of members with more than 30 hectares is necessary, including as a minimum:

- evidence that the average farm of small- scale producers in the region and for the product in question is higher than 30has (e.g. statistics)
- evidence that due to lower productivity/production methods a bigger farm size is needed.

Once the request has been approved, you have to ensure the following:

- Comply with the conditions laid out in the granting letter.
- Maintain adequate records to verify compliance.

5 Category B exceptions: particular circumstances

Particular circumstances may make the full application of Standard requirements contrary to the intension of the standard or the mission of Fairtrade International. Category B exceptions are classified as particular circumstances that cannot be classified within the exceptions described in category A. In the below listed cases, FLOCERT may grant exceptions from Standard requirements.

- Force majeure situations (natural or manmade disasters),
- Other unforeseen events outside of the control of your organization (such as changes in legislation, pest outbreaks, abrupt prices changes)
- Specific organizational, environmental, social or technical conditions of a particular case that make it exceptionally and justifiable different from other cases.
- The opportunity to bring substantial benefits to producers and workers via Fairtrade sales is made impossible by the application of a particular standard requirement.

And if following conditions are met:

- You hand in the exception request and it is approved before you actually deviate from the Standard requirement in question.
- It is a temporary measure.

Notes:

- Depending on complexity or sensitivity of the request, FLOCERT may refer the case to Fairtrade International's Exceptions Committee for decision.
- Exceptions fees will be added to the next invoice.

6 References

- Fairtrade International Exceptions Policy
- Exception Application forms
- Fee structure documents
- Fairtrade Standard for Traders
- Fairtrade Standard for Small Producer Organizations
- Fairtrade Standard for Hired Labour
- Fairtrade Standard for Contract Production
- Fairtrade Standard for Gold and Associated Precious Metals