

THE IMPACT OF THE EUROPEAN DEFORESTATION-FREE REGULATION ON TRADE RELATIONS WITH SOUTHEAST ASIA

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Abstract

As political and trade ties deepen between the European Union (EU) and Southeast Asia, new challenges have surfaced where EU trade laws and extraterritorial regulations intersect with social and environmental concerns. The EU must balance these with the development goals of its interregional partners. Notably, the EU's sustainable forest policies have strained relations with palm-oil producers like Indonesia and Malaysia. The upcoming 2023 European deforestation-free regulation adds further tension, as its broad scope and benchmarking have sparked opposition in the forest sector. Examining these challenges highlights the existing and significant conflicts raised by the EU's unilateral approach to climate mitigation. For the sake of the European environmental strategy's effectiveness, as it extends beyond economic ambitions, it becomes necessary for the Union to develop a joint and suitable cooperation with its partners, to achieve political consensus while limiting trade disruptions in the forest agricultural sector.

Keywords: deforestation, deforestation-free regulation, EUDR, European Union, palm oil, Southeast Asia

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On 5 March 2024, the World Trade Organization (WTO) ruled in a dispute that added yet another layer to a lasting dissension between the European Union and Malaysia over palm oil, a sensitive agricultural commodity. The WTO has indeed been the stage of a conflict surrounding the implementation of the 2018 directive on renewable energy¹ (RED II) of the European Union (the EU or the Union). The latter is the subject of two distinct complaints filed by both Indonesia and Malaysia in 2020 and 2021,² respectively. By encouraging renewable energy in the transport sector through increased biofuel usage, while restricting crops associated with high indirect land-use change, the directive is deemed discriminatory towards palm oil by the petitioning countries.³

In addition, the palm oil industry, which has been vocal about issues originating from European law, faces new significant challenges ahead with the impending implementation of the 2023 EU's deforestation regulation (EUDR).⁴

1 Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, OJ L 328, 21 December 2018, p. 82–209.

2 WTO. (2021). Request for the establishment of a panel by Malaysia. *European Union and Certain Member States – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WTO Doc WT/DS600/2.

3 *Ibid.*

4 Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, OJ L 150, 9 June 2023, p. 206–247.

As climate change-related matters tend to become more pressing, deforestation and land degradation have been identified as responsible for significant biodiversity loss. Indeed, according to the Food and Agricultural Organization (FAO), about 420 million hectares of forest have been lost in the past thirty years.⁵ Increased demand for agriculture-based products has been pointed out as a reason behind this substantial deforestation process. Estimates thus found that agriculture's demand for land expansion is responsible for about 80% of global deforestation.⁶ Additionally, the consumption of food and feed products within the EU has significantly contributed to these environmental impacts. It has exerted considerable pressure on forests in non-EU countries, resulting in the acceleration of the process.⁷ In this regard, the European Union is the second entity, after China, whose consumption and imports of certain agricultural products have been recognized as direct drivers of deforestation.⁸

The Union's ambition is, nonetheless, to set some of the highest environmental norms through its extensive and ever-evolving environmental policies and legislations.⁹ Forest loss has consequently been, for over a decade, an important matter in the environmental policy of the European Union and is part of one of its flagship strategies, the European Green Deal.¹⁰ Deforestation, based on the EU's definition, is "the conversion of forest to agricultural use, whether human-induced or not".¹¹ Although the FAO tends to apprehend this concept according to a wider perspective, encompassing not only agriculture, but also any other land use such as for infrastructure purposes,¹² this definition specifically targets the use of land for agriculture.

With the EUDR, the Union has thus introduced a new tool aiming to reverse the deforestation process, by banning the entry to its market of products grown on lands that were deforested after 2020. Six commodities have therefore been identified as being mainly responsible for deforestation due to their consumption and production in the EU: cattle, cocoa, coffee, palm

5 FAO. (2020). *Global Forests Resources Assessment 2020, main report*. Rome: Food and Agriculture Organization of the United Nations.

6 European Commission. (2019). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Stepping up EU Action to Protect and Restore the World's Forests, SWD (2019) 307 final*. https://ec.europa.eu/info/sites/default/files/communication-world-forests-2019_en.pdf

7 *Ibid.*

8 Wedeux & Schulmeister-Oldenhove (2021).

9 The Article 3§5 of the Treaty on European Union (TEU) explicitly states as an objective for the European Union the following: the Union "shall contribute to [...], the sustainable development of the Earth [...]."

10 This strategy sets the outline for the EU's pursuit of climate neutrality to be reached by the year 2050. European Commission. (2019). *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM (2019) 640 final*. https://ec.europa.eu/info/sites/default/files/communication-european-green-deal-2019_en.pdf

11 See Article 2 of the Regulation (EU) 2023/1115 of the Parliament and the Council, *supra* note 4.

12 FAO (2020), *supra* note 5.

oil, soy, and wood-based products.¹³ According to the regulation, producers – whether Europeans or from a third country – wishing to put these products into the European market will have to comply with the newly established norms.

Among those most impacted by the regulation are producers from the Southeast Asian region. Indeed, Malaysia and Indonesia are jointly responsible for about 85–90% percent of the worldwide palm oil production.¹⁴ Beyond palm oil, for instance, Vietnam as well as Indonesia are large coffee-producing countries,¹⁵ Thailand is a major producer of rubber. Agriculture as a whole constitutes a significant portion of the economic activity of countries in the Greater Mekong subregion, such as the Lao People's Democratic Republic (Lao PDR). An important part of Southeast Asian economies hence relies on exports of these commodities to international markets, including the European market.

When it comes to the history of the European Union and the Southeast Asian countries' relations, they can be traced back to the colonial era during which agricultural commodities were already being traded, although with lesser norms.¹⁶ Even though an interregional free trade agreement is not on the table as of 2024 and the project has been being politically rekindled from time to time,¹⁷ this does not prevent the EU and Southeast Asian countries from maintaining and even deepening their trade and diplomatic ties at the bilateral level.¹⁸ Indeed, their interregional relations are being reinforced, not without contention, through the elevation to an Association of Southeast Asian Nations (ASEAN)–EU strategic partnership, as well as through bilateral free trade negotiations with member States whose level of development allows for it.

At the heart of these deepening economic relations, food, and agricultural commodities can alter the outcome of a trade agreement according to the sensitivity of the issue at stake. Palm oil in this regard embodies the challenges of a globalized food chain supply meeting divergences in terms of production requirements on international markets. While a significant part of palm oil is dedicated to the biofuel industry, estimates found that it is the most widely used edible oil: 70% of its consumption is by the food industry.¹⁹ This predominance

13 Regulation (EU) 2023/1115 of the European Parliament and of the Council, *supra* note 4.

14 Rahman, S., & Poh Onn, L. (2024). *Prosperity or predicament? Decoding certification challenges in Malaysia's palm oil industry*. Trends in Southeast Asia, TRS6/24. Singapore: ISEAS Publishing, p. 1.

15 RECOFTC. (2024). *Potential impacts of the EU Regulation on Deforestation-free Products (EUDR) on smallholders in Thailand and Indonesia – case studies on rubber, timber and coffee*. Bangkok: Regional Community Forestry Training Center for Asia.

16 Kumeh, E. M., & Ramcilovic-Suominen, S. (2023). Is the EU shirking responsibility for its deforestation footprint in tropical countries? Power, material, and epistemic inequalities in the EU's Global Environmental Governance. *Sustainability Science*, 18(2), 599–616. <https://doi.org/10.1007/s11625-023-01302-7>

17 ASEAN-EU. (2022). Joint Declaration, ASEAN-EU Commemorative Summit 2022. <https://asean.org/joint-leaders-statement-of-asean-eu-commemorative-summit-2022/>

18 The EU finalized free trade agreements with Singapore (2019) and Vietnam (2020) and is negotiating with the Philippines, Indonesia, and Thailand as of September 2024.

19 Stam, C. (2020). Malaysia relies on sustainable palm oil to keep entry into European market. *Euractiv*. <https://www.euractiv.com/section/agriculture-food/news/trashed-61/>

does not prevent tensions,²⁰ on the contrary, as the WTO complaints lodged by Indonesia and Malaysia have illustrated. In this sense, the extraterritorial expansion of European environmental norms' impact is complex; it appears to stem from a unilateral and Eurocentric approach to a global issue, which has been criticized in Southeast Asia.²¹

On the one hand, the producing and exporting countries rely heavily economically and even socially on the realization of these exports to the demanding European market. On the other, the EU, whose consumption has been established to be an important driver of deforestation appears determined to strengthen its environmental policy, while pursuing global leadership in the domain. The highly political and sensitive nature of this issue exposes the strongest resistance the EU meets in the diffusion of its agri-food-related norms in Southeast Asia.²² Despite its ambitions, this regulation's implementation is facing many challenges. In this sense, it appears that this already litigious matter could put another strain on the deepening of interregional relations.

This manifestation of one of the European normative trade's power limits, in the field of forest governance, allows for an examination of the extent of the European deforestation-free regulation's contentious nature in the Union's trade relations with Southeast Asian countries.

As of October 2024, it is not yet possible to assess the actual impact of the regulation, as it is set to be fully implemented by mid-2026. However, the current state of the trade negotiations and the challenges met by the previous European legislation and policies – such as the recent WTO disputes with Malaysia and Indonesia – as well as the current diplomatic tools and policies used between the involved parties, shed light on the challenges and difficulties that this regulation is facing. The debate surrounding the incoming implementation lies on the ambitious nature of the European Union's environmental policy, which is not without ambivalence. Despite its pursuit of multilaterally-defined objectives, the regulation is designed according to a unilateral European perspective. Once facing its impending implementation, the regulation meets and thus needs to consider the socioeconomic realities of its partners, without undermining its established objectives.

20 Palm oil has been particularly subject to controversies in Europe due to concerns surrounding the sustainability of its production. It has given rise to the appearances of food products being labelled as “without palm oil” in order to encourage their consumption. See Omont, H. (2010). Contributions de la production d'huile de palme au développement durable: Problématique générale, controverses. *Oilseeds and Fats, Crops and Lipids*, 17(6), 362 – 367. <https://doi.org/10.1051/ocl.2010.0342>; Carreño, I., & Dolle, T. (2016). L'étiquetage “clean” et les allégations “sans huile de palme” “évidentes” et “trompeuses”. *Revue européenne de droit de la consommation (REDC)*, 1, 99–107.

21 Kinseng, R. A., et al. (2022). Unraveling disputes between Indonesia and the European Union on Indonesian palm oil: From environmental issues to national dignity. *Sustainability: Science, Practice and Policy*, 19(1), p. 9. <https://doi.org/10.1080/15487733.2022.2152626>

22 *Ibid.*

1. A contested unilateral approach to a highly sensitive environmental issue

1.1. The European Union's deforestation-free regulation, within the continuity of the European's approach to environmental policy

As the Union wishes to erect itself as a leading power in tackling environmental issues, it has developed new tools which tend to have a direct consequence on its external relations.²³ Ever since the beginning of the twenty-first century, the European Union has been leading a conditionality strategy, actively tying together climate-related issues with economic matters in its external action. For instance, this culminated with the inclusion of a sustainable development chapter in the first new-generation free trade agreement concluded with an Asian country, South Korea.²⁴

Regarding forest governance, among the reasons put forward for the EUDR's adoption is the compensation for failures to reach goals established at the multilateral level²⁵ or by international environment law.²⁶ The EU tends to follow its own set of standards, which are reported to be among the stringiest. The forest governance sector and the culture of palm oil are no exception to this rule.²⁷ As containing deforestation is a pressing global issue, the EU has taken steps to halt the process based on its experienced environmental policies and legislation.²⁸ Indeed, this regulation's innovation builds on the expertise acquired through the implementation of two previous laws related to the trade of commodities from deforested lands in third countries. One has established the Forest Law Enforcement, Governance and Trade licensing scheme to tackle illegal logging and associated trade,²⁹ including through the conclusion of voluntary partnership agreements with partner countries.³⁰ Following its enactment, a 2010 regulation laid down obligations for operators placing timber-related products on the European market. By this voluntary system,

23 Ippolito, F., & Fines, F. (2023). Des outils européens novateurs pour relever les défis environnementaux. *Revue de l'Union européenne*, pp. 260-261.

24 Fines, F. (2023). Le verdissement des accords de commerce avec l'inclusion de clauses "environnement et climat". *Revue de l'Union européenne*, p. 262.

25 According to the regulation, the goal of reducing by half forest loss by 2020 of the New York Declaration on forests) and the goal of halting deforestation by 2020 in the United Nations' Sustainable Development Goals (SDGs), both failed to be met. See Preamble (20) & (21) of Regulation (EU) 2023/1115 of the European Parliament and of the Council, *supra* note 4.

26 Henn, E. V. (2021). Protecting forests or saving trees? The EU's regulatory approach to global deforestation. *Review of European, Comparative & International Environmental Law*, 30(3), p. 338. <https://doi.org/10.1111/reel.12413>

27 European Parliament. (2020). *Committee on Agriculture and Rural Development, Opinion of the Committee on Agriculture and Rural Development for the Committee on the Environment, Public Health and Food Safety on The EU's role in protecting and restoring the world's forests* (2019/2156(INI)).

28 *Ibid.*

29 Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community, OJ L 347, 30 December 2005, pp. 1-6.

30 Among Southeast Asian States, both Indonesia and Vietnam have concluded a voluntary partnership agreement with the European Union in 2014 and 2019 respectively.

operators are requested to ensure the legality of their supply chains through an established due diligence system,³¹ in order to foster their responsibility in the global value chains. Through this system, the EU instituted a “transnational forest governance”,³² allowing it to track and control the compliance of standards which supposedly cannot be enforced beyond its borders.³³

The 2023 EUDR delves into a deeper level as it extends its application scope beyond timber products to the six main agricultural resources responsible for deforestation: cattle, palm oil, soy, cocoa, coffee, and rubber. Regardless of the legality of the deforested area, it pursues the following objective: the specified imported products must be deforestation-free.³⁴ According to the provided definition, this entails that the targeted commodities must not be produced on land which might have been the subject of deforestation after 31 December 2020.³⁵ More specifically, the specified commodities are now submitted to a due diligence obligation.³⁶ This implies that operators wishing to put these resources on the market, regardless of their origin, should be able to provide certain information on the supply chain for traceability and transparency. Among the requested information are, for example, the production area’s geolocation, the legal conformity in the producing country, and proof that the product is indeed deforestation-free.³⁷

The extent of the obligations relying on the operators is set according to a controversial benchmarking process of countries by the European Commission (the Commission). It shall determine whether they come from a low-risk, standard-risk, or high-risk country.³⁸ In practice, this entails that operators from low-risk countries will be subject to a simplified due diligence system, while those from high-risk will be requested to provide additional information related to the risk assessment and the measures taken to mitigate it. The latter involves, for instance, the conduct of investigations and audits, as well as policies, control, and procedures.³⁹ The status criteria depend on characteristics such as the deforestation’s rate in the country, the extent of agricultural land expansion, the commitments made by the authorities to combat deforestation, or even the treatment of indigenous populations on these lands.⁴⁰

As protests against the discriminatory and political nature of this process

31 Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, OJ L 295, 12 November 2010, pp. 23–34.

32 Henn (2021), *supra* note 26, pp. 339.

33 *Ibid.* p. 343.

34 Regulation (EU) 2023/1115 of the European Parliament and of the Council, *supra* note 4.

35 See Article 2(13). *Ibid.*

36 Regulation (EU) 2023/1115 of the European Parliament and of the Council, *supra* note 4.

37 *Ibid.*

38 *Ibid.*

39 See Article 11. *Ibid.*

40 Article 29. *Ibid.*

have already emerged,⁴¹ the implementation of this ambitious regulation is going to be challenging as it seemingly stems from a disputed and unilateral approach specific to European interests with great extraterritorial implications. The EUDR is no exception to the unilateral approach undertaken by the European Union to tackle climate change-related issues. It comes from the European Green Deal, which has first and foremost been designed “by and for Europeans”. This results in measures adopted within the framework of this strategy to be viewed as protectionist by its trade partners.⁴² Moreover, the approach is contested because the partners who are directly impacted have not been consulted. They request the EU to take responsibility and act accordingly afterward to lessen the impact on their livelihood.⁴³

1.2. The extraterritorial dimension of European green norms meeting resistance through trade disputes

The deforestation-free regulation intervenes at a time of escalating political and trade tensions surrounding European trade measures. Although part of the civil society has been welcoming the adoption of the European regulation on deforestation,⁴⁴ this regulation is far from reaching a consensus among international partner countries. Its rules are set to have an extraterritorial impact as well as direct consequences on the producers of these commodities in their own country. In this sense, the palm oil industry offers its most compelling example.

The implementation of the RED II directive, despite the attempt at mediation through common consultations,⁴⁵ has previously been an issue between palm oil-producing countries and the European Union. The latter has been straightforwardly accused of “regulatory imperialism”⁴⁶ by Indonesian diplomacy. The EU has been blamed for concealed protectionism through the forced imposition of norms on its Southeast Asian partners. This conflict has impeded the elevation of the relations between the EU and the ASEAN to a strategic partnership up until the establishment of a joint working group on palm oil under the scheme of the ASEAN-EU interregional relation framework.⁴⁷

41 Trading partners joint letter on EUDR. (2023). https://www.fair-and-precious.org/files/upload/news/RDUE/Trading_partners_joint_letter_on_EUDR_7_September_2023.pdf

42 Jayaram, D., & Lazard, O. (2023). EU-ASEAN climate diplomacy: Navigating misperceptions, interests, and opportunities. In L. Bomassi (Ed.), *Reimagining EU-ASEAN relations: Challenges and opportunities* (pp. xx-xx). Carnegie Europe, p. 6.

43 Pontecorvo, C. M. (2023). *Union européenne et déforestation globale: outils récents*. Revue de l'Union européenne, p. 268.

44 Romano, V. (2023, April 20). Campaigners hail ‘historic’ Day as Parliament adopts EU anti-deforestation law. *Euractiv*. <https://www.euractiv.com/section/energy-environment/news/campaigners-hail-historic-day-as-parliament-adopts-eu-anti-deforestation-law/>

45 WTO. (2020, March 24). Request for the Establishment of a Panel by Indonesia, *European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WT/DS593/7.

46 Widodo, J. (2022). *Speech extract for the opening of the Commemorative Summit of ASEAN-EU Relations*. <https://newsroom.consilium.europa.eu/events/20221214-eu-asean-commemorative-summit-2022/138278-7opening-ceremony-part-7-20221214>

47 ASEAN-EU. (2023). Plan of Action to Implement the ASEAN-EU Strategic Partnership (2023-2027).

At the bilateral level, following the failure of mediation consultations, the conflict later crystallized around the WTO dispute settlement mechanisms. The Malaysia-EU dispute ruling came out in March 2024, and as of October 2024, Indonesia's case against the EU is still pending, upon its own suspension request.⁴⁸ Regarding the first case, the WTO panel ruled in favor of maintaining the rules established by the directive which are not deemed inconsistent with the obligations related to WTO law.⁴⁹ In this sense, the decision contributes to legitimizing the action undertaken by the EU in favor of the environment. However, the EU has reportedly been inconsistent with its obligations concerning the necessary data information related to the law's adoption process. The Union has also failed to engage and cooperate with Malaysia in accordance with article 5.6 of the Technical Barriers to Trade Agreement of the WTO.⁵⁰

The EU's earned experience has resulted in the EUDR specifying that its rules are aligned with the WTO law and not stemming from arbitrary discrimination.⁵¹ Indeed, they apply indifferently regardless of the origin of the operator – whether from the EU or a third country.⁵² However, the European unilateral approach to the country benchmarking process is still deemed discriminatory and punitive. In this sense, a letter written by representatives of producing and developing countries has been addressed to the European Commission to denounce it. Among the seventeen signatories from various regions in the world are three Southeast Asian countries: Indonesia, Malaysia, and Thailand. Furthermore, they argue against the lack of recognition from the EU of the efforts made by these producing countries to tackle deforestation within their own territory, as well as of the implemented national sustainable certification mechanisms.⁵³

While palm oil certifications such as the Indonesian Sustainable Palm Oil (ISPO) system were created to compete with other foreign standards like the Roundtable Sustainable Palm Oil (RSPO),⁵⁴ there are adherents to the latter, including the EU considering it ineffective. Indonesia's sense of injustice can be attributed to the efforts made by the country to reach an all-time low

48 WTO. (2024, July 9). Suspension of Panel work – Communication from the Panel, *European Union - Certain Measures concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WT/DS593/15.

49 In particular, the cap imposed on commodities certified as high indirect land use is not deemed contrary to Article 2 of the Technical Barriers to Trade Agreement. In this sense, see conclusions of WTO. (2024, March 5). Report of the panel, *European Union and certain member States – Certain Measures concerning Palm Oil And Oil Palm Crop-Based Biofuels*, WT/DS600/R.

50 This article provides for the obligation to inform and notify another Member State should a newly established conformity assessment procedure have a significant effect on trade. See *Ibid.*

51 Henn (2021), *supra* note 26, p. 347.

52 Preamble (3). Regulation (EU) 2023/1115 of the European Parliament and of the Council, *supra* note 4.

53 See, for example, Trading partners joint letter on EUDR (2023), *supra* note 41.

54 Choiruzzad, S. A., Tyson, A., & Varkkey, H. (2021). The ambiguities of Indonesian sustainable palm oil certification: Internal incoherence, governance rescaling and state transformation. *Asia Europe Journal*, 19(2), 189–208. <https://doi.org/10.1007/s10308-020-00593-0>

deforestation rate in 2022, with a decrease reaching 8,4% that same year.⁵⁵ Regardless of this complex situation, Indonesia is still gauging the incoming impact of the EUDR. Despite having considered forwarding a complaint to the WTO as early as March 2023, the country is currently assessing the results of its actual implementation.⁵⁶ Other solutions to deal with the issue through a more mutually cooperative approach are being sought,⁵⁷ hence the need for effective European diplomacy and appeasement.

Although external partners of the EU understand and willingly support the environmental objectives of the new regulation, they would rather see systems encouraged with economic incentives instead of punitive trade obstacles, as asserted by Indonesian diplomacy.⁵⁸ Besides, the matter is not exclusive to the palm oil sector, as complaints have been lodged by representatives of the rubber industry from Southeast Asia, underlining the unrealistic and unilateral nature of the measures.⁵⁹ Small actors are indeed disadvantaged by the new technical rules, in comparison with large corporations with greater financial means and margins of maneuver.⁶⁰ In order to be successful, this ambitious yet contentious regulation, thus, requires adapting to the socioeconomic realities of the operators responsible for its implementation.

2. The European Union's deforestation-free regulation facing the socio-economic realities of its partners

2.1. The increased complexity of trade negotiations and weight of norms implementation

The reciprocal measures introduced in the EUDR, as a preview of the EU's intended direction for agrifood trade, have proven challenging to implement in practice.⁶¹ As a consequence, these ambitious mirror measures⁶² could be meaningless should their application prove to be ineffective.

One of the main arguments raised by foreign authorities against the EUDR has been the disregard for the local circumstances of third-country producers

55 NICFI. (2023, June 27). *Deforestation still at a record low in Indonesia*. Norway's International Climate and Forest Initiative. <https://www.nicfi.no/2023/06/27/deforestation-still-at-a-record-low-in-indonesia/>

56 Marques da Silva, I. (2023, September 20). Why the global south is against the EU's anti-deforestation law. *euronews*. <https://www.euronews.com/my-europe/2023/09/20/why-the-global-south-is-against-the-eus-anti-deforestation-law>

57 Iswara, M. A., et al. (2023). European Union palming off deforestation regulation to smallholders in Indonesia. *East Asia Forum*.

58 Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation. (2021). *President Jokowi Addresses Three Perspectives on Making Forests as Part of Global Climate Action*. <https://setkab.go.id/en/president-jokowi-addresses-three-perspectives-on-making-forests-as-part-of-global-climate-action/>

59 Tan, E. R. L., & Lin J. (2024). Engaging Southeast Asia: The EU's role as a Resilient and Reliable Middle Power? *ISEAS Perspective*, No. 41.

60 *Ibid*.

61 As highlighted by the controversies surrounding the negotiations or the implementation of the Mercosur-EU free trade agreement and of the EU-Canada free trade agreement.

62 Lamy, P., et al. (2022). A narrow path for EU agri-food mirror measures? In *Greening Agri-food Policy in the EU (GRAPE) Policy Paper 2*. Brussels: European Jacques Delors.

and the stringent requirements set by the regulation.⁶³ Smallholders,⁶⁴ who appear to be at the core of the tensions, have raised concerns to the Union about complying with the deforestation-free regulation's requirements.⁶⁵ They represent quite a large share of the producers in the Southeast Asian region: in Thailand, 90% of rubber producers are smallholders,⁶⁶ 40% of the palm oil produced in Malaysia comes from small-scale farmers,⁶⁷ and for Indonesia, the palm oil sector is estimated to employ over 4.3 million people among which over a third fall into this category.⁶⁸

Thus, the EUDR is expected to put them at a disadvantage compared with large companies as the latter have greater means to adapt to the challenging and evolving sets of standards. In particular, the due diligence system has to be implemented by the operators wishing to put the concerned products on the market. This involves a certain amount of information to be gathered by the producers. For instance, the required geolocation data is expected to be a costly procedure both financially and timely. Representatives of the producing countries have argued that this position would lead to the barring of exports not because smallholders would fail to meet the criteria of being deforestation-free, but because they would lack the means to prove it.⁶⁹ This would lead to impoverishment and counterproductive consequences of deforestation⁷⁰ such as diverting exports towards partners with less stringent environmental requirements,⁷¹ like China.⁷²

Beyond palm oil, even smallholders from the cocoa and coffee industries sought guidance and technical assistance from the European Commission.⁷³ Voices from the coffee sector have, for instance, alerted

63 Trading partners joint letter on EUDR (2023), *supra* note 41.

64 The FAO has referred to smallholders as “small scale farmers (...) who manage areas varying from less than one hectare to 10 hectares” adding that they are “characterized by family-focused motives”. See FAO (2013). *Smallholders and Family Farmers*, Fact Sheet, Food and Agriculture Organization of the United Nations.

65 See FMT Reporters. (2023, March 22). Small farmers petition. EU for changes to deforestation rule. *Free Malaysia Today*. <https://www.freemalaysiatoday.com/category/nation/2023/03/22/small-farmers-petition-eu-for-changes-to-deforestation-rule/>

66 EFI. (2024). *Thailand's natural rubber producers are preparing for new market requirements* [Briefing]. European Forest Institute.

67 Rahman & Poh Onn (2024), *supra* note 14.

68 Iswara et al. (2023), *supra* note 57.

69 Trading partners joint letter on EUDR (2023), *supra* note 41.

70 Hancock, A. (2023, August 20). EU deforestation rules risk ‘catastrophic’ impact on global trade, says ITC chief. *Financial Times*. <https://www.ft.com/content/9119d448-ff1c-434d-b07f-27b1bf11c041>

71 Chu, M. M. (2023, January 12). Malaysia says it could stop palm oil exports to EU after new curbs. *Reuters*. <https://www.reuters.com/markets/commodities/malaysian-urges-palm-oil-producers-boost-cooperation-after-eu-rules-2023-01-12/>

72 Goh, N. (2023, September 18). Malaysia to double palm oil exports to China, dodge EU restrictions. *Nikkei Asia*. <https://asia.nikkei.com/Economy/Trade/Malaysia-to-double-palm-oil-exports-to-China-dodge-EU-restrictions>

73 See Fairtrade Advocacy Office. (2023). *Deforestation-free supply chains*. Fairtrade Advocacy Office. <https://fairtrade-advocacy.org/our-work/eu-policies/sustainable-and-deforestation-free-supply-chains/>

European institutions about the unpreparedness of the sector when it comes to the rules of the EUDR. Their apprehensions mostly concern the technical aspects of this regulation's implementation; hence their request for assistance, clarity, and guidance on these matters.⁷⁴

Additionally, one other consequence would be undermining the economic and trade ambitions pursued in the Southeast Asian region. Clashes around the issue of palm oil have had a hindering impact⁷⁵ as Indonesia has already stated that negotiations with the EU would have to start over despite the undertaking of over sixteen rounds of free trade agreement negotiations.⁷⁶ The palm oil disputes first related to the RED II directive, and then to the EUDR are some of the reasons for stalling trade negotiations between the European Union and Indonesia.⁷⁷ In light of the EUDR, it does not bode well either for the Malaysia-EU FTA negotiation, in halt since 2012.⁷⁸

However, nuance must be provided, as the situation is not entirely a conflict due to some integrated implementation adjustments contributing to a smoother enactment of the EUDR, as requested by the stakeholders from the agricultural sector.

2.2. Necessary adjustments through effective instruments in the pursuit of environmental diplomacy

In order to deal with this complex situation, a staggered application of the regulation hints at flexibility on the EU's part, as it is intended to allow necessary adjustments and adaptation. Regarding the regulation's actual enforcement, companies wishing to export the specified commodities into the European market initially had to comply by the end of December 2024. Smallholders, however, were granted an extension to adjust as their compliance deadline was set for June 2025.⁷⁹ Furthermore, although intended to enter into force in December 2024, the controversial country benchmarking according to the risk assessment procedure appears to consider a further delay. Meanwhile, countries have all been temporarily assigned, since June 2023, a standard-risk status while the system is being established.⁸⁰

74 Representatives of the Coffee Sector, including the ASEAN Coffee Association, have addressed a letter to Ursula von der Leyen, President of the European Commission in July 2024, requesting guidance and clarity over technical elements to ensure that the sector could meet the regulation's objectives, while reaffirming their commitment to the success of the regulation. See GCP. (2024, July). *GCP signs letter to EU Commission calls for urgent action for effective EUDR implementation*. Global Coffee Platform. <https://www.globalcoffeeplatform.org/latest/2024/gcp-signs-letter-to-eu-commission/>

75 Tan & Lin (2024), *supra* note 59.

76 Hidayat, F. (2024, January 16). How to break the deadlock in the Indonesia-EU trade talks. *The Diplomat*. <https://thediplomat.com/2024/01/how-to-break-the-deadlock-in-the-indonesia-eu-trade-talks/>

77 European Parliament (2023), *Trade negotiations between the EU and ASEAN member states* [Briefing]. European Parliamentary Research Service.

78 Hancock, A., & Ruehl, M. (2023, May 31). Indonesia and Malaysia freeze trade talks with EU over palm oil. *Financial Times*. <https://www.ft.com/content/3cad4fab-cbdd-4ddb-a5a7-846c7de9c6e2>

79 Article 38 of the Regulation (EU) 2023/1115 of the European Parliament and of the Council, *supra* note 4.

80 Article 29 - 2. *Ibid*.

In addition, it appears that concerns and repeated appeals from the different stakeholders have managed to garner enough attention from the Commission. The initial hints of flexibility on the EU's part have been confirmed less than three months before the initially planned enforcement of the regulation. Indeed, in October 2024, the Commission proposed, through an amendment, a 12-month delay to the original implementing timeline, pushing it back to 30 December 2025. The staggered implementation is set to apply as planned, and smallholders are expected to comply six months later, in June 2026.⁸¹ In the meantime, the Commission also brought political reassurance by asserting that a great majority of the countries would be categorized as “low-risk”.⁸² This proposal, set to be voted on by the European Parliament and if adopted, could provide a valuable margin of adaptation to the different stakeholders. Among the reasons put forward by the European Commission are concerns related to the effectiveness of the regulation as well as the repeated concerns from its global partners.⁸³

Along with the delay proposal, the Commission also acceded to the request for guidance and technical assistance⁸⁴. This can be attributed to the regulation introducing a mechanism to provide technical assistance, advice, and information exchange,⁸⁵ as well as the pressure the EU received from external partners. In this sense, certain tools of application will be available for testing ahead of the scheduled full-scale implementation. This is the case for the digital information system where operators would have to upload their due diligence statements.⁸⁶ Besides, the communication aiming to offer guidance on the actual meaning of the regulation's terms shows a certain didactic effort from the Commission. This initiative seeks to resolve any technical issues and ambiguities stemming from the regulation's terms to its external partners by bringing clarifications and detailed explanations to certain terms or processes such as the due diligence system and risk assessment.⁸⁷

Additionally, the Commission drafted a framework for international cooperation as provided by Article 30 of the regulation, thus reasserting its willingness to collaborate with its external partners. Among the key aspects developed within this framework are maintaining dialogue with partner countries

81 European Commission. (2024a). *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/1115 as regards provisions relating to the date of application*, COM (2024) 452 final/2. <https://ec.europa.eu/info/law/better-regulation/initiatives/2024/>

82 European Commission. (2024b). *Commission strengthens support for EU Deforestation Regulation implementation and proposes extra 12 months of phasing-in time, responding to calls by global partners*. https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_24_5009/IP_24_5009_EN.pdf

83 *Ibid.*

84 European Commission. (2024c). *Communication to the Commission, Approval of the content of a draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products*, C (2024) 7027 final. <https://ec.europa.eu/info/law/better-regulation/initiatives/2024/>

85 Article 15. Regulation (EU) 2023/1115 of the Parliament and the Council, *supra* note 4.

86 European Commission. 2024b.

87 European Commission. (2024d). *Annex to the Communication to the Commission; Approval of the content of a draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products*, C (2024) 7027 final. <https://ec.europa.eu/info/law/better-regulation/initiatives/2024/>

and supporting actions, especially concerning smallholders. It specifically refers to EUDR engagement projects led in Southeast Asia.⁸⁸ This particularly aligns with the development policies led jointly with its external partners in forest governance.⁸⁹ Indeed, the EU and its global partners, including in Southeast Asia, have earned expertise in the domain by leading joint development cooperation projects and policies, as well as capacity-building programs related to forest management or agroforestry. For example, Lao PDR has received technical assistance in order to gain access to external trade markets for its timber-related resources through the European Arise+ program.⁹⁰

Furthermore, the political dialogue remains open between the conflicting parties, perhaps seeing a positive outcome in the future. Indeed, Malaysia and the EU have announced working together towards a smooth implementation of the EUDR, while considering the efforts towards sustainability led by the national Malaysian Sustainable Palm Oil (MSPO) certification scheme.⁹¹ Besides, Malaysia, Indonesia, and the European Commission have agreed to set up a joint task force to facilitate the implementation of the EUDR.⁹² Lessons have been drawn on both sides from the RED II directive's dispute, leading to efforts to maintain dialogue between the European Commission and representatives from both countries.⁹³ They work together to address the gaps between the standards set by the EUDR and those used by partner countries.

According to reports partly funded by the EU targeting the main gaps between the ISPO and the EUDR, although there are still considerable divergences in technical aspects stemming from varying definitions and shortcomings on geolocation information, legality, and traceability, there is still useful content in these standards. Indeed, when it comes to the due diligence systems, common descriptive features between the two standards are likely to contribute to the standards, such as the description of product or supplier information.⁹⁴ Additionally, the EU also funded projects to reflect on solutions built from the national structure of each country, to

88 European Commission. (2024e). *Annex to the Communication to the Commission, Approval of the content of a draft Communication from the Commission on the Strategic Framework for International Cooperation Engagement in the context of Regulation (EU) 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation*, C (2024) 7028 final. <https://ec.europa.eu/info/law/better-regulation/initiatives/2024/>

89 Preamble (28). Regulation (EU) 2023/1115 of the Parliament and the Council *supra* note 4.

90 Gunawardena, C. (2022). *Final report for Mid-Term Evaluation of the ARISE Plus LAO PDR Programme*. AESA (Stantec Consortium).

91 European External Action Service. (2024, February 2). *Joint press release: The 2nd Meeting of the Ad Hoc Joint Task Force on the EUDR*. https://www.eeas.europa.eu/delegations/indonesia/joint-press-release-2nd-meeting-ad-hoc-joint-task-force-eudr_en?s=168

92 European External Action Service. (2023). *Joint press statement, The European Commission, Indonesia, and Malaysia agree to set up a Joint Task Force to strengthen the cooperation for the Implementation of EU's Deforestation Regulation*. https://www.eeas.europa.eu/delegations/indonesia/european-commission-indonesia-and-malaysia-agree-set-joint-task-force-strengthen-cooperation_en?s=168

93 *Ibid.*

94 EFI & KAMI. (2024). *Joint gap assessment of the EUDR information needs and information availability from the Indonesian Sustainable Palm Oil (ISPO) certification*. European Forest Institute.

facilitate the handling of the challenges encountered by smallholders in implementing the regulation, such as the creation of local district registries.⁹⁵

Moreover, while the palm oil industry representatives have expressed strong opinions about the challenges posed by the EUDR, the European market access manages, to some extent, to operate as a lever. In this sense, the Thai rubber industry has reportedly deployed means to prepare for its implementation, from the perspective of Thailand relaunching and concluding a free trade agreement with the EU.⁹⁶ Vietnam, which has already concluded such an agreement with the EU, reported to have closely and collaboratively cooperated with the EU authorities to guarantee a minimal impact on its coffee industry.⁹⁷ The Vietnamese authorities appear confident regarding the implementation of the EUDR. It is mostly the coffee industry sector that is affected, but most land used for its needs was deforested before 2020.⁹⁸

Lastly, at the ASEAN-EU level, the different joint work meetings held to tackle the issue of palm oil between the two regions cover the implementation of the EUDR, ensuring that dialogue is maintained between the two partners and offering a space for the smallholders to be heard.⁹⁹ The EU has been actively supporting countries in Southeast Asia in their forest governance capacity,¹⁰⁰ helping them through the Forest Law Enforcement, Governance, and Trade (FLEGT) system, and must pursue efforts in this direction. Although scattered, sectoral initiatives from the EU have multiplied and do not solely involve the conflicting cases of Indonesia and Malaysia's palm oil, as they also concern the most vulnerable countries such as Lao PDR.¹⁰¹

95 EFI & KAMI. (2024). *Sustainability of Malaysian and Indonesian Palm Oil, the feasibility of establishing district-level registries of palm oil producers in Indonesia* [Report]. European Forest Institute.

96 Gritten, D., & Khunrattanasiri, W. (2023). *Assessment of the potential impact of the proposal for an EU regulation to prevent deforestation-products originating from Thailand to enter the EU market* (Special report). Landed Mills International.

97 IDH. (2023, September). *Vietnam: Leading the way in EU deforestation regulation alignment*. IDH. <https://www.idhsustainabletrade.com/news/vietnam-leading-the-way-in-eu-deforestation-regulation-alignment>

98 VNTR. (2023, November 7). *Europe bans goods originating from deforestation: are Vietnamese businesses happy or worried?*. Vietnam Trade National Repository, Ministry of Industry and Trade. <https://vntr.moit.gov.vn/news/europe-bans-goods-originating-from-deforestation-are-vietnamese-businesses-happy-or-worried>

99 ASEAN. (2023). *Joint press release, Third Joint Working Group Meeting on Palm Oil between the European Union and Relevant ASEAN Member States 20 June 2023*. <https://asean.org/joint-press-release-third-joint-working-group-meeting-on-palm-oil-between-the-european-union-and-relevant-asean-member-states/>

100 See, for instance, European External Action Service. (2020). *EU launches €5 million programme to support forest governance in ASEAN*. https://www.eeas.europa.eu/eeas/eu-launches-%E2%82%AC5-million-programme-support-forest-governance-asean_und_en

101 Multiple projects have been implemented in Lao PDR related to forest governance and its sustainability, one of the latest ones being "Team Europe Partnership with Lao PDR to increase sustainable and inclusive Trade, Investment and Connectivity in the Agriculture and Forestry sectors – TICAF". It is dedicated to tackling the issue of deforestation in the country while ensuring its connectivity to global markets and encouraging the use of climate-resilient crops. See Delegation of the European Union to Lao PDR. (2024). *Team Europe and Laos launch Global Gateway programme to develop coffee, tea, and forest value chains*. https://www.eeas.europa.eu/delegations/lao-pdr/team-europe-and-laos-launch-global-gateway-programme-develop-coffee-tea-and-forest-value-chains_en?s=183

These examples underline the political response the EU is providing to this regulatory challenge.

Conclusion

Despite the obstacles, the EU appears to have a positive perspective on the deforestation-free regulation's ambitions, as reviews of its scope of application are underway to extend it even further. The Union is indeed considering its extension to other commodities and will explore applying it to other natural ecosystems.¹⁰² However, its actual implementation will likely encounter its share of hurdles. Although the objectives set in the regulation respond to a pressing issue that the European Union has leverage on and has been responsible for, its extraterritorial implications highlight the difficulties of leading ambitious and large-scale international environmental policies. The challenging context of this regulation's adoption and implementation is unsurprising considering the history of the European environmental measures in this area and their international reception. Besides, there is no consensus on how to deal with these issues, leading to emerging political tensions when heterogeneous socioeconomic matters are at stake, as is the case in Southeast Asian producing countries. Despite the lack of available long-term data and the uncertain impact of the regulation, its implementation is likely to be quite challenging unless the European Union demonstrates its willingness to adapt to the needs of its global partners and the forest sector's most vulnerable stakeholders. Pursuing political dialogues with public authorities will be essential for reaching compromises while minimizing the risk of trade disputes. In this situation, a delicate balance must be found to meet the deforestation-free objective while ensuring that no one is left behind. ●

References

- [1] Bomassi, L. (Ed.). (2023). *Reimagining EU-ASEAN relations: Challenges and opportunities*. Carnegie Europe
- [2] Carreño, I., & Dolle, T. (2016), 'L'étiquetage "clean" et les allégations "sans huile de palme" "évidentes" et "trompeuses"', *Revue européenne de droit de la consommation (REDC)*, Issue 1/2016
- [3] Choiruzzad, S. A., Tyson, A., & Varkkey, H. (2021). The ambiguities of Indonesian sustainable palm oil certification: Internal incoherence, governance rescaling and state transformation. *Asia Europe Journal*, 19(2). <https://doi.org/10.1007/s10308-020-00593-0>
- [4] Delegation of the European Union to Lao PDR. (2024). *Team Europe and Laos launch Global Gateway programme to develop coffee, tea, and forest value chains*
- [5] EFI. (2024). *Thailand's natural rubber producers are preparing for new market requirements* [Briefing]. European Forest Institute
- [6] EFI & KAMI. (2024a). *Joint gap assessment of the EUDR information needs and information availability from the Indonesian Sustainable Palm Oil (ISPO) certification*. European Forest Institute
- [7] EFI & KAMI. (2024b). *Sustainability of Malaysian and Indonesian Palm Oil, the feasibility of establishing district-level registries of palm oil producers in Indonesia* [Report]. European Forest Institute

102 Article 34. Regulation (EU) 2023/1115 of the European Parliament and of the Council, *supra* note 4.

- [8] FAO. (2020). *Global Forests Resources Assessment 2020, main report*. Rome: Food and Agriculture Organization of the United Nations
- [9] Fines, F. (2023). Le verdissement des accords de commerce avec l'inclusion de clauses "environnement et climat". *Revue de l'Union européenne*
- [10] Gritten, D., & Khunrattanasiri, W. (2023). *Assessment of the potential impact of the proposal for an EU regulation to prevent deforestation-products originating from Thailand to enter the EU market* (Special report). Landed Mills International
- [11] Gunawardena, C. (2022). *Final report for Mid-Term Evaluation of the ARISE Plus LAO PDR Programme*. AESA (Stantec Consortium)
- [12] Henn, E. V. (2021). Protecting forests or saving trees? The EU's regulatory approach to global deforestation. *Review of European, Comparative & International Environmental Law*, 30(3). <https://doi.org/10.1111/reel.12413>
- [13] Ippolito, F., & Fines, F. (2023). Des outils européens novateurs pour relever les défis environnementaux. *Revue de l'Union européenne*
- [14] Iswara, M. A., Nurshadrina, D. S., & Suryahadi, A. (2023). European Union palming off deforestation regulation to smallholders in Indonesia. *East Asia Forum*
- [15] Jayaram, D., & Lazard, O. (2023). EU-ASEAN climate diplomacy: Navigating misperceptions, interests, and opportunities. In L. Bomassi (Ed.), *Reimagining EU-ASEAN relations: Challenges and opportunities* (pp. xx-xx). Carnegie Europe
- [16] Kinseng, R. A., et al. (2022). Unraveling disputes between Indonesia and the European Union on Indonesian palm oil: From environmental issues to national dignity. *Sustainability: Science, Practice and Policy*, 19(1). <https://doi.org/10.1080/15487733.2022.2152626>
- [17] Kumeh, E. M., & Ramcilovic-Suominen, S. (2023). Is the EU shirking responsibility for its deforestation footprint in tropical countries? Power, material, and epistemic inequalities in the EU's Global Environmental Governance. *Sustainability Science*, 18(2). <https://doi.org/10.1007/s11625-023-01302-7>
- [18] Lamy, P., et al. (2022). A narrow path for EU agri-food mirror measures? In *Greening Agri-food Policy in the EU (GRAPE) Policy Paper 2*. Brussels: European Jacques Delors
- [19] Omont, H. (2010). Contributions de la production d'huile de palme au développement durable: Problématique générale, controverses. *Oilseeds and Fats, Crops and Lipids*, 17(6), 362 – 367. <https://doi.org/10.1051/ocl.2010.0342>
- [20] Pontecorvo, C. M. (2023). *Union européenne et déforestation globale: outils récents*. Revue de l'Union européenne
- [21] Rahman, S., & Poh Onn, L. (2024). *Prosperity or predicament? Decoding certification challenges in Malaysia's palm oil industry*. Trends in Southeast Asia, TRS6/24. Singapore: ISEAS Publishing
- [22] RECOFTC. (2024). *Potential impacts of the EU Regulation on Deforestation-free Products (EUDR) on smallholders in Thailand and Indonesia – case studies on rubber, timber and coffee*. Bangkok: Regional Community Forestry Training Center for Asia
- [23] Tan, E. R. L., Tan, & Lin J. (2024). Engaging Southeast Asia: The EU's role as a Resilient and Reliable Middle Power? *ISEAS Perspective*, No. 41
- [24] Wedeux, B., & Schulmeister-Oldenhove, A. (2021). *Stepping up? The continuing impact of EU consumption on nature worldwide* (Report). Brussels: WWF European Policy Office

Author Contribution

The author solely contributed to the study conception and design. The author read and approved the final manuscript.

Declarations

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