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Navigating the European Union Deforestation-free Regulation:  
A Case Study of Smallholder Palm Oil Farmers in Indonesia

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A Case Study of Smallholder Palm Oil Farmers in Indonesia*

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# **Navigating the European Union Deforestation-free Regulation: A Case Study of Smallholder Palm Oil Farmers in Indonesia**

Feby Setiawan\*

## **Abstract**

The EU Deforestation-free Regulation (EUDR) will potentially impact Indonesia, particularly smallholder palm oil farmers who pose difficulties in complying with the provisions of the EUDR. This thesis delves into the potential implications of EUDR on Indonesia's smallholder palm oil farmers, by exploring regulatory provisions, potential impacts, opportunities, and assesses the alignment of EUDR with the World Trade Organization (WTO) Technical Barriers to Trade (TBT) agreement. This study is conducted through doctrinal legal research, interdisciplinary legal research, and case studies. The findings show that challenges such as traceability issues and country benchmarking risks may exclude Indonesian smallholder palm oil farmers from the EU market. Efforts have been made by both Indonesia and the EU to address the issues, which include ongoing negotiation of the EU-Indonesia FTA, ad hoc JTF on palm oil, mandatory and voluntary certification schemes (ISPO and RSPO), and the EU commitment to assisting smallholder farmers through technical support. Apart from that, some third countries including Indonesia have expressed their concerns to the WTO regarding unilateral measures of EUDR. The EUDR remains consistent with the TBT agreement on non-discrimination principles. However, the implementation of EUDR on international trade should encourage a collaborative multilateral approach to address trade and environmental issues.

*Keywords:* EUDR, deforestation, smallholder farmers, palm oil, WTO

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## **List of Abbreviations**

ARISE+	ASEAN Regional Integration Support by the European Union
CEPA	Comprehensive Economic Partnership Agreement
CPOPC	Council of Palm Oil Producing Countries
DSB	Dispute Settlement Body
EC	European Commission
EGD	European Green Deal
EU	European Union
EUDR	European Union Deforestation-free Regulation
EUTR	European Union Timber Regulation
FAQ	Frequently Asked Question
FLEGT	Forest Law Enforcement, Governance and Trade
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
ILUC	Indirect Land Use Change
IPCC	Intergovernmental Panel on Climate Change
IPOP	Indonesian Palm Oil Pledge
ISPO	Indonesian Sustainable Palm Oil
JTF	Joint Task Force
MFN	Most Favoured Nation
NGO	Non-Governmental Organization
OECD/FAO	Organisation for Economic Co-operation and Development/Food and Agriculture Organization
RED	Renewable Energy Directive
RSPO	Roundtable on Sustainable Palm Oil
SCM	Subsidies and Countervailing Measures
SME	Micro, Small and Medium-sized Enterprise
TBT	Technical Barrier to Trade
UN	United Nations
US	United States
VPA	Voluntary Partnership Agreement
WTO	World Trade Organization
WWF	World Wildlife Fund
ZDC	Zero Deforestation Commitment

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## 1. Introduction

The European Union (EU) Biodiversity Strategy for 2030<sup>1</sup> and the Farm to Fork Strategy<sup>2</sup>, which is a part of the European Green Deal<sup>3</sup>, were published by the European Commission (EC) in May 2020. Within this ambitious framework, the EU has set its sights on addressing deforestation and forest degradation to preserve biodiversity and combat climate change. Both strategies mentioned corresponding new legislative acts on EU Deforestation-free Regulation (EUDR)<sup>4</sup> that entered into force on 29 June 2023. The regulation aims to minimize the consumption of products associated with deforestation or forest degradation within the EU market and for export purposes. Commodities that fall under the scope of this regulation are cattle, cocoa, coffee, palm oil, rubber, soya, and wood.<sup>5</sup> The EUDR is set to become effective on 30 December 2024.<sup>6</sup>

Indonesia is one of the countries affected by this regulation, as palm oil and its derivative products are Indonesia's main agricultural export commodities.<sup>7</sup> According to data obtained from the Indonesian Ministry of Agriculture in 2022, smallholders possess a land area of 6,159,333 hectares dedicated to oil palm cultivation.<sup>8</sup> This land area yields a total production of 15,519,234 tonnes, thereby accounting for approximately 34.05% of the overall oil palm production in Indonesia.<sup>9</sup> Given the importance of the palm oil sector to Indonesia's economy and the crucial role played by smallholder farmers, it is essential to comprehend the potential impacts and opportunities that may arise from the EUDR. Smallholder farmers, as primary producers, face significant

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'EU Biodiversity Strategy for 2030, Bringing nature back into our lives' (2020) COM/2020/380 final.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system' (2020) COM/2020/381 final.

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'The European Green Deal' (2019) COM/2019/640 final.

<sup>4</sup> 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 [2023] OJ L 150/206.

<sup>5</sup> *ibid* art. 1.

<sup>6</sup> *ibid* art. 38(2).

<sup>7</sup> Directorate General of Estate Crops, Indonesian Ministry of Agriculture 'Statistical of National Leading Estate Crops Commodity 2021-2023' (2023) <<https://ditjenbun.pertanian.go.id>> accessed 7 August 2023.

<sup>8</sup> *ibid*.

<sup>9</sup> *ibid*.

challenges in complying with the EUDR established by the EC. This phenomenon may arise because of the constrained capacities of smallholders to enhance their production practices due to factors such as poverty, insufficient knowledge, small-scale farming, and inadequate support from the government.<sup>10</sup> Hence, it is necessary to examine the preparedness of Indonesian oil palm smallholders in response to the EUDR.

The regulation has also drawn criticism from developing countries including Indonesia, through a Joint Letter to the World Trade Organization (WTO).<sup>11</sup> The main criticism emphasizes the perceived discriminatory nature of the EUDR's country assessment criteria and benchmarking system, posing potential challenges to fundamental WTO principles.<sup>12</sup> Moreover, the EUDR was also criticized as a unilateral measure and having the potential to create trade barrier.<sup>13</sup> This thesis assesses the consistency of EUDR with the Technical Barriers to Trade (TBT) agreement to evaluate the EU's claims of fairness and non-discrimination in implementing the EUDR. Between the EU and Indonesia, there is also an ongoing Dispute Settlement DS593 on palm oil, which may potentially result in classifying Indonesia as a high-risk country under the EUDR provisions.<sup>14</sup>

The first part of the thesis starts with understanding the EU's approach to deforestation and forest degradation issues, which primarily focuses on the EUDR. It navigates the EGD as the EU's green policy, the regulatory landscape of the EUDR and how it may affect third countries, the potential impact of the Brussels effect and extraterritorial effect, and its intersection with the EU – Indonesia trade relationship. Then, the second part discusses the potential impacts and opportunities of EUDR on smallholder oil palm farmers in Indonesia. This part examines the multifaceted landscape of palm oil, shedding light on its applications and controversies within the food sector, the dynamic developments over the past two decades and recent advancements within Indonesia's

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<sup>10</sup> A Horae, R King, S Airey, 'Cocoa trade, climate change and deforestation' (2017) Resource Trade Earth <<https://resourcetrade.earth/publications/cocoa-trade-climate-change-and-deforestation>> accessed 13 September 2023.

<sup>11</sup> World Trade Organization, 'Joint Letter, European Union proposal for a regulation on deforestation-free products. Submission by Indonesia and Brazil' (2022) G/AG/GEN/213.

<sup>12</sup> *ibid.*

<sup>13</sup> World Trade Organization, 'European Union Regulation on Supply Chains Free from Deforestation and Forest Degradation, Communication from Argentina, Colombia, Dominican Republic, Guatemala, Honduras, Panama, Paraguay, and Peru' (2023) WT/GC/W/912.

<sup>14</sup> World Trade Organization, 'DS593: European Union – Certain measures concerning palm oil and oil palm crop-based biofuels' (2019) <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm)> accessed 12 December 2023.



palm oil sector, and the EUDR potential impacts and opportunities on Indonesia's smallholder oil palm farmers. The last part of this thesis evaluates the EUDR on global trade perspectives under the WTO law. It provides concerns about the EUDR from developing countries to the WTO, a case study on WTO Dispute Settlement DS593: EU-Indonesia (Palm Oil), examines whether the EUDR falls within the principles laid out in the TBT agreement, and discusses the crisis of multilateralism.

### **1.1. Research objectives**

The primary objective of this research is to analyse the potential implications of EUDR on Indonesia's smallholder palm oil farmers. Specifically, it aims to investigate the regulatory provisions, explore potential impacts and opportunities, and assess the alignment of the EUDR with the WTO TBT agreement.

### **1.2. Research questions**

The main research question addressed by this thesis is as follows: *How does the EUDR influence Indonesia's smallholder palm oil farmers concerning its provisions and implications?* To provide a systematic approach, three sub-research questions have been formulated to assess the main research question:

1. What are the key provisions and implications of the EUDR on third countries?
2. What are the potential impacts and opportunities of EUDR on smallholder palm oil farmers in Indonesia?
3. To what extent does the EUDR align with or potentially conflict with the WTO TBT agreement?

By answering these questions, this research is expected to provide valuable insights to various stakeholders in Indonesia, guiding government bodies, Non-Governmental Organizations (NGOs), palm oil associations, industries, and farmers on how to navigate and adapt to the EUDR. Furthermore, this research is also expected to contribute to the advancement of smallholder palm oil farmers in Indonesia towards a more sustainable trajectory.

### **1.3. Methodology**

This thesis employs a doctrinal approach, an interdisciplinary approach, and case studies as its methodological framework. The data collection is conducted through text analysis and literature study of primary sources of law in the form of regulations and

case law both in the EU and Indonesia. For secondary sources, policy documents, international journals, internet databases, and publications are also analysed.

### 1. Doctrinal Approach

Doctrinal legal research elaborates on a comprehensive literature review of primary sources of law. This method is well suited to advocacy and the resolution of legal issues since it closely aligns with the analytical reasoning employed by judges.<sup>15</sup> In this thesis, this method applies to examine the provisions and implications of the EUDR on Indonesia's smallholder palm oil farmers.

### 2. Interdisciplinary Approach

Interdisciplinary legal research assimilates the study of law with other non-legal disciplines. This could create opportunities to employ various insights from a wide range of disciplines within the social sciences.<sup>16</sup> In this thesis, the non-legal disciplines used are the economic and political approaches of smallholder palm oil farmers in Indonesia.

### 3. Case Studies

Case study research is a flexible research approach that has the capacity to offer an exhaustive and in-depth comprehension of a diverse range of issues across many disciplines.<sup>17</sup> In this thesis, a case study on WTO dispute settlement DS593: EU - Palm Oil (Indonesia) is analysed.

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<sup>15</sup> Terry Hutchinson, *Research Methods in Law* (2<sup>nd</sup> Edition, Routledge, 2017).

<sup>16</sup> T Peck, 'Interdisciplinary Methodological Approaches to Desk-Based Socio-legal Human Rights Research' (2023) *Law and Method*, <<https://doi.org/10.5553/REM/.000069>> accessed 8 September 2023.

<sup>17</sup> H Harrison, M Birks, R Franklin, J Mills, 'Case Study Research: Foundations and Methodological Orientations' (2017) *FQS* 18(1): art. 19.

## 2. Understanding the EU Deforestation-free Regulation on Smallholder Farmers

### 2.1. European Green Deal

The world is currently experiencing urgent climate and environmental-related challenges. According to the Intergovernmental Panel on Climate Change (IPCC) Synthesis Report<sup>18</sup>, it is mostly attributed to releasing greenhouse gas emissions from human activities. The activities encompassed in this context include the usage of non-sustainable energy sources, land use and its changes, and diverse consumption and production patterns at both individual and national levels. Consequently, both the environment and humans experienced significant losses and damages.<sup>19</sup> The EU places significant emphasis on environmental sustainability, as the European Green Deal (EGD) urges policymakers to actively seek out measures for environmental and climatic protection.<sup>20</sup> To transform environmental-related challenges into a unique opportunity, the EC released the EGD in 2019.<sup>21</sup> EGD's overarching aim is to function as a strategic framework for the EU to transform its economy and society on a more sustainable pathway. EGD sets forth ambitious targets of achieving climate neutrality by 2050, safeguarding the health and well-being of EU citizens from environment-related risks, and ensuring a just and inclusive transition.<sup>22</sup> EGD was formally published as a soft law instrument with a non-legally binding effect.<sup>23</sup> Although only as a "*Communication*", it holds considerable significance for the actions of the European Union and its Member States.<sup>24</sup> The adoption and implementation of EGD's corresponding legislative acts will result in legal consequences.

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<sup>18</sup> IPCC, 'SYNTHESIS REPORT of the IPCC SIXTH ASSESSMENT REPORT (AR6) Summary for Policymakers' (2023) <[https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)> accessed 16 October 2023.

<sup>19</sup> *ibid* 4-5.

<sup>20</sup> Schunz S, 'The "European Green Deal" – a Paradigm Shift? Transformations in the European Union's sustainability meta-discourse' (2022) 4 Political Research Exchange <<https://www.tandfonline.com/doi/full/10.1080/2474736X.2022.2085121>> accessed 10 October 2023.

<sup>21</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'The European Green Deal' (2019) COM/2019/640 final.

<sup>22</sup> *ibid* 2-3.

<sup>23</sup> Thomson Reuters, 'Soft Law (EU)' (*Practical Law* 2023) <<https://uk.practicallaw.thomsonreuters.com/w-018-9616>> accessed 16 October 2023

<sup>24</sup> Sikora A, 'European Green Deal – Legal and Financial Challenges of the Climate Change' (2020) 21 ERA Forum <<https://link.springer.com/article/10.1007/s12027-020-00637-3>> accessed 29 September 2023.

As stated in one of the EGD's key elements "*Preserving and restoring ecosystems and biodiversity*", deforestation and forest degradation are among the *foci* to be addressed by the EC.<sup>25</sup> This section outlines the intention of the EC to implement a range of regulatory and non-regulatory measures aimed at facilitating the growth and development of imported products and value chains that are free from deforestation and forest degradation. Furthermore, the "*Farm to Fork Strategy*" elements, also prohibit the entry of imported food that fails to meet the applicable environmental standards of EU markets.<sup>26</sup> EGD proposes a range of actions with an indicative timetable to address this issue. Specifically, "*measures to support deforestation-free value chains*" from 2020 as explained in the Annex.<sup>27</sup> In May 2020, EC published two strategies namely the Biodiversity Strategy for 2030<sup>28</sup> and the Farm to Fork Strategy<sup>29</sup>, as a follow-up to the deforestation issue.

The EU acknowledges that addressing the issue of deforestation is complex and needs multiple approaches. In the Biodiversity Strategy for 2030, it is mentioned that deforestation is a major driver of biodiversity loss and contributes to climate change.<sup>30</sup> While in the Farm to Fork Strategy, it is mentioned that the EU needs to reduce the environmental impacts associated with food production, including addressing deforestation in supply chains.<sup>31</sup> Both strategies align with their shared environmental goals of reducing the EU's contribution to global deforestation and forest degradation. Subsequently, the EC drafted a legislative proposal in 2021 aimed to reduce the placing

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<sup>25</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'The European Green Deal' (2019) COM/2019/640 final, 13.

<sup>26</sup> *ibid* 12.

<sup>27</sup> Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'The European Green Deal' (2019) COM/2019/640 final.

<sup>28</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'EU Biodiversity Strategy for 2030, Bringing nature back into our lives' (2020) COM/2020/380 final.

<sup>29</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system' (2020) COM/2020/381 final.

<sup>30</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'EU Biodiversity Strategy for 2030, Bringing nature back into our lives' (2020) COM/2020/380 final.

<sup>31</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system' (2020) COM/2020/381 final.

of products associated with deforestation on the EU market. The proposals later became the EU Deforestation-free products regulation.<sup>32</sup>

EGD is the EU's strategy for green economy through four main strategies: (1) turning ecological challenges into profitable opportunities, (2) presenting the EU as a morally responsible actor, (3) capitalizing on a strong desire for environmental improvement, and (4) emphasizing the security and consolidation of the EU.<sup>33</sup> In achieving the EGD, it is imperative that the principles of solidarity, sustainable development, and a high level of environmental protection must be aligned with the constitutional framework of the EU legal system.<sup>34</sup> Moreover, the effective implementation of EGD necessitates the establishment of clearly defined and transparent policies, which may be achieved by embracing the three fundamental principles of sustainable development: social well-being, environmental preservation, and economic sustainability.<sup>35</sup>

Although EGD appears promising in addressing environmental-related issues, some criticisms have been raised. First, EU Member States are transferring environmental harm to other countries through the importation of goods, while claiming credit for their environmentally friendly policies within their borders.<sup>36</sup> Second, the risk of greenwashing on allegedly eco-products that could undermine EGD.<sup>37</sup> Third, measures

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<sup>32</sup> European Commission, 'Deforestation-free products' <[https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en)> accessed 08 November 2023.

<sup>33</sup> Vela Almeida D and others, 'The "Greening" of Empire: The European Green Deal as the EU First Agenda' (2023) 105 Political Geography 102925 <<https://www.sciencedirect.com/science/article/pii/S0962629823001038>> accessed 10 October 2023.

<sup>34</sup> Sikora A, 'European Green Deal – Legal and Financial Challenges of the Climate Change' (2020) 21 ERA Forum <<https://link.springer.com/article/10.1007/s12027-020-00637-3>> accessed 29 September 2023.

<sup>35</sup> Smol M, 'Is the Green Deal a global strategy? Revision of the Green Deal definitions, strategies and importance in post-COVID recovery plans in various regions of the world' (2022) 169 Energy Policy 113152 <<https://www.sciencedirect.com/science/article/pii/S0301421522003779>> accessed 10 October 2023.

<sup>36</sup> Fuchs R, Brown C and Rounsevell M, 'Europe's Green Deal offshores environmental damage to other nations' (2020) 586 Nature 671 <<https://www.nature.com/articles/d41586-020-02991-1>> accessed 11 October 2023.

<sup>37</sup> Guevska R, 'European Green Deal vs. Greenwashing – Issues and Opportunities' *European Student Think Tank* (2022) <<https://esthinktank.com/2022/06/17/european-green-deal-vs-greenwashing-issues-and-opportunities/>> accessed 16 October 2023.

set through EGD and its corresponding legislative acts could potentially create tensions in international trade and relations, which could lead to trade disputes.<sup>38</sup>

Achieving the EGD goals would be highly uncertain without adequate understanding and monitoring of each action for sustainable development pillars. Given the ongoing challenges both inside and outside the EU, implementing the EGD without appropriate adjustments could jeopardize sustainable development and the unity of the EU. A shift towards climate neutrality can be sustainable if it is underpinned by commitment and agreement.<sup>39</sup> EGD presents a significant opportunity for the EU to effectively attain its sustainability objectives by strengthening cooperation among European countries.<sup>40</sup> EC should also give careful attention to potential trade-offs that may arise between economic, environmental, and social objectives. This can be achieved through close coordination with the Member States to ensure the relevant legislation and policies are effectively enforced and implemented.<sup>41</sup>

## **2.2. Regulation (EU) 2023/1115 on deforestation-free products**

In 2010, the EU introduced a specific legal framework called EU Timber Regulation (EUTR) requiring business operators to ensure that timber and timber products traded within the EU single market have been legally sourced.<sup>42</sup> The EUTR aims to combat illegal logging and decrease the consumption of illegal timber and timber products that were imported or domestically produced.<sup>43</sup> The legislation established requirements for business operators who place timber into the market for the first time to exercise due

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<sup>38</sup> Kettunen M and others, 'An EU Green Deal for Trade Policy and the Environment – IEEP AISBL' *Institute for European Environmental Policy* (2020) <<https://ieep.eu/publications/an-eu-green-deal-for-trade-policy-and-the-environment/>> accessed 16 October 2023.

<sup>39</sup> Filipović S, Lior N and Radovanović M, 'The green deal – just transition and sustainable development goals *Nexus*' (2022) 168 *Renewable and Sustainable Energy Reviews* 112759 <<https://www.sciencedirect.com/science/article/pii/S136403212200644X>> accessed 11 October 2023.

<sup>40</sup> Wolf S and others, 'The European Green Deal – More than Climate Neutrality' (2021) 56 *Intereconomics* 99 <<https://link.springer.com/article/10.1007/s10272-021-0963-z>> accessed 10 October 2023.

<sup>41</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 'The European Green Deal' (2019) COM/2019/640 final, 4.

<sup>42</sup> 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 [2010] OJ L 295 12.11.2010.

<sup>43</sup> European Commission, 'Timber Regulation' <[https://environment.ec.europa.eu/topics/forests/deforestation/illegal-logging/timber-regulation\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/illegal-logging/timber-regulation_en)> accessed 07 November 2023.

diligence, as well as for traders to maintain a traceable record of their suppliers and customers.<sup>44</sup> The elements of due diligence employed in the context of the EUTR were access to information, risk assessment, and risk mitigation.<sup>45</sup>

The 'Fitness Check' results of the EUTR had a positive impact on forest governance.<sup>46</sup> The evaluation indicated that the implementation of the EUTR resulted in improvements to the forest governance of third countries, enabling them to comply with the requirements of this regulation. However, it was concluded that focusing only on the legality of timber was not sufficient to align with the regulation objectives.<sup>47</sup> Furthermore, the EUTR also did not explicitly address the emerging issue of deforestation. Based on those facts, the EC has enacted new legislative acts on deforestation-free products that entered into force on 29 June 2023.<sup>48</sup> The EUDR regulates not only timber and timber products but also other agricultural commodities. This new regulation consolidates and improves the existing framework of the EUTR, which is deemed redundant and should be repealed.<sup>49</sup> The EUTR will be repealed and come into force starting from 30 December 2024.<sup>50</sup>

During the Open Public Consultation, more than 1.2 million EU citizens expressed a desire to purchase products that do not contribute to global deforestation and forest degradation.<sup>51</sup> Around 10% of the world's deforestation is attributed to EU consumer

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<sup>44</sup> *ibid.*

<sup>45</sup> *ibid.*

<sup>46</sup> Commission Staff Working Document, Executive Summary of the Fitness Check on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 (EU Timber Regulation) and on Regulation (EC) No 2173/2005 of 20 December 2005 (FLEGT Regulation), *Accompanying the document* Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (2021) SWD/2021/329 final.

<sup>47</sup> *ibid.*

<sup>48</sup> 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 [2023] OJ L 150/206.

<sup>49</sup> *ibid* recital 80.

<sup>50</sup> *ibid* art. 37(1).

<sup>51</sup> European Commission, 'Deforestation and forest degradation – reducing the impact of products placed on the EU market' <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Minimising-the-risk-of-deforestation-and-forest-degradation-associated-with-products-placed-on-the-EU-market/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Minimising-the-risk-of-deforestation-and-forest-degradation-associated-with-products-placed-on-the-EU-market/public-consultation_en)> accessed 28 October 2023.

goods, some of which are imported from third countries.<sup>52</sup> EUDR aims to minimize the consumption of products associated with deforestation and forest degradation within the EU market and for export purposes. Commodities that fall under the scope of this regulation are cattle, cocoa, coffee, palm oil, rubber, soya, and wood.<sup>53</sup> The definition of deforestation-free is “that the relevant products contain, have been fed with or have been made using, relevant commodities that were produced on land that has not been subject to deforestation after 31 December 2020”.<sup>54</sup>

According to the regulation, relevant commodities and the goods made from them shall limit the EU's contributions to deforestation, forest degradation, greenhouse gas emissions, and the loss of global biodiversity.<sup>55</sup> These products may be placed on or exported from the EU market only after fulfilling all three conditions<sup>56</sup>:

(a) *They are deforestation-free.*

The relevant products and commodities produced are not subject to deforestation after the cut-off date of 31 December 2020.<sup>57</sup>

(b) *They have been produced in accordance with the relevant legislation of the country of production.*

The relevant products and commodities produced by businesses should adhere to all applicable laws of the country of production, including respect for human rights and the indigenous people.<sup>58</sup> This refers to the legal status pertaining to the area of production including land use rights, environmental protection, regulations related to forests, rights of third parties, labour rights, human rights, the principle of free, prior, and informed consent, as well as tax, anti-corruption, trade and customs regulations.<sup>59</sup>

(c) *They are covered by a due diligence statement.*

Businesses will be required to provide due diligence statements encompassing the collection of information, data, and documents, as well as risk assessment and risk

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<sup>52</sup> European Parliament, 'Deforestation: causes and how the EU is tackling it' <<https://www.europarl.europa.eu/news/en/headlines/society/20221019STO44561/deforestation-causes-and-how-the-eu-is-tackling-it>> accessed 28 October 2023.

<sup>53</sup> 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 [2023] OJ L 150/206, art. 1.

<sup>54</sup> *ibid* art. 2(13)(a).

<sup>55</sup> *ibid* arts. 1(a)-1(b).

<sup>56</sup> *ibid* art. 3.

<sup>57</sup> *ibid* art. 2(13).

<sup>58</sup> *ibid* art. 10.

<sup>59</sup> *ibid* art. 2(40).



mitigation measures.<sup>60</sup> In one of the risk mitigation measures, there is a clause regarding smallholders that stipulates supporting compliance of smallholders through capacity building and investments.<sup>61</sup> The purpose of due diligence statements is to ensure that only legal and deforestation-free products are produced.<sup>62</sup>

The EU Member States are required to fulfill their responsibilities as outlined in this regulation. According to Article 14 of the EUDR, Member States are obliged to appoint one or more competent authorities that are responsible for the effective implementation of this regulation.<sup>63</sup> The Member States shall ensure that the competent authorities possess adequate powers, functional independence, and resources to effectively fulfill their responsibilities.<sup>64</sup> Furthermore, it is worth noting that Member States may provide technical assistance, guidance, and facilitate the exchange of information to the business operators and competent authorities.<sup>65</sup>

Appointed competent authorities have an obligation to carry out checks on business operators and traders within their respective territories to verify whether the products being circulated adhere to the EUDR.<sup>66</sup> The checks shall be based on a risk-based approach, which entails the establishment of indicative risk criteria by the EC at the Union level. These criteria will undergo regular review and updates, and then be reported to the competent authorities.<sup>67</sup>

The EUDR also provides specific clauses on the scrutiny by third parties. Regarding the checks, competent authorities shall conduct checks based on substantiated concerns raised by third parties on suspected cases of non-compliance with the regulation.<sup>68</sup> It is mentioned that natural or legal persons may submit these concerns to the competent authorities. The competent authorities then shall promptly, diligently, and impartially

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<sup>60</sup> *ibid* art. 8.

<sup>61</sup> *ibid* art. 11(1)(c).

<sup>62</sup> *ibid* art. 3.

<sup>63</sup> *ibid* art. 14(1).

<sup>64</sup> *ibid* art. 14(4).

<sup>65</sup> *ibid* art. 15.

<sup>66</sup> *ibid* art. 16(1).

<sup>67</sup> *ibid* art. 16(4).

<sup>68</sup> *ibid* art. 16(12).

assess the substantiated concerns and implement any necessary steps.<sup>69</sup> Furthermore, natural or legal persons also have the right to access the judicial system.<sup>70</sup>

The checks conducted by competent authorities are classified based on business size, including micro, small, and medium-sized enterprise (SME): (1) checks performed on operators and non-SME traders<sup>71</sup>, and (2) checks carried out specifically on SME traders<sup>72</sup>. The first category involves checks on the due diligence system, including the procedures of risk assessment and risk mitigation, as well as examining the related records and documentation of proper functioning in its due diligence system.<sup>73</sup> In the second category, the checks have been simplified to focus only on checking the records and documentation, provided that SME traders can demonstrate compliance with the provisions of Article 5(2), (3), and (4).<sup>74</sup>

In cases when business operators or traders fail to comply, the competent authorities can require them to take appropriate and proportional corrective action within a reasonable timeframe.<sup>75</sup> Article 24(2) specifies a range of corrective actions that can be taken, for example, related products must be withdrawn or recalled immediately.<sup>76</sup> Member States shall also lay down rules on the imposition of penalties for violating the EUDR by business operators and traders.<sup>77</sup> The penalties shall be effective, proportionate, and dissuasive. The list of penalties includes several measures, such as fines, confiscation, temporary exclusion from public procurement, temporary prohibition from placing the products on the EU market, and prohibition from exercising simplified due diligence. The specific provisions outlining these penalties may be found in Article 25(2).<sup>78</sup>

To assess the threat of deforestation and forest degradation in third countries, the Country Benchmarking System is used.<sup>79</sup> This regulation classifies third countries or

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<sup>69</sup> *ibid* art. 31.

<sup>70</sup> *ibid* art. 32.

<sup>71</sup> *ibid* art. 18.

<sup>72</sup> *ibid* art. 19.

<sup>73</sup> *ibid* art. 18(1).

<sup>74</sup> *ibid* art. 19(1).

<sup>75</sup> *ibid* art. 24(1).

<sup>76</sup> *ibid* art. 24(2).

<sup>77</sup> *ibid* art. 25(1).

<sup>78</sup> *ibid* art. 25(2).

<sup>79</sup> *ibid* art. 29-30.

parts thereof into a three-tier assessment system: high risk, low risk, and standard risk.<sup>80</sup> Products coming from high risk countries will have increased scrutiny in the market by the Member States' competent authorities. Meanwhile, products coming from low risk countries will go through a simplified due diligence process.<sup>81</sup> Upon the enactment of this regulation on 29 June 2023, all third countries were assigned as standard risk. Nevertheless, the EC will categorize these countries by issuing Implementing Acts no later than 30 December 2024 through the examination procedure outlined in Article 36(2) of this regulation.<sup>82</sup>

The EC has a strategic role in the assessment process which shall be based on an objective and transparent manner, taking into consideration the most recent scientific evidence and internationally recognized sources. The criteria used for the assessment are (1) rate of deforestation and forest degradation, (2) rate of agriculture land expansion, and (3) production trends of relevant commodities/products.<sup>83</sup> The assessment may also consider several important information as outlined in Article 29(4), including bilateral agreements between the EU and the relevant country as well as laws at the national or subnational level within that country.<sup>84</sup> The EC also plays a role in engaging specific dialogue with countries<sup>85</sup> and formally notifying the country concerned as well as informing the competent authorities<sup>86</sup>.

The EU adopts a coordinated approach with third countries, employing partnership and cooperation mechanisms to effectively tackle the root causes that contribute to deforestation and forest degradation. The mechanisms used are structured dialogues, administrative arrangements, and joint roadmaps focused on aligning with the EUDR, placing specific emphasis on smallholders.<sup>87</sup> The full participation of all stakeholders including smallholders is crucial for the success of partnerships and cooperation between the EU and third countries.<sup>88</sup> Furthermore, it is essential to strengthen the rights of smallholders as forest-dependent communities through partnership and

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<sup>80</sup> *ibid* art. 29(1).

<sup>81</sup> *ibid* recital 68.

<sup>82</sup> *ibid* art. 29(2).

<sup>83</sup> *ibid* art. 29(3).

<sup>84</sup> *ibid* art. 29(4).

<sup>85</sup> *ibid* art. 29(5).

<sup>86</sup> *Ibid* art. 29(6).

<sup>87</sup> *ibid* art. 30(1).

<sup>88</sup> *ibid* art. 30(2).

cooperation.<sup>89</sup> Additionally, the EU should actively participate in both bilateral and multilateral forums to advocate for other major consumer countries in supporting the implementation of sustainable agriculture practices and sustainable forest management.<sup>90</sup>

Starting on 30 December 2024, the key provisions of the EUDR will come into effect, which leaves a short adaptation period for adjustment to the regulation.<sup>91</sup> However, several issues have emerged, the first one is how enforcement checks by Member States will be based on a fair, objective, and data driven approach.<sup>92</sup> Second, the EUDR has been labelled as a “protectionism” measure against specific agricultural commodities.<sup>93</sup> Third, the developing countries view the three-tier system as being inherently punitive and discriminatory as in the joint letter sent to the WTO.<sup>94</sup> Finally, it adds new controls, exposes businesses to reputational risks, and is likely to penalize producers, particularly smallholder farmers and SMEs.<sup>95</sup>

### **2.3. The Brussels effect and extraterritorial effect**

The EU has effectively established itself as a significant entity by leveraging its legal institutions and standards. It demonstrates a phenomenon whereby the EU may exert global regulatory power solely by regulating its domestic market without the need for additional actions.<sup>96</sup> The EU's political power, which is acquired through consensus-driven, serves as an effective instrument for encouraging other countries to adopt European regulations. This is because legislative measures that emerge from the EU's inter-institutional and multi-level policy-making processes adhere to rigorous legal standards, thereby providing a sense of certainty. It resulted in such measures that

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<sup>89</sup> *ibid* art. 30(3).

<sup>90</sup> *ibid* arts. 30(4)–30(5).

<sup>91</sup> *ibid* art. 38(2).

<sup>92</sup> Bellfield H and Tan J, 'Data Can Make the EU Deforestation Regulation Fair and Workable' (*World Economic Forum*, 1 June 2023) <<https://www.weforum.org/agenda/2023/06/how-data-can-make-the-eus-deforestation-regulation-fair-and-workable-84babe13c/>> accessed 17 September 2023.

<sup>93</sup> *ibid*.

<sup>94</sup> World Trade Organization, 'Joint Letter, European Union proposal for a regulation on deforestation-free products. Submission by Indonesia and Brazil' (2022) G/AG/GEN/213.

<sup>95</sup> *ibid*.

<sup>96</sup> Enwukwe NE and Karekezi L, 'EU Unilateral Power to Regulate the Global Trade Markets: The Brussels Effect' (2022) 1 *European Journal of Law and Political Science* 5.

effectively communicate the EU's strategic objectives and political commitments in a credible manner.<sup>97</sup>

The EU's political power in a positive way often aligns with its offering of aid to other countries to promote its regulatory objectives. When a recipient of aid holds a positive attitude towards a specific aid, it is logical to establish cooperation from the most favorable source and the most acceptable objective. Moreover, the EU acknowledges the significance of coordination of development assistance through aid.<sup>98</sup>

EU has successfully disseminated its standards globally through a phenomenon known as the "Brussels Effect".<sup>99</sup> Anu Bradford argues that the Brussels Effect refers to the EU's capacity to exert influence beyond its borders through the promulgating regulations that require compliance to have access to the EU single market.<sup>100</sup> The Brussels Effect mechanisms occur through market-driven and treaty-driven influences.<sup>101</sup> The market-driven approach usually influences trade (i.e., an increase in a country's overall export volume to the EU), whereas the treaty-driven approach influences through bilateral or multilateral agreements.<sup>102</sup>

Some trade agreements established by the EU incorporate non-trade policy objectives.<sup>103</sup> These objectives are designed to foster sustainable development by linking preferential access to the EU market in areas such as environmental protection, human rights, and labour rights.<sup>104</sup> An empirical study shows that the Brussels Effect is

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<sup>97</sup> Bendiek A and Stuerzer I, 'The Brussels Effect, European Regulatory Power and Political Capital: Evidence for Mutually Reinforcing Internal and External Dimensions of the Brussels Effect from the European Digital Policy Debate' (2023) 2 Digital Society.

<sup>98</sup> Garrett JM, Rollo JMC and Holmes PM, 'Pulling together or pulling apart: EU trade and development policy' *CEPR* <<https://cepr.org/voxeu/columns/pulling-together-or-pulling-apart-eu-trade-and-development-policy>> accessed 18 October 2023.

<sup>99</sup> Bradford A, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press, 2020) <<https://scholarship.law.columbia.edu/books/232>> accessed 18 October 2023.

<sup>100</sup> *ibid.*

<sup>101</sup> Herghelegiu C, ME Fernando, 'The Brussels Effect: Are consumer health and safety regulations across the world shaped by the European Union?' (2022) <[https://single-market-economy.ec.europa.eu/system/files/2022-12/S1%20-%20CH\\_ppt.pdf](https://single-market-economy.ec.europa.eu/system/files/2022-12/S1%20-%20CH_ppt.pdf)> accessed 18 October 2023.

<sup>102</sup> *ibid.*

<sup>103</sup> Borchert I and others, 'The Pursuit of Non-Trade Policy Objectives in EU Trade Policy' (2020) <<https://cadmus.eui.eu/handle/1814/66882>> accessed 18 October 2023.

<sup>104</sup> *ibid.*

a major driver for the proliferation of EU data protection policies.<sup>105</sup> This effect prompted foreign companies to modify their conduct and enhance their adherence to data protection regulations, not just for individuals within Europe but also for those outside its borders.<sup>106</sup> Another study is the impact of the Brussels Effect on the food trade under WTO's law.<sup>107</sup> WTO attempted to limit the Brussels Effect through its Dispute Settlement Mechanisms. Nevertheless, the WTO ruling has limited potential to jeopardize the Brussels Effect.<sup>108</sup>

EUDR has the potential to be a regulation that has a Brussels Effect. This is due to its alignment with the EU policy objectives, which prioritise environmental protection, particularly in relation to the issue of deforestation.<sup>109</sup> This regulation applies to the requirements imposed on third countries regarding the selling of agricultural commodities in the EU market that should originate from sustainable agricultural production.<sup>110</sup> Therefore, it is imperative to oversee the unilateral measures adopted by the EU to ensure that the EU adequately considers the impacts of its actions on third-country and does not abuse its power.<sup>111</sup>

According to Black's Law Dictionary, extraterritoriality refers to the application and enforcement of laws outside the territorial boundaries of a state or country.<sup>112</sup> EUDR as an EU domestic law has extraterritorial implications for third countries, which aims to

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<sup>105</sup> Mahieu R and others, 'Measuring the Brussels Effect through Access Requests: Has the European General Data Protection Regulation Influenced the Data Protection Rights of Canadian Citizens?' (2021) 11 Journal of Information Policy 301 <<https://scholarlypublishingcollective.org/psup/information-policy/article/doi/10.5325/jinfopoli.11.2021.0301/292024/Measuring-the-Brussels-Effect-through-Access>> accessed 18 October 2023.

<sup>106</sup> *ibid.*

<sup>107</sup> Sinopoli D and Purnhagen KP, 'Reversed Harmonization or Horizontalization of EU Standards?: Does WTO Law Facilitate or Constrain the Brussels Effect?' (*Social Science Research Network*, 2016) <<https://ssrn.com/abstract=2783466>> accessed 18 October 2023.

<sup>108</sup> *ibid.*

<sup>109</sup> 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 [2023] OJ L 150/206.

<sup>110</sup> *ibid.*

<sup>111</sup> Hadjiyianni I, 'The European Union as a Global Regulatory Power' (2020) 41 Oxford Journal of Legal Studies <<https://academic.oup.com/ojls/article-abstract/41/1/243/6017945>> accessed 11 October 2023.

<sup>112</sup> Black's Law Dictionary, 'Extraterritoriality Definition & Legal Meaning' <<https://thelawdictionary.org/extraterritoriality/>> accessed 19 October 2023.

protect the environment, particularly in combating deforestation.<sup>113</sup> One of the adverse implications associated with extraterritoriality relates to trade competition. EU producers will enjoy extensive access to subsidies, grants, and loans that facilitate their compliance with regulatory requirements. However, in principle, non-EU producers will have limitations to access those facilities, which will consequently limit their growth in international trade.<sup>114</sup> Regarding enforcement in the scope of extraterritoriality, a study identified several hurdles that hinder this issue.<sup>115</sup> The hurdles are procedural rules on how to process foreign violators, rules on gathering and sharing evidence, as well as the implementation of enforcement measures. These matters are still being discussed at international fora.<sup>116</sup>

#### **2.4. EU – Indonesia trade relationship**

Partnership and cooperation between the EU and Indonesia have been established through a framework agreement since 1 May 2014.<sup>117</sup> The scope and aims of this agreement encompassed the mutual commitment of both parties to promote sustainable development, foster bilateral cooperation, and facilitate trade and investment, including specific sectors of agriculture and rural development.<sup>118</sup> In accordance with provisions outlined in Article 29 of the agreement, the parties agreed to develop collaboration on mitigating the barriers to trade in crops, livestock, and their respective derivatives.<sup>119</sup>

To strengthen bilateral cooperation on trade and investments between the parties, a Free Trade Agreement (FTA) was negotiated in 2016, commonly known as the EU-Indonesia Comprehensive Economic Partnership Agreement (CEPA).<sup>120</sup> CEPA aimed to

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<sup>113</sup> Diz JBM and Araújo HE de P, 'Extraterritoriality and the Impact of EU Regulatory Authority: Environmental Protection as Soft Power' (2021) 4 *European Union and its Neighbours in a Globalized World* <[https://link.springer.com/chapter/10.1007/978-3-030-82291-0\\_15#DOI](https://link.springer.com/chapter/10.1007/978-3-030-82291-0_15#DOI)> accessed 18 October 2023.

<sup>114</sup> *ibid.*

<sup>115</sup> Martyniszyn M, *Developing Countries' Experience with Extraterritoriality in Competition Law* (United Nations 2022) <<https://unctad.org/publication/developing-countries-experience-extraterritoriality-competition-law>> accessed 14 October 2023.

<sup>116</sup> *ibid.*

<sup>117</sup> European Commission, 'EU-Indonesia Partnership and Cooperation Agreement' (2014) <<https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/d9e40005-57d1-4e2e-8afb-353f3cff22c8/details>> accessed 20 October 2023.

<sup>118</sup> *ibid* arts. 1-2.

<sup>119</sup> *ibid* art. 29.

<sup>120</sup> European Commission, 'EU-Indonesia Comprehensive Economic Partnership Agreement' (2016) <<https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and->

support trade and investments in various sectors, including tariff, non-tariff barriers, dispute settlement, technical barriers to trade, sustainable development, and sustainable food systems.<sup>121</sup> As of July 2023, a total of fifteen rounds of negotiations have been conducted for the CEPA between the EU and Indonesia.<sup>122</sup> However, the negotiations will persist, driven by the textual proposals of the agreement and concise factsheet covering various topics proposed by the EU.

In the textual proposals, two chapters discussed related deforestation issues, which are "Trade and Sustainable Development" and "Sustainable Food Systems".<sup>123</sup> The Trade and Sustainable Development chapter was proposed on 29 May 2017. According to one of the articles, it was stipulated that both parties shall promote trade in products derived from sustainable resources and combat deforestation.<sup>124</sup> The Sustainable Food Systems chapter was proposed on 26 May 2021, it also stipulated that both parties agreed to cooperate in mitigating the negative environmental and climate impacts associated with current food systems and strengthening the resilience of the food system.<sup>125</sup> There is an optimistic outlook that the agreement can be concluded by mid-2024.<sup>126</sup>

Regarding the bilateral agreements established between the EU and other ASEAN (Association of Southeast Asian Nations) countries, it is noteworthy that negotiations have been successfully concluded by the two countries. Specifically, Singapore successfully concluded negotiations in 2014, while Vietnam achieved the same outcome in 2015.<sup>127</sup> Meanwhile, Indonesia has been engaged in the negotiation stage from 2016 up to the present day. There are multiple factors that contributed to the EU's decision not to select Indonesia as its initial bilateral FTA partner among ASEAN countries<sup>128</sup>: (1)

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[region/countries-and-regions/indonesia/eu-indonesia-agreement/documents\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/indonesia/eu-indonesia-agreement/documents_en) > accessed 20 October 2023.

<sup>121</sup> *ibid.*

<sup>122</sup> *ibid.*

<sup>123</sup> *ibid* "Trade and Sustainable Development" and "Sustainable Food Systems".

<sup>124</sup> *ibid* Trade and Sustainable Development.

<sup>125</sup> *ibid* Sustainable Food Systems.

<sup>126</sup> Radio France Internationale, 'EU Hopes for Trade Pact with Indonesia within Two Years' (2022) <<https://www.rfi.fr/en/business-and-tech/20220920-eu-hopes-for-trade-pact-with-indonesia-within-two-years>> accessed 20 October 2023.

<sup>127</sup> European Commission, 'Association of South East Asian Nations (ASEAN)' <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/association-south-east-asian-nations-asean\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/association-south-east-asian-nations-asean_en)> accessed 20 October 2023.

<sup>128</sup> Zainab Assegaff, 'Indonesia: Not a Priority in the European Union Bilateral FTA Negotiations with ASEAN' (2021) Proceedings of the Asia-Pacific Research in Social Sciences and Humanities Universitas Indonesia Conference (APRISH 2019) <<https://www.atlantispress.com/proceedings/aprish-19/125957185>> accessed 11 October 2023.



The EU has experienced a trade imbalance in its economic relations with Indonesia, (2) Indonesia is not an EU priority, and (3) The EU had an unfavorable opinion of Indonesia in environmental issues.

Another flagship initiative under the cooperation framework between the EU and ASEAN for Indonesia is the ARISE+ Indonesia (ASEAN Regional Integration Support by the European Union) - Trade Support Facility.<sup>129</sup> This initiative seeks to strengthen Indonesia's ability to improve its trade performance and competitiveness by providing technical assistance, with a total budget of around EUR 15 million.<sup>130</sup> It is expected that through this initiative, Indonesia will enhance the competitiveness of its goods and services, as well as better accessibility to the EU market.<sup>131</sup>

According to the data on EU trade with Indonesia in 2022, the EU's total import value is 23,543 million euros with a market share of 6,711 million euros (28.5%) in agricultural products.<sup>132</sup> Furthermore, vegetable oils (oilseeds and palm) are the second biggest commodity in top EU agri-food imports from Indonesia with a market share of 2,269 million euros (34%).<sup>133</sup> However, the EU is currently actively making efforts to decrease the use of palm oil, as stated in the EU Agricultural Outlook 2022-2032 Report.<sup>134</sup> The decrease in demand for biodiesel, deforestation concerns, and the intention to promote the consumption of sunflower oil, rapeseed oil, and olive oil are the underlying factors behind this phenomenon.<sup>135</sup>

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<sup>129</sup> ARISE+ Indonesia, 'Indonesia - EU CEPA | ARISE+ Indonesia' (2019) <<https://ariseplus-indonesia.org/en/documents/indonesia-eu-cepa.html>> accessed 20 October 2023.

<sup>130</sup> *ibid.*

<sup>131</sup> ARISE+ Indonesia, 'Seizing Gains from a Transformative Agreement: A Study on the Indonesia-EU Comprehensive Economic Partnership Agreement' (2021) <<https://ariseplus-indonesia.org/en/documents/indonesia-eu-cepa.html>> accessed 20 October 2023.

<sup>132</sup> European Commission, Directorate General for Trade, 'Trade in Goods with Indonesia' (2023) <[https://webgate.ec.europa.eu/isdb\\_results/factsheets/country/details\\_indonesia\\_en.pdf](https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_indonesia_en.pdf)> accessed 20 October 2023.

<sup>133</sup> European Commission, Directorate General for Agriculture and Rural Development, 'Agri-Food Trade Statistical Factsheet European Union-Indonesia' (2023) <[https://agriculture.ec.europa.eu/system/files/2023-05/agrifood-indonesia\\_en.pdf](https://agriculture.ec.europa.eu/system/files/2023-05/agrifood-indonesia_en.pdf)> accessed 20 October 2023.

<sup>134</sup> European Commission, Directorate General for Agriculture and Rural Development, 'EU Agricultural Outlook for Markets, Income and Environment 2022 - 2032' <[https://agriculture.ec.europa.eu/system/files/2023-04/agricultural-outlook-2022\\_report\\_en\\_0.pdf](https://agriculture.ec.europa.eu/system/files/2023-04/agricultural-outlook-2022_report_en_0.pdf)> accessed 20 October 2023.

<sup>135</sup> *ibid.*

The Indonesian government has shown increased concerns about palm oil commodities, particularly in response to the enactment of the EUDR. Recently, an agreement was established to form an Ad Hoc Joint Task Force (JTF) on strategies and practical approaches for the implementation of the EUDR in palm oil.<sup>136</sup> Ad Hoc JTF comprises of government representatives and various stakeholders from the EC, Indonesia, and Malaysia. Additionally, the Secretariat of the Council of Palm Oil Producing Countries (CPOPC) will oversee the discussions.<sup>137</sup> The objective of Ad Hoc JTF is to function as a consultative platform concerning the supply chain, traceability, and transparency of palm oil.<sup>138</sup> On 4 August 2023, a consensus was reached regarding the Terms of Reference for the Ad Hoc JTF work, which includes the inclusion of smallholders into the supply chain and consideration of relevant national certification schemes such as land legality and cut-off date for deforestation. The Ad Hoc JTF is scheduled to conclude its work by the end of 2024, with the possibility of an extension through mutual agreement.<sup>139</sup>

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<sup>136</sup> European External Action Service, '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' (2023) <[https://www.eeas.europa.eu/delegations/indonesia/european-commission-indonesia-and-malaysia-agree-set-joint-task-force\\_en](https://www.eeas.europa.eu/delegations/indonesia/european-commission-indonesia-and-malaysia-agree-set-joint-task-force_en)> accessed 11 September 2023.

<sup>137</sup> *ibid.*

<sup>138</sup> European External Action Service, 'Kick-off Meeting of the Ad Hoc Joint Task Force between Indonesia, Malaysia and the EU | EEAS' (2023) <[https://www.eeas.europa.eu/delegations/indonesia/kick-meeting-ad-hoc-joint-task-force-between-indonesia-malaysia-and-eu\\_en](https://www.eeas.europa.eu/delegations/indonesia/kick-meeting-ad-hoc-joint-task-force-between-indonesia-malaysia-and-eu_en)> accessed 17 September 2023.

<sup>139</sup> *ibid.*

### **3. Potential impacts and opportunities of EUDR on smallholder oil palm farmers in Indonesia**

#### **3.1. Applications and controversies of palm oil within the food sector**

According to Law Insider, palm oil is a type of oil obtained from the fruit of oil palm crops (*Elaeis guineensis*).<sup>140</sup> Around 60% of products available for purchase in the market contain palm oil as an ingredient.<sup>141</sup> Palm oil is used in a wide range of applications such as food ingredients, cosmetics, animal feed, and biofuel production.<sup>142</sup> In the food sector, palm oil is favoured due to its characteristics and functional attributes. These include a high melting point, a neutral smell and taste profile, fatty acid composition, and natural preservative properties.<sup>143</sup> In terms of crop productivity, oil palm offers relatively lower maintenance costs and high yield compared to other vegetable oils, generating increased demand among farmers to cultivate oil palm.<sup>144</sup>

Despite the benefits, palm oil also has various controversies which sparked debates. Regarding health issues, palm oil is labelled as unhealthy and related to heart disease, even though scientific evidence indicating that palm oil does not increase cholesterol levels.<sup>145</sup> A study conducted by Harvard Medical School has also shown that palm oil does not contain any trans fat which is deemed to be unhealthy.<sup>146</sup> Another issues with palm oil are concerning the human rights. In producing countries like Indonesia, oil palm plantations often lead to the abuse of local communities' rights.<sup>147</sup> As consequences, it resulted in loss of livelihood opportunities, increases in poverty, and food insecurity.<sup>148</sup> Besides health and human rights concerns, one of the most

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<sup>140</sup> Law Insider, 'Palm oil definition' <<https://www.lawinsider.com/dictionary/palm-oil>> accessed 1 November 2023.

<sup>141</sup> The Sustainable Palm Oil Choice, 'What is palm oil?' <<https://www.sustainablepalmoilchoice.eu/what-is-palm-oil/>> accessed 1 November 2023.

<sup>142</sup> WWF, '8 things to know about palm oil' <<https://www.wwf.org.uk/updates/8-things-know-about-palm-oil>> accessed 1 November 2023.

<sup>143</sup> Holland F, 'Palm Oil Applications in the Food Industry' (2023) <<https://foodmatterslive.com/article/palm-oil-applications-food-industry/>> accessed 3 November 2023.

<sup>144</sup> *ibid.*

<sup>145</sup> Council of Palm Oil Producing Countries, 'On the Contrary, Palm Oil is Healthy and Sustainable' (2023) <<https://cpopc.org/pressroom/read/on-the-contrary-palm-oil-is-healthy-and-sustainable>> accessed 3 November 2023.

<sup>146</sup> Robb-Nicholson C, 'By the way, doctor: Is palm oil good for you?' (2021) <<https://www.health.harvard.edu/staying-healthy/by-the-way-doctor-is-palm-oil-good-for-you>> accessed 3 November 2023.

<sup>147</sup> Human Rights Watch, 'Indonesia: Expanding Palm Oil Operations Bring Harm' (2021) <<https://www.hrw.org/news/2021/06/03/indonesia-expanding-palm-oil-operations-bring-harm>> accessed 3 November 2023.

<sup>148</sup> *ibid.*

controversial issues surrounding palm oil is its environmental impact that associated with deforestation and forest degradation.<sup>149</sup>

Considering the extensive benefits of palm oil and its impact on the livelihood of people who work in this sector, a total ban on the usage of palm oil within the food sector is not an ideal solution.<sup>150</sup> Instead, the best approach is to move towards sustainable palm oil. The EU is currently at the forefront in procurement and use of certified sustainable palm oil such as the Roundtable on Sustainable Palm Oil (RSPO).<sup>151</sup> According to the data from Solidaridad, 93% of palm oil imported into the EU market in 2021 was sustainably certified as segregated.<sup>152</sup> This means that throughout the supply chain, palm oil from different certified sources is kept separate from regular palm oil. Furthermore, in 2023, the EC promulgated the EUDR which targets agricultural commodities including palm oil, in combating deforestation and forest degradation.<sup>153</sup> Indonesia as a palm oil producing country is also impacted by this legislation. However, it is viewed as a challenge and opportunity to enhance the sustainability of Indonesian palm oil production.

### **3.2. The developments of Indonesia's palm oil over the past two decades**

The development of palm oil towards sustainable production in Indonesia started with global concerns on the environmental and social impact.<sup>154</sup> Gaveau's research findings revealed that palm oil cultivation is a major driver to the degradation of old-growth

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<sup>149</sup> 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 [2023] OJ L 150/206, recital 38.

<sup>150</sup> Holland F, 'Palm Oil Applications in the Food Industry' (2023) <<https://foodmatterslive.com/article/palm-oil-applications-food-industry/>> accessed 3 November 2023.

<sup>151</sup> Solidaridad, 'Briefing Paper: Implications of the EU Deforestation Regulation (EUDR) for oil palm smallholders' (2023) <<https://www.solidaridadnetwork.org/wp-content/uploads/2023/04/Briefing-paper-EUDR-and-palm-oil-smallholders.pdf>> accessed 16 November 2023.

<sup>152</sup> *ibid.*

<sup>153</sup> 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 [2023] OJ L 150/206, art. 1.

<sup>154</sup> INDEF, 'Driving sustainability in Indonesia's palm oil sector: The role of the Indonesian government's certification system: ISPO' (2021) INDEF Policy Brief Vol. 1 No.1/VI/2021 <<https://indef.or.id/en/publikasi/driving-sustainability-in-indonesias-palm-oil-sector-the-role-of-the-indonesian-governments-certification-system-ispo/>> accessed 2 November 2023.

forest in Indonesia.<sup>155</sup> Interestingly, in 2022, a study conducted by Trase Insight showed that Indonesia had successfully decreased the deforestation rate caused by palm oil production in the past decade as shown in Figure 1.<sup>156</sup> The graph shows the decline in the deforestation rate despite the increase in palm oil production.<sup>157</sup> However, the current decline should not be seen as permanent, as there remain expansion risks.<sup>158</sup>

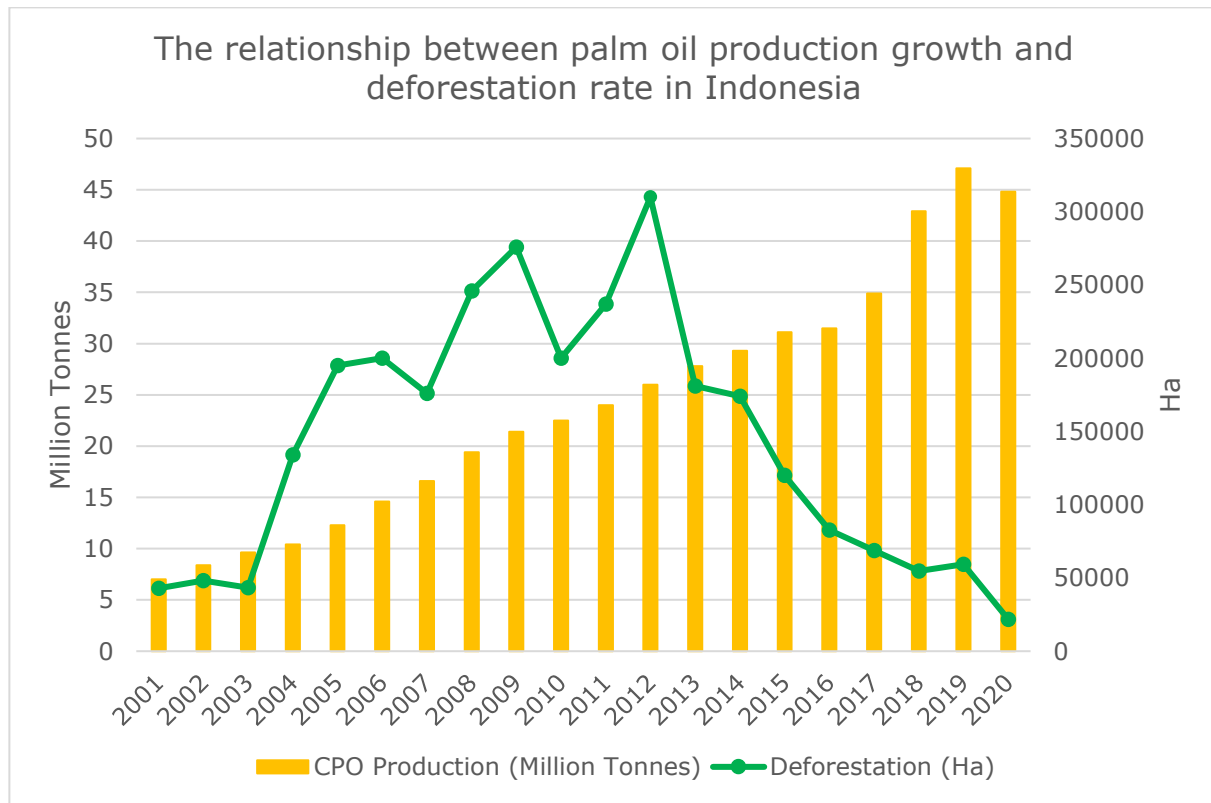


Figure 1. The reduction in deforestation over the past decade despite the increasing of palm oil production in Indonesia

<sup>155</sup> Gaveau DLA and others, 'Slowing deforestation in Indonesia follows declining oil palm expansion and lower oil prices' (2022) 17 PLOS ONE <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0266178>> accessed 18 November 2023.

<sup>156</sup> Heilmayr R and Benedict J, 'Indonesia Makes Progress towards Zero Palm Oil Deforestation' (2022) <<https://insights.trase.earth/insights/indonesia-makes-progress-towards-zero-palm-oil-deforestation/>> accessed 1 November 2023.

<sup>157</sup> *ibid.*

<sup>158</sup> Gaveau DLA and others, 'Slowing deforestation in Indonesia follows declining oil palm expansion and lower oil prices' (2022) 17 PLOS ONE <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0266178>> accessed 18 November 2023.

To address sustainability concerns, the Indonesian government has issued Law No. 39/2014 on plantations.<sup>159</sup> The regulation stipulates that the plantation shall be organised with the principle of sustainability.<sup>160</sup> Furthermore, the government issued Indonesian Presidential Regulation No. 44/2020<sup>161</sup> and Indonesian Ministry of Agriculture Regulation No. 38/2020<sup>162</sup> which provide Indonesia's roadmap towards sustainable palm oil development. Indonesia imposes a mandatory national certification scheme called Indonesian Sustainable Palm Oil (ISPO) aimed to ensure sustainability standards in the palm oil supply chain.<sup>163</sup> In terms of deforestation and forest degradation, ISPO requires business actors to manage natural resources and biodiversity, which encompasses protected forest areas and regions of high conservation value, reduce emissions of greenhouse gases, and safeguard natural forests and peat.<sup>164</sup> This includes preventing deforestation and forest degradation. In addition, the principles of transparency are outlined, including how to handle complaints, have a traceable supply chain system, and be open to information that is not confidential.<sup>165</sup> The ISPO applies to oil palm plantation business actors including smallholder oil palm farmers. Nonetheless, ISPO certification encounters challenges in its implementation due to legislative gaps and complexity at the regional level.<sup>166</sup> The local government faced uncertainty in following up on the regulation amid the numerous existing regulations that remain in force.<sup>167</sup>

Indonesia's efforts to establish internationally acknowledged standards will fail if not built in a multistakeholder process.<sup>168</sup> Possible challenges that may be found during the process include land legality, certification costs, limited information sharing, data

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<sup>159</sup> Indonesian Law No. 39/2014 on plantations.

<sup>160</sup> *ibid* art. 2.

<sup>161</sup> Indonesian Presidential Regulation No. 44/2020 on the certification system for Indonesian sustainable palm oil.

<sup>162</sup> Indonesian Ministry of Agriculture Regulation No. 38/2020 on the organising of Indonesian sustainable palm oil.

<sup>163</sup> *ibid* art. 3.

<sup>164</sup> *ibid* art. 4(3).

<sup>165</sup> *ibid* art. 4(6).

<sup>166</sup> Putri EIK and others, 'The Oil Palm Governance: Challenges of Sustainability Policy in Indonesia' (2022) 14 Sustainability 1820 <<https://www.mdpi.com/2071-1050/14/3/1820>> accessed 19 November 2023.

<sup>167</sup> *ibid*.

<sup>168</sup> Pacheco P and others, 'Governing sustainable palm oil supply: Disconnects, complementarities, and antagonisms between state regulations and private standards' (2018) 14 Regulation & Governance <<https://onlinelibrary.wiley.com/doi/full/10.1111/rego.12220>> accessed 3 November 2023.

discrepancies, and negative campaigns against palm oil.<sup>169</sup> Each stakeholder has their own role and need to work together to answer the challenges faced by ISPO certification. Indonesian government should speed up the certification process, provide incentive schemes, and address gaps at all levels of authority related to the implementation of ISPO certification.<sup>170</sup> NGOs should facilitate training and capacity building for smallholders to attain certification.<sup>171</sup> Consumers also contribute to the responsible purchasing of certified sustainable palm oil products.<sup>172</sup> The World Wildlife Fund (WWF) also advocates for consumers to engage in responsible consumption and purchasing decisions by relying on the available information.<sup>173</sup> Therefore, it is imperative to foster collaboration across stakeholders at all levels.

Besides ISPO, there are several private initiatives and certifications in Indonesia. Firstly, it is the global certification system for sustainable palm oil called RSPO.<sup>174</sup> However, the RSPO gains criticism, particularly on its conflict resolution mechanism which is perceived as unequal access to justice by favouring companies over rural communities in providing remedies.<sup>175</sup> Another criticism is that RSPO certification has not effectively reached smallholders who are in a more disadvantaged position.<sup>176</sup> The certification process should prioritise on social and environmental concerns for smallholders, while also allowing for adaptability to comply with the standards.<sup>177</sup> Furthermore, Berenschot's study illustrates that palm oil companies were able to avoid the regulation, suppression

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<sup>169</sup> Peteru S, Komarudin H and Brady MA, 'Sustainability certifications, approaches, and tools for oil palm in Indonesia and Malaysia' (2022) <<https://cqs-space.cgiar.org/handle/10568/128146>> accessed 5 November 2023.

<sup>170</sup> *ibid.*

<sup>171</sup> *ibid.*

<sup>172</sup> Council of Palm Oil Producing Countries, 'On the Contrary, Palm Oil is Healthy and Sustainable' (2023) <<https://cpopc.org/pressroom/read/on-the-contrary-palm-oil-is-healthy-and-sustainable>> accessed 3 November 2023.

<sup>173</sup> WWF, 'Financial Flows: Who is financing the palm oil buyers? 2023 Edition: Report' (2023) <[https://wwfint.awsassets.panda.org/downloads/wwf\\_financial\\_flows\\_2023\\_report\\_1.pdf](https://wwfint.awsassets.panda.org/downloads/wwf_financial_flows_2023_report_1.pdf)> accessed 10 November 2023.

<sup>174</sup> RSPO, 'Who we are' <<https://rspo.org/who-we-are/>> accessed 5 November 2023.

<sup>175</sup> Afrizal A and others, 'Unequal access to justice: an evaluation of RSPO's capacity to resolve palm oil conflicts in Indonesia' (2022) 40 *Agriculture and Human Values* 291 <<https://link.springer.com/article/10.1007/s10460-022-10360-z>> accessed 14 November 2023.

<sup>176</sup> de Vos RE and others, 'Pre-certification conditions of independent oil palm smallholders in Indonesia. Assessing prospects for RSPO certification' (2023) 130 *Land Use Policy* 106660 <<https://www.sciencedirect.com/science/article/pii/S0264837723001266>> accessed 5 November 2023.

<sup>177</sup> *ibid.*

of community protests, and undermine the conflict resolution mechanisms through collusion with powerholders.<sup>178</sup>

The sustainability impact assessment of the EU-Indonesia FTA suggests that it would be beneficial to collaborate on enhancing the RSPO certification scheme and ISPO certification scheme's safeguarding of human rights, particularly the customary land rights of indigenous people.<sup>179</sup> Supply-chain initiatives that seek to mitigate deforestation must incorporate a combination of public and private actions in order to be more effective.<sup>180</sup> While certification programmes such as ISPO and RSPO can contribute to combating deforestation and forest degradation, they should not be relied upon as the only mechanism for achieving sustainability. Hence, it is important to have multiple sustainability approaches that are strengthened by additional initiatives.<sup>181</sup> The study recommends that, in parallel to the FTA, both parties work together on strengthening the use of certification schemes in the palm oil sector.

Secondly, zero deforestation commitment (ZDC), a voluntary sustainability initiative to indicate that companies commit in reducing deforestation linked to their product.<sup>182</sup> Gaveau observed that the decline in deforestation rate in Indonesia can be attributed to the ZDC implementation.<sup>183</sup> Additionally, in conjunction with ZDC, public supply chain

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<sup>178</sup> Berenschot W and others, 'Anti-Corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia' (2022) 131 *Geoforum* 39 <<https://www.sciencedirect.com/science/article/pii/S0016718522000446>> accessed 9 November 2023.

<sup>179</sup> European Commission, *Sustainability Impact Assessment (SIA) in support of Free Trade Agreement (FTA) negotiations between the European Union and the Republic of Indonesia, Final Report* (Publications Office of the European Union 2019).

<sup>180</sup> Barrantes MAN and others, 'Deforestation and forest degradation in coffee supply chains' (2023) Wageningen Economic Research Policy Brief <<https://research.wur.nl/en/publications/deforestation-and-forest-degradation-in-coffee-supply-chains>> accessed 11 November 2023.

<sup>181</sup> Peteru S, Komarudin H and Brady MA, 'Sustainability certifications, approaches, and tools for oil palm in Indonesia and Malaysia' (2022) <<https://cgspace.cgiar.org/handle/10568/128146>> accessed 5 November 2023.

<sup>182</sup> Garrett RD and others, 'Criteria for effective zero-deforestation commitments' (2019) 54 *Global Environmental Change* 135 <<https://www.sciencedirect.com/science/article/pii/S0959378018306654>> accessed 1 November 2023.

<sup>183</sup> Gaveau DLA and others, 'Slowing Deforestation in Indonesia Follows Declining Oil Palm Expansion and Lower Oil Prices' (2022) 17 *PLOS ONE* <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0266178>> accessed 1 November 2023.



reporting mechanisms could also decrease the deforestation rate.<sup>184</sup> NGOs have been vital in triggering ZDC made by palm oil companies, as well as observing their performances.<sup>185</sup>

Thirdly, the Indonesian Palm Oil Pledge (IPOP), commitment towards zero deforestation by palm oil companies.<sup>186</sup> The IPOP was criticised and disbanded by the Indonesian government, contending that it posed a threat to the development of smallholders, failed to acknowledge public standards, and was an illegal cartel.<sup>187</sup> In this case, the Indonesian government re-asserts its sovereignty over producers, rule-making, and economic organization.<sup>188</sup>

### **3.3. Recent advancements of Indonesia's smallholder oil palm farmers**

According to the Table 1, the land area and production of palm oil by smallholders continues to increase each year.<sup>189</sup> It accounts for approximately 34.05% of the overall oil palm production in Indonesia.<sup>190</sup> Indonesian government has implemented various schemes to encourage the participation of smallholders into palm oil businesses such as creating nucleus-plasma, cooperative schemes, declaring cooking oil as one of Indonesia's essential products, introducing mandatory targets for biodiesel, and implementing policies to support the advancement of palm oil processing industries.<sup>191</sup> Indonesian smallholder oil palm farmers mainly through collective action have demonstrated the capacity for rural development and land conservation.<sup>192</sup>

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<sup>184</sup> Richens J, 'Can Indonesia Continue to Reduce Palm Oil Deforestation?' (*Trase Insights*, 28 September 2022) <<https://insights.trase.earth/insights/can-indonesia-continue-to-reduce-palm-oil-deforestation/>> accessed 17 September 2023.

<sup>185</sup> Dermawan A, Hospes O and Termeer CJAM, 'Between zero-deforestation and zero-tolerance from the state: Navigating strategies of palm oil companies of Indonesia' (2022) 136 *Forest Policy and Economics* 102690.

<sup>186</sup> Dermawan A and Hospes O, 'When the State Brings Itself Back into GVC: The Case of the Indonesian Palm Oil Pledge' (2018) 9 *Global Policy* 21 <<https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12619>> accessed 8 November 2023.

<sup>187</sup> *ibid.*

<sup>188</sup> *ibid.*

<sup>189</sup> Directorate General of Estate Crops, Indonesian Ministry of Agriculture 'Statistical of National Leading Estate Crops Commodity 2021-2023' (2023) <<https://ditjenbun.pertanian.go.id>> accessed 7 November 2023.

<sup>190</sup> *ibid.*

<sup>191</sup> Dermawan A and Hospes O, 'Sustainability pathways in oil palm cultivation: a comparison of Indonesia, Colombia and Cameroon' (2018) Burleigh Dodds series in agricultural science p. 33-48 <<https://library.wur.nl/WebQuery/wurpubs/537865>> accessed 11 November 2023.

<sup>192</sup> Jelsma I and others, 'Collective action in a smallholder oil palm production system in Indonesia: The key to sustainable and inclusive smallholder palm oil?' (2017) 54 *Journal of Rural*

Smallholders main source of income is dependent on oil palm cultivation, often utilise their own family as labour. RSPO classified smallholders into 'scheme smallholders' and 'independent smallholders'.<sup>193</sup> Typically, scheme smallholders are affiliated with oil palm plantation companies or mills. On the contrary, independent smallholders operate autonomously, they possess the freedom to decide the crop to be planted including the land management.<sup>194</sup> Evidence indicates that during the sustainable certification process, smallholders develop an awareness on environmental issues and knowledge on good agricultural practices.<sup>195</sup>

Table 1. Area and Production Palm Oil by Smallholders in Indonesia, 2001-2023\*\*) <sup>196</sup>

Year	Area (Ha)	Production (Tonnes)
2001	1.561.031	2.798.032
2002	1.808.424	3.426.740
2003	1.854.394	3.517.324
2004	2.220.338	3.847.157
2005	2.356.895	4.500.769
2006	2.549.572	5.783.088
2007	2.752.172	6.358.389
2008	2.881.898	6.923.042
2009	3.061.413	7.517.716
2010	3.387257	8.458.709
2011	3.752.480	8.797.924
2012	4.137.620	9.197.728
2013	4.356.087	10.010.728
2014	4.422.365	10.205.395
2015	4.535.400	10.527.791
2016	4.739.318	11.575.542

Studies 198 <<https://www.sciencedirect.com/science/article/pii/S0743016716303941>> accessed 7 November 2023.

<sup>193</sup> RSPO, 'Which RSPO certification is right for you?' <<https://rspo.org/as-a-smallholder/certification/>> accessed 7 November 2023.

<sup>194</sup> *ibid.*

<sup>195</sup> Peteru S, Komarudin H and Brady MA, 'Sustainability certifications, approaches, and tools for oil palm in Indonesia and Malaysia' (2022) <<https://cgspace.cgiar.org/handle/10568/128146>> accessed 5 November 2023.

<sup>196</sup> Directorate General of Estate Crops, Indonesian Ministry of Agriculture 'Statistical of National Leading Estate Crops Commodity 2021-2023' (2023) <<https://ditjenbun.pertanian.go.id>> accessed 7 November 2023.

2017	5.697.892	13.191.189
2018	5.818.888	15.296.801
2019	5.896.775	14.925.877
2020	6.044.058	15.495.427
2021	6.029.749	15.503.840
2022*)	6.159.333	15.519.234
2023**)	6.300.426	16.273.170

Note:

1. \*) Preliminary data
2. \*\*) Estimation data

The data regarding the total oil palm area in 2001-2020 was derived from reports provided by various regions as well as survey findings. The period of 2021-2023 was derived from a reassessment of the area of oil palm coverage by the application of remote sensing techniques.

Smallholder farmers as primary producers face significant challenges in complying with the EUDR established by the EC. This phenomenon may arise because of the constrained capacities of smallholders to enhance their production practices, due to factors such as poverty, insufficient knowledge, small-scale farming, and inadequate support from the government.<sup>197</sup> Moreover, independent smallholders may face huge difficulties in providing information requirements such as the legality of their land and accurately determining the geolocation of their agricultural areas.<sup>198</sup> Regarding this issue, the FAQ published by the EC states that farmers can obtain the geolocation data of their land using mobile phones.<sup>199</sup> Another issue regarding incentives, a study conducted by Jelsma revealed that farmers with higher capitalization levels are less likely to invest in

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<sup>197</sup> A Horae, R King, S Airey, 'Cocoa trade, climate change and deforestation' (2017) Resource Trade Earth <<https://resourcetrade.earth/publications/cocoa-trade-climate-change-and-deforestation>> accessed 13 September 2023.

<sup>198</sup> Solidaridad, 'Briefing Paper: Implications of the EU Deforestation Regulation (EUDR) for oil palm smallholders' (2023) <<https://www.solidaridadnetwork.org/wp-content/uploads/2023/04/Briefing-paper-EUDR-and-palm-oil-smallholders.pdf>> accessed 16 November 2023.

<sup>199</sup> European Commission, 'Frequently Asked Questions - Deforestation Regulation' (2023) <[https://environment.ec.europa.eu/publications/frequently-asked-questions-deforestation-regulation\\_en](https://environment.ec.europa.eu/publications/frequently-asked-questions-deforestation-regulation_en)> accessed 2 November 2023.

GAP, which leads to uncertainty that enhancing access to finance will result in better farming practices.<sup>200</sup>

The EU is committed to strengthening its involvement in assisting smallholder farmers through partnerships and cooperation with producing countries. The latest breakthrough made by the EU is launching a global Team Europe Initiative on Deforestation-free Value Chains that aims to combat deforestation and help partner countries transition to sustainable, deforestation-free, legal supply chains.<sup>201</sup> On top of that, it will help partner countries and producers with technical support and capacity building on key issues including land-use mapping, geo-localization, and traceability.<sup>202</sup> On the updated Frequently Asked Questions (FAQs) of the EUDR, various issues have been addressed by the EC on the implementation of EUDR.<sup>203</sup> These concerns include traceability, due diligence, benchmarking and partnerships, as well as related to guidelines which are expected to be published soon.<sup>204</sup>

### **3.4. EUDR potential impacts on Indonesia's smallholder oil palm farmers**

The EUDR provides businesses irrespective of their size, with market prospects for deforestation-free products.<sup>205</sup> Fulfilling compliance with the EUDR by smallholders is possible, however the expenses associated with ensuring compliance are expected to be higher than the additional market value gained.<sup>206</sup> There are several potential

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<sup>200</sup> Jelsma I and others, 'Do wealthy farmers implement better agricultural practices? An assessment of implementation of Good Agricultural Practices among different types of independent oil palm smallholders in Riau, Indonesia' (2019) 170 *Agricultural Systems* 63 <<https://www.sciencedirect.com/science/article/pii/S0308521X18306668>> accessed 15 November 2023.

<sup>201</sup> European Commission, 'Global Gateway: EU and Member States launch global Team Europe Initiative on Deforestation-free Value Chains' (2023) <[https://international-partnerships.ec.europa.eu/news-and-events/news/global-gateway-eu-and-member-states-launch-global-team-europe-initiative-deforestation-free-value-2023-12-09\\_en](https://international-partnerships.ec.europa.eu/news-and-events/news/global-gateway-eu-and-member-states-launch-global-team-europe-initiative-deforestation-free-value-2023-12-09_en)> accessed 16 December 2023.

<sup>202</sup> *ibid.*

<sup>203</sup> European Commission, 'Frequently Asked Questions: Implementation of the EU Deforestation Regulation' (2023) <<https://circabc.europa.eu/ui/group/34861680-e799-4d7c-bbad-da83c45da458/library/e126f816-844b-41a9-89ef-cb2a33b6aa56/details>> accessed 22 December 2023.

<sup>204</sup> *ibid.*

<sup>205</sup> Carroll SG, 'Brussels refutes Indonesia's claims on EU anti-deforestation law' (2023) <<https://www.euractiv.com/section/energy-environment/news/brussels-refutes-indonesias-claims-on-eu-anti-deforestation-law/>> accessed 1 November 2023.

<sup>206</sup> Solidaridad, 'Briefing Paper: Implications of the EU Deforestation Regulation (EUDR) for oil palm smallholders' (2023) <<https://www.solidaridadnetwork.org/wp-content/uploads/2023/04/Briefing-paper-EUDR-and-palm-oil-smallholders.pdf>> accessed 16 November 2023.

impacts that the EUDR will further exclude Indonesian oil palm farmers from supply chains to the EU market. First, traceability was recognised as the biggest obstacle that independent smallholders faced.<sup>207</sup> In the article 4(6) of organising ISPO regulation, it is stated that plantation company need to implement a traceable supply chain system.<sup>208</sup> Further provisions regulate that to ensure traceability of the palm oil product supply chain, plantation companies can choose a segregation or mass balance supply chain model.<sup>209</sup> Indonesian smallholder oil palm farmers encounter challenges to comply, due to tracing to the origin difficulties and lack of transaction documentation.<sup>210</sup> In the EU's latest publication, the traceability provision does not apply to smallholders who do not put their products themselves directly on the EU market.<sup>211</sup> However, their business partners (operators/traders) may need the information requirements regarding their production for regulatory compliance.<sup>212</sup> The EUDR mandates the precise geo-location of product origins but achieving this degree of accuracy just through operators/traders' traceability system is inadequate. It is essential to complement it with transparent national traceability systems and robust deforestation monitoring systems.<sup>213</sup>

Second, there is a potential risk that operators/traders may prioritise purchasing palm oil from well-organised smallholders to comply with the EUDR.<sup>214</sup> Conversely, independent smallholders that are in remote areas or not well organised will be excluded due to barriers associated with education and digital literacy. It is imperative that operators/traders also procure their palm oil from independent smallholders while encouraging them to comply. Indonesia is aware of this issue and has established a

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<sup>207</sup> *ibid.*

<sup>208</sup> Indonesian Ministry of Agriculture Regulation No. 38/2020 on the organising of Indonesian sustainable palm oil, article 4(6).

<sup>209</sup> *ibid* arts. 29-30.

<sup>210</sup> Solidaridad, 'Briefing Paper: Implications of the EU Deforestation Regulation (EUDR) for oil palm smallholders' (2023) <<https://www.solidaridadnetwork.org/wp-content/uploads/2023/04/Briefing-paper-EUDR-and-palm-oil-smallholders.pdf>> accessed 16 November 2023.

<sup>211</sup> European Commission, 'EU Deforestation Regulation: An opportunity for smallholders' (2023) <<https://op.europa.eu/en/publication-detail/-/publication/13116422-7869-11ee-99ba-01aa75ed71a1>> accessed 18 December 2023.

<sup>212</sup> *ibid.*

<sup>213</sup> Renier C and others, 'Transparency, traceability and deforestation in the Ivorian cocoa supply chain' (2023) 18 *Environmental Research Letters* <<https://iopscience.iop.org/article/10.1088/1748-9326/acad8e>> accessed 8 November 2023.

<sup>214</sup> Simon F, 'Indonesia, Malaysia seek more time to implement EU anti-deforestation law' (2023) <<https://www.euractiv.com/section/energy-environment/news/indonesia-malaysia-seek-more-time-to-implement-eu-anti-deforestation-law/>> accessed 25 November 2023.

"clearing house" to facilitate palm oil producers in submitting all the required information for compliance with the EUDR. The objective is to provide a single scheme to avoid confusion for smallholders.<sup>215</sup>

Third, the country benchmarking imposes a risk to the smallholders that produce sustainable palm oil in some regions of a country. EC may consider evaluating not just the deforestation rates of a whole country, but also for each specific commodity at the regional level.<sup>216</sup> The EU should prioritise to high-risk regions in tackling the root causes of deforestation. If this issue is not well-addressed, traders/operators will shift their sourcing to low-risk locations and smallholders will be excluded.<sup>217</sup> Other concern related to this is the risks of land disputes.<sup>218</sup>

Fourth, palm oil and its derivatives are occasionally traded using a mass balance model.<sup>219</sup> This model utilises a market mechanism to engage smallholder farmers in sustainable supply chains by using a blend of certified and non-certified palm oil across the supply chains.<sup>220</sup> Nevertheless, the mass balance chains of custody are prohibited under the EUDR due to the inability to ensure that the goods introduced to or exported from the Union market are free from deforestation.<sup>221</sup>

All those impacts will cause Indonesian oil palm smallholders to experience a short-term decline in terms of demand and prices. However, if they are still excluded in the medium and long term, other steps could be taken by exploring new markets beyond the EU, strengthening current markets like India and China, as well as boosting

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<sup>215</sup> *ibid.*

<sup>216</sup> Bellfield H and others, 'Risk benchmarking for the EU deforestation regulation: Key principles and recommendations' (2023) Trase and Proforest Policy Briefing <<https://www.proforest.net/fileadmin/uploads/proforest/Documents/Publications/EU-deforestation-regulation-Key-principles-and-recommendations.pdf>> accessed 1 November 2023.

<sup>217</sup> *ibid.*

<sup>218</sup> Zhunusova E and others, 'Potential impacts of the proposed EU regulation on deforestation-free supply chains on smallholders, indigenous peoples, and local communities in producer countries outside the EU' (2022) 143 Forest Policy and Economics 102817 <<https://www.sciencedirect.com/science/article/pii/S1389934122001307>> accessed 15 November 2023.

<sup>219</sup> Roundtable Sustainable Palm Oil, 'RSPO supply chains' <<https://rspo.org/as-an-organisation/certification/supply-chains/>> accessed 2 November 2023.

<sup>220</sup> *ibid.*

<sup>221</sup> European Commission, 'Frequently Asked Questions - Deforestation Regulation' (2023) <[https://environment.ec.europa.eu/publications/frequently-asked-questions-deforestation-regulation\\_en](https://environment.ec.europa.eu/publications/frequently-asked-questions-deforestation-regulation_en)> accessed 2 November 2023.

consumption within the domestic market.<sup>222</sup> Hence, providing sufficient support and financial resources to improve their plantations and appropriate production practices is important. These measures will effectively address the root causes of deforestation in the palm oil sector.

### **3.5. EUDR as opportunities to enhance the sustainability of Indonesia's smallholder oil palm farmers**

There is currently a global push to promote the shift towards sustainable agriculture, driven by political, environmental, and social momentum. Supporting this agricultural and food system transition requires local adaptation, participation of stakeholders, and an understanding that agriculture produces more than just food commodities.<sup>223</sup> Given the enactment of the EUDR, Indonesia should perceive it as an opportunity rather than a barrier. EUDR should be seen as a driving force for Indonesia's agricultural sector to be restructured in a sustainable manner. Each stakeholder, including the governments, companies, NGOs, and smallholder farmers has a role to contribute towards enhancing the sustainability within the palm oil sector.

The Indonesian government plays a crucial role in enhancing sustainable practices among smallholder oil palm farmers as a regulatory authority. Recently, Indonesia implemented measures to halt the expansion of oil palm cultivation into primary forests and peatlands through land-use planning and moratoriums.<sup>224</sup> Other research conducted by Azhar suggests the implementation of land policy reforms.<sup>225</sup> Specifically on obligatory for plantation business to share their producing land with displaced farmers via crop and livestock integration strategy.<sup>226</sup> This strategy is effective to

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<sup>222</sup> Rifin A and others, 'Assessing the impact of limiting Indonesian palm oil exports to the European Union' (2020) 9 Journal of Economic Structures <<https://journalofeconomicstructures.springeropen.com/articles/10.1186/s40008-020-00202-8>> accessed 11 November 2023.

<sup>223</sup> Boix-Fayos C and de Vente J, 'Challenges and potential pathways towards sustainable agriculture within the European Green Deal' (2023) 207 Agricultural Systems 103634 <<https://www.sciencedirect.com/science/article/pii/S0308521X23000392>> accessed 9 November 2023.

<sup>224</sup> Monzon JP and others, 'Fostering a climate-smart intensification for oil palm' (2021) 4 Nature Sustainability 595 <<https://www.nature.com/articles/s41893-021-00700-y>> accessed 14 November 2023.

<sup>225</sup> Azhar B and others, 'Mitigating the risks of indirect land use change (ILUC) related deforestation from industrial palm oil expansion by sharing land access with displaced crop and cattle farmers' (2021) 107 Land Use Policy 105498 <<https://www.sciencedirect.com/science/article/pii/S0264837721002210>> accessed 15 November 2023.

<sup>226</sup> *ibid.*

mitigate deforestation, enhance food security, and reduce the utilisation of chemical herbicides.<sup>227</sup> Indonesia might also adopt an alternative strategy by engaging in economic and sustainable diplomacy through cooperation and negotiation platforms with the EU.<sup>228</sup> The Indonesian government may also consider creating a National Palm Oil Authority to tackle matters related to food safety, quality, traceability, and sustainability of palm oil.<sup>229</sup>

Based on the joint Organisation for Economic Co-operation and Development/Food and Agriculture Organization (OECD/FAO) handbook on deforestation and due diligence, companies should provide sufficient resources, capacity building, and training to their suppliers.<sup>230</sup> This will enable them to effectively carry out due diligence measures regarding deforestation. Certain suppliers such as smallholder farmers, require more support to empower them, resulting in increased earnings, improved yield productivity, and resilience.<sup>231</sup> Support can be provided through longer contractual agreements, implementing traceability systems, and offering financial assistance.<sup>232</sup> Companies play a vital role in empowering smallholder farmers, as many palm oils rely on indirect sourcing and have a substantial supply base of smallholder farmers. Furthermore, it is crucial for companies to persist in procuring from smallholder farmers in high-risk regions and actively participating in mitigating deforestation in those areas, instead of shifting their sourcing to low-risk regions.<sup>233</sup>

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<sup>227</sup> Azhar B and others, 'Mitigating the risks of indirect land use change (ILUC) related deforestation from industrial palm oil expansion by sharing land access with displaced crop and cattle farmers' (2021) 107 Land Use Policy 105498 <<https://www.sciencedirect.com/science/article/pii/S0264837721002210>> accessed 15 November 2023.

<sup>228</sup> Hamid S and Paramitaningrum, 'Indonesian Economic Diplomacy toward Palm Oil: Indonesia's Respond to the EU Resolution on Palm Oil and Deforestation of Rainforest (2016/2222(INI))' (2023) 388 E3S Web of Conferences <[https://www.e3s-conferences.org/articles/e3sconf/abs/2023/25/e3sconf\\_icobar2023\\_04006/e3sconf\\_icobar2023\\_04006.html](https://www.e3s-conferences.org/articles/e3sconf/abs/2023/25/e3sconf_icobar2023_04006/e3sconf_icobar2023_04006.html)> accessed 11 November 2023.

<sup>229</sup> Hariyadi P, 'Food safety & nutrition issues: challenges and opportunities for Indonesian palm oil' (2020) 418 IOP Conference Series: Earth and Environmental Science <<https://iopscience.iop.org/article/10.1088/1755-1315/418/1/012003>> accessed 6 November 2023.

<sup>230</sup> OECD/FAO, *OECD-FAO Business Handbook on Deforestation and Due Diligence in Agricultural Supply Chains* (OECD Publishing 2023).

<sup>231</sup> *ibid.*

<sup>232</sup> *ibid.*

<sup>233</sup> Bellfield H and others, 'Strengthening the EU regulation on deforestation-free products' (2022) Trase Policy Briefing <<https://cdn.sanity.io/files/n2jhvipv/production/ba35f696e24f132a3e623f7fc70539579d1cf8b6.pdf>> accessed 1 November 2023.



As smallholders, numerous sustainable agriculture practises can be used. Strategies to encourage sustainable production encompass the intensification and technological advancements, facilitating infrastructure development, and providing incentives.<sup>234</sup>

Practises that can be implemented are:

(1) Sustainable intensification practises in oil palm cultivation have the potential to balance economic and environmental objectives effectively.<sup>235</sup>

(2) Short harvest intervals. A study reveals that reducing harvest intervals can enhance productivity and minimise losses of oil palm fruits.<sup>236</sup> Nevertheless, to shorten the time between harvest, it requires collective action to optimise the harvest process.<sup>237</sup>

(3) Implementation of mixed oil palm cultivation systems, which can effectively achieve land sparing by optimising land utilisation.<sup>238</sup>

(4) Agroecology, which is able to produce high palm oil yields by minimising the use of external inputs such as mineral fertilisers and pesticides.<sup>239</sup>

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<sup>234</sup> Xin Y, Sun L and Hansen MC, 'Oil palm reconciliation in Indonesia: Balancing rising demand and environmental conservation towards 2050' (2022) 380 *Journal of Cleaner Production* 135087 <<https://www.sciencedirect.com/science/article/abs/pii/S0959652622046613>> accessed 4 November 2023.

<sup>235</sup> Monzon JP and others, 'Fostering a climate-smart intensification for oil palm' (2021) 4 *Nature Sustainability* 595 <<https://www.nature.com/articles/s41893-021-00700-y>> accessed 14 November 2023.

<sup>236</sup> de Vos RE and others, 'Shortening harvest interval, reaping benefits? A study on harvest practices in oil palm smallholder farming systems in Indonesia' (2023) 211 *Agricultural Systems* 103753 <<https://www.sciencedirect.com/science/article/pii/S0308521X23001580>> accessed 15 November 2023.

<sup>237</sup> *ibid.*

<sup>238</sup> Khasanah N and others, 'Oil Palm Agroforestry Can Achieve Economic and Environmental Gains as Indicated by Multifunctional Land Equivalent Ratios' (2020) 3 *Frontiers in Sustainable Food Systems* <<https://www.frontiersin.org/articles/10.3389/fsufs.2019.00122/full>> accessed 3 November 2023.

<sup>239</sup> Bessou C and others, 'Agroecological practices in oil palm plantations: examples from the field' (2017) 24 *OCL* <[https://www.ocl-journal.org/articles/ocl/full\\_html/2017/03/ocl170012/ocl170012.html](https://www.ocl-journal.org/articles/ocl/full_html/2017/03/ocl170012/ocl170012.html)> accessed 7 November 2023

## 4. Assessing the EUDR on global trade perspectives

### 4.1. Concerns about the EUDR from developing countries to the WTO

While the EUDR presents a great chance to strengthen the EU's stance on the global stage in the fight against deforestation and forest degradation, developing countries have been vocal in their opposition to and criticism of the regulation.<sup>240</sup> The EUDR has drawn criticism from developing countries through a joint letter to the WTO. Indonesia and Brazil submitted the letter to the WTO on 29 November 2022.<sup>241</sup> The letter was signed by 14 developing countries with a substantial share of the global output for affected commodities. The main criticism brought by the developing countries in this letter was that the country assessment criteria and benchmarking system are discriminatory and might pose significant challenges to fundamental WTO rules.<sup>242</sup> Moreover, it adds new controls, exposes businesses to reputational risks, and is likely to penalize producers, particularly smallholder farmers.<sup>243</sup> EUDR could raise potential trade distortion issues, which may have detrimental socio-economic consequences for developing countries.

As a continuation of the criticism toward the EUDR, 17 like-minded countries including Indonesia, sent a second joint letter on 7 September 2023, which was signed by their ambassadors.<sup>244</sup> The main points raised in this second letter pertain to ignoring local conditions and capacities, national laws, certification systems, their anti-deforestation initiatives, and producer countries' multilateral commitments.<sup>245</sup> The other concern expressed in this letter is that the EU's due diligence and traceability model, which is designed to be "one-size-fits-all" will have a negative impact on both importing and exporting countries.<sup>246</sup>

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<sup>240</sup> Licini A, 'The EUDR Case: The International Struggle of the EU Against Illegal Deforestation' (2023) Istituto Analisi Relazioni Internazionali <<https://iari.site/2023/07/23/the-eudr-case-the-international-struggle-of-the-eu-against-illegal-deforestation/>> accessed 4 December 2023.

<sup>241</sup> World Trade Organization, 'Joint Letter, European Union proposal for a regulation on deforestation-free products. Submission by Indonesia and Brazil' (2022) G/AG/GEN/213.

<sup>242</sup> *ibid.*

<sup>243</sup> *ibid.*

<sup>244</sup> Ministry of Foreign Affairs of the Republic of Indonesia, '17 Like-Minded Countries Convey Official Concern Regarding the EUDR' (2023) <<https://kemlu.go.id/portal/en/read/5234/berita/17-like-minded-countries-convey-official-concern-regarding-the-eudr>> accessed 4 December 2023.

<sup>245</sup> *ibid.*

<sup>246</sup> *ibid.*

The latest concern regarding the EUDR was also raised by Latin American countries through communication to the WTO Trade and Environment Committee on 9 November 2023.<sup>247</sup> They expressed concern that the EUDR could result in higher costs or barriers to trade, particularly for small businesses and producers in the supply chains.<sup>248</sup> In addition, they mentioned that there are still some unclear parts that need further supplementary regulations. As a result, the time it will take for business actors involved in these chains to make the necessary adjustments to comply will be shorter than the 18 months planned for implementation, which is set for the end of December 2024.<sup>249</sup> This communication was accompanied by a number of queries addressed to the EU about the provisions of the EUDR, which are expected to be answered through formal written responses.<sup>250</sup>

The WTO is a multilateral intergovernmental organization that operates an international system of trade rules with 164 member countries representing 98% of world trade.<sup>251</sup> A higher quality of living, more employment opportunities, and improved people's lives are all the objectives of the WTO.<sup>252</sup> To achieve the objectives, the WTO functions to administering WTO trade agreements, facilitating discussions between member countries for trade negotiations, mediating disputes that arise from such negotiations, monitoring national trade policies, helping developing countries with technical assistance and training, and cooperating with other international organizations.<sup>253</sup> The WTO trade agreement is binding on its members and is intended to facilitate trade and reduce barriers for both parties.<sup>254</sup> Various aspects on trade are addressed by the WTO's agreements, namely General Agreement on Tariffs and Trade (GATT) 1994, agriculture, sanitary and phytosanitary measures, technical barriers to trade, subsidies and

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<sup>247</sup> World Trade Organization, 'European Union Regulation on Deforestation and Forest Degradation-free Supply Chains, Communication from Argentina, Brazil, Colombia, Ecuador, Guatemala, Honduras, Mexico, Paraguay, and Peru' (2023) WT/CTE/GEN/33.

<sup>248</sup> *ibid* 4.

<sup>249</sup> *ibid* 5.

<sup>250</sup> *ibid* 7.

<sup>251</sup> World Trade Organization, 'Understanding the WTO' <[https://www.wto.org/english/thewto\\_e/whatis\\_e/who\\_we\\_are\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm)> accessed 6 December 2023.

<sup>252</sup> *ibid*.

<sup>253</sup> *ibid*.

<sup>254</sup> World Trade Organization, 'What is the World Trade Organization?' <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm)> accessed 6 December 2023.

countervailing measures (SCM), etc.<sup>255</sup> While the WTO regulates and facilitates international trade through these agreements, it is also crucial to address other factors such as balancing trade with environmental concerns.<sup>256</sup>

There is an increasing emphasis on environmental policies which intersect with trade policies in various countries.<sup>257</sup> In his paper, Pascal went into further detail about how important it is to take a diversified approach based on a country's development level.<sup>258</sup> He stated the importance of the trade-environment-development nexus at the multilateral level and ensuring WTO as an intergovernmental organization are presence to address the issues.<sup>259</sup> Recently, the African Group circulated a communication to the WTO proposing principles guiding the development and implementation of trade-related environmental measures on 13 July 2023.<sup>260</sup> While the African Group agrees that climate action is critical, it also recognises that the present debates over trade and the environment could have serious consequences for developing countries.<sup>261</sup> Enhancing the influence of developing countries in the multilateral environmental domain would require them to have developed economies and be less susceptible to unilateral trade measures.<sup>262</sup> A study revealed that the protectionism measures implemented by developed countries do not promote their own environmental efficiency and instead have a negative impact on global sustainable development.<sup>263</sup> Moreover, it also hinders

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<sup>255</sup> World Trade Organization, 'WTO legal texts' <[https://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](https://www.wto.org/english/docs_e/legal_e/legal_e.htm)> accessed 6 December 2023.

<sup>256</sup> World Trade Organization, 'Environmental requirements and market access: preventing 'green protectionism'' <[https://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_req\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envir_req_e.htm)> accessed 17 January 2024.

<sup>257</sup> Organization for Economic Co-operation and Development, 'Trade and the environment' <<https://www.oecd.org/trade/topics/trade-and-the-environment/>> accessed 6 December 2023.

<sup>258</sup> Lamy P and others, 'The Case for a Global Triangle Forum at the WTO' (2023) <<https://www.europejacquesdelors.eu/publications/httpstessforum.orglatestthe-case-for-a-global-triangle-forum-at-the-wto>> accessed 8 Desember 2023.

<sup>259</sup> *ibid.*

<sup>260</sup> World Trade Organization, 'Principles Guiding the Development and Implementation of Trade-related Environmental Measures, Communication from the African Group' (2023) WT/GC/W/894, WT/CTE/W/255, G/C/W/830, IP/C/W/703, G/AG/W/239.

<sup>261</sup> *ibid* 1.2.

<sup>262</sup> Thapa O, 'WTO Agreements and Environmental Issue a Developing Countries Perspective' (Master Thesis, Wageningen University & Research 2012).

<sup>263</sup> Wang Q and others, 'Does protectionism improve environment of developing countries? A perspective of environmental efficiency assessment' (2022) 30 Sustainable Production and Consumption 851 <<https://www.sciencedirect.com/science/article/pii/S2352550922000094>> accessed 18 January 2024.

the sustainable development of developing countries by decreasing their environmental efficiency, despite potentially reducing their territorial pollutant emissions.<sup>264</sup>

The WTO allows its members to justify trade restrictions if it is necessary to safeguard social interests and values.<sup>265</sup> Environmental protection is an example of non-trade values that the WTO is concerned, despite its trade-oriented focus.<sup>266</sup> The WTO has established a Trade and Environment Committee, which manages issues related to environmental and sustainable development into the WTO work.<sup>267</sup> Although the environmental protection is criticized as “green protectionism” in trade, a study by Brandi shows that the measures do not significantly impede the export activities of developing countries.<sup>268</sup> Moreover, it encourages developing countries to promote green exports and reduce dirty exports. On the other hand, the study also emphasises that it is only observable among exporters from developing countries that demonstrate a robust environmental performance.<sup>269</sup>

The EUDR’s objectives which prevent further deforestation and forest degradation from products traded and consumed in the EU, align with those of the WTO, which seeks to promote environmental protection and sustainable international trade.<sup>270</sup> Even though EUDR aligns with the WTO’s concerns, it has the potential for trade discrimination, impact on smallholders, and need for WTO-compatible.<sup>271</sup> Protective measures for the environment should not be imposed unilaterally nor framed as a form of disguised protectionism, rather they should be in line with WTO principles.<sup>272</sup>

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<sup>264</sup> *ibid.*

<sup>265</sup> World Trade Organization, ‘WTO rules and environmental policies: GATT exceptions’ <[https://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_rules\\_exceptions\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm)> accessed 6 December 2023.

<sup>266</sup> World Trade Organization, ‘The environment: a specific concern’ <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey2_e.htm)> accessed 6 December 2023.

<sup>267</sup> *ibid.*

<sup>268</sup> Brandi C and others, ‘Do environmental provisions in trade agreements make exports from developing countries greener?’ (2020) 129 *World Development* 104899 <<https://www.sciencedirect.com/science/article/pii/S0305750X20300255>> accessed 18 January 2024.

<sup>269</sup> *ibid.*

<sup>270</sup> LiveEO, ‘Balancing Act: The EUDR’s Impact on Global Trade and WTO Relations’ (2023) <<https://www.live-eo.com/article/the-world-trade-organization-and-the-eudr>> accessed 4 December 2023.

<sup>271</sup> *ibid.*

<sup>272</sup> World Trade Organization, ‘Principles Guiding the Development and Implementation of Trade-related Environmental Measures, Communication from the African Group’ (2023) WT/GC/W/894, WT/CTE/W/255, G/C/W/830, IP/C/W/703, G/AG/W/239.

## 4.2. Case study on WTO Dispute Settlement DS593: EU-Indonesia (Palm Oil)

On 9 December 2019, Indonesia sued the EU at the WTO Dispute Settlement Body (DSB) regarding the EU imposing certain measures on Indonesian palm oil and biofuels made from oil palm crops through its Renewable Energy Directive (RED II).<sup>273</sup> The EU has decided to phase out palm oil from its market by the end of 2030 due to concerns about its impact as a high indirect land use change (ILUC) risk.<sup>274</sup> This decision has had a significant impact on the Indonesian palm oil sectors. Indonesia claimed that the measures imposed by the European Union appear to be inconsistent with the GATT 1994, TBT agreement, and SCM agreement.<sup>275</sup> Various countries have joined the consultations since then through their third-party rights. The panel was established on 12 November 2020.<sup>276</sup>

In the last communication from the panel on 24 February 2023, it was stated that the final report would be issued to the parties not before the third quarter of 2023.<sup>277</sup> However, at the time of writing, the case was still ongoing at the WTO DSB due to the complexity of the legal and factual issues surrounding the dispute. Apart from that, during the EU Trade Policy Review 2023, Indonesia also conveyed how the EU will ensure that its policies are applied in a fair, non-discriminatory manner, and in accordance with WTO principles.<sup>278</sup> The EU cannot answer the question because it is closely related to the ongoing WTO proceedings. Any remarks or discussions at this point could jeopardise the process's integrity because the WTO litigation is still ongoing.<sup>279</sup>

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<sup>273</sup> World Trade Organization, 'European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels, Communication from the Panel' (2023) WT/DS593/1, G/L/1348, G/TBT/D/52, G/SCM/D128/1.

<sup>274</sup> *ibid.*

<sup>275</sup> World Trade Organization, 'DS593: European Union – Certain measures concerning palm oil and oil palm crop-based biofuels' (2019) <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm)> accessed 12 December 2023.

<sup>276</sup> *ibid.*

<sup>277</sup> World Trade Organization, 'European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels, Communication from the Panel' (2023) WT/DS593/12.

<sup>278</sup> World Trade Organization, 'Trade Policy Review: European Union, Minutes of the Meeting Addendum' (2023) WT/TPR/M/442/Add.1, page 541 <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/M442A1.pdf&Open=True>> accessed 8 December 2023.

<sup>279</sup> *ibid.*

According to the DS593 case, palm oil is classified as having a high ILUC risk.<sup>280</sup> It means derived from food and feed crops that have a substantial global expansion into areas with high carbon stock, such as forests, wetlands, and peatlands.<sup>281</sup> Reflecting on the ongoing case, there is a potential that Indonesia will be categorized as a high risk country for palm oil and its derivative products in accordance with the EUDR provisions. During the 2023 EU Trade Policy Review, Indonesian delegates voiced their concern about the EU's unfair trade restrictions on palm oil.<sup>282</sup> They said that Indonesia had implemented efforts to improve sustainable palm oil practices at the national level through ISPO certification, as well as recognize international standards such as RSPO certification.<sup>283</sup> Hence, Indonesia requested that the EU examine the rule to make sure it doesn't discriminate and follows WTO principles.

Apart from the case above, the implementation of EUDR can also be reflected in Indonesian timber products. Indonesia is the first country recognized by the EU for timber products through the Voluntary Partnership Agreement on Forest Law Enforcement, Governance, and Trade (VPA FLEGT) licensing since 2016.<sup>284</sup> In Article 30(1) of EUDR, it is mentioned that the EU will engage in producer countries through partnership and cooperation mechanisms via existing agreements or provisions thereof.<sup>285</sup> The EUDR can reflect on the implementation of VPA FLEGT licensing for palm oil sectors.<sup>286</sup> Key takeaways from the VPA FLEGT include the monitoring and evaluation

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<sup>280</sup> World Trade Organization, 'DS593: European Union – Certain measures concerning palm oil and oil palm crop-based biofuels' (2019) <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm)> accessed 12 December 2023.

<sup>281</sup> European Commission, 'Sustainability criteria for biofuels specified' (2019) <[https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_19\\_1656](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1656)> accessed 15 December 2023.

<sup>282</sup> World Trade Organization, 'Trade Policy Review: European Union, Minutes of the Meeting' (2023) WT/TPR/M/442 <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/M442.pdf&Open=True>> accessed 11 December 2023.

<sup>283</sup> *ibid.*

<sup>284</sup> European Forest Institute, 'FLEGT licences from Indonesia' <<https://flegtlicence.org/www.flegtlicence.org/th/flegt-licences-from-indonesia.html>> accessed 12 December 2023.

<sup>285</sup> 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 [2023] OJ L 150/206, article 30(1).

<sup>286</sup> Fern, 'What impact will the EUDR have on VPAs and FLEGT Licensing?' (2023) <<https://www.fern.org/publications-insight/what-impact-will-the-eudr-have-on-vpas-and-flegt-licensing/>> accessed 12 December 2023.

mechanisms as well as the information systems that could support the compliance and enforcement of the EUDR.<sup>287</sup>

### **4.3. Examine the consistency of EUDR on the WTO TBT agreement**

To prevent unnecessary obstacles in trade and discrimination, the TBT agreement establishes rules to ensure that technical regulations, standards, and conformity assessment procedures adopted by the members are in accordance.<sup>288</sup> Concurrently, it also acknowledges that WTO members have the right to implement measures to achieve legitimate policy objectives such as environmental protection.<sup>289</sup> In the joint letter submitted by developing countries, the provisions in the EUDR related to country assessment criteria and benchmarking systems are discriminatory.<sup>290</sup> Therefore, this section examines the consistency of the EUDR with the TBT agreement.

To examine the applicability of the EUDR with the TBT agreement, the first step is to address whether this regulation falls under the scope of Article 1 of the TBT agreement.<sup>291</sup> In Article 1 on general provisions, the TBT agreement distinguishes “technical regulations”, “standards”, and “assessment of conformity”.<sup>292</sup> According to Annex 1 of the TBT agreement, the EUDR falls under the definition of “technical regulation” which is defined as a document that specifies characteristics, related processes, or production methods of a product, including the administrative provisions, with which compliance is mandatory.<sup>293</sup> The EC-Asbestos and EC-Sardines cases adopted criteria to determine whether a document qualifies as a technical regulation.<sup>294</sup> The following criteria have been met by the EUDR, which are:

- a) *there must be an identifiable product or group of products,*

Article 1 and Annex I of the EUDR have a list of relevant commodities and products, which are cattle, cocoa, coffee, oil palm, soya, wood, rubber, and its derived products.

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<sup>287</sup> *ibid.*

<sup>288</sup> World Trade Organization, ‘Technical barriers to trade’ <[https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm)> accessed 8 December 2023.

<sup>289</sup> *ibid.*

<sup>290</sup> World Trade Organization, ‘Joint Letter, European Union proposal for a regulation on deforestation-free products. Submission by Indonesia and Brazil’ (2022) G/AG/GEN/213.

<sup>291</sup> Article 1, TBT Agreement.

<sup>292</sup> Article 1.1, TBT Agreement.

<sup>293</sup> Annex 1, TBT Agreement.

<sup>294</sup> Appellate Body Report. 2001a. European Communities — Measures Affecting Asbestos and Products Containing Asbestos. WT/DS135/AB/R. para. 66-70; Panel Report. 2002a. European Communities - Trade Description of Sardines. WT/DS231/R. para. 7.24-7.35; Appellate Report. 2002b. European Communities - Trade Description of Sardines. WT/DS231/AB/R. para. 173-195



b) *one or more product characteristics, or associated processes and production methods, should be the subject of the regulation, and*

According to the EUDR, operators and traders must fulfil specific requirements, including due diligence statements, which fit this criterion.

c) *compliance shall be mandatory.*

Complying with the requirements set in the regulation is mandatory if producers want to trade their products in the EU market.

Based on the analysis above, the EUDR is deemed a technical regulation. Then to examine whether the EUDR is discriminatory or not, Article 2 of the TBT agreement sets down the preparation, adoption, and application requirements for technical regulations by central government bodies.<sup>295</sup> The fundamental principles of the TBT agreement are analysed to examine the consistency of the EUDR, which includes non-discrimination principles, avoidance of unnecessary trade barriers, the use of international standards, technical assistance, and providing special and differential treatment for developing countries.<sup>296</sup>

This research focuses on non-discriminatory principles as stipulated in Article 2.1 of the TBT agreement, "*Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country*".<sup>297</sup> In the WTO principles, there are two non-discrimination principles, which are "most-favoured-nation (MFN) treatment" and "national treatment".<sup>298</sup> The MFN treatment means countries cannot treat their trading partners differently. If a WTO member does a favourable treatment like reducing the customs duty rate to another member for a certain product, then it is essentially obligated to do the same for other WTO members.<sup>299</sup> The national treatment means treating imported and locally produced goods/services/intellectual property rights equally.<sup>300</sup>

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<sup>295</sup> Article 2, TBT Agreement.

<sup>296</sup> World Trade Organization, 'Agreement on Technical Barriers to Trade' <[https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)> accessed 8 December 2023.

<sup>297</sup> Article 2.1, TBT Agreement.

<sup>298</sup> World Trade Organization, 'Principles of the trading system' <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm)> accessed 8 December 2023.

<sup>299</sup> *ibid.*

<sup>300</sup> *ibid.*

According to the written questions and answers during the EU Trade Policy Review 2023, the EU ensures that EUDR is fair and non-discriminatory in its application to all products, whether they are made inside or outside the EU. Throughout the development of the EUDR, the EU's international commitments and WTO requirements were all considered.<sup>301</sup> To prove that EUDR is consistent/inconsistent with the Article 2.1 of the TBT agreement, then the regulation is examined through the WTO analytical index of the TBT agreement.<sup>302</sup> The WTO Appellate Body in the *US – Clove Cigarettes* and *US – Tuna II (Mexico)* outlines three essential elements that need to be demonstrated in the inconsistency with Article 2.1 of the TBT agreement.<sup>303</sup> The following elements are:

a) *that the measure at issue constitutes a 'technical regulation' within the meaning of Annex 1.1,*

Based on the examination of the EUDR with Article 1 of the TBT agreement previously, the EUDR is deemed a technical regulation.

b) *that the imported products must be like the domestic product and the products of other origins, and*

Products and/or commodities regulated in the EUDR are also produced in the EU. For example, cattle and its relevant products are the EU main agricultural products for exports.<sup>304</sup> Nevertheless, certain agricultural commodities in the EU exhibit a larger proportion of imports (e.g., coffee and vegetable oils) as opposed to exports.<sup>305</sup>

c) *that the treatment accorded to imported products must be less favourable than that accorded to like domestic products and like products from other countries.*

Imported products are not treated less favourably than domestic like products as the EUDR does not prohibit any products or commodities from entering the EU market. If the producer can demonstrate their imported and/or domestic like products did not

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<sup>301</sup> World Trade Organization, 'Trade Policy Review: European Union, Minutes of the Meeting Addendum' (2023) WT/TPR/M/442/Add.1, page 535 <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/M442A1.pdf&Open=True>> accessed 4 December 2023.

<sup>302</sup> World Trade Organization, 'WTO Analytical Index, TBT Agreement – Article 2 (DS reports)' page 4 <[https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/tbt\\_art2\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/tbt_art2_jur.pdf)> accessed 18 January 2024.

<sup>303</sup> Appellate Body Report, *US – Tuna II (Mexico)*, para. 202 (referring to Appellate Body Report, *US – Clove Cigarettes*, para. 87). See also Appellate Body Reports, *US – COOL*, para. 267.

<sup>304</sup> Eurostat, 'Extra-EU trade in agricultural goods' (2023) <[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Extra-EU\\_trade\\_in\\_agricultural\\_goods#Agricultural\\_products:\\_four\\_groups](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Extra-EU_trade_in_agricultural_goods#Agricultural_products:_four_groups)> accessed 18 January 2024.

<sup>305</sup> *ibid.*

contribute to deforestation, the products can be sold in the EU by fulfilling the EUDR requirements. Therefore, the EUDR is consistent with Article 2.1 of the TBT agreement as there is no discriminatory treatment between imported products and domestic like products.

#### **4.4. Crisis of multilateralism**

The increasing use of unilateral trade measures is posing a threat to the multilateral trading system, according to the economic outlook by the United Nations (UN) Department of Economic and Social Affairs.<sup>306</sup> A particular concern by the African countries is the possibility of trade distortions brought by unilateral trade-environmental policies that favour domestic goods over imported ones.<sup>307</sup> This could limit the ability of developing and least developed nations to access international markets. A study by Bruno Capuzzi elucidates the potential difficulties that the EUDR may encounter in ensuring compliance with WTO principles due to the EUDR's possibility of discriminatory practices and arbitrary risk assessments in unilaterally categorizing the third countries.<sup>308</sup> Therefore, it is crucial to maintain the function of the WTO considering recent developments in EU new legislation, such as the EUDR, where the line between climate and protectionist policy goals isn't always clear.<sup>309</sup>

In the EU Trade Policy Review 2023<sup>310</sup>, the representative from the EU acknowledged that WTO members are mostly concerned about the unilateral nature of the EU's trade and environment measures.<sup>311</sup> However, WTO members also praised the EU's

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<sup>306</sup> Department of Economic and Social Affairs United Nations, 'Multilateral trade challenged by "increasingly unilateral trade measures," UN forum hears' <<https://www.un.org/uk/desa/multilateral-trade-challenged-%E2%80%99increasingly-unilateral-trade-measures%E2%80%99-un-forum>> accessed 11 December 2023.

<sup>307</sup> World Trade Organization, 'Principles Guiding the Development and Implementation of Trade-related Environmental Measures, Communication from the African Group' (2023) WT/GC/W/894, WT/CTE/W/255, G/C/W/830, IP/C/W/703, G/AG/W/239, paragraph 1.3.

<sup>308</sup> Capuzzi B, 'Is the European Union Deforestation Regulation WTO-Proof? The Context of EU's Green Agenda and an Exercise of WTO Compatibility' (2023) Social Science Research Network <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4443139](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4443139)> accessed 11 December 2023.

<sup>309</sup> Henig D, 'Perspectives: WTO rules must allow room to address process and production methods' (2023) <<https://borderlex.net/2023/06/22/perspectives-wto-rules-must-allow-room-to-address-process-and-production-methods/>> accessed 4 December 2023.

<sup>310</sup> World Trade Organization, 'Trade Policy Review: European Union, Minutes of the Meeting' (2023) WT/TPR/M/442 <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/M442.pdf&Open=True>> accessed 11 December 2023.

<sup>311</sup> *ibid* 5.59.

sustainability efforts, including its commitment to enhancing transparency and providing information updates. WTO members emphasised the EU to ensure that its sustainability-focused trade policies do not impose unnecessary trade restrictions and are consistent with the WTO agreements.<sup>312</sup> The EUDR is among the measures criticized by WTO members in this context along with other regulations in the EU Green Deal. The categorization of countries into different risks and benchmarking systems are seen as unilateral measures that impose differentiated conditions for access to the EU market.<sup>313</sup>

On 9 November 2023, Latin American countries expressed their concern on EUDR which states that countries are unilaterally assigned a deforestation risk rating, without communicating or coordinating the specific criteria and methodology with the countries that could be impacted.<sup>314</sup> Furthermore, on 1 December 2023 they communicated similar concerns, which see the EUDR as a unilateral measure that could impede trade.<sup>315</sup> They criticized that EUDR affects production in third countries, which uses a one-size-fits-all approach, fails to engage in meaningful dialogue of trade and environmental multilateral regimes.<sup>316</sup> As suggested by the letter, the EU should review its regulations and consider the wider consequences of a trend of unilateral regulations taken for sustainability and engage in meaningful debates with third countries.<sup>317</sup>

Multilateralism is defined as the systematic arrangement of relations among three or more states.<sup>318</sup> They can form a multilateral trade agreement to regulate trade between themselves without discrimination to promote greater economic integration. In the interdependent global economy, the best approach to liberalising trade is through

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<sup>312</sup> *ibid* 5.63.

<sup>313</sup> Marques da Silva I, 'Why the Global South is against the EU's Anti-Deforestation law' (2023) <<https://www.euronews.com/my-europe/2023/09/20/why-the-global-south-is-against-the-eus-anti-deforestation-law>> accessed 11 Desember 2023.

<sup>314</sup> World Trade Organization, 'European Union Regulation on Deforestation and Forest Degradation-free Supply Chains, Communication from Argentina, Brazil, Colombia, Ecuador, Guatemala, Honduras, Mexico, Paraguay, and Peru' (2023) WT/CTE/GEN/33.

<sup>315</sup> World Trade Organization, 'European Union Regulation on Supply Chains Free from Deforestation and Forest Degradation, Communication from Argentina, Colombia, Dominican Republic, Guatemala, Honduras, Panama, Paraguay, and Peru' (2023) WT/GC/W/912.

<sup>316</sup> *ibid* 1.2.a

<sup>317</sup> World Trade Organization, 'European Union Regulation on Supply Chains Free from Deforestation and Forest Degradation, Communication from Argentina, Colombia, Dominican Republic, Guatemala, Honduras, Panama, Paraguay, and Peru' (2023) WT/GC/W/912, paragraph 3.4.

<sup>318</sup> Scott J, 'Multilateralism' <<https://www.britannica.com/topic/multilateralism>> accessed 13 December 2023.

multilateral trade agreements.<sup>319</sup> In the EUDR's recital 23, it is stated that as a member of the WTO, the EU is committed to promoting non-discrimination and equitable multilateral trading system under the WTO.<sup>320</sup> The EU shall engage in international discussions on policies and actions to combat deforestation and forest degradation, which can be bilateral or multilateral, and they can take place in forums like the WTO.<sup>321</sup>

In the EU Trade Policy Review 2023, the multilateral trading system remains a core of the EU trade policy.<sup>322</sup> As evidence, the EU has actively contributed as a major funder of capacity-building and technical assistance activities. The EU also promoted discussions on various topics of global trade, as well as reform of the WTO through an initiative called Multi-Party Interim Appeal Arbitration Arrangement.<sup>323</sup> Despite the criticisms that the EU has received in its trade policy to address deforestation, the EU's policy decisions will have far-reaching effects both inside and outside its borders because of its size and position in the global economy.<sup>324</sup> Thus, it is desirable for the EU to strive for a balance between economic growth, sustainable goals, and enhanced multilateral collaboration with countries impacted by its policies.<sup>325</sup>

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<sup>319</sup> United Nations Economic and Social Commission for Western Asia, 'Multilateral trade agreements' <<https://archive.unescwa.org/multilateral-trade-agreements>> accessed 13 December 2023.

<sup>320</sup> 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 [2023] OJ L 150/206, recital 23.

<sup>321</sup> *ibid* 30(4).

<sup>322</sup> WTO, 'Trade Policy Review: European Union, Report by the Secretariat' (2023) WT/TPR/S/442, page 9 <[https://www.wto.org/english/tratop\\_e/tpr\\_e/s442\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s442_e.pdf)> accessed 13 December 2023.

<sup>323</sup> *ibid*.

<sup>324</sup> World Trade Organization, 'Trade Policy Review: European Union, Minutes of the Meeting' (2023) WT/TPR/M/442 <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/M442.pdf&Open=True>> accessed 11 December 2023, para. 3.32.

<sup>325</sup> *ibid*.

## **5. Conclusions**

The EU's proactive approach to combat deforestation and forest degradation, as outlined in the EGD and embodied in the EUDR, represents a significant step towards global climate and biodiversity goals. The EGD, as a soft law instrument, sets ambitious targets for achieving climate neutrality by 2050 and ensuring a just and inclusive transition. The EU's emphasis on preserving ecosystems and biodiversity, particularly addressing deforestation and forest degradation, is evident in the EGD. The EUDR, which will start to apply on 30 December 2024, establishes a comprehensive framework aimed at addressing deforestation. This regulation imposes stringent requirements for products to be considered deforestation-free to enter the EU market. It requires adherence to relevant legislation, including due diligence statements, and compliance checks. The commodities subject to the regulation are cocoa, coffee, soy, palm oil, wood, rubber, and cattle, including their respective derivatives. Member States play a crucial role in implementation, with competent authorities conducting checks and enforcing corrective actions for non-compliance.

The EUDR addressed the threat of deforestation and forest degradation in third countries through a Country Benchmarking System. This system classifies countries into three tiers (high risk, low risk, and standard risk) based on factors such as deforestation rates, agriculture land expansion, and commodity production trends. Although initially, all third countries are designated as standard risk, the EC will categorize them after the legislation come into effect. The EC employs a strategic, science-based, and transparent assessment process, considering scientific evidence, international sources, and relevant information like bilateral agreements. The EU emphasizes a coordinated approach with third countries, engaging in partnerships and cooperation mechanisms to address root causes. This includes structured dialogues, administrative arrangements, and joint roadmaps, with a specific focus on smallholders. Involving all stakeholders, especially smallholders, is deemed critical for successful partnerships. Strengthening the rights of smallholders as forest-dependent communities is also highlighted.

The EU through its influence has effectively wielded the Brussels Effect and extraterritorial effect to extend its regulatory power beyond its borders. Through market-driven and treaty-driven influences, the EU seeks to promote its environmental objectives beyond its borders. This phenomenon has led to challenges such as the fairness and objectivity of enforcement checks by Member States, accusations of

protectionism against specific commodities, and concerns from developing countries highlighting the need for ongoing international dialogue and collaboration.

Examining the EU's trade relationship with Indonesia provides insights into the broader context. The ongoing negotiations on the EU-Indonesia Free Trade Agreement reflect a commitment towards the promotion of sustainable development, including measures to combat deforestation. Indonesia, being the leading global producer of palm oil, is subject to the implications of the EUDR. The recent establishment of the Ad Hoc Joint Task Force between the EU, Indonesia, and Malaysia highlights collaborative efforts to address the complexities of the palm oil supply chain. While the EUDR represents a promising initiative, its success hinges on effective implementation, fostering international cooperation to achieve common environmental objectives, and addressing concerns raised by various stakeholders.

This thesis provides an overview of the complex landscape surrounding palm oil in Indonesia, the regulatory frameworks in place, and the potential impacts and opportunities arising from the EUDR for smallholder oil palm farmers. Palm oil has many applications within the food sector. Despite its benefits, palm oil has faced criticism for health concerns, human rights issues, and environmental impacts. Indonesia as a producing country has been working towards sustainable palm oil production. Over the past two decades, the deforestation rate has been declining, emphasizing the government's efforts to promote sustainable practices through various legal frameworks. Public and private certification schemes acknowledged in Indonesia are discussed, including the mandatory ISPO and some voluntary initiatives and certifications, such as the RSPO, ZDC, and the IPOP. However, criticisms and challenges associated with these schemes persist, including legislative gaps and complex implementation.

The EUDR has the potential impacts to exclude Indonesian smallholder oil palm farmers from the EU market. This is due to several challenges, including traceability issues, prioritizing purchasing from well-organized smallholders, risks of country benchmarking, and the prohibition of mass balance chains of custody, resulting in a potential decline in demand and prices for smallholders. The EU is committed to strengthening its involvement in assisting smallholder farmers by providing technical support through partnerships and cooperation with producing countries. There are

several sustainable farming practices that smallholder palm oil farmers can adopt, which includes sustainable intensification, technological advancements, shorter harvest intervals, mixed cultivation systems, and embracing agroecology. The Indonesian government also has established land-use planning and moratorium policies for palm oil and a "clearing house" to facilitate palm oil producers in submitting required information for compliance with the EUDR provisions. The EUDR should be seen as an opportunity for Indonesia's agricultural sector to be restructured in a sustainable manner. It is imperative to improve and foster collaboration across stakeholders at all levels to achieve sustainable palm oil production in Indonesia. Consequently, smallholder palm oil farmers can benefit from the collaboration, fostering more environmentally and socially responsible palm oil production.

On the global level, the EUDR also reveals a complex landscape of concerns and implications. The EUDR aligns with the WTO's objectives of promoting environmental protection and sustainable international trade, but it has the potential for trade discrimination. It faced significant opposition from developing countries, particularly in relation to its perceived discriminatory nature and potential adverse impacts on trade. The main criticism is that the country assessment criteria and benchmarking system are discriminatory and potentially challenging the WTO rules. Latin American countries also raised concerns about the EUDR's potential to increase costs or barriers to trade, particularly for small businesses and producers in their supply chains. The WTO as a multilateral intergovernmental organization, operates an international system of trade rules that aims to improve people's lives and living standards. It administers trade agreements, facilitates trade negotiations, mediates disputes, and helps developing countries with technical assistance and training.

Indonesia is one of the countries that criticizes the EUDR, especially for palm oil commodities. In 2019, Indonesia sued the EU at the WTO DSB over the EU's Renewable Energy Directive II measures on Indonesian palm oil and biofuels. The EU plans to phase out palm oil by 2030 due to high ILUC risk concerns. Indonesia claims these measures conflict with the GATT 1994, TBT agreement, and SCM agreement. Since the panel was established in November 2020, the case is still ongoing due to the complexity of the legal and factual issues surrounding the dispute. Indonesia may be classified as a high-risk country for palm oil and its derivative products under EUDR provisions due to the similarity with the ongoing DS593 case. Therefore, Indonesian delegates expressed



concerns about unfair trade restrictions on palm oil and requested the EU to examine the rule and acknowledge national efforts in sustainable palm oil practices. The EUDR can also reflect on the implementation of VPA FLEGT through its monitoring and evaluation mechanisms and information systems for Indonesia palm oil sectors.

The consistency of the EUDR with the WTO TBT Agreement is examined due to concerns that the legislation may be seen as discriminatory and create obstacles to international trade. The EUDR falls under the scope of the TBT agreement and is considered a technical regulation under the scope of Article 1 of the TBT agreement. It meets certain criteria, including (1) identifiable product or group of products which the EUDR has a list of relevant commodities and products, (2) one or more product characteristics or processes to be subject to the regulation, and (3) mandatory compliance. The EUDR also remains consistent with Article 2.1 of the TBT agreement on non-discrimination principles, as there is no discriminatory treatment between imported products and domestic like products.

The increasing use of unilateral trade measures by developed countries poses a threat to the multilateral trading system. This could limit the ability of developing and least developed countries to access international markets. WTO members have expressed concerns about the unilateral nature of the EU's trade and environment measures, but also praised the EU's sustainability efforts. The EUDR is criticized for its unilateral categorization of countries into different risks and benchmarking systems, which are seen as unilateral measures that impose differentiated conditions for access to the EU market. Despite criticisms, the EU remains committed to promoting non-discrimination and equitable multilateral trading systems under the WTO, engaging in international discussions on policies and actions to combat deforestation and forest degradation. Striking a balance between economic growth, sustainability goals, and collaborative multilateral engagement is essential for the EU to navigate the global trade landscape effectively. Thus, the EUDR's impact on global trade requires careful consideration, addressing the concerns of developing countries, ensuring alignment with WTO principles, and fostering a collaborative multilateral approach to address deforestation and forest degradation issues.

There are some limitations in this thesis that could be addressed in future research. First, although the EUDR has entered into force and will come into effect on 30

December 2024, the information available from the EC is confined to the legislation and the FAQ. The guidelines for practical implementation are eagerly anticipated by many stakeholders considering the short time frame. Second, there are time constraints in working on this thesis which only six months. Given a longer time span, it is expected that future research might conduct in-depth interviews or surveys to the smallholders. This could provide a more nuanced perspective and better understanding of the palm oil smallholders preparedness regarding EUDR. Third, it is important to note that the socioeconomic conditions of palm oil smallholders differ across the Indonesian regions and districts. This thesis only examines the potential at the national level. Hence, for future research, district or regional level studies of EUDR can be conducted. Fourth, this thesis is solely focuses on palm oil commodities. Future studies could expand to the EUDR's potential impact beyond palm oil, exploring challenges and opportunities in other agricultural commodities such as wood, rubber, coffee, and cocoa. By resolving these limitations, it will further enhance the understanding of the intricacies of the EU's strategy in tackling deforestation and forest degradation.

## **6. Recommendations**

Given the complexity of the EUDR and its implications, the following recommendations are suggested:

1. Ratify the ongoing EU – Indonesia FTA in a mutually beneficial manner, particularly in relation to the palm oil commodity by addressing sustainability, deforestation, and the empowerment of smallholder farmers.
2. Businesses will need time to adjust to the new regulation. Thus the EU should publish the EUDR guidelines considering that it will come into effect soon.
3. Encourage the WTO panel on the DS593 case to issue its final report to the parties, which should already be reported no later than the third quarter of 2023. The decision from this case may help classify Indonesian palm oil risks in the EUDR.
4. Both Indonesia and the EU should facilitate smallholder farmers in education, financial, technology, or technical assistance of palm oil sustainable practices.

These recommendations can help smallholder palm oil producers in Indonesia comply with the EUDR, help promote sustainable agriculture, and adapt to the changing global trade environment.

## Annex

### Frequently Asked Questions – Implementation of the EU Deforestation Regulation (86 Questions – Updated 22 December 2023)

<b>Traceability</b>
<p><b>(1) Why and how must operators collect coordinates?</b></p> <p>The Regulation requires operators and traders which are not SMEs to collect geographic coordinates of the plots of land where the commodities were produced.</p> <p>Traceability to the plot of land (i.e. the requirement to collect the geographic coordinates of the plots of land where the commodities were produced) is necessary to demonstrate that there is no deforestation occurring on a specific location. Geographic information linking products to the plot of land is already used by part of the industry and a number of certification organisations. Remotely sensed information (air photos, satellite images) or other information (e.g. photograph in the field with linked geotags and time stamps) may be used for verifying if the geolocation of declared commodities and products is linked to deforestation.</p> <p>The geolocation coordinates need to be provided in the due diligence statements that operators are required to submit to the Information System ahead of the placing on the market or export of the products. It is therefore a core part of the Regulation, which prohibits the placing on the market, or the export, of any product covered by the Regulation’s scope whose geolocation coordinates have not yet been collected and submitted as part of a due diligence statement.</p> <p>Collecting the geolocation coordinates of a plot of land can be done via mobile phones, handheld <a href="#">Global Navigation Satellite System (GNSS)</a> devices and widespread and free-to-use digital applications (e.g. Geographic Information Systems (GIS)). These do not require mobile network coverage, only a solid GNSS signal, like those provide by Galileo.</p> <p>For plots of land of more than 4 hectares used for the production of commodities other than cattle, the geolocation must be provided using polygons, meaning latitude and longitude points of six decimal digits to describe the perimeter of each plot of land. For plots of land under 4 hectares, operators (and traders which are not SMEs) can use a polygon or a single point of latitude and longitude of six decimal digits to provide geolocation. Establishments where cattle are kept can be described with a single point of geolocation coordinate.</p>
<p><b>(2) Should all commodities (imported, exported, traded) be traceable?</b></p> <p>The traceability requirements apply to each batch of imported/exported/traded relevant commodities.</p> <p>The Regulation requires that operators (or traders which are not SMEs) trace <b>every relevant commodity</b> back to its plot of land before making a relevant product available or placing it on the market, or before exporting it. Consequently, <b>the submission of the due diligence statement which includes geolocation information is a requirement for the relevant products to be imported</b> (customs procedure ‘release for free circulation’) and to be exported (customs procedure ‘export’) and the consignment for transactions within the market.</p>
<p><b>(3) How does it work for bulk-traded or composite products?</b></p>

For products traded in **bulk**, such as soy or palm oil, this means that the operator (or traders that are not SMEs) needs to ensure that all plots of land involved in a shipment are identified and that the commodities are not mixed at any step of the process with commodities of unknown origin or from areas deforested or degraded after the cut-off date of 31 December 2020.

For relevant **composite** products, such as e.g. wooden furniture with different wood components, the operator needs to geolocate all the plots of land where relevant commodities (wood for example) used for the manufacturing process has been produced. The relevant commodities' components may be neither of unknown origin nor from areas deforested or degraded after the cut-off date.

#### **(4) Are mass balance chains of custody allowed?**

The Regulation requires that the commodities used for all products falling under the scope be traceable to the plot of land.

Mass balance chains of custody that allow for the mixing, at any step of the supply chain, of deforestation-free commodities with commodities of unknown origin or non-deforestation-free commodities **are not allowed** under the Regulation, because they do not guarantee that the commodities placed on the market or exported, are deforestation-free. Therefore, the commodities placed on the market, or exported, need to be segregated from commodities of unknown origin or from non-deforestation-free commodities at every step of the supply chain. As mass balance is therefore to be ruled out, full identity preservation is not needed.

#### **(5) What if part of a product is non-compliant?**

If part of a relevant product is non-compliant, **the non-compliant part needs to be identified and separated from the rest** before the relevant product is placed on the market or exported, and that part may be neither placed on the market nor exported.

If identification and separation cannot be done, for instance because the non-compliant products have been mixed with the rest, then the whole relevant product is non-compliant as it cannot be guaranteed that the conditions of Article 3 of the Regulation are met and therefore it may be neither placed on the market nor exported.

For instance, when bulk commodities have all been mixed and are linked to several hundred plots of land, the fact that one of the plots of land has been deforested after 2020 would make the whole relevant product non-compliant.

This is with no prejudice to other situations, however defined, where 100% of relevant commodities or relevant products placed on the market 1) can be traced to the plot of land, 2) is legal and deforestation free by the meaning of the regulation, and 3) at no point in time has been mixed with commodities of unknown origin or non-deforestation-free.

#### **(6) What does 'plot of land' mean?**

The "plot of land" – the subject of geolocation under the Regulation – is defined in Article 2 (27) as "land within a single real estate property, as recognised by the law of the country of production, which

possesses sufficiently homogeneous conditions to allow an evaluation of the aggregate level of risk of deforestation and forest degradation associated with relevant commodities produced on that land."

**(7) What are the rules for land that is not real-estate?**

What happens with public or communal land that does not fall within the concept of "real-estate property"?

The Regulation requires that commodities placed on the market or exported must have been produced or harvested on the land designated as a plot of land. The absence of a land registry or formal title should not prevent the designation of land that is de facto used as a plot of land (see below).

**(8) What if property registers or titles are unavailable?**

How can operators and traders that are not SMEs obtain geolocation data in countries where there are no property registers and where farmers for instance might lack IDs or titles over their land?

Farmers can collect the geolocation of their plots of land regardless of the absence of a land registry or the lack of IDs or titles over their land. Unless they are direct suppliers of the operators or operators themselves, no personal information is required from the farmers and the geolocation of the land they cultivate is sufficient, for example via application on a mobile phone.

As regards the legality requirement, the Regulation requires compliance with national laws. If farmers are legally allowed to farm and sell their product under the national laws (which might lack a property register and where some farmers might lack IDs), then that would also mean that operators (or traders that are not SMEs) would generally be able to meet the legality requirement when sourcing from those farmers. Operators (or traders that are not SMEs), nonetheless, would need to verify that there is no risk of illegality in their supply chains.

There are many different means that operators (or traders that are not SMEs) already use today to collect the geolocation and legality information: some resort to mapping directly their suppliers, while others rely on intermediaries like cooperatives, certification bodies, national traceability systems or other companies. Operators (or traders that are not SMEs) are legally responsible for ensuring that the geolocation and legality information is correct, regardless of the means or intermediaries they use to collect that information.

**(9) Can an operator use the producer's geolocation data?**

Yes, but it is the operator who is ultimately responsible for its accuracy and not the producer who provides it. The Regulation does not apply to producers (i.e smallholders) which do not place products on the Union market themselves (and thus do not fall under the definition of operators and traders).

In such a case, the operator will have to guarantee that the area where the relevant commodity was produced is correctly mapped and that the geolocation corresponds to the plot of land. Among the risk assessment procedures and measures which the operator can use are supporting measures for suppliers to meet requirements of this Regulation, in particular for smallholders, through capacity building and other investments.

**(10) Should operators verify the geo-location?**

Operators and traders which are not SMEs **need to verify and prove that the geo-location is correct.**

Ensuring the truthfulness and precision of geolocation information is a crucial aspect of the responsibilities that operators and traders must fulfil. Providing incorrect geolocation details would constitute a breach of the obligations of operators (and traders that are not SMEs) under the Regulation.

**(11) Should due diligence be repeated for products from the same land?**

The geolocation information obligation to be provided in the due diligence statements, via the Information System, is connected to each relevant product. Operators (or traders that are not SMEs) will thus **need to indicate this information each time** they intend to place, make available on the market or export a relevant product. The due diligence must be repeated (i.e. updated) for each relevant product, including providing the geolocation coordinates accordingly.

**(12) Can a polygon cover several plots of land?**

Polygons are to be used to describe the perimeter of the plots of land where the commodity has been produced. **Each polygon should indicate one single plot of land, whether contiguous or not.** Several polygons must be provided in one due diligence statement where a relevant product is made of commodities from several plots of land. A polygon cannot be used to trace the perimeter of a random land area that might include plots of land only in some of its parts.

**(13) Should polygons be provided by means of circumference?**

There is neither an obligation nor a possibility to provide the plot of land information by means of circumference. **For plots of land of more than four hectares** (for the production of the relevant commodities other than cattle), geolocation has to be provided using polygons (not a unique central point with a circumference) with sufficient latitude and longitude points to describe the perimeter of each plot of land.

**(14) How should the origin of mixed goods be declared?**

The operator needs to declare the origin of all goods effectively shipped to the EU.

For example, if compliant goods from multiple origins are mixed into the same silo, and then some of those goods are shipped to the EU:

- The origin declared on arrival in the EU **must include the origin of all goods that entered the silo since it was last empty** (and could therefore potentially be included in the shipment to the EU)
- Declaring the origin of x amount of goods that entered the silo, where x is the amount shipped to the EU **is not allowed** under the Regulation, as it would violate the prohibition under the Regulation of placing products of unknown origin on the Union market.

**(15) Can operators include land that did not produce the commodity?**

The thrust of the regulation requires a correspondence between the commodities/products placed on the market and the plots of land where they are effectively produced. However, **an operator can, in specific circumstances, provide geolocation coordinates for a number of plots of land higher than those where the commodities were produced.**

If the operator declares 'in excess' in the due diligence statement, the operator assumes full responsibility for compliance of ALL plots of land for which geolocation is provided, regardless of whether

such plots of land are concerned by the production of commodities/products eventually placed on the market. If one plot of land 'geolocalised' in the due diligence statement is not compliant, the entire set of plots of land 'geolocalised' is non-compliant. In these cases the operator declaring plots of land in excess has also to carry out full due diligence in compliance with articles 9, 10 and 11, for ALL plots of land declared (including those in excess) and has to provide evidence that 1) the risk of non-compliance has been assessed in accordance with article 10.2 for ALL plots of land, and 2) that, in such assessment, the operator has taken particular account of criteria (i) and (j), of article 10 and 3) that such risk is negligible for ALL plots of land.

**(16) How will geolocation allow claims to be checked in practice?**

How will geolocation allow for checking the validity of a no-deforestation claim in practice? Is it aligning satellite navigation positioning and deforestation maps? Will there be baseline maps that forest areas or areas that have undergone deforestation and forest degradation? How will it work if geolocation of farms, plantations or concessions are not available?

It is the responsibility of the operator (or traders that are not SMEs) to collect the geolocation coordinates of the plots of land where the commodities were produced. If the operator cannot collect the geolocation of all plots of land contributing to a relevant product, then s/he shall not place that product on the market or export them, in accordance with Article 3 of the Regulation.

Operators (and traders which are not SMEs) and enforcing authorities could cross-check the geolocation coordinates against satellite images or forest cover maps to assess if the products meet the deforestation-free requirement of the Regulation. However, the operators (and traders that are not SMEs) remain liable.

**(17) How will the EU check the validity of a no-deforestation claim?**

The EU Member States' competent authorities (EUMS CAs) should carry out checks to establish that the relevant commodities and products that have been or are intended to be placed on or made available on the market or exported, come from deforestation-free plots of land and were produced legally (as per their obligation under Art. 16). This includes conducting checks on the validity of the due diligence statements, and the overall compliance of the operators and traders with the provisions of the Regulation.

For more information on the scope of EUMS CAs obligations, please refer to Articles 18 and 19 of the Regulation.

**(18) Will Competent Authorities use the definitions from the Regulation?**

In the context of the implementation of this Regulation, Competant Authorities of EU Member States **will use the definitions set out in Article 2 of the Regulation**. A regulation is a binding legislative act in the EU. It must be applied in a harmonized manner in its entirety in the 27 EU Member States.

**(19) How should polygons in shapefile format be declared?**

The detailed rules for the functioning of Information System will be established through an implementing act. Stakeholders will be informed and consulted on these developments via the Multi-Stakeholder Platform on Protecting and Restoring the World's Forests. The Information System will, where possible, facilitate the work of operators by **allowing some widely used geolocation formats to be uploaded**



**directly into the system when declaring polygons in a due diligence statement.** The Information System will evolve and become more sophisticated over time, based on feedback from users.

**(20) What is supply chain traceability?**

The information, documents and data that operators and traders that are not SMEs need to collect and keep during 5 years to demonstrate compliance with the Regulation are listed in Article 9 and Annex II as well as in Article 2 (28) as regards data related to geolocation.

Operators (and traders which are not SMEs) shall exercise due diligence with regard to all relevant products supplied by each particular supplier. Therefore, they shall put in a place a due diligence system, which includes the collection of information, data and documents needed to fulfil the requirements set out in Art. 9; risk assessment measures as described in Art. 10; risk mitigation measures as referred to in Art. 11. The requirements for the establishment and maintenance of due diligence systems, reporting and record keeping are listed in Art. 12. The operators will have to communicate to operators and to traders further down the supply chain all information necessary to demonstrate that due diligence was exercised and that no or only a negligible risk was found.

Operators and traders further down the supply chain that receive such information may base their own due diligence on the information received, but the fact that another operator or trader further up in the value chain has carried out a due diligence does by no means disapply their own obligations.

Operators and traders which are not SMEs are required to ensure that the information on traceability that they supply to enforcing authorities in the Member States through the due diligence statement submitted to the Information System is correct. The development and functioning of the Information System will be in line with the relevant data protection provisions. In addition, **the system will be equipped with security measures, that will ensure the integrity and confidentiality of the information shared.**

**(21) How will traceability work for products from multiple countries?**

Operators and traders that are not SMEs are required to ensure that the required information on traceability that they supply to competent authorities in the Member States is correct, **regardless of the length or the complexity of their supply chains.**

Traceability information can be added up along supply chains. For instance, a large, bulk shipment of soy that has been sourced in several hundred plots of land from several countries would need to be associated with a due diligence statement that includes all relevant countries of production and geolocation information for every single plot of land from all of these countries that has contributed to the shipment.

**(22) What is the 'date or time range of production'?**

Operators (and traders that are not SMEs) are required to collect information on the date or time range of production under the obligations set out in Article 9 of the Regulation. This information is needed to establish whether the relevant product is deforestation-free. That is why it applies to the commodities covered by the Regulation that are placed on the market or to the commodities that are used for the production of relevant products covered by the Regulation.

For commodities other than cattle, the date of production refers to **the date of harvesting of the commodities**, and the time range of production refers to **the period/duration of the production process** (for instance, in the case of timber, "time range of production" would refer to the duration of the relevant harvesting operations).

For relevant products other than live animals in the cattle commodity, the time range of production refers to the lifetime of the animal including the date of slaughtering.

N.B: information on date or time range of production of a product operators wish to place on the market or export does not need to be included in the due diligence statement, but operators are required to collect, organise and keep it for five years (Art.9).

**(23) How does traceability work for cattle?**

Would it be enough to provide the geolocation of the land where the calf was born? Some cattle may be moved to one or more locations before slaughter.

Operators (or traders that are not SMEs) who place on the market cattle products must geolocate all establishments associated with raising the cattle, encompassing the birthplace, farms where they were fed, grazing lands, and slaughterhouses.

**(24) What if upstream suppliers do not provide required information?**

If an operator (or trader that is not an SME) placing a commodity on the market is unable to obtain the information required by the Regulation from upstream suppliers, they must refrain from placing the relevant products on the market or exporting them as that would result in a violation of the Regulation, which could lead to potential sanctions.

**(25) Should coordinates be provided for land in low-risk countries?**

There is **no exception** for the traceability requirement via geolocation. The operators also have to assess the complexity of the relevant supply chain and the risk of circumvention of the Regulation and the risk of mixing with products of unknown origin or origin in high-risk or standard-risk countries or parts thereof (Art. 13). If the operator obtains or is made aware of any relevant information that would point to a risk that the relevant products do not comply with the Regulation or that the Regulation is circumvented, the operator shall fulfil all of the obligations under Articles 10 and 11 and shall immediately communicate any relevant information to the competent authority.

**(26) Does the legality requirement apply for deforestation-free land?**

Relevant commodities and relevant products cannot be placed on the market or exported unless they have been produced in accordance with the relevant legislation of the country of production as per the requirement set out in Art. 3(b).

The obligations under Art. 3 are cumulative: **the legality requirement (Art 3(b)) has to be fulfilled in addition to the 'deforestation-free' requirement** (Article 3(a)) and the requirement for the commodities or products to be covered by a due diligence statement (Art.3(c)).

**(27) Are there obligations for non-EU countries?**

**There are no legal obligations applicable to non-EU countries.** This Regulation sets out obligations for operators and traders (see chapter 2 of the Regulation) as well as for the EU member states and their competent authorities (see chapter 3 of the Regulation).

However, many countries around the world have taken action to enhance deforestation-free supply chains, strengthen public traceability systems on relevant commodities, etc., thereby facilitating the tasks of companies under this Regulation. This is welcome, as such developments can greatly help operators and traders to comply with their obligations.

#### Scope

#### **(28) What products are included in the Regulation?**

The Regulation applies only to products listed in Annex I. Products not included in Annex I are not subject to the requirements of the Regulation, even if they contain relevant commodities in the scope of the Regulation. For example, soap will not be covered by the Regulation, even if it contains palm oil.

Likewise, products with an HS code not included in Annex I, but which might include components or elements derived from commodities covered by the Regulation – such as cars with leather seats or natural rubber tyres – are not subject to the requirements of the Regulation.

N.B.: The Regulation foresees that the list of relevant products and product descriptions may be amended by the Commission by means of a delegated act. In addition, the Commission will assess the need and the feasibility of making a legislative proposal to the European Parliament and to the Council to extend the scope of the Regulation to further commodities, based on an impact assessment of relevant commodities on deforestation and forest degradation. The first review of the commodity scope is to take place within two years of the entry into force of the Regulation.

#### **(30) Does the regulation apply regardless of quantity or value?**

**There is no threshold volume or value of a relevant commodity or relevant product, including within processed products, below which the Regulation would not apply.**

Operators and traders placing or making available on the market or exporting a relevant product included in Annex I, whatever its quantity, are subject to the obligations of the Regulation.

#### **(31) What about products produced in the EU?**

Products produced inside the EU are **subject to the same requirements as products produced outside the EU**. The Regulation applies to products listed in Annex I, whether there are produced in the EU or imported.

For instance, if an EU company produces chocolate (code 1806, which is included in Annex I), then it will be considered as an operator subject to the obligations of the Regulation, even if the cocoa powder used in the chocolate has already been placed on the market and fulfilled the due diligence requirements (see also question 38 on operators down the supply chain).

#### **(32) How does the regulation apply to wood used for packaging?**

For example, in the case of a producer selling packaging to manufacturers (to protect the final product - not to be sold as a final product to consumers), the text "**not including packaging material used exclusively as packaging material to support, protect or carry another product placed on the market" in Annex I under Wood HS code 4415** should be understood as follows:

If any of the concerned packaging is placed on the market or exported as a product in its own right (i.e. standalone packaging), rather than as packaging for another product, it is covered by the Regulation and therefore due diligence requirements apply.

If packaging, as classified under HS code 4415, is used to 'support, protect or carry' another product, it is not covered by the Regulation.

Packaging material used exclusively as packaging material to support, protect or carry another product placed on the market is not a relevant product within the meaning of Annex I of the Regulation, regardless of the HS code under which they fall.

User manuals accompanying shipments are also falling under this exemption unless they are purchased in their own right.

### **(33) Does all recycled paper/paperboard fall under the scope?**

Most recycled paper/paperboard products contain a small percentage of virgin pulp or pre-consumer recycled paper (for example, discarded paperboard scraps from cardboard box production) to strengthen the fibres.

Annex I states that the Regulation **does not apply to goods if they are produced entirely from material that has completed its lifecycle and would otherwise have been discarded as waste** as defined in Article 3, point (1), of Directive 2008/98/EC. So, no obligation applies under the Regulation in respect of the recycled material.

On the contrary, **if the product contains a percentage of non-recycled material, then it is subject to the requirements of the Regulation** and the non-recycled material will need to be traced back to the plot of origin via geolocation.

### **(34) What are CN and HS Codes and how should they be used?**

The nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System, commonly known as "**HS Nomenclature**", is an international multipurpose nomenclature which was elaborated under the auspices of the World Customs Organization (WCO). This nomenclature assigns six-digit codes to classify goods and applies worldwide. Countries/ regions can add additional numbers to the universal six-digit HS Nomenclature for more detailed classification.

**The Combined Nomenclature (CN code)** of the European Union is an eight-digit commodity code that further subdivides the global HS Nomenclature into more specific goods to address the needs of the European Community.

The CN code is the basis for the declaration of goods for import into or export from the European Union, and also for intra-EU trade statistics. Commodities and products in Annex I of the Regulation are classified by their CN codes. Relevant products in Annex I of the Regulation are classified in the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87.

At import, when releasing goods for free circulation as defined in article 201 of the UCC Regulation (EU) No 952/2013, the CN code can be further subdivided to a ten-digit TARIC code specifically created to address the needs of the EU legislation. When declaring goods for export procedure as defined in article 269 of the UCC Regulation (EU) No 952/2013, the final subdivision can go up to an eight-digit CN code.

Supply chain members need to classify their products based on Annex I to the basic CN Regulation (Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff) to establish whether the Regulation applies to them. The HS codes can evolve every 5 years. The EU's CN Regulation is adopted each year, to reflect any updates.

See for more information: [Council Regulation \(EEC\) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.](#)

#### **Subjects of obligations**

##### **(35) Who is considered an operator?**

As defined in Article 2(15) of the Regulation, an operator is a natural or legal person who places relevant products on the market (incl. via an import) or exports them in the course of commercial activity.

This definition also covers companies that transform one product of Annex I (which has already been the object of due diligence) into another product of Annex I. For example, if company A, based in the EU, imports cocoa butter (HS code 1804, included in Annex I), and company B, also based in the EU, uses that cocoa butter to produce chocolate (HS code 1806, included in Annex I) and places it on the market, both company A and B would be considered operators under the Regulation.

Operators placing on the market a product listed in Annex 1 I that has not been subject to due diligence in a prior step of the supply chain (for example importers sourcing cocoa) are, regardless of their size, subject to the obligation of filing a due diligence statement.

##### **(36) What does "in the course of commercial activity" mean?**

Commercial activity is understood as an activity taking place in a business-related context.

The combined definitions of "operator" (Article 2.15) and of 'in the course of a commercial activity' (Article 2.19) imply that any person, which places a relevant product on the market for selling (with or without transformation) or as a gift, for the purpose of processing or for distribution to commercial or non-commercial consumers, or for use in the context of its commercial activities will be subject to the due diligence requirements and present the due diligence statement.

##### **(37) What does 'relevant legislation of the country of production' mean?**

Relevant commodities and products can only be placed on the EU market if they are deforestation-free and comply with the relevant legislation of the country of production, Art. 3 (b), Art. 2 (40) EUDR.

"Relevant legislation" may include, among others, national laws (including relevant secondary law) and jurisprudence as well as international law as applicable in domestic law. The Regulation presents a non-exhaustive list of legislative areas without specifying particular legal acts, as these differ from country to country and may be subject to amendments. According to the definition, the legislation listed in letters (a) to (h) must be interpreted as being linked to the area of production. For the legislation on environmental protection, the meaning and purpose stipulated in Art. 1 EUDR should be taken into account. Therefore, legislation with a link to the protection of forests, the reduction of greenhouse gas emissions or the protection of biodiversity is relevant.

Relevant documentation is required for the purposes of the risk assessment, Art. 9 (1) (h), 10 EUDR. Such documentation may, for example, consist of official documents from public authorities, contractual agreements, court decisions or impact assessments and audits carried out. In any case, the operator has to verify that these documents are verifiable and reliable, taking into account the risk of corruption in the country of production.

The Commission will issue a specific guidance document on legality in due course.

**(38) What are the obligations of operators further down the supply chain?**

Operators further down the supply chain are those who transform a product listed in Annex I (which has already been subjected to due diligence) into another product listed in Annex I. Their obligations vary depending on whether they are Small and Medium-sized Enterprises (SMEs) or not.

When submitting their due diligence statement in the Information System, non-SME operators further down the supply chain may refer to due diligence performed earlier in the supply chain by including the relevant reference number for the parts of their relevant products that were already subject to a due diligence. However, they are obliged to ascertain that due diligence was carried out and they retain legal responsibility in the event of a breach of the Regulation. For parts of relevant products that have not been subject to due diligence, non-SME operators shall exercise due diligence in full and submit a due diligence statement.

SME operators further down the supply chain are subject to the same obligations as an operator and retain legal responsibility in the event of a breach of the Regulation. However, in respect of parts of their products that have been subject to a due diligence, they are required a) neither to exercise due diligence for parts of their products that were already subject of due diligence exercise; b) nor to submit a due diligence statement in the Information System. But they still have to provide due diligence reference numbers obtained from previous steps in the supply chain. For parts of relevant products that have not been subject to due diligence, SME operators shall exercise due diligence in full and submit a due diligence statement.

**(39) How does the regulation apply to exports?**

The Regulation applies both to exports and to imports. Operators exporting relevant products will have to include the reference number of the due diligence statement in their export declaration. Operators exporting products made with commodities that were already covered by a due diligence statement may

also avail themselves of relevant simplifications in article 4 ([see information for products produced in the EU](#)).

**(40) Which companies are non-SME traders and what are their obligations?**

A non-SME trader is a trader which is not a small and medium-sized undertaking pursuant to Article 2(30) of EUDR. This provision refers to the definitions provided in Article 3 of Directive 2013/34/EU.

This will essentially include any large company that is not an operator and commercialises the products included in Annex 1 on the market, for instance, large supermarket or retail chains.

By virtue of Article 5(1) of the Regulation, the obligations of large traders are the same as those of large downstream operators: a) they need to file a due diligence statement; b) when doing so, they may rely on the due diligence previously carried out in the supply chain but, in such a case, they are subject to the provisions of Article 4(9); c) they are liable in case of breach of the Regulation, also for a due diligence carried out or a due diligence statement submitted by an upstream operator.

**(41) Who is liable in case of a breach of the Regulation?**

All operators retain responsibility for the compliance of the relevant product they place on the market or export. The Regulation also requires operators (or traders which are not SMEs) to communicate all necessary information along the supply chain.

Traders also retain responsibility for relevant products they make available on the market or export.

Therefore, in case of breach of the Regulation (if products have already entered the market or in case information is not properly disclosed by the operator), each actor of the supply chain concerned by the placing or making available on the market or the export of a relevant product retains responsibility and may be held liable.

**(42) Who is the operator in the case of standing trees or harvesting rights?**

Standing trees as such do not fall within the scope of the Regulation. Depending on the detailed contractual agreements, the 'operator' at the moment of harvesting could be either the forest owner or the company that has the right to harvest relevant products, depending on who is placing the relevant product on the market or exporting it.

**Definitions**

These definitions are the basis for the obligations for companies and stakeholders in third countries that have commercial relations with the EU, as well as for EU competent authorities.

**(43) What does 'global deforestation' mean?**

'Global deforestation' means deforestation taking place worldwide (both in the EU and outside) in line with the definition set out in Article 2 (i.e. the conversion of forest to agricultural use, whether human-induced or not).

Deforestation and forest degradation are among the main drivers of climate change and biodiversity loss - the two key global environmental crises of our time.

The main cause of deforestation and forest degradation worldwide is the expansion of agricultural land for the production of commodities such as soy, beef, palm oil, wood, cocoa, rubber or coffee. As a major economy and consumer of these commodities, the EU is contributing to deforestation and forest degradation worldwide. The EU, therefore, has the responsibility to contribute to ending it.

By promoting the production and consumption of 'deforestation-free' commodities and products and reducing the EU's impact on global deforestation and forest degradation, the Regulation is expected to bring down EU-driven greenhouse gas emissions and biodiversity loss.

**(44) Which criteria does wood need to comply with?**

**The wording of the deforestation-free definition in Art. 2 (13) (b) ("....in case of relevant products that contain or have been made using wood...") singles out wood from the product scope, creating the impression of a 'special case' and raising a question regarding the applicability of the "deforestation-free" criterion in Article 3 (a) to wood. Does wood need to comply with both criteria, related to deforestation and forest degradation, or only forest degradation?**

In order to meet the requirements of the Regulation, wood needs to comply with both criteria: a) it needs to have been harvested from land not subject to deforestation after 31 December 2020; and b) it needs to be harvested without inducing forest degradation after 31 December 2020.

**(45) What are the compliant harvesting levels?**

**If a wood operator in 2022 harvests 20% of a forest with a 100% cover and lets the land naturally regenerate, would the harvested wood be compliant? In 30 years, once the forest will have been regenerated, could the same operation take place with the same conclusion on the EUDR compliance?**

Under the Regulation, "forest degradation" means structural changes to forest cover, taking the form of the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land, and the conversion of primary forests into planted forests (Article 2 (7)).

This definition covers all categories of forests defined by the Food and Agriculture Organisation of the United Nations. Therefore, forest degradation under the Regulation consists of transforming certain types of forests into other kinds of forests or other wooded land.

Different levels of wood harvesting are allowed, provided that this does not result in a transformation falling under the definition of degradation.

**(46) Will "forest degradation" affect existing sustainable forest management systems?**

Forest degradation under the Regulation means the conversion of certain types of forests into other kinds of forests or other wooded land. Sustainable forest management systems can be employed and encouraged, provided they do not lead to a conversion that meets the degradation definition.

**(47) How to apply "trees able to reach those thresholds in situ"?**

**How shall we apply the clause "trees able to reach those thresholds in situ" related to tree height and canopy cover in the forest definition in Article 2 (4)?**



<p>If the woody vegetation has or is expected to surpass more than 10% canopy cover of tree species with a height or expected height of 5 m or more, it should be classified as “forest”, based on the FAO definition. E.g. young stands that have not yet but are expected to reach a crown density of 10 percent and tree height of 5 m are included under forest, as are</p>
<p><b>(48) Which forest land use change is compliant?</b>  <b>Deforestation is defined in Article 2 (3) as “conversion of forest to agricultural use.” Is any other forest land-use change compliant with the Regulation?</b></p> <p>Deforestation under the Regulation is defined as conversion of forest to agricultural use. Conversion for other uses such as urban development or infrastructure does not fall under the deforestation definition. For instance, wood from a forest area that has been legally harvested to build a road would be compliant with the Regulation.</p>
<p><b>(49) Would a natural disaster count as deforestation?</b></p> <p>The definition of “deforestation” in the Regulation encompasses the conversion of forest to agricultural use, whether human-induced or not, which includes situations due to nature disasters. A forest that has experienced a fire and is then subsequently converted into agricultural land (after the cut-off date) would be considered deforestation under the Regulation. In this specific case, an operator would be prohibited from sourcing commodities within the scope of the Regulation from that area (but not because of the forest fire). Conversely, if the affected forest is allowed to regenerate, it would not be deemed deforestation, and an operator could source wood from that forest once it has regrown.</p>
<p><b>(50) Will ‘other wooded land’ or other ecosystems be included?</b></p> <p>The Regulation relies on the definition of ‘forest’ of the Food and Agriculture Organization of the United Nations. This includes four billion hectares of forests – the majority of habitable land area not already used by agriculture – which encompasses areas defined as savannahs, wetlands and other valuable ecosystems in national laws.</p> <p>The first review of the Regulation to be done within one year of the entry into force will assess the impact of further expanding the scope to ‘other wooded land’. The second review to be done within two years of the entry into force of the Regulation will assess the impact of expanding it to ecosystems beyond ‘forests’ and beyond ‘other wooded land’.</p> <p>The conversion from primary or naturally regenerating forest to plantation forests or to other wooded land is already part of the definition of ‘forest degradation’, and wood products</p>
<p><b>Due Diligence</b></p>
<p><b>(51) What are my obligations as an EU operator?</b></p> <p>As a general rule, operators (and traders which are not SMEs) will have to set up and maintain a Due Diligence System, which consists of three steps.</p> <p>As step one, they would need to collect the information referred to in Article 9, such as the commodity or product which they intend to place (or make available in case of non-SME traders) on the market or export, including under customs procedures ‘release for free circulation’ and ‘export’, as well as the</p>

respective quantity, supplier, country of production, evidence of legal harvest, among others. A key requirement, in this step, is to obtain the geographic coordinates of the plots of land where the relevant commodity was produced and to provide relevant information – product, CN code, quantity, country of production, geolocation coordinates – in the due diligence statement to be submitted via the Information System. If the operator (or traders which are not SMEs) cannot collect the required information, it must refrain from placing (or making available in case of non-SME traders) on the market or exporting the relevant product concerned. Failing to do so would result in a violation of the Regulation, which could lead to sanctions.

If the operator (or traders which are not SMEs) cannot collect the required information, it must refrain from placing the affected products on the Union market or exporting from it. Failing to do so would result in a violation of the Regulation, which could lead to potential sanctions.

In step two, companies will need to feed the information gathered under the first step into the risk assessment pillar of their Due Diligence Systems to verify and evaluate the risk of non-compliant products entering the supply chain, taking into account the criteria described in Article 10. Operators need to demonstrate how the information gathered was checked against the risk assessment criteria and how they determined the risk.

In step three, they will need to take adequate and proportionate mitigation measures in case they find under step two more than a negligible risk of non-compliance in order to make sure that the risk becomes negligible, taking into account the criteria described in Article 11. These measures need to be documented.

Operators sourcing commodities entirely from areas classified as low risk will be subject to simplified due diligence obligations. According to Article 13, they will need to collect information in line with Article 9, but they will not be required to assess and mitigate risks (Articles 10 and 11) unless the operator obtains or is made aware of any relevant information, including substantiated concerns submitted under Article 31, that would point to a risk that the relevant products do not comply with this Regulation (Article 13.2).

**(52) What is an 'authorised representative'?**

According to Article 6, the operator and the trader may mandate authorised representatives to submit a due diligence statement on their behalf. In this case, the operator and trader will retain responsibility for the compliance of the relevant products.

If the operator is a natural person or microenterprise, it may mandate the next operator or trader in the supply chain to act as its authorised representative, provided it is not a natural person or micro-enterprise. In this case, the mandating operator retains responsibility for the compliance of the product.

**(53) Can companies conduct due diligence on behalf of subsidiaries?**

The internal organisation and due diligence policy of a group of companies (a mother company and its subsidiaries) is not governed by the Regulation. The operator or trader that places or makes available on the market or exports a relevant product, is responsible for the compliance of the product and for the

overall compliance with the Regulation. Hence, it is its name that shall figure in the due diligence statement and it shall retain the full responsibility under the Regulation.

**(54) What about re-importing a product?**

**What are my due diligence statement obligations if I am re-importing a product that was previously exported from the EU?**

Where an operator (or trader that is not an SME) re-imports a product that was previously exported and places it under the customs procedure 'release for free circulation', the same obligations apply as if the product was placed for the first time on the market. When exported, the relevant product loses its customs status of 'Union good' and that relevant product is considered to be a new product when subsequently re-placed or re-made available on the market. Already existing due diligence statements can help the operator to exercise due diligence.

**(55) Which customs procedures are affected?**

Relevant products placed under other customs procedures than the 'release for free circulation' or 'export' (e.g. customs warehousing, inward processing, temporary admission etc.) are not subject to the EUDR.

**(56) What is the role of certification or verification schemes?**

Certification schemes can be used by supply chain members to help their risk assessment to the extent the certification covers the information needed to comply with their obligations under the Regulation. Operators and traders which are not SMEs will still be required to exercise due diligence and they will remain responsible for any breach.

**(57) How long should documentation be kept?**

**How long should the operator keep the documentation of the due diligence exercise? Do SME traders have to keep the relevant information about the relevant product they place or make available on the market or export? What is considered as the beginning of this duration?**

Operators shall collect, organise and keep for five years from the date of the placing on the market or export of the relevant commodities and relevant products the information gathered based on Article 9, accompanied by evidence. Based on the provisions of Article 10 (4) and Article 11 (3), the operators should be able to demonstrate how due diligence was carried out and what mitigation measures were put in place in case risk was identified. Relevant documentation about these measures must be saved for at least five years after the due diligence exercise was carried out. Operators must also keep record of the due diligence statements for five years from the date when the statement is submitted in the Information System, which is prior to the date of placing the product on the market or exporting it. In that regard, non-SME traders have the same obligations as the operators.

SME traders must keep for at least five years the information listed in Article 5 (3), including the due diligence reference numbers from the date of the making available on the market or export of relevant products.

**(58) What are the criteria for 'negligible risk products'?**

'Negligible risk' refers to the level of risk that applies to relevant products to be placed on the market or exported, where, on the basis of a full assessment of product-specific and general information, and,

where necessary, of the application of the appropriate mitigation measures, those commodities or products show no cause for concern as to not being in compliance with Article 3, point (a) or (b).

**(59) Are 'negligible risk products' exempt?**

**Can we understand negligible risk under Article 2 (26) EUDR read together with Article 10(1) EUDR as exemption criteria of EUDR?**

No. Operators and traders [that are not SMEs] may only reach a conclusion on 'negligible risk' (which is a pre-condition for placing or making available on the market or exporting relevant products ) **as a result of conducting due diligence** (as per Article 4(1)). Conducting due diligence is a core obligation of operators and traders under this regulation, which is not subject to any exemption.

N.B. The 'negligible risk' element does not apply to commodities (there is no 'risk status' per commodity in the Regulation).

**(60) Could certain commodities from a given country be considered 'negligible risk'?**

Could palm oil, rubber, coffee, cacao, or timber from a given country be considered 'negligible risk'?

No. See question above.

**Benchmarking and partnerships**

**(61) What is country benchmarking?**

A benchmarking system operated by the Commission will classify countries, or parts thereof, in three categories (high, standard and low risk) according to the level of risk of producing in such countries commodities that are not deforestation-free.

The criteria for the identification of the risk status of countries or parts thereof are defined in Article 29 of the Regulation. Article 29 (2) mandates the Commission to develop a system and publish the list of countries, or parts thereof, no later than 18 months after the entry into force of the Regulation when the main obligations of the Regulation kick in. It will be based on an objective and transparent assessment analysis of quantitative and qualitative criteria, taking into account the latest scientific evidence, internationally recognised sources, and information verified on the ground.

**(62) What is the methodology?**

The methodology is currently being developed by the Commission and will be presented in future meetings of the Multi-Stakeholder Deforestation Platform and other relevant meetings.

**(63) How can stakeholders contribute?**

**How can producer countries and other stakeholders feed into the benchmarking process, and how will information supplied by producer countries and other stakeholders be evaluated, verified and utilised?**

The Commission is required under Article 29(5) to engage in a specific dialogue with all countries that are, or risk to be classified as, high risk, with the objective to reduce their level of risk. This dialogue will be an opportunity for partner countries to provide additional relevant information and work in close contact with the EU ahead of the finalisation of the classification.

**(64) Can countries share relevant data with the Commission?**

**Can countries share data that they consider relevant to the implementation of this Regulation (such as data on deforestation and forest degradation rates) with the Commission? If so, can they do so outside of the specific dialogue framework foreseen in Article 29(5)?**

While this Regulation does not place any obligation on third countries to share relevant data with the EU, countries that wish to share such data with the EU are welcome to do so at any stage from the entry into force of the Regulation. They can do so regardless of whether the country is engaged in a specific dialogue with the EU, for instance under Article 29(5) of this Regulation on benchmarking or in a different context.

**(65) Will legality risks be considered?**

**Will the benchmarking take into account legality risks as well as deforestation and forest degradation? How will the legislation and forest policies of producer countries, particularly regarding 'legal deforestation', be assessed/taken into account during the benchmarking process?**

The list of criteria is described in Article 29 of the Regulation. The assessment of the Commission will be based on an objective and transparent assessment analysis, based on the criteria defined in Article 29 (3) and 29 (4) of the Regulation. The relevant quantitative criteria are: (a) rate of deforestation and forest degradation, (b) rate of expansion of agriculture land for relevant commodities, and (c) production trends of relevant commodities and of relevant products.

As envisaged in the Regulation, the assessment may also take into account other criteria including (a) information supplied by governments and third parties (NGOs, industry); (b) agreements and other instruments between the country concerned and the Union and/or its Member States that address deforestation and forest degradation; (c) the existence of national laws to fight deforestation and forest degradation and their enforcement; (d) the availability of transparent data in the country; (e) if applicable, the existence, compliance with, or effective enforcement of laws protecting the rights of indigenous peoples; (and (g) international sanctions imposed by the UN Security Council or the Council of the European Union on imports or exports of the relevant commodities and relevant products; etc.

**(66) What support is provided for producer countries and smallholders?**

**How are producer countries and smallholders being supported to produce products in compliance with the Regulation? How can we ensure that smallholders are not excluded from supply chains?**

The EU and its Member states are stepping up engagement with partner countries, consumer and producer countries alike, to jointly address deforestation and forest degradation through a global Team Europe Initiative on Deforestation-free Value Chains. Partnerships and cooperation mechanisms under the TEI will support countries to address deforestation and forest degradation where a specific need has been detected, and where there is a demand to cooperate - for instance, to help smallholders and companies in ensuring working with only deforestation-free supply chains. The Commission has entered already in projects to disseminate information, raise awareness, and address technical questions through workshops for smallholders in the most affected third countries.

See more on [opportunities for smallholders in the EUDR](#).

**(67) What are the different elements of the Team Europe initiative?**

**What is the interplay between the different elements of the TEI initiative: the hub, the Sustainable Agriculture for Forest Ecosystems (SAFE) project, FPI projects and facilities planned in this context, but also those relevant in the broader context, for example at regional level? How will duplications be avoided?**

This Team Europe Initiative (TEI) Hub (short: "Zero Deforestation Hub") will provide information and outreach to partner countries on deforestation-free value chains and will conduct knowledge-management to coordinate relevant pre-existing projects from EU and Member States, with upcoming activities dedicated to the goals of the TEI. This will ensure that different Team Europe activities on deforestation-free value chains in producing countries can be better aligned, gaps identified, and redundancies avoided.

The **Sustainable Agriculture for Forest Ecosystems (SAFE)** project is the most important pillar on the cooperation side of the TEI. SAFE is currently being implemented in Brazil, Ecuador, Indonesia and Zambia. Further country components will be added in Vietnam and DRC in 2024. The SAFE project will be further scaled up to cover more countries through upcoming financial contributions from Member States.

The **Technical Facility on Deforestation-free Value Chains** will be a flexible and on-demand instrument to assist producing countries with expertise on technical requirements, such as geolocalization, land-use mapping and traceability, with a particular focus on smallholders. These activities will be closely coordinated with EU Delegations and aligned with pre-existing projects as well as SAFE, in order to create synergies and avoid duplications.

**(68) How does the Team Europe initiative relate to the CSDDD?**

In view of the ongoing legislative process on the Corporate Sustainability Due Diligence Directive (CSDDD), the TEI Hub will be working closely together with the upcoming EU Helpdesk on CSDDD, in particular with regards to agricultural value chains and smallholders which will be affected by both EUDR and CSDDD.

**(69) How can we mitigate the risk of false 'high risk' benchmarking?**

**How can we mitigate the risk of operators avoiding certain supply chains or certain producer countries/regions that are benchmarked as 'high risk'?**

Operators sourcing from standard and high risk countries or parts of countries are subject to the same standard due diligence obligations. The only difference is that shipments from high-risk countries will be subject to enhanced scrutiny from competent authorities (9% of operators sourcing from high-risk areas). In that sense, drastic changes of supply chains are not warranted or expected. Furthermore, high risk classification will entail a specific dialogue with the Commission to address jointly the root causes of deforestation and forest degradation, and with the objective to reduce their level of risk.

**(70) How will the EU ensure transparency?**

The process leading to the benchmarking system will be transparent. Regular updates and consultations on the benchmarking methodology will take place in the Multi-stakeholder Platform on deforestation, where many third countries take part, alongside with the 27 EU member states. The Commission will provide updates on the approach followed and the methodology used.

Furthermore, as per its obligations under the Regulation, the Commission will engage in a specific dialogue with all countries that are, or risk to be classified as high risk (prior to making the classification), with the objective to reduce their level of risk.' This will ensure there will be no sudden announcement of risk status and will allow for more in-depth discussions. This dialogue will provide an opportunity for producer countries to provide additional relevant information.

### **Supporting implementation**

#### **(71) What is the Information System and the 'EU Single Window'?**

The Information System (IS) is the IT system which will contain the due diligence statements submitted by operators and traders to comply with the requirements of the Regulation. The Information System will be operational by the entry into the application of the Regulation and will provide users with the functionalities listed in Art. 33(2) of the Regulation.

The [EU Single Window Environment for Customs](#) (EU SWE-C) is a framework that enables interoperability between customs IT systems and non-customs systems, such as the Information System established pursuant to Art. 33 of the Regulation. The central component of EU SWE-C, known as EU CSW-CERTEX system, will interconnect the Information System with national customs IT systems and will enable sharing and processing of data submitted to customs and non-customs authorities by economic operators. The Single Window will thus ensure information sharing in real-time and digital cooperation between customs authorities and competent authorities in charge of enforcing non-customs formalities, including in the field of environmental protection.

#### **(72) What data security safeguards will they have?**

The Information System and, subsequently, its interconnection with the EU Single Window Environment for Customs, will be aligned with the relevant and applicable provisions in terms of data protection. In line with the Union's Open Data Policy, the Commission shall provide access to the wider public to the complete anonymised datasets of the Information System in an open format that can be machine-readable and that ensures interoperability, re-use, and accessibility.

#### **(73) How can operators and traders register?**

**What can operators and traders use as an ID number/company registration number for the IS? How should domestic operators/traders, who do not have EORI numbers and may not have VAT numbers, register for the IS?**

Operators that import or export relevant commodities and relevant products need to provide their **Economic Operators Registration and Identification** (EORI) number when registering in TRACES NT. Domestic operators/traders, who do not have an EORI number may register through one of the other identifiers supported by TRACES such as VAT number, National Company Number or Taxpayer Identification Number.

#### **(74) Can the system store frequently used data?**

<p><b>Will it be possible to 'store' frequently used data (e.g. an operator/trader's main suppliers) in the IS, so that it can be easily auto-filled rather than needing to be entered afresh for each new DDS?</b></p> <p>The Information System does not include this functionality at the moment. Nevertheless, it will be possible to duplicate due diligence statements that have already been submitted, thus reducing the time needed to fill a new statement. It will be the responsibility of operators and traders to make the necessary changes in the duplicated statement to ensure compliance. In addition, an 'import' button is provided, which will allow economic operators to import the information about the production place from a predefined file (Format GeoJSON).</p>
<p><b>(75) Can the system help farmers identify their geolocation?</b></p> <p>No, the Information System acts as the repository of the due diligence statements submitted by operators and traders pursuant to Art. 4(2) and Art. 5(1). As such, it does not provide software or tools to identify geolocations coordinates.</p>
<p><b>(76) Can a due diligent statement be amended?</b></p> <p>Cancellation or amendment of submitted DDS will be possible within 72 hours after the due diligence reference number has been provided by the System. Cancellation or amendment will not be possible if the DDS reference number has already been used in a custom declaration, in another DDS, or if the corresponding product has already been placed or made available on the market or exported.</p>
<p style="text-align: center;"><b>Timelines</b></p>
<p><b>(77) When does it enter into force and into application?</b></p> <p>The Regulation was published in the Official Journal of the European Union on 9 June 2023. It entered into force on 29 June 2023. However, the applicability of certain Articles listed in paragraph 2 of Article 38 will enter into application on 30 December 2024 (18 months transition) and on 30 June 2025 (24 months transition) for micro- and small enterprises.</p>
<p><b>(78) What about the period between these dates?</b></p> <p><b>Will the products placed on the Union market between the entry into force of the Regulation and its date(s) of applicability have to comply with the requirements of the Regulation?</b></p> <p>The entry into application for large and medium enterprise operators and traders is foreseen 18 months after the entry into force of the Regulation (on 30 December 2024). This means that operators and traders do not have to comply with the requirements for products placed on the Union market before that date. For small- and micro undertakings this period is extended (24 months after the entry into force of the Regulation - on 30 June 2025).</p>
<p><b>(79) How to prove that the product was produced before the Regulation entered into force? Who bears the burden of proof that the relevant commodity or relevant product which an operator wants to place on the market or export was produced before entry into force and the Regulation does not apply?</b></p> <p>The Regulation is applicable as stipulated in Article 1 (1) unless the conditions of Article 1 (2) are met. The operator bears the burden of proof for this exception and must be able to provide relevant information as reasonable proof that the conditions of Article 1(2) are met. While in this case the operator</p>



is not obliged to submit a due diligence statement, the operator should save necessary documents proving non-applicability of the Regulation and its obligations.

**(80) What are the obligations for operators and non-SME traders when they place on the market or export a relevant product which is made of a relevant product or a relevant commodity that was placed on the market during the transitional period (i.e., the period between the entry into force of the Regulation (30/6/2023) and its entry into application (30/12/2024)?**

This situation may be best explained with a few concrete scenarios:

1. *A relevant commodity (e.g. natural rubber - CN code 4001) is placed on the market during the transitional period, hence not necessarily geolocalised, and is then used to produce a relevant derived product (e.g. new tyres - CN code 4011), which is then placed on the market (or exported) after 30/12/2024.*

If a commodity is placed on the market during the transitional period, i.e., before the entry into application of the EUDR, when placing on the market a derived product, the obligation of the operator (and of non-SME traders) will be limited to gathering adequately conclusive and verifiable evidence to prove that the relevant commodity (rubber) used to produce such relevant product (tyres) was placed on the market before the entry into application of the Regulation. This is without prejudice to Article 37.2 with regard to timber and timber products.

If the commodity is placed on the market or exported after the transitional period, i.e., after 30/12/2024, the operator (and the non-SME traders) will be subject to the standard obligations of the Regulation. Equally, for parts of relevant products that have been produced with commodities placed on the market after 30/12/2024, the operator (and the non-SME traders) will be subject to the standard obligations of the Regulation.

2. *A relevant product (e.g. cocoa butter - CN code 1804) is placed on the market during the transitional period, hence not necessarily geolocalised, but is then used to produce another relevant derived product (e.g. chocolate - CN code 1806) which is placed on the market (or exported) by a downstream operator after 30/12/2024.*

In this case, the obligation of the operator (and of non-SME traders) placing on the market or exporting a derived product (chocolate), will be limited to gathering adequately conclusive and verifiable evidence to prove that the relevant derived product (cocoa butter) was placed on the market before the entry into application of the Regulation. For parts of the final relevant product that have been produced with other relevant products placed on the market after 30/12/2024, the operator (and the non-SME traders) will be subject to the standard obligations of the Regulation. This is without prejudice to Article 37.2, with regard to timber and timber products.

3. *An operator places on the market a relevant commodity or a product in the transitional period, which is then 'made available' on the market by one or more non-SME traders after 30/12/2024.*

In this scenario, the obligations of the non-SME trader will be limited to gathering adequately conclusive and verifiable evidence to prove that such relevant commodity, or relevant product, was placed on the market before the entry into application of the Regulation. This is without prejudice to Article 37.2, with regard to timber and timber products.

#### **Other questions**

##### **(81) Will the Commission issue guidelines?**

The Commission is working on **guidelines** to elaborate on some of the aspects of the Regulation, notably on the definition of “agricultural use”, that will address issues related to agroforestry and agricultural land, certification, legality and on other aspects that are of interest to many stakeholders on the ground. These documents are planned to be published before the entry into application of the Regulation.

The Commission is also gathering inputs and promoting dialogue amongst stakeholders via the Multi-stakeholder platform on Protecting and Restoring the World’s Forests with a view to providing informal guidance on a number of issues. This document on Frequently Asked Questions already answers the most frequent questions received by the Commission from relevant stakeholders and will be updated over time. If needed, additional facilitation tools will be mobilised.

N.B: No additional guidelines are necessary to comply with the rules. The Commission aims to elaborate certain aspects to explain how the Regulation will work in practice, share best practice examples, etc.

##### **(82) Will the Commission issue commodity-specific guidelines?**

No. However, the Commission aims to put forward best practice examples, including in guidance documents, which will to some extent cover commodity-specific aspects.

##### **(83) What are the reporting obligations for operators?**

**Operators which are not SMEs will have to publicly report on their due diligence system annually. For those operators that are in the scope of Corporate Sustainability Reporting Directive (CSRD) and comply with EU Sustainability Reporting Standards (ESRS) in due time, is it sufficient to publish their report according to the requirements in CSRD? Or will there be additional reporting requirements?**

The Regulation provides that when it comes to reporting obligations, operators falling also within the scope of other EU legislative instruments that lay down requirements regarding value chain due diligence may fulfil their reporting obligations under the Regulation by including the required information when reporting in the context of other EU legislative instruments (Article 12.3).

##### **(84) What is the EU Observatory on deforestation and forest degradation?**

The [Observatory](#) will be built on already existing monitoring tools, including Copernicus products and other publicly or privately available sources, to support the implementation of this Regulation by providing scientific evidence, including land cover maps on the cut-off date, regarding global deforestation and forest degradation and related trade. The use of these maps will not automatically ensure that the conditions of the Regulation are complied with, but will be a tool to help companies to ensure compliance with this Regulation, for example to assess the deforestation risk. Companies will still be obliged to carry out due diligence.

The EU Observatory on deforestation and forest degradation will cover all forests worldwide, including European forests and will be developed in coherence with other ongoing EU policy developments such as the Forest Monitoring Law and upgrading and enhancement of the Forest Information System for Europe (FISE).

The primary purpose of reference maps produced by the EU Observatory will be to inform the risk assessment by operators/ traders and EU MS Competent Authorities (CAs). As such, reference maps will have the following features:

- **They will be non-mandatory.** There will be no obligation compelling operators /traders (or CAs) to use the reference maps of EU Observatory to inform their risk assessment.
- **They will be non-exclusive.** Operators and traders (as well as CAs) may avail themselves of other maps that can be more granular or detailed than those made available by the Observatory. The regulation is not prescriptive on the modalities to inform the risk assessment. The Observatory is one of the many tools which will be available, and will be a tool that the Commission will offer free of charge.
- **They will be non legally binding.** Therefore, reference maps may made available by the EU Observatory may be used for risk assessment. However, the fact that geolocation provided falls within an area considered as forest does not automatically lead to conclusions of non-compliance. On the other hand, one should not assume that if geolocation falls outside an area considered as forest the shipment/commodity will not be checked (there can be random checks, and there may be other risk factors) or that the commodity will be automatically compliant (first, due to the absence of 100% accuracy, and second, because a deforestation-free commodity could anyway be illegal).

**(85) What constitutes high-risk, and how long can a suspension take place?**

**Article 17 allows Competent Authorities to take immediate actions – including suspension - in situations that present high risk of non-compliance. What constitutes high-risk, and how long can the suspension take place?**

Competent authorities may identify situations where relevant products present a high risk of being non-compliant with the requirements of the Regulation on the basis of different circumstances, including on the spot checks, the outcome of their risk analysis in their risk-based plans, or risks identified through the information system, or on the basis of information coming from another competent authority, substantiated concerns etc. In such cases, the competent authorities can introduce interim measures as defined in Article 23, including the suspension of placing or making available the product on the market. This suspension should end within three working days, or 72 hours in case of perishable products. However, the competent authority can come to the conclusion, based on checks carried out in this period of time, that the suspension should be extended by additional periods of three days to establish if the products is compliant with the Regulation.

**(86) How does the Regulation link to the EU Renewable Energy Directive?**

The objectives of the Deforestation Regulation and the Renewable Energy Directive are complementary, as they both address the overarching objective of fighting climate change and biodiversity loss.

Commodities and products that fall within the scope of both acts will be subject to requirements for general market access under the EUDR and for being accounted as renewable energy under the Renewable Energy Directive (RED). These requirements are compatible and mutually reinforcing. In the specific case of certification systems for low Indirect Land Use Change (ILUC) according to Commission Regulation (EU) 2019/807 supplementing Directive (EU) 2018/2001, these certification systems may also be used by operators and traders within their due diligence systems to obtain information required by the EUDR to meet some of the traceability and information requirements set out in its Article 9. As with any other certification system, their use is without prejudice to the legal responsibility and obligations under the EUDR for operators and traders to exercise due diligence.