



Task Force 04

TRADE AND INVESTMENT FOR SUSTAINABLE AND INCLUSIVE GROWTH

Challenges in the Multilateral Debate on International Forest Regulation: An Analysis of the Applicability and Impact of the EUDR for the G20

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Abstract

Driven by the urgency of the climate crisis, the European Union (EU or Union) has introduced the European Deforestation-Free Regulation (EUDR or regulation). This regulation represents a step forward in international forest governance. However, it also presents several challenges, including vague definitions, disruption of trade flows and the unintended impact of stricter regulatory requirements. This policy brief provides an overview of the regulation by analyzing its impacts on trade and its potential implementation tools, using Brazil – a G20 member and a major commodity-exporting country – as a case study. Drawing on this analysis, it proposes several recommendations to minimize uncertainties and enhance regulatory adaptation, such as considering existing deforestation monitoring tools and ensuring EUDR's compliance with the international trade regime. The G20, given its diverse membership, presents a valuable platform to facilitate the dialogue between the affected countries. The policy brief proposes two potential scenarios for the EUDR's implementation – one positive and another negative – depending on the level of cooperation and dialogue established between stakeholders. In short, this piece aims to inform discussions within the G20 forum, promoting sustainable international trade aligned with global standards. The policy brief will be divided into three parts: (1) a brief description of the EUDR's legal provisions; (2) the identification of the partnership tools and proposed implementation mechanisms; and (3) the interaction of the EUDR with the framework of the World Trade Organization (WTO) and related challenges.

Keywords: Deforestation; European Union; G20; Multilateral Dialogue; WTO Law.



Diagnosis of the Issue¹

Introduction: context and normative overview

Deforestation remains an issue that considerably affects climate crisis, contributing to the onset of greenhouse gases (GHG) emissions, biodiversity loss and the violations of human rights. Likewise, the deforestation impacts are transboundary and yet insufficiently accounted for.

Recognizing a global regulatory gap in forest protection, the EU took a bold step by adopting the EUDR (for prior initiatives, see Annex I, II and III). The regulation's established mechanisms, scope, and objective (Annex IV and V) are expected to impact other regimes – such as trade – and third countries.

The EUDR lays rules regarding the “placing and making available on the EU market, as well as the export from the Union” of seven specific commodities and their subproducts: cattle, cocoa, coffee, oil palm, rubber, soy, and wood. Revisions of the regulation should take place periodically. It also envisages partnerships and cooperation with third countries to engage and jointly address the root causes of “deforestation” and of “forest degradation”.

The Regulation requires commodities operators to guarantee that their products are: (i) deforestation-free; (ii) produced following the relevant legislation of the country of production; and (iii) accompanied by due diligence statements showing no more than a

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negligible risk of non-compliance. It is worth bearing in mind that such statements shall be uploaded to the EUDR Information System (IS), which is currently under development.

The EUDR provides for a transitional period of 18 months to end in December 2024. When compared to other standards that impose restrictions on the entry of products into the EU, such as the Carbon Board Adjustment Mechanism (CBAM), the EUDR's shorter adaptation period raises concerns about the ability of producers to successfully prepare for the regulation.

Challenges to Implementation

Effective implementation of the EUDR depends on robust instruments for measuring deforestation and environmental degradation. Examining these tools and comparing them with those employed by other countries is therefore crucial. Brazil serves as a compelling case study due to its prominence in environmental discussions and its role both as a major commodity exporter and as the country presiding over the G20 in 2024.

Figure 1 below shows the main challenges related to the EUDR. When applicable, the Brazilian case serves as a good paradigm for the identification of possible effects on third countries. For a direct comparison between Brazilian mechanisms, those proposed by the EUDR and their challenges, see Annex VII.1.

Topic	Challenge
<p>Forest Definition</p>	<p>The EUDR adopts FAO’s definition of forest: “land spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use”. But other countries and entities adopt different concepts. There is a difficulty to set a single definition due to the high complexity of different biomes, such as Brazil’s Cerrado and Caatinga.</p>
<p>Type of deforestation</p>	<p>A potential challenge with the EUDR lies in its approach to deforestation. Unlike regulations in some producer countries, such as Brazil, the EUDR does not differentiate between legal and illegal deforestation. In Brazil, for instance, the Forest Code establishes a legal framework for forest management, allowing for sustainable logging practices in designated areas.</p>
<p>Minimum area of deforestation</p>	<p>While the EUDR defines what constitutes a forest territory, it lacks a clear threshold for what qualifies as deforestation or forest degradation. This absence of a minimum area for either category raises concerns about consistency and fairness in implementation (see Annex VIII for a comparison with Brazil's approach).</p>
<p>Data Privacy</p>	<p>The Information System (IS), as the platform in charge of facilitating the collection and processing of due diligence statements, concerns raises from data and privacy. The EUDR does not specificate how this information will be stored and the level of confidentiality within the IS or how it will comply with the European General Data Protection Regulation (GDPR) and producing countries’ data protection laws</p>
<p>Risk Assessment Criteria</p>	<p>The EUDR lacks clearly defined criteria for assessing a country's deforestation risk. This ambiguity, coupled with, for instance, a lack of clarity regarding provisions for consultation and cooperation with indigenous peoples, raises concerns about the fairness and effectiveness of the regulation's implementation.</p>
<p>Certification and Traceability</p>	<p>A key concern regarding the EUDR's implementation is the lack of clear guidance on producer certification. The EU has yet to specify what type of certification will demonstrate compliance with national laws, creating uncertainty for producers. In contrast, countries like Brazil have established robust green certification and traceability systems. For instance, Brazil's federal Green Seal certification offers a well-developed national framework encompassing all three pillars of sustainability (see Annex VII for details).</p>

FIGURE 1A: Main EUDR challenges. Figure by authors.



Information System	The Information System, which will serve as the official system for submitting the data required by the due diligence process, is not yet operational.
Transition Period for Implementation	Concerns have been raised regarding the tight timeframe for implementing the EUDR. Some producer countries, particularly developing nations with less robust monitoring and traceability systems, may struggle to meet compliance requirements by the designated deadline. This could place an undue burden on these countries and potentially disrupt established trade flows.
Relocation of production and trade	One unintended consequence of the EUDR might be the relocation of production and trade, away from monitored areas to places where due diligence is not required. Producers may shift their operations to countries with laxer environmental standards or those not under the EU's radar, leading to "leakage" effects where deforestation activities simply move from one country to another rather than being eliminated. Importers might simply move their trade to products and areas not affected by the regulation.
Small and medium-sized enterprises (SMEs) and small producers affection	The regulation also risks to disproportionately affect small and medium-sized enterprises (SMEs) and small producers in the value chains of the selected commodities. These entities often lack the financial and technical resources to comply with more stringent due diligence requirements, leading to their potential exclusion from the EU market or inefficient relocation of resources away from other sustainable practices.
Vulnerable groups affection	The regulation pays inadequate attention to the most vulnerable groups dependent on small-scale family agriculture. These populations, often operating at the margins, could be disproportionately harmed by the EUDR's requirements.
Partnerships	The network of dialogues established between the European Union and third countries on the implementation of the EUDR is still limited.

FIGURE 1B: Main EUDR challenges. Figure by authors.

Impact on International Trade and Compliance with WTO Framework

The EUDR's potential to disrupt established commodity value chains has sparked concerns among G20 members, namely Brazil and Indonesia (WTO 2022). These reservations concern its impact on trade flows and on the compatibility of the regulation vis-à-vis the World Trade Organization (WTO) framework.

Several G20 members that rely substantially on exports of commodities may experience significant shifts in their trade flows due to the EUDR's implementation. For example, Brazil, which has the EU as its top export market for coffee and a major consumer of its soy and palm oil, faces considerable challenges (Annex VI).

A significant concern lies in EUDR's potential conflict with existing trade rules enshrined in the General Agreement on Tariffs and Trade (GATT), considering that import restrictions on forest products for environmental purposes remain largely untested in the WTO (Matsushita 2015, 743). *In principle*, WTO rules allow for the use of trade-related environmental measures provided that they align with the principles of international trade law (Dobson 2023, 372). In that sense, some authors view the adoption of the EUDR as positive, proposing that the EU must use trade regulations to lessen its deforestation footprint (Marín Durán and Scott, 2022).

However, there is an ongoing debate on whether the EUDR falls under the exceptions outlined in GATT's Article XX, specifically concerning its *chapeau* and the conditions established by provisions (b)² and (g)³. The WTO's Appellate Body has devised an

² Necessary to protect human, animal or plant life or health.

³ Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

original approach for analyzing Article XX, called the “two-tiered test”, which further specified how both exceptions must be interpreted (Koul 2018, 616-617).

The WTO's Appellate Body paralysis, dating back to 2019 and due to blocked appointments of members, has hampered the resolution of trade disputes and stalled further consideration of environment-related trade measures. Recent WTO Ministerial Conferences have also shown limited progress in addressing this complex relationship. As a matter of fact, developing countries have recently expressed “deep concern about the increase in unilateral and protectionist measures” (13th WTO Ministerial Conference 2024) in a clear reaction to regulations, such as the EUDR.

Hence, the discussion is of great relevance for the G20 as it discusses the effects of extraterritorial regulations on international trade, environmental protection, and its developmental impact on vulnerable communities, such as small producers and indigenous peoples. All these topics relate closely to the current Brazilian G20 presidency. The G20 currently has working groups on trade, environment and development, and Brazil has contributed to the creation of a Task Force for the Global Mobilization Against Climate Change with the goal of promoting an ample debate on the alignment of the financial sector to the long-term goals of the Paris Climate Agreement. In this context, G20 stands out as a high-level forum with potential to foster dialogue between developed and developing countries, addressing concerns about the potential economic impacts of stricter environmental regulations.

Recommendations

Considering the diagnosis presented, the following challenges and recommendations were identified (Annex IX):

I – Definitions

Challenge: The EU needs to further specify some of the EUDR definitions, such as ‘forest’, ‘deforestation’ and the minimum area considered to be deforested.

Recommendation: These concepts need to undergo a process of harmonisation through dialogue with third countries, especially the Global South (Annex VIII). The G20 shall serve as a multilateral platform for exchanges.

II – Information System and data privacy

Challenge: The EUDR’s Information System (IS) raises concerns regarding how it will be used to collect and process due diligence data submitted to it (Annex IV). In addition, there is a lack of specifications regarding the system’s compliance with data protection laws. Lastly, the IS is not yet operational, disrupting preparatory efforts on the part of stakeholders.

Recommendation: Complementary guidelines should be developed. G20 countries should encourage the exchange of experiences and best practices to this end with the development of technical task forces. In addition, since the IS is not yet operational, the transitional period should be extended to ensure sufficient time for adaptation.



III – Risk assessment criteria

Challenge: The EUDR lacks clearly defined criteria for assessing a country's deforestation risk. This raises concerns regarding the Regulation fairness and effectiveness (Annex IV).

Recommendation: As in Item II above, the development of task forces for the exchange of information and best practices is recommended to develop complementary and informed guidelines.

IV – Certifications and Traceability

Challenge: A key concern regarding the EUDR's implementation is the lack of clear guidance on producer certification. The EU has yet to specify what type of certification will demonstrate compliance with national laws, creating uncertainty for producers. In contrast, countries like Brazil have established robust green certification and traceability systems. For instance, Brazil's federal Green Seal certification offers a well-developed national framework encompassing all three pillars of sustainability (Annex VII).

Recommendation: A multilateral dialogue should be established for the adoption of mutually recognized certification and standardization programs between certification systems.

V – Transition period for implementation

Challenge: Concerns have been raised regarding the tight timeframe for implementing the EUDR. Some producer countries, particularly developing nations with less robust monitoring and traceability systems, may struggle to meet compliance requirements by the designated deadline. This could place an undue burden on these countries and potentially disrupt established trade flows.



Recommendations: The G20 should act as a platform for discussion on a broader timeframe for implementing the EUDR's requirements, including by proposing an extension of the one-year transition period, initially envisaged to end in 2024.

VI – SMEs and vulnerable groups

Challenge: The Regulation pays insufficient attention to the most vulnerable groups of the commodities' value chains, such indigenous communities, small producers, and Small and Medium Enterprises (SMEs). These groups are at risk of suffering disproportionate negative impact from EUDR implementation (Annex VI).

Recommendation: The G20 should encourage the establishment of a dedicated fund or analogous financial assistance program to address the needs of vulnerable groups impacted by the EUDR, which should provide the necessary resources for capacity building, technical assistance, and access to technology.

VII – Partnerships

Challenge: The network of dialogues established between the European Union and third countries on the implementation of the EUDR is still limited.

Recommendation: The G20 should set up a task force to facilitate communications leveraging existing platforms like the EUDR's Forest Partnerships.

VIII – Adequacy to the WTO framework

Challenge: Some producer countries express concern that the Regulation's impact on their trade value chains might violate the GATT principle of non-discrimination.

Recommendation: G20's established working groups on trade and environment should be fostered as a valuable platform to facilitate dialogue on trade issues and bridge between interested stakeholders.

Scenario of outcomes

I - Consensus and effective implementation (positive scenario)

Recommendations for a more tailored and flexible implementation of the EUDR are fully embraced by the EU and the G20, leading to significant positive outcomes. The G20 helps to foster an environment of cooperation and consensus-building between the EU, commodity-exporting countries, and other stakeholders. This collaborative approach allows for the adaptation of the EUDR's implementation to better fit the diverse realities of commodity-producing regions, by acknowledging existing due diligence and certification systems and countries' advances in environmental policies. As a result, there is no duplication of efforts, and small producers are effectively integrated into the value chain, mitigating the risk of their future exclusion. Thus, small producers remain within the value chain, and the EUDR's overall acceptability and effectiveness in combating deforestation increase.

The positive outcomes extend beyond immediate regulatory compliance. The EUDR, backed by a strong foundation of international cooperation and stakeholder engagement promoted by the G20, contributes to a tangible reduction in targeted deforestation rates.

In a possible positive scenario, the following outputs can be summarized:

- Less costs for third countries, allowing them to adapt to the EUDR within the established transition period;
- Harmonization of technical definitions such as forest, deforestation, and minimum area of deforestation allows for a global adaptation to the EUDR considering each national legal framework and practice;
- Clarification of risk assessment criteria creates a non-discriminatory scenario;

- When mutually recognized, certifications facilitate trade flows and regulatory harmonization;
- Guidelines for the processing of personal data allow for greater security for operators, reducing the risk of data leakage;
- The development of partnerships and cooperation promotes less conflictual implementation of the Regulation;
- Reduction of impact risk on small producers and vulnerable groups is to be expected;
- Countries can contribute with their experience to the implementation of the Information System;
- Reduction of the risk of taking a dispute to the WTO.

II - Rigidity and unilateral implementation (negative scenario)

The EU maintains a rigid implementation mechanism for the EUDR, which is powered by a lack of dialogue. The unwillingness to recognize and integrate existing due diligence and certification systems in developing countries results in duplication of efforts, placing an undue burden on producers, especially smallholders.

Given the lack of consensual implementation, the commodity-exporting countries seek available remedies under the WTO framework and other bilateral and multilateral trade mechanisms. This scenario escalates into broader trade disputes, creating non-negligible animosities between the EU and the Global South. The contentious situation stifles potential cooperation on environmental issues and undermines global efforts to address climate change and deforestation.

In a possible negative scenario, the following outputs can be summarized:

- Higher costs of implementation for non-EU countries due to a short transitional period;
- Different definitions and the lack of mutual recognition of certifications prevent harmonized implementation;
- Lack of clarity in risk assessment definitions leads to EUDR discriminatory application;
- Lack of guidelines for the processing of personal data creates the possibility of conflicts arising in relation to data leaks;
- The lack of dialogue increases the possibility of a conflictual EUDR implementation;
- Small producers and vulnerable groups are subject to the negative impact and exclusion from value chains;
- The risk of taking a trade dispute to the WTO increases.

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