



**AN IN-DEPTH ANALYSIS OF THE REGULATORY AND NORMATIVE
CHALLENGES TO BRAZILIAN LEGAL ORDER IN LIGHT OF THE NEW EUDR
REQUIREMENTS**

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PRESENTATION

The newly adopted European Deforestation-Free Regulation (EUDR) presents both opportunities and challenges for Brazil's legal order. This regulation represents a step forward in international forest governance as it 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. In this context, Brazil will likely be one of the most affected countries by the EUDR. The country is a major trader of many commodities listed in the EUDR and its exports comprise a great share of the country's revenue. Also, Brazil is heavily dependent on exporting its commodities production, thus raising concerns about possible socio-economic effects in the country.

In the view of this, the present report provides a comprehensive analysis of the regulatory and normative challenges posed by the EUDR to Brazil. The **first section** begins by discussing the international environmental agenda and by establishing the existing international regulations that govern forest protection. Considering this context, the **second section** delves into the context that ultimately led to the adoption of the EUDR, highlighting previous regional



initiatives and providing a roadmap leading to its creation. The **third section** concentrates on the discussion of the EUDR under the World Trade Organization's framework, also analysing the intersection between trade and environment. The **fourth section** focuses on Brazil's environmental framework related to forests, specifically bringing a deeper look into the coffee sector. It explores both the legal and policy aspects of this framework, while also identifying the challenges currently faced in its implementation. Lastly, the **concluding remarks section** lists several challenges for the adaptation of the Brazilian forest regulation in the face of the European regulation.

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INTRODUCTION

The growing perception of the harm caused by climate change to humankind persuaded States to acknowledge it as a common concern¹. This recognition encompasses, on the one hand, a shared collective responsibility for conserving natural resources, such as climate change and its adverse consequences; and, on the other hand, a social perspective seen on discussions such as of human rights, rights of indigenous peoples, gender equality, and intergenerational equity, among others. This collective interest to protect resources remains necessarily connected to humankind².

As climate change themes are being increasingly acknowledged as issues of global apprehension, they require, therefore, collective action. Recent developments to the international climate change regime in face of the aggravation of the climate emergency have led to the recognition of climate mitigation as a Global Public Good (GPG).³ In this sense, rules of international law that protect interests that are generally cited as GPGs, such as the protection of the environment, are seen as rules of substantive law⁴.

Concerns related to GPG implies a centralized governance and requires the participation of all States and people in a global partnership. The articulation of these collective actions leading to the realization of community interests depends on the existence of an institutional structure for their promotion and protection. In this regard, there has been an increasing demand for the development of international climate change law.

¹ ORAL, Nilufer, The Global Commons and Common Interests: Is there Common Ground? *In*: IOVANE, M. et al. (eds.), *The Protection of General Interests in Contemporary International Law*, Oxford, UK: Oxford University Press, 2021. DOI: 10.1093/oso/9780192846501.003.0002, p. 26

² ORAL, Nilufer, The Global Commons and Common Interests: Is there Common Ground? *In*: IOVANE, M. et al. (eds.), *The Protection of General Interests in Contemporary International Law*, Oxford, UK: Oxford University Press, 2021. DOI: 10.1093/oso/9780192846501.003.0002, p. 29

³ BANDA, Maria L., *Climate Adaptation Law: Governing Multi-Level Public Goods Across Borders*, 51 *Vand J Transnat'l L* 1027, 2018, p. 1030.

⁴ Nollkaemper, André. *International Adjudication of Global Public Goods: The Intersection of Substance and Procedure*. *The European Journal of International Law* Vol. 23 no. 3, 2012. Available at: <http://www.ejil.org/pdfs/23/3/2304.pdf>. Access: 19 jun. 2024.



Also, some authors understand that international adjudication contributes to the achievement of community interests embodied in GPG5, since community interests and ‘common concern’ relates to GPG as they transcend states’ individual interests and ensure the protection of the international community.

On a global level, the *United Nations Framework Convention on Climate Change* (UNFCCC) was established in 1992 to maintain greenhouse gas levels and protect the climate system on the basis of equity and common but differentiated responsibilities between developed and developing countries⁶. Later, in December 2015, 195 countries signed the Paris Agreement at the 21st COP session⁷ with the aim of reducing global temperatures to 1.5°C or 2°C pre-industrial levels⁸. In order to succeed, it establishes that the States should take actions of adaptation to increase resilience and reduce vulnerability to climate change⁹.

More recently, on December 2023, the 28th COP session came to a closure¹⁰. One of its main results was the conclusion of the first global “stock take” under the *Paris Agreement*, setting global goals for transforming energy systems towards climate neutrality by 2050 and achieving the Paris Agreement objective of limiting temperature rise to 1.5° C relative to pre-industrial levels.

5 Almeida, P. W., & Porto, G. H. (2019). Is International Adjudication a Global Public Good? Procedure vs. GPG before the ICJ / A adjudicação internacional é um bem público global? Procedimento vs. GPG antes do ICJ. *Revista De Direito Da Cidade*, 11(1), 597–620. <https://doi.org/10.12957/rdc.2019.38404>

⁶ United Nations, ‘United Nations Framework Convention on Climate Change’ (1992) *UN Treaty Series* vol. 1771 <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en> accessed 21 June 2023

⁷ United Nations, ‘Paris Agreement’ (2015) *UN Treaty Series*, vol. 3156 <https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf> accessed in 21 June 2023

⁸ United Nations, ‘Paris Agreement’ (2015) *UN Treaty Series*, vol. 3156 <https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf> accessed in 21 June 2023

⁹ United Nations, ‘Paris Agreement’ (2015) *UN Treaty Series*, vol. 3156 <https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf> accessed in 21 June 2023

¹⁰ For further information, see Summary of Global Climate Action at COP 28: <https://unfccc.int/sites/default/files/resource/Summary_GCA_COP28.pdf> and <<https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>>



Recognizing that the current policies and action at the global level on conservation, restoration and sustainable management of forests do not suffice to halt deforestation and forest degradation,¹¹ the European Commission set out in 2019 the *European Green Deal*, a program of initial policies and measures to manage emerging climate and environmental challenges¹². It is part of the EU's strategy to accomplish the *United Nation's 2030 Agenda and its Sustainable Development Goals*¹³. All further European environmental policies shall be in accordance with the European Green Deal goals and objectives¹⁴. As a result, the EU has engaged partners to adopt actions towards a green economy¹⁵. By 2050, the Commission aims to achieve climate neutrality by using trade policies to promote updated international standards across global supply chains¹⁶.

Even before the Green Deal, the EU set out a package of measures to fight illegal logging and associated trade called the *Forest Law Enforcement, Governance and Trade Action Plan* (FLEGT)¹⁷. Illegal logging occurs when timber is harvested against national laws¹⁸. One of the FLEGT's key strategies is the *EU Timber Regulation* of 2010¹⁹. All timber products sold on the European market are legal only if they have been harvested in accordance with the domestic law of the harvesting country²⁰. To protect mainly primary forests, the Commission released the *Communication on Stepping up EU Action to Protect and Restore the World's*

¹¹ Regulation (EU) 2023/1115 of the European Parliament and of the Council 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) Official Journal L150/206, in paras. 10, 21-22; see also TRAMONTANA, E. Where are we now with global forest regulation and governance? Insights from a 'Global Public Goods' Perspective, *Rivista Quadrimestrale di Diritto Dell'ambiente* (2), 2-28, 2016, p. 5-6

¹² European Commission, 'The European Green Deal' (Communication) COM (2019) 640 final, 2

¹³ European Commission, 'The European Green Deal' (Communication) COM (2019) 640 final, 3

¹⁴ European Commission, 'The European Green Deal' (Communication) COM (2019) 640 final, 2-3

¹⁵ European Commission, 'The European Green Deal' (Communication) COM (2019) 640 final, 20-21

¹⁶ European Commission, 'The European Green Deal' (Communication) COM (2019) 640 final, 22

¹⁷ European Commission, 'Stepping up EU Action to Protect and Restore the World's Forests' (Communication) COM (2019) 352 final, 4

¹⁸ European Commission, 'Forest Law Enforcement, Governance and Trade (FLEGT): proposal for an EU action plan' (Communication) COM (2003) 251 final, 4

¹⁹ European Commission, 'Stepping up EU Action to Protect and Restore the World's Forests' (Communication) COM (2019) 352 final, 4

²⁰ The European Parliament and the Council Regulation (EU) 995/2010 laying down the obligations of operators who place timber and timber products on the market [2010] OJ L 295/23, art. 1-4



Forests in 2019²¹. According to the Commission, EU policies were not enough to promote forest conservation and sustainable use²².

Later, in 2023, the EU has taken a new step with the adoption of ‘*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*’ (‘EUDR’).

The EUDR prohibits the trade of goods from seven commodities (cattle, cocoa, coffee, palm oil, rubber, soya, and wood) if they originate from deforested regions. This list of commodities may be expanded in later revisions of the EUDR. To ensure their supply chains are free from deforestation and forest degradation, market operators must submit due diligence declarations. These declarations include specific information, risk assessments, and any necessary mitigation measures. Operators must comply with these obligations before placing products on the market, and requirements will be influenced by the level of risk assigned to the product's region of origin. The EUDR also establishes a three-tier country benchmarking system. This system evaluates the risks associated with producing covered commodities, and determines if a country must comply with both its own regulations and those set out by the EUDR.

The EUDR is a demand-side measure that seeks to reduce GHG emissions and biodiversity loss driven by the EU’s contribution to deforestation and forest degradation worldwide. The absence of regulation concerning the seven commodities included in the scope of the EUDR could contribute to climate change by rising annual deforestation to approximately

²¹ European Commission, ‘Stepping up EU Action to Protect and Restore the World’s Forests’ (Communication) COM (2019) 352 final, 6

²² European Commission, ‘Stepping up EU Action to Protect and Restore the World’s Forests’ (Communication) COM (2019) 352 final, 1



248,000 hectares by 2030²³. Therefore, an enhanced EU action would be required to effectively achieve UN's SDGs²⁴.

Given the regulatory gap concerning forests and the characteristics of the EU proposal – the mechanisms established, the scope and the objective of the regulation –, the policy intervention is expected to produce impacts on other regimes – such as trade – and other States. Accordingly, the EU Commission itself envisaged the goal of establishing the Union as a 'global standard-setter'²⁵, seeking to develop international climate law and to induce other international actors. It expects to incentivize behavioral shift in the countries of production and influence other consumer countries to adopt similar practices.²⁶

The interest and concern of Brazilian actors in the adoption of the EUDR draw from the fact that Brazil is likely to be listed as a high-risk country. Brazil is one of the biggest exporters of many of the 'relevant commodities' listed in the regulation and the exportation of these commodities comprises a great share of the country's revenue. Additionally, Brazil is home to the biggest rainforest in the world, whose territory is in danger of deforestation, in particular as a result of unlawful expansions of territory to cultivate livestock and plantation of commodities.

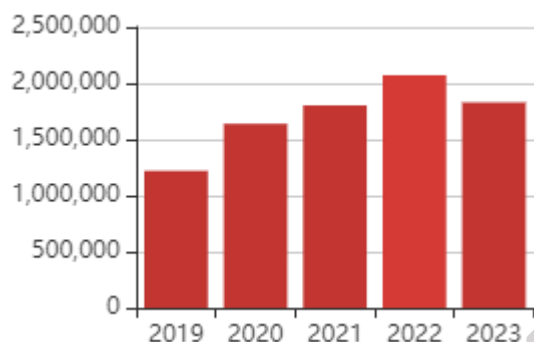
Figure 1 – Evolution of the deforestation area in Brazil in hectares (2019-2023)

²³ Regulation (EU) 2023/1115 of the European Parliament and of the Council 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) Official Journal L150/206, in para. 8;

²⁴ Regulation (EU) 2023/1115 of the European Parliament and of the Council 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) Official Journal L150/206, in para. 11

²⁵ European Commission, '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' COM (2021) 706 final, in p. 5;

²⁶ European Commission, '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' COM (2021) 706 final, in p. 25-26;



Source: Adapted from Mapbiomas (2024)

Thus, Brazilian products are expected to face stricter due diligence requirements, which will also increase the costs of trade. The barriers imposed by EUDR's risk-based benchmark of the regulation would make these products less attractive and create disadvantage in relation to others countries. Considering these possible forthcoming effects, one must analyse what are Brazil's main regulatory and policy challenges in the light of the new European regulation.

This report seeks to address this issue. First, this document dives into the international and European regulations governing forest ecosystems and analyzes how they interact with each other. Then, it delves into the context that ultimately led to the adoption of the EUDR, highlighting previous regional initiatives and providing a roadmap leading to its creation. It also examines the tools employed by the EU to enforce the EUDR. Afterwards, the report discusses the EUDR's under the international trade law framework and its possible effects on international commodity flux. Lastly, this document focuses on Brazil's environmental framework related to forests in both its legal and policy aspects. In this context, we take a deeper look into the coffee sector in Brazil. Ultimately, this report assesses the EUDR's influence on Brazil, examining challenges posed by the EUDR for Brazil's normative and policy framework.

In order to achieve the main objective of this research, a mixed methodological approach is employed, comprising theoretical and empirical analysis in order to addresses EUDR's regulatory challenges to Brazil. It first comprises a theoretical analysis of the instruments applicable to forest ecosystems. Then, we conduct both a theoretical analysis of the European



forest-related framework and a normative analysis of the EUDR's provisions and previous regulation. Afterwards, the report addresses the intersection between the EUDR and international trade through a mix of quantitative analysis (extracted from databases such as ComexStat and ITC's Trade Map), in order to map the global flow of commodity trade, and a theoretical analysis regarding international trade law. Lastly, a descriptive qualitative analysis on the Brazilian forest-related framework in the light of the EUDR's challenges is conducted, also considering the coffee sector as a sectorial analysis.

The results found in this research can bolster suggestions and alternatives to the Brazilian strategy related to its adaptation to the EUDR. It can also promote sustainable practices and improve forest-related framework in Brazil.

1. INTERNATIONAL FOREST REGULATION

1.1. MULTILATERAL FRAMEWORK

The contemporary multilateral framework on the environment only began to be established in the middle of the last century. The first milestone concerned the 1968 United Nations (UN) report on *Activities of United Nations Organizations and Programmes Relevant to the Human Environment*, which laid the foundations for the establishment of the United Nations Environment Programme (UNEP) as the world's leading environmental authority. Later, in 1969, the UN also issued the *Problems of the Human Environment* report highlighting severe risks if the environmental trends observed at the time were maintained.

Based on these initiatives, international forums converged in favor of discussing the establishment of targets to curb environmental degradation, resulting in two of the greatest conferences on environmental themes: (i) the *United Nations Conference on the Human Environment* (Stockholm Conference, 1972), which resulted in the drafting of the Stockholm Declaration, with 26 principles and the effective creation of UNEP; and (ii) the *United Nations Conference on Environment and Development* (ECO-92), resulting in Agenda-21 and



influencing the creation of agreements such as the Convention on Biological Diversity, the United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change. It was also at ECO-92 that two important documents were drawn up: the Rio Declaration on Environment and Development and the Declaration of Principles on Forests.

In this context, it began to formulate the international framework currently responsible for regulating forests and directly or indirectly related to them, as can be seen in the following topics. For better visualization purposes, we have divided referred framework into three blocks of years, each covering a period of two decades.

1.1.1. 1970 - 1990 period

Three agreements stand out in the period from 1970 to 1990. The 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage* (World Heritage) dealt with the protection and maintenance of outstanding cultural and natural heritage sites of universal value, including forest areas. The *Convention on International Trade in Endangered Species* - CITES (1975) dealt with the control of trade in endangered or threatened species, including various tree and wood species. Lastly, the *Ramsar Convention* (1975) sought to regulate the conservation and intelligent use of wetlands, including mangroves and some other forest ecosystems.

1.1.2. 1990 - 2010 period

The period 1990-2010 was rich in establishing several of the main frameworks recognized today. In 1991, the *International Labor Organization* (ILO) issued resolution no. 169 addressing the protection of the social, economic and cultural rights of indigenous peoples, implicitly including forest dwellers and forest-dependent indigenous peoples. In 1993, the aforementioned *Convention on Biological Diversity* (CBD) came into being, addressing the



conservation and sustainable use of biological diversity and the equitable sharing of the benefits of genetic resources, including forest biological diversity. Within this framework, an expanded work program on forest biological diversity was adopted in 2002.

In 1994, three milestones are worth mentioning: (i) the *International Tropical Timber Agreement* - ITTA on facilitation of trade in tropical timber and ensuring of exports from sustainable sources; (ii) the *United Nations Framework Convention on Climate Change* - UNFCCC on limitation of human-induced disturbances to the global climate system by stabilizing greenhouse gas (GHG) concentration in the atmosphere and provisioning about forests are reservoirs, sinks and sources of GHGs; and the creation of the *World Trade Organization* (WTO) by the Marrakesh Agreement, aimed at regulating international trade, thus impacting rules regarding nature-based products.

In 1996, *United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (UNCCD) brought provisions to mitigate the effects of drought and to prevent desertification, also considering the role of forests in order to achieve this goal.

Lastly, in 1997, another great milestone was the *Kyoto Protocol* which, alongside UNFCCC and, years later, the *Marrakech Accord* (a set of agreements reached at the 7th Conference of the Parties to the UNFCCC, held in 2001, on the rules for meeting the targets set out in the Kyoto Protocol), brought rules and modalities for forests to mitigate climate change. The *Joint Implementation and the Clean Development Mechanisms* under the Kyoto Protocol include forestry projects.

1.1.3. 2010-today period

The period from 2010 onwards is characterized by the continuity of discussions and the deepening of previously established agreements. In 2015, it is relevant to highlight the UN Economic and Social Council (ECOSOC) *Resolution on the International Forest Agreement beyond 2015* and the United Nations Forum on Forests (UNFF) *Resolution on the International*



Forest Agreement beyond 2015, which aims to strengthen the international forest agreement and extend it to 2030.

Also in 2015, all UN state members adopted the *UN Agenda 2030 for Sustainable Development*, that established targets to be achieved in the environmental, economic, social and institutional domains by 2030, as well as the *Paris Agreement* (on UNFCCC 21th Conference of Parties – COP 21) regarding climate change and topics such as financing, mitigation and adaptation.

In 2021, during the COP 26, 140 State-Parties signed the Glasgow Leaders' Declaration on Forests and Land Use, also known as the Forest Deal²⁷, which provides a commitment to halt deforestation and forest degradation by 2030. It emphasizes the importance of sustainable forest management, conservation, restoration, and financing for achieving this goal. Lastly, in 2023's COP 28, Brazil proposed the creation of a Global Forest Fund. The proposal aims to fund \$250 billion to 80 countries with tropical forests to help maintain their trees, with annual payments based on the hectares conserved or restored.

Other ecosystems have also gained prominence in global discussions. For instance, in 2023, the *United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction* (BBNJ) was signed by nearly 70 countries. The treaty aims to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the provisions of the *United Nations Convention on Law of the Sea* (UNCLOS).

Regarding unilateral initiatives, some countries are also seeking to regulate the protection of forests and the environment as a whole. This is the case of the *Forest Act Bill* in the United States and the *Environment Act Bill* in the United Kingdom, both from 2021. These proposes provides, among other things, for the regulation of products linked to deforestation.

²⁷ United Nations. 28th UN Climate Change Conference of Parties. Glasgow Leaders' Declaration in Forest and Land Use. 2012. Available at: <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>



In this sense, they are similar to the EUDR, showing a tendency that's not exclusive to the European Union.

1.2. CHALLENGES AND THE INTERNATIONAL AGENDA

One of the greatest challenges of the environmental agenda is to reconcile the needs of international trade with the environmental discussion. As climate change is increasingly recognized as a global concern²⁸, all areas of international regulation, including trade, are called to adapt and contribute to addressing this critical issue. As stated in UN's Agenda 21, adopted at Rio-92, international trade and protection of the environment should be "mutually supportive"²⁹. This change in perception is also visible in WTO's ongoing Ministerial Conferences, especially since 2001, when the Doha Declaration launched negotiations on trade and environment³⁰. In this sense, the WTO³¹ finds that environment-related notifications grew from 165 cases, in 1997, to 768, in 2022, totalizing 8661 cases in said period.

Environmental pollution and the degradation of resources are the repercussions of increasing economic development and trading activities³². Some authors argue that the discourse on the relationship between trade and the environment is likely to have been affected by the growing geopoliticization, which has become quite visible in the trade wars and critical supply chains issues³³. In this sense, today's major topics for trade negotiations in the

28 BANDA, Maria L., *Climate Adaptation Law: Governing Multi-Level Public Goods Across Borders*, 51 *Vand J Transnat'l L* 1027, 2018, p. 1030.

29 United Nations, 'United Nations Conference on Environment and Development', 1995, available at: https://edisciplinas.usp.br/pluginfile.php/528199/mod_resource/content/0/Agenda%2021.pdf

30 In particular, the Final Declaration of the Doha Ministerial Conference in November 2001 adopted a Trade and Environment Work Programme, which aimed, amongst other objectives, to analyze the relationship between WTO rules and trade restrictions in multilateral environmental agreements. Available at: <https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#tradeenvironment>.

31 WORLD TRADE ORGANIZATION – WTO. Environmental database. WTO, 2024. Available at: <Homepage | WTO - EDB>. Access: 31 May 2024.

32 Schukla, Anamika. 2024. The Future of Trade and Environment: A Roadmap for Reconciling Two Competing Goals. *Journal of World Trade*, no. 1, vol. 58, pp. 115–130.

33 Gstöhl, S., & Schnock, J. (2024). Towards a Coherent Trade-Environment Nexus? The EU's Critical Raw Materials Policy. *Journal of World Trade*, 58(1), 35-60.



international forum comprised the impact of free trade on the environment³⁴. For instance, the EU-Mercosur Trade Agreement, currently under negotiation, faces obstacles mainly due to environmental discussions, since European countries, such as France, have been pushing in recent negotiations for stronger assurances on climate change and deforestation³⁵.

The current landscape of international trade often presents challenges for forests. An estimated one-third of agri-food exports are traded within global supply chains³⁶. While this global trade supports economic growth and development, meeting and facilitating global demand for commodities is also impacting global forests. Nearly 90% of tropical deforestation has taken place as a result of agricultural expansion.³⁷

In this scenario, demand for commodities like timber, palm oil, and soy – often associated with deforestation – can drive unsustainable practices and forest loss. Unsustainable land-use practices, coupled with weak regulations and governance in some countries, create an environment where deforestation becomes a profitable option for producers seeking to meet global demand. Additionally, complex supply chains can make it difficult to trace the origins of commodities and ensure they are deforestation-free, hindering efforts to promote sustainable practices.

On the other hand, international trade policies also have the potential to enhance sustainability in value chains, helping mitigate climate change. In 2023's COP 28, an UN Trade and Development (UNCTAD) study examined how 60 developing countries have integrated trade-related measures into their national pledges (NDCs) under the Paris Agreement.³⁸ The

34 Schukla, Anamika. 2024. The Future of Trade and Environment: A Roadmap for Reconciling Two Competing Goals. *Journal of World Trade*, no. 1, vol. 58, pp. 115–130.

35 ABNNET, Kate. EU: conditions to complete Mercosur trade deal not met yet. Reuters, 2024. Available at: <https://www.reuters.com/world/europe/eu-conditions-complete-mercador-trade-deal-not-met-yet-2024-02-07/>.

36 FAO, The State of Agricultural Commodity Markets 2022. Available at: <https://www.fao.org/documents/card/en/c/cc0471en>.

37 FAO, COP26: Agricultural expansion drives almost 90 percent of global deforestation (2021). Available at: <https://www.fao.org/newsroom/detail/cop26-agricultural-expansion-drives-almost-90-percent-of-global-deforestation/en>.

38 United Nations Conference on Trade and Development (UNCTAD), UNCTAD study shows trade's untapped potential in climate action, 2023. Available at: <https://unctad.org/news/unctad-study-shows-trades-untapped-potential-climate-action>.



study finds that, while this correlation is positive, trade policies remain underused as a tool to catalyze progress towards their climate goals, thus requiring a stronger international cooperation.

Therefore, challenges concerning environment-related themes started to get prominence among trade negotiations. Ultimately, achieving a more sustainable future for forests and other biomes requires a transformation of the global trade system, prioritizing responsible production and consumption.

2. THE EUROPEAN UNION'S NEW REGULATION ON DEFORESTATION

2.1. THE EUROPEAN TURN AND ITS REGIONAL REGULATORY FRAMEWORK

De Ville, Happersberger and Kalimo argue that there is an unilateralization of EU trade policy.³⁹ The authors point out that the term ‘turn’ does not mean a complete abandonment of multilateral and bilateral trade negotiations, nor that the EU has never used unilateral instruments before, but that it is suddenly introducing several unilateral instruments for various purpose, as listed: state interventions, sustainability and geopolitical upheaval (both as causal drivers); and the paralysis of the World Trade Organization (WTO) and limitations of and resistance to bilateral trade agreements (as intermediate variables).

Regarding sustainable instruments, the authors defend those measures aim to limit the potential negative impacts of goods and services that are consumed in the EU or of the international conduct of businesses with significant presence in the EU. This is in line with the *State of the Environment Report 2020*⁴⁰, issued by the European Environment Agency (EEA), which observed that European production and consumption patterns through trade contribute significantly to environmental pressures and degradation in other parts of the world. Also, it

³⁹ Kalimo, H., De Ville, F., & Happersberger, S. (2023). The unilateral turn in EU trade policy? The origins and characteristics of the EU's new trade instruments. *European Foreign Affairs Review*, 28 (Special Issue), 15–34.

⁴⁰ European Environment Agency (EEA), *The European Environment. State and Outlook 2020: Knowledge for Transition to a Sustainable Europe* (2019). Available at: <https://www.eea.europa.eu/soer/2020>



found that, to an increasing degree, Europe is externalizing its pressures on key environmental issues.

Specifically on deforestation concerns, the 2020 document *An EU legal framework to halt and reverse EU-driven global deforestation: European added value assessment* states that the EU is a substantial importer of forest-risk commodities, due to its consumption patterns, policy incentives and industrial needs, thus having a significant share of responsibility for global forest loss caused by international trade in forest-risk commodities (FRCs).⁴¹ Therefore, the report concludes for the need of an EU intervention to halt and reverse EU-driven deforestation. This is the case of an *EU legal framework to halt and reverse EU-driven global deforestation*, which led to the emergence of the EUDR.

Authors such as Marín Durán and Scott view the adoption of the EUDR as positive, proposing that the EU must use trade regulations to lessen its deforestation footprint.⁴² Their argument emphasizes the concept of complicity, demonstrating how moral, legal, and pragmatic concerns converge when determining shared responsibility for environmental harm. Similar position can be seen regarding previous European initiatives, as authors argues that they make it possible to build up a flexible and adaptive transnational governance regime from an assemblage of interconnected pieces⁴³.

Gstöhl and Schnock argue that the discourse on the relationship between trade and the environment is likely to have been affected by the growing geopoliticization.⁴⁴ In this context, one can note a clash of jurisdictions. While the traditional model of jurisdiction centres on individual acts and their concrete location, we are today faced increasingly with conglomerates of actions, temporally and geographically extensive. Thus, authors defend that in this

⁴¹ European Parliamentary Research Service (EPRS). *An EU legal framework to halt and reverse EU-driven global deforestation: European added value assessment*. 2020. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654174/EPRS_STU\(2020\)654174_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654174/EPRS_STU(2020)654174_EN.pdf)

⁴² DURÁN, Gracia Marín et al. *Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union*, *Journal of Environmental Law*, 34(2), 245.

⁴³ Overdeest, Chritine; Zeitlin, Jonathan. *Assembling an experimentalist regime: Transnational governance interactions in the forest sector*. *Regulation & Governance* (2014) 8, 22–48.

⁴⁴ GSTÖHL, S.; SCHNOCK, J., *Towards a Coherent Trade-Environment Nexus? The EU's Critical Raw Materials Policy*, *Journal of World Trade*, 58, Issue 1, 2024, p. 35-60.



assemblage overlap and interaction, rather than separation, are dominant characteristics, and some countries' spheres are much larger than others.

The creation of the EUDR highlights the European turn from a multilateral approach on environmental issues to a unilateral (and, to some extension, extraterritorial) policy. Therefore, one can argue that the environment as a GPG is composed of an overlap of jurisdictions, both multilateral (such as the highlighted framework described in the previous chapter) and unilateral (such as the EUDR, Forest Act Bill and the Environment Act Bill initiatives).

The EUDR's first proposal was based on several studies and their conclusions were included in the "Whereas" section of the legal text. This highlights some justifications presented by the EU. Among them, it is worth mentioning the following remarks⁴⁵:

Combating deforestation and forest degradation constitutes an important part of the package of measures needed to reduce greenhouse gas emissions and to comply with the Union's commitments under the European Green Deal, as well as the CDB, the EU Biodiversity Strategy for 2030 and the accompanying Union nature restoration objectives;

[...]

Halting deforestation and restoring degraded forests is an essential part of the Sustainable Development Goals of the United Nations. The EUDR aims to contribute (in particular) to meeting the goals regarding life on land (SDG 15), climate action (SDG 13), responsible consumption and production (SDG 12), zero hunger (SDG 2) and good health and well-being (SDG 3);

[...]

Agricultural expansion drives almost 90 % of global deforestation and production of feed for livestock can contribute to deforestation and forest degradation;

[...]

The Union imported and consumed one third of the globally traded agricultural products associated with deforestation between 1990 and 2008. Over that period, Union consumption was responsible for 10 % of worldwide deforestation associated with the production of goods or the provision of services;

[...]

The existing Union legal framework focuses on tackling illegal logging and associated trade and does not address deforestation directly. It consists of Regulation (EU) No 995/2010 of the European Parliament and of the Council and Council Regulation (EC) No 2173/2005.

⁴⁵ European Union (2023). 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.



Regarding the last remark, although considered to not address deforestation directly, the EU conceived several regulations and initiatives on forests before the adoption of the EUDR, thus creating its regulatory background. Some examples are summarized as follows.

The *EU's Forest Law Enforcement Governance and Trade (FLEGT) Action Plan* is the first contemporary European initiative to regulate forests as it sets out a range of measures to tackle illegal logging in the world's forests within the European Union (2003)⁴⁶, such as supporting timber-producing countries; promoting trade in legal timber; promoting environmentally and socially beneficial public procurement policies; supporting private-sector initiatives; financing and investment safeguards; using existing or new legislation; and addressing the problem of conflict timber. The FLEGT Action Plan led to two key pieces of legislation: the *FLEGT Regulation* (2005) and the *EU Timber Regulation* (2010).

The *FLEGT Regulation* establishes a licensing scheme for controlling the legality of listed timber and timber products imported into the EU. This licensing scheme is to be implemented through the conclusion of Voluntary Partnership Agreements (VPAs) between the EU and timber-producing countries.

The *Timber Due Diligence Regulation - EUTR*⁴⁷ strengthened the bilateral approach brought by the VPAs as it prohibits the placing on the EU market of illegally harvested timber, or products derived from such timber, irrespective of their domestic or foreign origin. The norm requires that EU operators who place timber products on the EU market exercise due diligence, and traders keep records of their suppliers and customers. Due diligence process includes access to information; risk assessment; and risk mitigation. In some sense, this paved the way for today's provisions of the EUDR⁴⁸.

⁴⁶ Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

⁴⁷ European Union. European Parliament and the Council Regulation (EU) 995/2010 ("European Union Timber Regulation"), 2010, OJ L 295. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>

⁴⁸ See Annex 2



In 2014, the EU created the *Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EU Timber Regulation and the FLEGT Regulation*. The objective is to provide advice and assistance to the European Commission in the preparation of legislative proposals and policy initiatives, the preparation of delegated acts and the implementation of Union legislation, programmes and policies in relation to the protection and the restoration of World's forests, including illegal logging, as well as coordination and cooperation with Member States and stakeholders in that regard.

In 2019, the EU decided to establish its contemporary guidelines regarding environment themes. The *European Green Deal*⁴⁹ brought legal binding climate targets covering all key sectors of the economy and including emissions reduction targets across a broad range of sectors, a target to boost natural carbon sinks, an updated emissions trading system to cap emissions, put a price on pollution and generate investments in the green transition, and social support for citizens and small businesses.

In 2020, a proposal for an *EU Legal Framework to halt and reverse EU-driven Global Deforestation*⁵⁰ was presented highlighting the need of a regulation on commodities related to deforestation, thus justifying the EUDR's creation.

In 2021, the *EU Biodiversity Strategy for 2030*⁵¹ brought a long-term plan to protect nature and reverse the degradation of ecosystems. The strategy aims to put Europe's biodiversity on a path to recovery by 2030 regarding themes such as the impacts of climate change, forest fires, food insecurity, and disease outbreaks (which includes the protection of wildlife and fighting illegal wildlife trade).

On 14 December 2023, the European Council and the European Parliament announced that they have reached a provisional agreement on the new *Corporate Sustainability Due*

⁴⁹ European Commission, 'The European Green Deal' (Communication) COM (2019) 640 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>

⁵⁰ European Commission, 'Stepping up EU Action to Protect and Restore the World's Forests' (COM/2019/352 final), 2019. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0352>

⁵¹ European Commission. EU Biodiversity Strategy for 2030. 2021. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:a3c806a6-9ab3-11ea-9d2d-01aa75ed71a1.0001.02/DOC_1&format=PDF



Diligence Directive (CSDDD) on environment and human rights protection.⁵² Then, on May 24, 2024, the Council of the European Union gave its final approval to the CSDDD. Also, in February 2024, the Council and Parliament stroke a deal to boost EU's green industry⁵³.

Lastly, and one of the most recent initiatives of the European Union, the *Nature Restoration Law* aims to set a legal standard for member states to restore 20% of degraded EU land and sea ecosystems by 2030. The regulation is the most recent from the European Green Deal that is intended to mitigate the impacts of climate change and, regarding to the forestry sector, the law specifically identifies “close-to-nature” and “continuous cover” approaches. Also, for the agricultural sector, there will be an increase in regulations.

Despite the ongoing process of an environment framework enlargement in the EU, this type of regulation is not free of criticism. For instance, the Green Deal has been targeted by farmers, industrialists, public opinion and governments, which are questioning it and calling for a regulatory pause⁵⁴.

2.2.THE CREATION OF THE EUDR

The path towards the adoption of the EUDR unfolded through a series of distinct stages, which will be summarized here. As observed in the last section, the EU began to establish its contemporary forest regulation with the EU FLEGT Action Plan in 2003, followed by the FLEGT Licensing Scheme Regulation in 2005. Then, in 2010, came into force the EUTR, serving as the first template for regulation forest-risk commodities. In 2013, it was conducted an impact assessment on EU consumption in deforestation. Also, three years later, it was conducted the first evaluation of the EU FLEGT Action plan. In 2018, the European

⁵² European Commission. Corporate Sustainability Due Diligence Directive (CSDDD). 2022. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>

⁵³ EuroNewsWeek. Council and Parliament strike a deal to boost EU's green industry. February 7, 2024. Available at: <https://euronewsweek.co.uk/sustainability/council-and-parliament-strike-a-deal-to-boost-eus-green-industry/>

⁵⁴ Malingre, Virginie. Europe's Green Deal is attacked on all sides. Le monde, 2024. Available at: https://www.lemonde.fr/en/environment/article/2024/01/29/europe-s-green-deal-is-attacked-on-all-sides_6474382_114.html#>. Access: 20 jun. 2024.



Commission (EC) issued the *Roadmap on Stepping Up EU Action*, with the objective of protecting and improving the health of existing forests and significantly increasing sustainable, biodiverse forest. Finally, on July 2019, the proposal for a regulation on deforestation-free products was first announced in the EC *Communication on Stepping up EU Action to Protect and Restore the World's Forests*.

On June 2020, it was introduced a roadmap for feedback on the initiative to tackle global deforestation and, on October, the European Parliament emitted a resolution with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation⁵⁵. On December, EC launched a public consultation on stepping up EU action against deforestation and forest degradation. The first legislative proposal came by November 2021, under the initiative of Virginijus Sinkevičius, Directorate-General for Environment. Alongside the proposal, the Commission published an evaluation of the existing EU Timber Regulation and the FLEGT Regulation.

In the course of 2022, several opinions and reports on the proposal were issued, such as the European Economic and Social Committee opinion (by the Section for Agriculture, Rural Development and the Environment - Rapporteur: Arnold Puech D'alissac and Florian Marin); the Swedish Parliament reasoned opinion; Council negotiated position; Parliament Report, positions and amendments; Parliament and Council provisional agreement and the text of the trialogue agreement.

On December 2022, the EUDR was officially adopted. On June 2023, it officially came into force as the Regulation (EU) 2023/1115, but its dispositions are expected to come into force only on December 2024 for larger business and June 2025 for small and medium enterprises (SMEs). The full process can be summarized as follows:

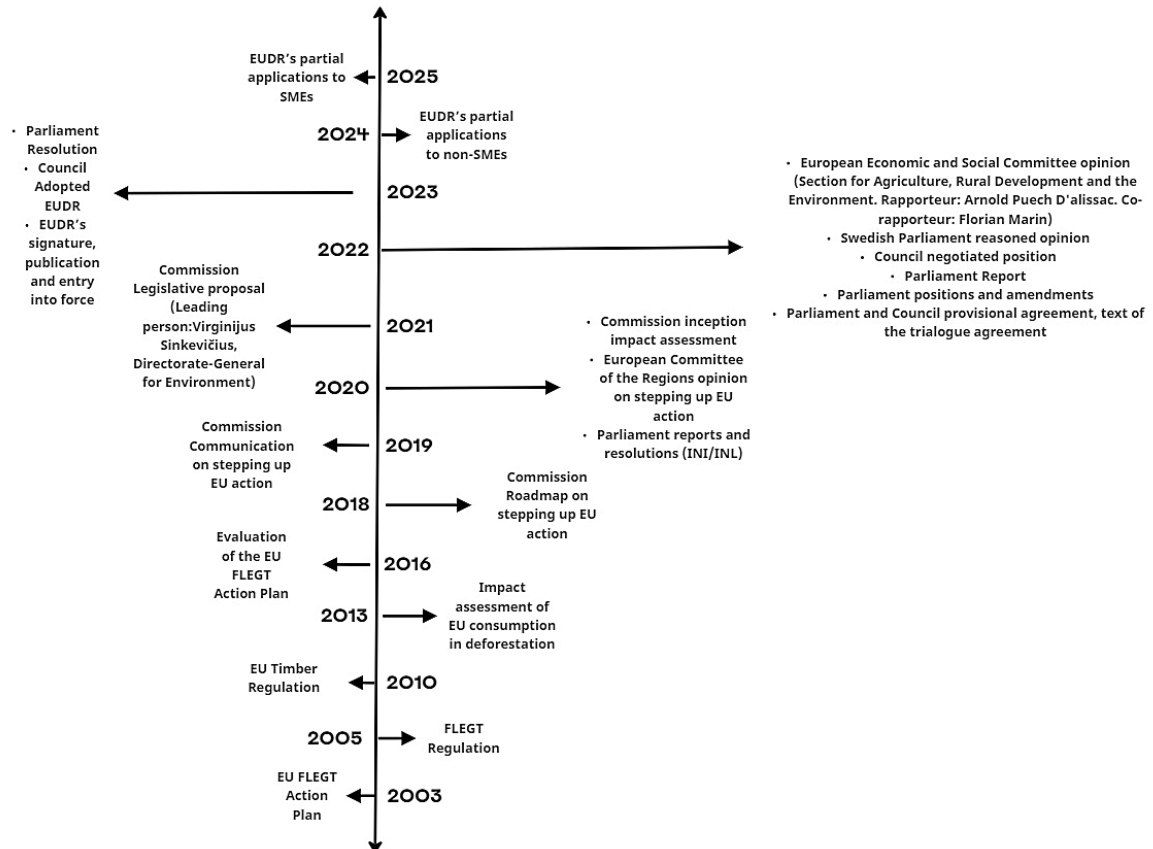
Figure 2 – EUDR's timeline

⁵⁵ European Parliament. Resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)). Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285_EN.html



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Source: Figure by the authors

The EUDR's justifications were first presented in the 2020's initial proposal, after conducting several studies regarding deforestation and commodities, and have been maintained in the final text within the "Whereas" section. The EUDR mentions an extensive array of international and regional legal documents, such as the UN's 2030 Agenda for Sustainable Development; the Paris Agreement; the European Green Deal; the EU Action to Protect and Restore the World's Forests, the EU Biodiversity Strategy for 2030; the EUTR and FLEGT licensing scheme; the 2022 communication of the Commission on the power of trade partnerships; the 2021 communication of the Commission on Trade Policy Review; as well as



the New York Declaration on Forests and Glasgow Leaders' Declaration on Forests and Land Use.

In light of this, it can be said that the EUDR is part of the European regulatory framework for the environment as a tool for implementing its new guidelines, especially after the advent of the Green Deal.

2.3.THE PROVISIONS OF THE NEW NORM

Building upon existing regulations, EUDR introduces several key advancements. It strengthens provisions from the EU Timber Regulation (EUTR) and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation, while also introducing new measures. Notably, the EUDR prohibits the “placing and making available on the European Union market, as well as the export from the Union” of seven specific commodities (cattle, cocoa, coffee, oil palm, rubber, soy, and wood) and its subproducts if they are linked to deforestation. This scope can be further expanded through future revisions of the EUDR. In fact, EUTR is expected to be repealed with effect from 30 December 2024, or, in the case of timber and timber products that were produced before 29 June 2023 and placed on the market from 30 December 2024, from 31 December 2027.

It is worth mentioning that revisions on the norm are expected to take place periodically, which include the extension of the EUDR's scope, as well as regulated ecosystems and commodities Article 34 (1) provides that, no later than 30 June 2024, the Commission shall present an impact assessment accompanied, “if appropriate”, by a legislative proposal to extend the scope of this Regulation to include other wooded land.

In order to assure the production chain is free from deforestation and forest degradation, market operators will be required to hand over due diligence declarations providing data, assessing the associated risks and mitigating them if necessary. These obligations must be complied before putting the product in the market and will vary according to risk assigned to the products' country of origin. Also, the regulation creates a three-tier country benchmarking



system to evaluate risks of producing relevant commodities and the need to comply with both the regulation of the country of production and the EUDR. A more detailed view of the regulation is presented below.

As mentioned, the EUDR's scope is described in its article 1 as setting rules on placing and making available in the EU Market, as well as the export from the Union, of certain products into and out of the EU market which contain, have been fed with or made using relevant commodities (cattle, cocoa, coffee, oil palm, rubber, soya, and wood and its numerous derived products – 'relevant commodities').

Article 2 highlights some important definitions, such as 'relevant commodities' (which means cattle, cocoa, coffee, oil palm, rubber, soya and wood); 'forest', defined as land spanning more than 0,5 hectares with trees higher than 5 meters 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; 'deforestation', that means the conversion of forest to agricultural use, whether human-induced or not; and 'forest degradation', meaning the structural changes to forest cover, taking the form of the conversion of: (a) primary forests or naturally regenerating forests into plantation forests or into other wooded land; or (b) primary forests into planted forests.

However, some important concepts are still not precise. For instance, the EUDR's adopts UN's Food and Agriculture Organization's (FAO) forest definition. However, other countries and organizations adopt different definitions. The difficulty of establishing a single concept is even higher considering the complexity of different biomes. Other controversies include the lack of differentiation between legal and illegal deforestation and the absence of a minimum area parameter to identify deforestation and forest degradation.

Article 3 sets cumulative conditions to place 'relevant commodities' or make them available on the EU market. Firstly, products must be deforestation-free (v. art. 2[13]), which means products must be produced without the use of land subjected to deforestation/degradation



after 31 Dec. 2020⁵⁶. Secondly, they must be produced following the relevant legislation of the country of production (v. art. 2[40]), such as land use, environmental law, forest-related rules, third parties' rights, labor rights, human rights under international law, tax, anti-corruption, trade, and customs regulations). Finally, products must be accompanied with due diligence statements showing no more than a negligible risk of non-compliance (v. art. 8).

In a non-compliance event, article 24 provides for corrective action, such as rectifying any formal non-compliance; preventing the relevant product from being placed or made available on the market or exported; withdrawing or recalling the relevant product immediately; and donating the relevant product to charitable or public interest purposes or, if that is not possible, disposing of it in accordance with Union law on waste management. Also, article 25 brings penalties to be applied, which shall be “effective, proportionate and dissuasive”, and may include fines, confiscation, temporary exclusion from public procurement processes and from access to public funding and temporary prohibition from placing or making available on the market or exporting relevant commodities and relevant products.

The due diligence statements⁵⁷ must include: 1. detailed information that proves the products comply with the EUDR (v. art. 9); 2. risk assessment for each product, to define the risk of non-compliance 2 (v. art. 10); and 3. risk mitigation measures (v. art. 11). Also, it is important to notice that, by issuing such statement, the ‘operator’ (the one that places relevant products on the market or exports them) assumes responsibility over compliance (art. 4 [3]) and the first natural or legal person established in the EU who makes imported relevant products available on the market shall also be deemed to be an operator (art. 7). Operators shall maintain a due diligence system and keep records of such (art. 12). However, it is possible to adopt a simplified due diligence (art. 13) when all relevant products have been produced in “low risk countries” (v. art. 29).

⁵⁶ In the case of wood and wood products, that the wood has been harvested from the forest without inducing forest degradation after 31 Dec. 2020.

⁵⁷ See Annex 3.



Article 17 determines the need for competent authorities to identify situations where relevant products present high risk of non-compliance, thus requiring immediate action. However, the article does not specify referred situations.

Article 18 and 19 provides for, respectively, checks on operators and non-small and midsize enterprises (SME) traders; and on SME traders. Checks on operators and non-SME traders include examination of their due diligence system, and documentation and records, as well it shall include, e.g., on-the-ground examination of relevant commodities or of the relevant products examination of corrective measures (article 24), and spot checks. On the other hand, checks on SME traders shall include the examination of documentation and records that demonstrate compliance with Article 5 (obligations of traders), as well as spot checks, including field audits when necessary.

Provisions on control are provided in Chapter 4 (articles 26-28), which includes the need for the development of “an electronic interface based on the European Union Single Window Environment for Customs, established by Regulation (EU) 2022/2399 of the European Parliament and of the Council” to enable the transmission of data.

EUDR also establishes a section concerning relations with third parties in which an ‘assessment of countries’ (v. art 29) creates a three-tier system of high, standard and low risk countries. It shall be based on an objective and transparent assessment by the Commission considering as the main criteria: 1. the rate of deforestation and forest degradation; 2. the rate of expansion of agriculture land for relevant commodities; and 3. production trends of relevant commodities and of relevant products.

The assessment “may” also take into account, for example, information submitted with regard to the effective covering of emissions and removals determined contribution to the UNFCCC; agreements and other instruments between the country concerned and the Union and/or its Member States that address deforestation and forest degradation and facilitate compliance of relevant commodities; whether the country concerned has national or subnational laws in place, including in accordance with the Paris Agreement; whether the country concerned



makes relevant data available transparently; and sanctions imposed by the UN Security Council or the Council of the European Union on imports or exports of the regulated commodities. The Commission shall 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.

The section also provides for partnerships and cooperation with third countries (v. art. 30). In this sense, the EU shall engage with producer countries to jointly address the root causes of deforestation and forest degradation. Partnerships and cooperation mechanisms may include structured dialogues, administrative arrangements, joint roadmaps that enable the transition to an adequate agricultural production allowing full participation of all stakeholders (such as civil society, indigenous peoples, local communities, women, the private sector and smallholders), and supporting inclusive dialogue towards national legal and governance reform processes. Also, the EU shall engage in international discussion on policies and actions to halt deforestation.

This can be seen in some initiatives such as the *Team Europe initiative on Deforestation-free Value Chains*, which aims to support partner countries to transition to sustainable, deforestation-free, and legal agricultural value chains. In this context, some projects were announced during the 2023's COP 28⁵⁸, which include new financial support of EUR 70 million; the Sustainable Agriculture for Forest Ecosystems (SAFE) project; Zero Deforestation Hub; Technical Facility on Deforestation-free Value Chains, and the Ad Hoc Joint Task Force with Malaysia and Indonesia. Also, the European Commission expert group *Multi-Stakeholder Platform on Protecting and Restoring the World's Forests* serves as a forum to foster exchanges among stakeholders' participation and is open to all countries.

Article 33 provides for the implementation of an Information System by 30 December 2024, in which shall contain the due diligence statements made available. However, the EUDR

⁵⁸See EUROPEAN COMMISSION. **COP28**: EU steps up cooperation with partner countries on deforestation-free supply chains and outlines further support measures. 2023. Available at: https://environment.ec.europa.eu/news/cop28-eu-steps-cooperation-partner-countries-deforestation-free-supply-chains-and-outlines-further-2023-12-12_en. Access: 22 feb. 2024.



does not specify how information will be stored and the level of confidentiality within the System, nor how it will be adequate to data protection regulations.

Also, it is worth mentioning that article 10's risk assessment indicates the need to evaluate the entire supply chain of a product, which requires the implementation of monitoring tools. In this sense, the EU launched the *Observatory on Deforestation and Forest Degradation Monitoring*⁵⁹ website that covers: global forest cover, forest attributes, and forest cover changes and drivers; production and trade flows; and tools for forest monitoring. The Observatory is a non-mandatory and non-exclusive platform to support EUDR's implementation and considers a minimum mapping area (MMU) of 0,5 hectares.

Lastly, in 2024, the UE established a Committee to support the EUDR's implementation. This is an important step to promote the Regulation's implementation and to support its development. Currently, the *Frequently Asked Questions* (FAQ) document has served as the focal instrument to resolve any doubts about the standard. However, it is still insufficient.

2.4. GLOBAL REACTIONS

The EU's stance on deforestation through product regulations has faced both praise and criticism, creating a complex and sometimes contradictory landscape of international responses.

Some producing countries have warned of potential economic fallout from EU's anti-deforestation law, raising concerns about their commodity exports. In November 2022, representatives from 17 countries, including major exporters like Brazil and Indonesia, raised objections to the EUDR in a letter to EU officials.⁶⁰ They expressed concerns about potential discrimination, WTO compliance, and impacts on small businesses, urging changes and open

⁵⁹ See European Commission. EU observatory on deforestation and forest degradation. 2024. Available at: <https://forest-observatory.ec.europa.eu/>. Access: 22 feb. 2024.

⁶⁰ World Trade Organization (WTO). Committee on Agriculture. Joint letter submitted by Indonesia and Brazil. 29 November 2022. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/GEN213.pdf&Open=True>



dialogue. Representatives from both Latin and Central American exporting countries have also raised concerns with the WTO regarding potential negative effects of the EUDR.⁶¹ Previous reactions also include 2022 and 2023 producing countries' letter expressing serious concerns regarding the EUDR and 2023.

The EUDR has sparked mixed reactions within Brazil's economic community, with some stakeholders expressing apprehension about its potential effects. The National Confederation of Industry (CNI) expressed its concern about the approval of the regulation, as it could create disproportionate barriers to international trade and negatively impact the Brazilian agro-industrial sector.⁶² The Brazilian Agribusiness Association (Abag) has also criticized the EUDR, stating that it fails to recognize the Brazilian Forest Code, which authorizes legal deforestation in designated areas of rural properties.⁶³

In September 2023, environmental and human rights NGOs from 21 countries sent an open letter to the European Parliament and the Council of Europe declaring that the EUDR should not be used to legitimize the EU-MERCOSUR agreement.⁶⁴ They argue that increased trade in agricultural commodities under the control of agribusiness, as foreseen in the EU-MERCOSUR trade agreement, would lead to more land conflicts that would affect the rights of indigenous peoples and local communities.

Exporting countries such as Indonesia have criticized the EUDR, claiming it unfairly disadvantages its palm oil producers in international markets and lacks support for

⁶¹ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W912.pdf&Open=True>

⁶² Confederação Nacional de Indústrias (CNI). Regulamento da União Europeia condiciona importação de determinadas commodities agrícolas e seus derivados a due diligence de desmatamento, Política Comercial n.º 10, 2023. Available at: https://static.portaldaindustria.com.br/media/filer_public/78/99/78990af4-d034-4897-8013-252abe5b3ec2/apc_regulamento_ue_desmatamento_ano_2_n_10.pdf

⁶³ Associação Brasileira do Agronegócio (ABAG), Associação de agronegócio do Brasil reage contra lei da UE sobre desmatamento, 2023. Available at: <https://abag.com.br/associacao-de-agronegocio-do-brasil-reage-contra-lei-da-ue-sobre-desmatamento/>

⁶⁴ El Reglamento de la UE sobre productos libres de deforestación no legitima el Acuerdo de Asociación UE-Mercosur: Una carta abierta al Parlamento Europeo y al Consejo de la UE. Available at: <https://alianzacerodeforestacion.org/wp-content/uploads/2023/05/Carta-EUDR-y-acuerdo-UE-Mercosur.docx.pdf>



compliance.⁶⁵ They argue the EUDR ignores Indonesia's considerable progress in tackling palm oil deforestation and warn it could even incentivize further deforestation due to potential market segregation. The country has brought two cases against EU before the WTO in this matter.⁶⁶

More recently, on 8 March 2024, the United States issued a letter to EU's Ambassador Katherine Tai addressing possible impacts of the EUDR in the US⁶⁷. Also, on 21 March 2024, a note⁶⁸ from the Austrian delegation supported by the Finish, Italian, Polish, Slovak, Slovenian, and Swedish delegations called for “urgent” action in the face of the EUDR's implementation due to imminent negative effects on sustainable and small-scale agricultural and forestry practices in the European Union.

From the point of view of civil society, reactions have also been mixed. On the one hand, some groups have expressed concerns regarding the EUDR. For instance, on 28 March 2024, a group of associations addressed a joint cross-commodity⁶⁹ call to EU Commission and Member States to provide urgent clarifications and workable solutions for EUDR implementation. On 8 April 2024, Global forest-based industries' called for legal clarity and adequate transition time to ensure a “smooth and effective” implementation of the EUDR⁷⁰.

On the other hand, different organizations praised the EUDR and signalled support for its implementation. On December 2023, a joint letter of civil society organisations⁷¹ working in non-EU countries expressed appreciation for the EUDR as an initiative that helps tackling the global biodiversity and climate crisis. Later, on March 2024, World Wildlife Fund

⁶⁵ Reuters. Indonesia accuses EU of 'regulatory imperialism' with deforestation law. June 8, 2023. Available at: <https://www.reuters.com/business/environment/indonesia-accuses-eu-regulatory-imperialism-with-deforestation-law-2023-06-08/>

⁶⁶ WTO Dispute Settlement Mechanism. EU – Palm Oil (Indonesia) (DS593) and EU and certain Member States – Palm Oil (Malaysia) (DS600).

⁶⁷ Unites States Senate. March 8, 2024 letter to Ambassador Katherine Tai. 2024.

⁶⁸ Council of the European Union. Urgent Call For Action: Challenges for European agriculture and forestry businesses posed by the Deforestation Regulation in the context of the current agricultural crisis. 2024.

⁶⁹ EU cross-commodity coalition on EUDR implementation. Joint cross-commodity call to EU Commission and Member States to provide urgent clarifications and workable solutions for EUDR implementation. 2024.

⁷⁰ AF&PA et al. Global forest-based industries' call for legal clarity and adequate transition time to ensure a smooth and effective implementation of the EU Deforestation Regulation. 2024

⁷¹ Amigos da Terra et al. Joint letter of civil society organisations working in non-EU countries. 2023.



organization issued a document entitled “No Ecosystem Left Behind”⁷² supporting the EUDR’s and calling for changes in its definition of forests in order to include new biomes, such as the Cerrado in Brazil. On 11 April 2024, over 100 entities from the civil society signed a letter to reiterate their full support for the EUDR. On May 15 2024, 25 Brazilian institutions addressed a letter⁷³ to the European Commission claiming that postponing EUDR could discredit EU commitments to fighting climate change and biodiversity loss. Lastly, on 17 May 2024, associations from different commodities sectors stated their commitment and need for a successful implementation of the EUDR, also highlighting some technical challenges in order to do so⁷⁴.

3. IMPLICATIONS ON TRADE

3.1. THE DISCUSSION UNDER WTO LAW

Under the WTO framework, a significant concern lies in the EUDR’s potential to conflict with existing trade rules enshrined in the General Agreement on Tariffs and Trade (GATT), considering import restrictions on forest products for environmental purposes remains largely untested in the WTO⁷⁵. *In abstracto*, the rules of the WTO allow for the use of trade-related environmental measures provided that they align with the principles of international trade law⁷⁶ and are non-discriminatory in nature, thus preventing their abuse for protectionist purposes⁷⁷.

72 WWF. No ecosystem left behind. 2024. Available at: <<https://www.wwf.org.br/nossosconteudos/biomas/cerrado/ecosystem/>>. Access: 20 jun. 2024.

73 APIB et al. Every second counts to protect global forests and ecosystems. 2024.

74 Bioenergy Europe et al. EUDR information system not yet on track to meet requirements of properly functioning supply chains. 2024.

75 Matsushita, M., et al. (2015). *The World Trade Organization: Law, Practice, and Policy* (3rd ed.). Oxford University Press

76 Most notably the most-favored nation clause under Article I.1 and the national treatment clause under Article III.1.

77 DOBSON, N., 'Climate protection versus trade: dilemmas for the EU', in RAYNER, T. et al. (eds.), *Handbook on European Union Climate Change Policy and Politics* (2023) 440



However, there is an ongoing debate about whether the EUDR falls under the exceptions⁷⁸ outlined in GATT's Article XX, specifically concerning its chapeau⁷⁹ and the conditions established by provisions (b)⁸⁰ and (g)⁸¹. Following the US–Tuna Dolphin cases⁸² under GATT's Panels, WTO's Appellate Body has devised an original approach for analyzing Article XX, called the “two-tiered test”⁸³, which makes significantly greater allowance for legitimate measures of environmental protection. In this procedure, the WTO first checks: (i) whether the restrictive measures can be classified as exceptional situations⁸⁴ – they must be necessary to the protection of human, animal, and plant health; or relate to the conservation of exhaustible natural resources; and, in a second step, (ii) analyzes whether they are arbitrary or constitute unjustified discrimination⁸⁵. This method was first developed in the United States–

78 In other words, while WTO members have some leeway to implement trade policies that might conflict with GATT rules, they must justify these measures under specific exceptions within the WTO framework.

79 GATT, Article XX: Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures (...)

80 GATT, Article XX(b): necessary to protect human, animal or plant life or health

81 GATT, Article XX(g): relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

82 WTO, US—Restrictions on Imports of Tuna Dolphin I, GATT B.I.S.D. (39th Supp.) at 155; US—Restrictions on Imports of Tuna Dolphin II, DS29/R, 16 June 1994, reprinted in 33 I.L.M. 839 (1994) (unadopted);

83 Koul, A. K. (2018). Guide to WTO and GATT: Economics, Law and Politics (6th ed.). Springer Nature Singapore Pte Ltd.

84 In other words, it assesses whether the measure falls under the exceptions of Article XX(b) and (g).

85 It analyzes whether the measure falls under the chapeau provision of Article XX, which provides three qualitative standards: (1) arbitrary discrimination; (2) unjustifiable discrimination; and (3) a disguised restriction on international trade.



Reformulated Gasoline case⁸⁶, followed by the US–Shrimp/Turtle case⁸⁷ and Brazil–Tyres⁸⁸, which further specified how both exceptions must be interpreted. In the case of unilateral standard-setting, the Appellate Body in US–Shrimp-Turtle did not condemn them *per se*, potentially allowing extraterritorial measures, but raised concerns on measures adopted “without taking into consideration different conditions which may occur in the territories of those other Members”⁸⁹. Thus, the analytical framework to analyze Article XX has emerged as the standard practice for the organization⁹⁰.

There are also additional methods for justifying environmental trade measures: (i) as measures undertaken for protection of public morals under GATT Article XX(a)⁹¹; and (ii) as non-tariff barriers under both Sanitary and phytosanitary measures (SPS) and Technical Barriers to Trade (TBT) Agreements⁹². Some authors have debated whether it is possible to make a distinction at the border between products based on how they were produced (“Process and

86 WTO, DS2: United States — Standards for Reformulated and Conventional Gasoline Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm

87 WTO, DS58: United States — Import Prohibition of Certain Shrimp and Shrimp Products. Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm; In US–Shrimp/Turtle case, the Appellate Body addressed the meaning of the term ‘exhaustible’ natural resource contained in Article XX(g). The Appellate Body emphasized the need for a dynamic rather than a static interpretation of the term ‘exhaustible’, noting the need to interpret this term in the light of contemporary concerns of the community of nations for the protection and conservation of the environment. Most importantly, the Appellate Body in the Shrimp/Turtle case gave clear extraterritorial scope to Article XX(g): it applies without distinction to exhaustible resources beyond areas of national jurisdiction as well as to domestic resources.

88 WTO, WDS332: Brazil — Measures Affecting Imports of Retreaded Tyres. Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm.

89 WTO, DS58: United States — Import Prohibition of Certain Shrimp and Shrimp Products. Appellate Body report, paras. 132-133 and 164-165. Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm

90 Matsushita, M., et al. (2015). *The World Trade Organization: Law, Practice, and Policy* (3rd ed.). Oxford University Press

91 Matsushita, M., et al. (2015). *The World Trade Organization: Law, Practice, and Policy* (3rd ed.). Oxford University Press

92 The verification of arbitrariness of restrictive measures also applies in other WTO rules, such as the TBT and the SPS. The Technical Barriers to Trade (TBT) Agreement establishes provisions for technical and regulatory standards, as well as assessment procedures for trade measures. The Agreement on Sanitary and Phytosanitary Standards (SPS), negotiated in the Uruguay Round, also lays down stringent standards for making rules governing sanitary and phytosanitary measures, which can have an influence on trade outcomes.



Production Methods”) and, if so, whether this would run counter to WTO’s rules on non-discrimination.

In the literature, some authors understand that there is little doubt that forests constitute ‘exhaustible natural resources’ within the meaning of Article XX(g) GATT, considering the expansive and flexible interpretation of this term in WTO jurisprudence⁹³. On the other hand, there are those who argue that not all extraterritorial measures falling under GATT’s Article XX(g) should be accepted as legal, but only those imposed in good faith, with technical and financial assistance included, aimed at fighting common concerns of humankind in the form of conservation of some exhaustible natural resources⁹⁴.

The WTO’s Appellate Body paralysis, ongoing since 2019 due to blocked appointments⁹⁵, 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 inter-relation. Although the role of international trade as a driver for achieving sustainable growth has routinely been reinforced⁹⁶, developing countries have recently expressed “deep concern about the increase in unilateral and protectionist measures”⁹⁷ during the 13th Ministerial Conference in Abu Dhabi, in a clear reaction to regulations such as the EUDR.

The dilemma of balancing environmental protection efforts with potential protectionist tendencies embedded in regulatory standards, often referred to as “green protectionism”,

93 Durán, G. M., et al. (2024). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*, 34(2), 245

94 Vij, V. (2022). Changing Realities: Evolution and Extraterritoriality Within Article XX(G) of GATT for Global Environmental Concerns. *Trade L. & Dev.*, 14(2), 195-238

95 Since late 2019, the United States has blocked the appointment of new judges to the WTO’s Appellate Body. The term of the last sitting Appellate Body member expired on 30 November 2020 and the Appellate Body now lacks a quorum necessary to hear appeals. Efforts to reform the dispute settlement system and pave the way for new appointments to the Appellate Body have been unsuccessful, grinding the dispute settlement system to a halt.

96 10th WTO Ministerial Conference, 2015, Nairobi. Ministerial Declaration. Available at: <https://www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm>.

97 13th WTO Ministerial Conference, 2024, Abu Dhabi. Ministerial Declaration on the Contribution of the Multilateral Trading System to Tackle Environmental Challenges. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN24/28.pdf&Open=True>



challenges the current multilateral trade system. These so called “neoprotectionist” measures such as the EUDR stimulate global litigation, further amplifying this impact.

3.2. MAPPING THE FLUX OF RELEVANT COMMODITIES TRADE

The EUDR and a possible impact on international trade have raised concerns, particularly regarding its potential to disrupt established commodity trade chains. As highlighted previously, these concerns led a group of countries to jointly express their anxieties to the WTO regarding the regulation.

The global reactions have come mainly from producing countries. Also, as stated in the UN Trade and Development’s State of Commodity Dependence 2021 report⁹⁸, more than 100 countries depend on commodity exports, which means that disruptions in value chains can generate profound socio-economic impacts in these nations.

In order to illustrate the flow of some of the EUDR’s regulated commodities in international trade, the International Trade Centre (ITC)⁹⁹ database¹⁰⁰ was used to map the main exporting countries in 2022 and the volume exported of each regulated commodity, as seen below.

Figure 3 – International trade flow of the EUDR’s regulated commodities in 2022

⁹⁸ UNITED NATIONS – UN. More than 100 countries depend on commodity exports. UNCTAD, 2021. Available at: <More than 100 countries depend on commodity exports | UNCTAD>. Access: 31 May. 2024.

⁹⁹ The International Trade Centre (ITC) is a multilateral agency which has a joint mandate with the World Trade Organization (WTO) and the United Nations (UN). The ITC is responsible for maintaining international trade guidelines and is a permanent forum for trade discussions.

¹⁰⁰ INTERNATIONAL TRADE CENTRE – ITC. Trade Map. 2024. Available at: <https://www.trademap.org/Country_SelProduct.aspx?nvpm=1%7c%7c%7c%7c%7c1801%7c%7c%7c4%7c1%7c1%7c2%7c1%7c1%7c1%7c1>. Access: 28 feb. 2024.

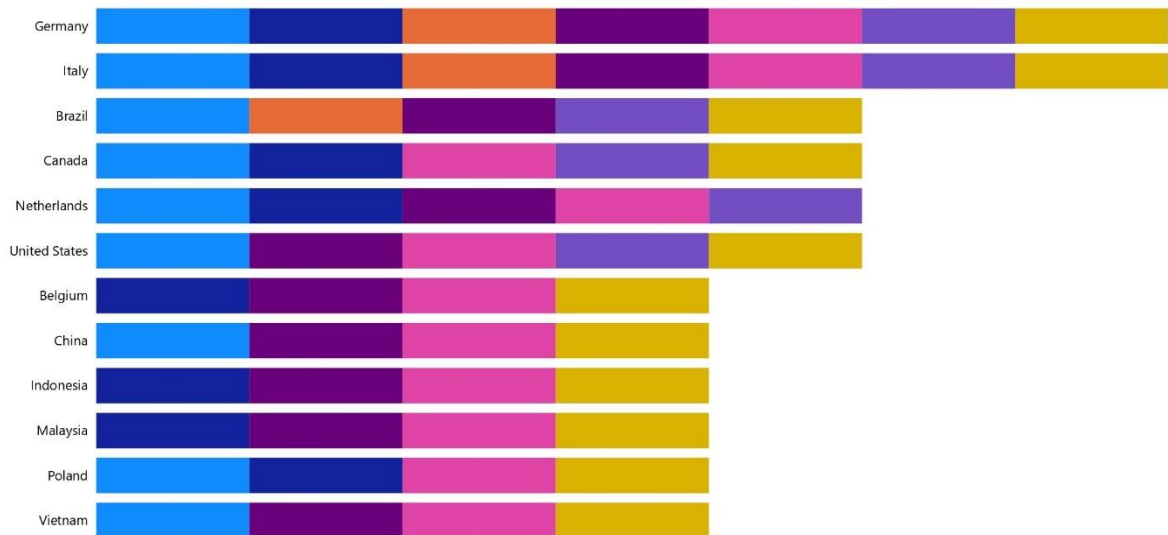


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Commodities ● Cattle ● Cocoa ● Coffee ● Oil Palm ● Rubber ● Soy ● Wood



Source: Figure by the authors

In order to take a more precise look at one commodity, we analysed the coffee sector.

Table 1– Value of coffee exported worldwide (2019-2022)



Exporters	Country - Value exported in 2022 (USD) thousand	Country - Value exported in 2021 (USD) thousand	Country - Value exported in 2020 (USD) thousand	Country - Value exported in 2019 (USD) thousand
World	43,356,192	36,383,423	30,742,341	29,601,674
1 st biggest exporter	Brazil - 8,542,533	Brazil - 5,833,257	Brazil - 4,996,305	Brazil - 4,553,569
2 nd biggest exporter	Colombia - 4,108,629	Switzerland - 3,601,361	Switzerland - 2,856,689	Switzerland - 2,508,925
3 rd biggest exporter	Switzerland - 3,422,252	Colombia - 3,188,816	Germany - 2,586,875	Germany - 2,377,576

Source: Table by the authors

As it can be seen, the international coffee market is dominated mainly by four countries: Brazil, Colombia, Switzerland and Germany. Brazil is the main exporter, placing on the top of the international ranking for the referred time period. Nearly half of Brazilian exports go to the European Union¹⁰¹.

In this regard, dependence on a single market represents potentials risks to value chains. From the point of view of production, small and medium-sized producers are among the most vulnerable groups because of possible dislocations in the value chain as a result of non-compliance with the EUDR. Smallholders fear the anti-deforestation laws could burden them with high costs and exclude them from key markets, potentially driving them towards unsustainable practices due to limited alternatives. Additionally, bigger companies, facing new

101 BRAZIL. Comexstat. 2024. Available at: < <https://comexstat.mdic.gov.br/pt/home> >. Access: 28 feb. 2024.



regulations, may simplify supply chains by excluding smallholders who struggle with implementing traceability systems.

Beyond the coffee sector, it is worth noting that a recent WTO's Report¹⁰² particularly stated that Brazil is dependent on commodities exports as a whole, which raises possible risks concerning the EUDR regulation. The Report also mentions that Brazil remains a major player in the global trade of certain agricultural commodities, in particular of soybeans, beef, poultry meat, sugar, orange juice, and, as already seen above, coffee.

Table 2 – Brazilian agro-based products exports

(USD million)	2018	2019	2020	2021
Agri-business exports	101,167	96,851	100,702	120,521
Agri-business imports	14,038	13,769	13,047	15,528
Agri-business trade balance	87,130	83,082	87,655	104,993
Total trade balance	58,033	48,036	50,941	61,407

Source: Table by the authors

In this sense, Brazil will likely be one of the most affected countries by the EUDR. As highlighted above, the country is a major trader of many commodities listed in the EUDR and its exports comprise a great share of the country's revenue. It also faces a long-standing clash against deforestation. Therefore, discussing the EUDR's challenges is of great relevance to both Brazilian socioeconomic and environmental perspectives.

4. ANALYSIS OF REGULATORY IMPLICATIONS FOR BRAZIL

4.1. BRAZILIAN REGULATORY FRAMEWORK

¹⁰² World Trade Organization. Trade Policy Review Body. Trade Policy Review Report: Brazil (WT/TPR/S/432/Rev.1), 2022. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/S432R1.pdf&Open=True>



4.1.1. Normative framework

Brazilian environmental policy was not fully structured until the second half of the 20th century. Since the 1930s, the country had only sectoral regulatory frameworks, which were not part of a larger, integrated environmental policy.¹⁰³ Although a major step for the protection of forests and the environment in general, the *1934 Forest Code* (Decree 23.793/1934) and its 1965 revised version (Law 4.771/65) lacked in enforcement mechanisms. Shortly after the influential 1972 Stockholm Conference, the Special Secretariat for the Environment (SEMA) was created as the first federal agency specialized in dealing with environmental issues. It was followed, in 1981, by the establishment of the *National Environmental Policy* (Law 6.938/81) and the *National Environmental System* (SISNAMA), composed by an important collegiate body: the *National Council for the Environment* (CONAMA).

The *1988 Federal Constitution of Brazil* has dedicated a specific section to address environmental issues. Article 225 of the Constitution protects the right of everyone to an “ecologically balanced environment,” which is “essential for a healthy life.” The article states that “the Government and the community have a duty to defend and to preserve the environment for present and future generations.” Paragraph 4 of article 225 establishes the biomes Amazon Forest, Atlantic Forest and Pantanal as national heritage. Given this condition, their management requires specific legislation. The 1988 Constitution reinstated the right of the States, Federal District and Municipalities to legislate complementarily to the Federal Government about forestry matters (articles 23 and 24).

The current *2012 Forest Code* is the main legal instrument for regulating land use on private rural lands in Brazil¹⁰⁴. The Forest Code establishes general rules for the protection of

¹⁰³ Moura, A. M. M. de (ed.). (2016). *Governança ambiental no Brasil: instituições, atores e políticas públicas*. Instituto de Pesquisa Econômica Aplicada, p. 14.

¹⁰⁴ BRAZIL. Law 12.651/2012, also known as the Brazilian Forest Code, establishes rules for the protection of native vegetation in permanent preservation areas, legal reserves, areas of restricted use, forest exploitation areas,



vegetation, especially Permanent Preservation Areas (APPs) and Legal Reserves (RLs). Legal Reserves are portions of land that must be set aside in native habitat, depending on property size and location – this protected percentage varies from 20 to 80% depending on the type of vegetation present and the property’s geographical location. Permanent Preservation Areas are protected areas, covered by native vegetation or not, with special environmental functions, such as facilitate genetic flows of fauna and flora, protect the soil, and ensure human wellbeing.

The 2012 Forest Code also regulates forest exploitation, the supply of forest raw materials, the control of the origin of forest products, and the control and prevention of forest fires. It recognizes that the forests and other forms of native vegetation existing in the national territory, recognized as useful to the lands they cover, are assets of common interest to all inhabitants of the country. Property rights over these areas are limited by the legislation in general and especially by the Forest Code.

The new Forest Code also introduced an innovative database called the Rural Environmental Registry (*Cadastro Ambiental Rural*), which provides georeferenced data on private properties. CAR serves several purposes. It integrates the environmental information of the rural properties for more effective management and planning in rural areas. It also serves as a tool to monitor and control deforestation in private landholdings. Landowners must register in the CAR in order to exercise several rights in the Forest Code, such as obtaining authorization to remove native vegetation, accessing benefits granted to landowners who illegally cleared forest prior to July 2008, and accessing rural credit from financial institutions.

The tool includes data from the owner, rural possessor or directly responsible for the rural property, the georeferenced plan of the perimeter of the property, areas of social interest and areas of public utility, with information on the location of the remaining native vegetation, areas of permanent preservation, areas of restricted use, consolidated areas and the location of legal reserves. Registration in the CAR is mandatory for all rural properties and possessions in

and addresses related issues. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/112651.htm.



the country and is declaratory and permanent in nature. The registration of the rural property in the CAR is carried out through an electronic system and is carried out with the competent state body, in the Federation Unit (UF) where the rural property is located. At the federal level, the Brazilian Forest Service (SFB) is responsible for coordinating registration and providing technical support for its implementation in federative entities, through the provision of technological solutions.

In addition, the 2012 Forest Code offers additional tools for rural landowners. The Environmental Regularization Program (in Portuguese, *Programa de Regularização Ambiental*), which comprises a set of actions and initiatives that must be developed by landowners to adjust and promote the environmental regularization of their land. Environmental Reserve Quotas (*Cotas de Reserva Ambiental*) are certificates that represent a portion of an area of natural vegetation cover on a property that can be used to compensate for the lack of a Legal Reserve on another property.

In addition, as part of the implementation of the revised Forest Code, in 2017 Brazil launched SINAFLOR – the *National System for Controlling the Origin of Forest Products* from source to sale.¹⁰⁵ SINAFLOR seeks to integrate the federal electronic traceability system for timber – known as “Declarations of Forest Origin” (in Portuguese, *Declaração de Origem Florestal*)¹⁰⁶

Forest conservation in public areas is carried out through the National System of Conservation Units (in Portuguese, *Sistema Nacional de Unidades de Conservação da Natureza*), abbreviated SNUC, created by Law 9.985/2000.¹⁰⁷ It comprises a set of regulations that enable the federal, state and municipal government departments, as well as private initiative, to create, implement and manage Conservation Units (UC). UCs are protected areas

¹⁰⁵ BRAZIL. Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA). SINAFLOR – the National System for Controlling the Origin of Forest Products. Available at: <https://www.gov.br/ibama/pt-br/servicos/sistemas/sinaflor>

¹⁰⁶ BRAZIL. Ministry of the Environment and Climate Change. Portaria n° 253/2018. Declaration of Forest Origin. Available at: <https://www.gov.br/ibama/pt-br/assuntos/biodiversidade/flora-e-madeira/documento-de-origem-florestal-dof>

¹⁰⁷ BRAZIL. Law 9.985/2000. Available at: https://www.planalto.gov.br/ccivil_03/leis/19985.htm



with relevant natural features, which have among their purposes the preservation, sustainable use, and restoration of natural environments, including forestry. Brazil currently has a total of 2,376 UCs, including federal, state, and municipal units, which cover about 18% of the country's territory and 26% of its marine areas.¹⁰⁸ These units are divided into two main types – full protection and sustainable use – and subdivided into a dozen different categories.

Law 11.284/2006 regulates public forests management with the view of granting sustainable timber production.¹⁰⁹ Special attention is devoted to local community management, forest concessions, environmental licensing and forestry prices. Moreover, it institutes, within the Ministry for Environment and Climate Change, the Brazilian Forestry Service (SBF) and the National Fund for Forestry Development (FNDF). The legislation provides also a classification of municipal, State or federal forests. Finally, it rules on the bodies in charge for forestry management and monitoring. Thus, Law 11.284/2006 is not only closely related to the 2012 Forest Code, but also to the National System of Conservation Units, integrating the forest protection microsystem.

The Atlantic Forest biome, one of the most devastated ecosystems in Brazil, is protected by Law 11.428/2006.¹¹⁰ The Law provides a specific, stricter legal regime for safeguarding the Atlantic Forest Biome (*Mata Atlântica*), thus superseding the Forest Code when, and if, their rules collide. Amongst other measures, the Atlantic Forest Law establishes economic incentives for forest protection measures; regulates the article of the Constitution that defines the Atlantic Forest as a National Heritage; prohibits the deforestation of primary forests; and creates rules for economic exploitation. Moreover, it creates a Fund for the Restoration of the Atlantic Forest Biome.

¹⁰⁸ Sarlet, I. W., & Fensterseifer, T. (2021). *Curso de Direito Ambiental* (2nd ed.) Forense. p. 1566 (digital version).

¹⁰⁹ BRAZIL. Law 11.284/2006. Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/L11284.htm

¹¹⁰ BRAZIL. Law 11.428/2006. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/11428.htm



Brazil's legal framework for forest protection¹¹¹ reflects both ambition and complexity. The 1988 Constitution establishes a strong foundation, declaring both Amazon and Atlantic Forests national heritages and mandating the protection of the environment for present and future generations. The 2012 Forest Code further specifies these goals, implementing stricter deforestation regulations and establishing mechanisms for conservation and restoration.

However, this framework faces challenges. Enforcement can be inconsistent, and debates remain regarding the balance between protecting forests and supporting economic development. Despite these ongoing issues, the legal framework provides a critical foundation for continued efforts to safeguard Brazil's forests and the vital role they play in the global environment.

4.1.2 Policy framework

Brazil has an extensive policy framework regulating its forests¹¹². At the federal level, the forest management is under the direct responsibility of four institutions.

The Ministry of the Environment and Climate Change (often abbreviated as MMA) is responsible for formulating forestry policies.¹¹³ It operates by granting power for sustainable forest production and is responsible for signing forest concession contracts.

The Brazilian Forestry Service (SFB) is the administrative institution of the federal public forests for the sustainable production of goods and services.¹¹⁴ It is also responsible for the generation of information, qualifications, and fostering the forest area.

The Brazilian Institute of the Environment and of Renewable Natural Resources (IBAMA) is the institution responsible for environmental control and inspection, and is also

¹¹¹ See Annex 4

¹¹² See Annex 5.

¹¹³ BRAZIL. Ministério do Meio Ambiente e Mudança do Clima (MMA). Available at: <https://www.gov.br/mma/pt-br>

¹¹⁴ BRAZIL. Serviço Florestal Brasileiro. Available at: <https://www.gov.br/florestal/pt-br>



responsible for licensing and environmental control of the Brazilian forests in its area of competence.¹¹⁵

The Instituto Chico Mendes of Conservation and Biodiversity (ICMBio) is responsible for proposing, implementing, managing, protecting, inspecting, and monitoring the Conservation Units instituted by the Federal Government.¹¹⁶

Additionally, the federal government, spanning through different administrations, has implemented key policies to address illegal deforestation. Between the late 1980s and the 1990s, the migration trends and disorderly land occupation led to the deforestation of approximately 18 million hectares in the Amazon region, reaching its peak in 1995.

Faced with this scenario, the first Lula presidency adopted in 2004 the *Action Plan for the Prevention and Control of Deforestation in the Legal Amazon* (in Portuguese, Plano de Ação para Prevenção e Controle do Desmatamento da Amazônia Legal – PPCDAM) with the goal of combatting deforestation and promoting sustainable development in the Legal Amazon¹¹⁷. The Plan ushered in a new era of rainforest protection through a multi-level approach. This included: real-time deforestation monitoring via advanced satellite technology; prioritized intervention in municipalities experiencing recent deforestation; conditional access to subsidized rural credit, requiring compliance with environmental regulations.

PPCDAM's first three phases were largely successful, as they contributed to a reduction of over 80% in the annual deforestation rate in the Amazon between 2004 and 2012. Building upon the success of the PPCDAM, the Brazilian government extended this approach to other biomes through: the *Cerrado Action Plan* (PPCerrado) launched in 2010, specifically targeting

¹¹⁵ BRAZIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA). Available at: <https://www.gov.br/ibama/pt-br>

¹¹⁶ BRAZIL. Instituto Chico Mendes de Conservação da Biodiversidade (ICMBio). Available at: <https://www.gov.br/icmbio/pt-br>

¹¹⁷ BRAZIL. Ministério do Meio Ambiente e Mudança do Clima (MMA). Plano de Ação para Prevenção e Controle do Desmatamento na Amazônia Legal. 2023. <https://www.gov.br/mma/pt-br/assuntos/combate-ao-desmatamento/amazonia-ppcdam-1>.



the protection of the Cerrado biome¹¹⁸; and the *Environmental Monitoring Program for Brazilian Biomes* (PMABB) established in 2015, providing a comprehensive monitoring framework for all Brazilian biomes¹¹⁹.

After a few years of increased deforestation rates, the new government implemented the fifth phase of PPCDAM in 2023, with a target of zero deforestation by 2030, and has recently launched a new phase of PPCerrado.¹²⁰ The Brazilian government's renewed efforts to curb deforestation in the Amazon are already showing results. From January to July 2023, there was a 42% decrease in deforestation in the region compared to the same period the previous year.¹²¹

Brazil has revitalized multi-stakeholder consultations on deforestation and climate change, signaling a renewed commitment to collaboration after a period of reduced engagement on both executive and legislative fronts.

Established in 2015, the National REDD+ Committee (CONAREDD+) was reinstated in 2023 to coordinate the national REDD+ strategy.¹²² It brings together representatives from various government levels (ministries, state governments, municipalities) alongside civil society organizations. CONAREDD+ can also establish temporary expert panels to address specific themes related to deforestation and climate change. The resumption also strengthens the Amazon Fund, the largest REDD+ mechanism on the planet.

The *Permanent Parliamentary Joint Commission on Climate Change*, which operates within the National Congress, serves as a platform for discussing and monitoring climate

¹¹⁸ BRAZIL. Ministério do Meio Ambiente e Mudança do Clima (MMA). Plano de Ação para Prevenção e Controle do Desmatamento na Amazônia Legal. 2023. <https://www.gov.br/mma/pt-br/assuntos/combate-ao-desmatamento/amazonia-ppcdam-1>.

¹¹⁹ BRAZIL. <http://redd.mma.gov.br/pt/monitoramento/programa-de-monitoramento-ambiental-dos-biomas-brasileiros>

¹²⁰ BRAZIL. <https://agenciabrasil.ebc.com.br/geral/noticia/2023-11/governo-lanca-4a-fase-do-plano-de-acao-contra-desmatamento-do-cerrado>

¹²¹ BRAZIL. <https://www.gov.br/mma/pt-br/desmatamento-na-amazonia-cai-42-5-nos-sete-primeiros-meses-de-2023>

¹²² BRAZIL. Decree 11.548/2023. Available at: http://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/D11548.htm



change issues in Brazil.¹²³ It facilitates public consultations and hearings, fostering public participation and holding the executive branch accountable for its actions on climate change.

In addition, various initiatives have been developed by state governments, private sector, and civil society organizations to monitor and ensure transparency in commodity chains. Monitoring and traceability systems are being developed primarily in the soy and cattle commodity chains, which are closely associated with deforestation and land grabbing. In relation to instruments for measuring deforestation, relevant government and private initiatives use images captured by satellites that provide analytical support for public policies aimed at preserving the environment and biodiversity in the country. Among them are the TerraBrasilis platform, launched by National Institute for Space Research (INPE), and Mapbiomas.

TerraBrasilis is a platform developed by the INPE that organizes and provides access, through a web portal, to geographic data produced by INPE on the transformations occurring in terms of land cover and use in the country. The tool is a spatial data analysis infrastructure, based on complex algorithms, which provides interfaces that are not only found in traditional geographic information systems. With cutting-edge technologies, the system was developed to guarantee the best performance, allow high availability, smaller size, simplicity to produce increments, reliability for changes and fault tolerance in unstable computer network scenarios, to adjust to the input format of complex algorithms and to speed up the loading of the web application so that it is faster than other systems.

The platform follows international standards for the dissemination of geographic data and the specifications of the National Spatial Data Infrastructure (INDE). This makes the data produced interoperable, that is, it can be part of other visualization and analysis platforms. Furthermore, TerraBrasilis provides an interactive panel where users can interact with different types of graphics that summarize the information generated to facilitate understanding.

¹²³ BRAZIL. Senado Federal. Comissão Mista Permanente sobre Mudanças Climáticas. Available at: <https://legis.senado.leg.br/comissoes/comissao?codcol=1450>



The images produced by INPE and published on the TerraBrasilis platform serve as a basis for government environmental monitoring programs such as the Deforestation in the Legal Amazon Satellite Project (PRODES) and the Deforestation Detection System in Real Time (DETER). PRODES and DETER demonstrated their commitment to monitoring the mapping of large-scale deforestation areas systematically and through data quality assurance. The complexity of the programs requires the design, implementation and deployment of a spatial data infrastructure based on extensive data analysis features. And this is what INPE, through TerraBrasilis, provides for these programs.

However, the DETER project has shown limited results in tracking the recent changes in deforestation trends, as they have reduced in overall size. Thus, to assist in monitoring this new pattern, the DETER-B project was created, as it identifies and maps, in near real time, deforestation with a minimum area close to 1 hectare.¹²⁴ For this, images from the WFI sensors of the CBERS-4 satellite (Sino-Brazilian Land Resources Satellite) and AWiFS of the IRS satellite (Indian Remote Sensing Satellite) are used. Additionally, the TerraClass project was reinstated in 2023, a partnership between INPE and Embrapa that aims to produce systemic maps of land use for deforested areas in the Legal Amazon.¹²⁵

MapBiomass is another technological-informational instrument built by a collaborative network, formed by NGOs, universities and technology startups, which, in a similar way to TerraBrasilis, aims to reveal the transformations of the Brazilian territory, with precision, agility and quality, in order to make knowledge about the coverage and use of Brazilian land accessible and, in this way, contribute to the conservation of natural resources and the fight against climate change.

MapBiomass covers data, since 1985, on deforestation, regeneration, forest fires, water levels and cultivation areas. To monitor these transformations in land use, MapBiomass digitally

¹²⁴ BRAZIL. Instituto Nacional De Pesquisas Espaciais (INPE). DETER-B Project. Available at: http://www.inpe.br/cra/projetos_pesquisas/deter.php

¹²⁵ BRAZIL. Instituto Nacional De Pesquisas Espaciais (INPE). Terra Brasilis Project. Available at: http://terrabrasilis.dpi.inpe.br/app/dashboard/deforestation/biomes/legal_amazon/rates



divided the region into 9.6 billion squares of equal size and made them available on its digital platform. It is no surprise that the organization is responsible for validating and preparing reports for each deforestation event detected in Brazil since January 2019. It is also worth remembering that MapBiomas is also present throughout Latin America, covering a series of topics related to various countries, such as mining and agriculture.

Certification is also part of the Brazilian framework. Brazil Green Seal Program is a federal government initiative that aims to develop a national certification and conformity assessment strategy for Brazilian products and services that have proven to have a socio-environmentally responsible life cycle. In this sense, this mechanism aims to promote environmental sustainability, guarantee the competitiveness and access of Brazilian products in the international market.

The Program also aims to reduce the multitude of environmental requirements that apply to Brazilian products. In this way, it aims to unify the various Brazilian environmental labeling initiatives established by governmental and private entities. Furthermore, it intends to harmonize the requirements established by governments and private entities from third countries, compliance with which conditions access to the market for Brazilian products and services abroad. The Brazil Green Seal Program aims to help Brazilian exporters to prove compliance with environmental norms and regulations in the main international markets, which will contribute to reducing bureaucracy and reducing costs for the exporter. It is then considered the “export passport” of national producers.

Any products and services originating from the primary, secondary or tertiary sectors of the national economy and that meet the sustainability criteria defined within the scope of the Program can receive the Brazil Green Seal. As of voluntary participation, it can be obtained by legal entities accredited by INMETRO (an institution that has formal recognition of competence for inspection or certification in Brazil) to carry out conformity assessment tasks, according to established requirements. In this way, the program is able to convey confidence to the buyer and the regulatory authority, thus facilitating trade across borders.



Another regional certification body is Selo Verde de Minas Gerais (Green Seal-MG). The Green Seal-MG is a platform developed by researchers of the University of Minas Gerais (UFMG), in partnership with the Government of Minas Gerais and the Territorial Intelligence Center, and support from the AL-INVEST Verde program of the European Union (EU). It offers individualized information on rural properties in Minas Gerais regarding compliance with national legislation, traceability and socio-environmental criteria for the export of agricultural commodities. The website, presents information about the Minas Gerais territory, such as: land use, biomes, indigenous lands, deforestation after 2008, among others. The tool establishes a certification of socio-environmental compliance, based on an integrated and automated analysis of data from the Rural Environmental Registry (CAR), the Continuous Monitoring of Vegetation Cover by the State Institute of Forests – IEF and high-resolution mapping of the Minas Gerais coffee park.

In addition to these initiatives, Cecafé Seal is another green seal worth mentioning. This certification guarantees the sustainability of the coffee agribusiness chain and respect for labor and environmental laws throughout the production chain. This certificate ensures that, in coffee producing areas, there are continuous efforts to protect watershed areas, adopt rational water management, and that advanced agricultural techniques are applied to achieve significant productivity per planted hectare. It also guarantees that the coffee producer adopts, on his rural property, the same labor laws applied to urban workers.

Private and public actors have also launched initiatives for environmental traceability. There is, for instance, the Pará Green Seal (Selo Verde) platform, Soy Moratorium, Brazilian Agro-Traceability System (SIBRAAR), Brazilian Cattle and Buffalo Individual Identification System (SISBOV) and Brazilian Coffee (Cafés do Brasil) Traceability Platform.

Taking a pioneering step in 2021, the Pará government launched the Green Seal (Selo Verde) platform. This innovative system cross-references data from CAR (Rural Environmental Registry), Animal Transit Guide (GTA), and satellite imagery to certify producers based on their environmental compliance. Specifically, it verifies if their production occurs in areas free



from deforestation since 2008.¹²⁶ Through this initiative, Pará became the first state in Brazil to implement a public system for cattle traceability with environmental considerations.¹²⁷ Other Brazilian states such as Minas Gerais and Goiás are adopting similar initiatives.¹²⁸

Similar to cattle, Brazil's soybean sector employs voluntary efforts to combat deforestation. The Soy Moratorium, a landmark agreement between the private sector, civil society, and the Ministry of the Environment and Climate Change, promotes zero-deforestation soy production in the Amazon biome. Companies adhering to the Moratorium pledge not to trade, buy, or finance soy from areas within the Amazon deforested after July 2008. In addition, initiatives like the Round Table on Responsible Soy (RTRS) offer further mechanisms for responsible soybean production.

The Brazilian government agency Embrapa developed, in 2022, the Brazilian Agro-Traceability System (SIBRAAR) that tracks agro-industrial products, offering information about their quality and origin, in a transparent and reliable way, using digital blockchain technology. The system is aimed at the agroindustry and can be customized for application in derivatives of various agricultural crops. Based on this system, the consumer, through a QR Code printed on the packaging, has direct access to information about the product: from the rural property where it originated, through the processing stages to its distribution and commercialization on the market.

Furthermore, the Brazilian federal government launched the Brazilian Cattle and Buffalo Individual Identification System (SISBOV), an individual cattle identification system. It aims to register and identify the cattle and buffalo herd in the national territory in order to enable the tracking of animals from birth to slaughter, thus providing support for decision-making relating the quality of national herd and imported. In this system, adherence by rural producers is voluntary, except when its obligation is defined in a specific normative act, or

¹²⁶ BRAZIL. <https://www.gov.br/participamaisbrasil/programa-selo-verde-brasil>

¹²⁷ BRAZIL. <https://www.semas.pa.gov.br/seloverde/>

¹²⁸ BRAZIL. <https://portal.al.go.leg.br/noticias/141130/sancionada-a-criacao-do-selo-verde-ambiental-em-goias;>
<http://www.ief.mg.gov.br/selo-verdemg>



required by official health controls or programs. Also, the Animal Transit Guide (GTA)¹²⁹ provide data essential for domestic and international trade.

Building upon successful animal traceability, private and public actors have launched initiatives for environmental monitoring and traceability. While agreements like the 2009 Meat TAC represent progress, they face limitations.¹³⁰ The Meat TAC, for instance, only verifies farms supplying a limited number of slaughterhouses or supermarkets, and doesn't guarantee traceability throughout the entire supply chain.

Recently, the Brazilian Central Bank has added sustainability as one of the core pillars to its work agenda.¹³¹ In 2020, the concept of sustainability was officially included as part of the Brazilian Central Bank's agenda and the Bank became an official supporter of the Task Force on Climate related Financial Disclosures (TCFD), which seeks to make firms' climate-related disclosures more consistent and comparable.¹³² In 2021, the Central Bank has also revisited the Rural Credit Operations System (SICOR)¹³³, creating a 'Green Rural Bureau' as an open-data platform accessible by all financial institutions to monitor deforestation and related social risks.

4.2 CHALLENGES FOR IMPLEMENTING THE EUDR

4.2.1 General challenges¹³⁴

¹²⁹ BRAZIL. https://www.gov.br/agricultura/pt-br/assuntos/sanidade-animal-e-vegetal/saude-animal/cgtqa/t_nacional/gta

¹³⁰ BRAZIL. <https://plenamata.eco/verbete/tac-da-carne-no-para/#:~:text=Os%20Termos%20de%20Ajustamento%20de,com%20o%20uso%20de%20trabalho>

¹³¹ BRAZIL. Banco Central. Nova agenda sustentável do Banco Central. Available at: <https://www.bcb.gov.br/estabilidadefinanceira/sustentabilidade>.

¹³² Financial Stability Board (FSB), 'Task Force on Climate-related Financial Disclosures (TCFD)' <https://www.fsb-tcfd.org/> accessed 22 February 2024.

¹³³ BRAZIL. Banco Central. Crédito rural. Available at: <https://www.bcb.gov.br/estabilidadefinanceira/creditorural>.

¹³⁴ See Annex 7.



Brazil has an extensive normative and policy framework regulating its forests. However, there is still much to improve in order to achieve international commitments such as the 2016 Paris Agreement.

In September 2023, at the Climate Action Summit in New York, Brazil announced a correction to its climate commitment that had been reduced under the Bolsonaro administration. To correct the last two updates of Brazil's Nationally Determined Contribution (NDC), which in practice allowed for a higher volume of greenhouse gas emissions than the commitment presented at the signing of the Paris Agreement in 2015, the country presented new percentage targets.¹³⁵ Brazil's climate goal has been increased from 37% to 48% emission reduction by 2025 and from 50% to 53% by 2030.

Despite the progress already achieved, the implementation of the Forest Code continues to face many challenges. The task is immense, as it involves approximately 5.07 million rural properties, of which about 75% are owned by family farmers, and depends on the action of state agencies in 27 federative units, with different levels of human and technological resources. In addition, rural producers need to take the initiative to regularize the environmental status of their properties through a complex process that includes several difficulties.

Much of the current deforestation in Brazil occurs in so-called “non-designated forests” (in Portuguese, *florestas não designadas*), which are public forest areas that have not been designated as indigenous land, conservation units, or other types of protected areas, such as extractive reserves, settlements and quilombola areas. Despite being important from an environmental point of view, these forests have been losing ground to land grabbing in the Amazon. In November 2023, the Senate’s Environment Committee approved a bill (PL 486/2022) which requires the government to designate a purpose for these endangered areas.¹³⁶

¹³⁵ Ministério do Meio Ambiente e Mudança do Clima. Marina anuncia na ONU correção da meta climática brasileira. 2023. Available at: <https://www.gov.br/mma/pt-br/noticias/marina-anuncia-na-onu-correcao-da-meta-climatica-brasileira#:~:text=Com%20a%20corre%C3%A7%C3%A3o%20o%20pa%C3%ADs,%C3%A2mbito%20do%20Acordo%20de%20Paris>.

¹³⁶ Senado Federal. Project n.º 486/2022. For further information, see: <https://www25.senado.leg.br/web/atividade/materias/-/materia/152042>



Based on a preliminary analysis, several challenges for the compatibility of the European regulation with the Brazilian forest regulation can be identified¹³⁷. Since the EUDR prohibits the sale of products from deforested areas without distinguishing between legal and illegal deforestation, this poses a challenge for the compatibility of the European regulation with national legislation. It is estimated that more than 95% of deforestation in Brazil shows signs of illegality.¹³⁸

Another difference between European and Brazilian policies is that the latter aims to protect and combat the deforestation of all forms of native vegetation, while the EUDR only addresses the conversion of forest into agricultural or pasture areas. In this sense, the impact of the EUDR on reducing deforestation in Brazil may be limited, as deforestation in other biomes, such as the Cerrado or Pantanal, at least in non-forest areas, will not be covered by the European standard.

Additionally, the risk assessment of non-EU countries of production takes into account vague concepts, such as requirements for countries to take “effective enforcement measures to tackle deforestation and forest degradation”, to “penalise activities leading to deforestation and forest degradation” and “whether it applies penalties of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation”.¹³⁹

On the other hand, 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. Similar challenges can be seen regarding other definitions and criteria.

The definitions for SMEs utilized by EUDR are solely based on the EU legislation¹⁴⁰, which differ from Brazilian standards. Although both regulations use similar gross accounting parameters, the European standard fails to consider the disparity in the purchasing power of

¹³⁷ See Annex 6.

¹³⁸ CNN Brasil. Mais de 95% do desmatamento na Amazônia é ilegal, diz climatologista. 2023. Available at: <https://www.cnnbrasil.com.br/nacional/mais-de-95-do-desmatamento-na-amazonia-e-ilegal-diz-climatologista/>

¹³⁹ EUDR, article 29(3,4).

¹⁴⁰ Article 3 of Directive 34/2013.



currencies. Furthermore, there is no specification regarding the use of parity or conversion indexes to stabilize the values.

As already mentioned, conceptual differences regarding the definition of “forest” are of fundamental importance. FAO’s definition adopted by the EUDR fails to encompass the complexity of forests in Brazil. Not all forest types of peculiar biomes, such as the Cerrado and Pantanal, necessarily meet the requirements of the FAO’s definition to be considered forests. Nevertheless, in the Brazilian reality they are considered and used as forests, which include the use of timber resources, extraction of fruits, seeds and medicinal products. To contemplate the complexity of forest resources in Brazil, national authorities have used a broader definition that could encompass other vegetation that are not strictly forests.

The implementation of the new regulation raises potential privacy concerns, particularly related to the extensive data collection required for due diligence practices. The EUDR requires operators to collect information about all actors involved in the production and trade of the regulated commodities, potentially including names, addresses, and land ownership details of farmers, smallholders, and indigenous communities. Even though the EUDR emphasizes the importance of complying with existing EU data protection legislation like the General Data Protection Regulation (GDPR), concerns have been risen about the potential over-collection of personal data, exceeding what is strictly necessary for demonstrating compliance with the Regulation.

Due to the information requirement for due diligence, effective implementation of the EUDR depends on robust instruments to measure deforestation and environmental degradation. In this sense, instruments that measure deforestation and environmental degradation are essential, such as images produced by satellites that allow not only the collection of information on deforestation and environmental degradation, but also data on the geolocation of agricultural properties, government certification bodies or sectoral organizations that guarantee the sustainability of exported products and traceability mechanisms, capable of remotely



monitoring the entire production path throughout the production chain, thus guaranteeing production safety and compliance of the production chain.

However, there is no universal parameterisation of these systems. For example, the EU's Observatory on Deforestation and Forest Degradation, despite being a support tool, adopts a minimum measurement area of 0.5 hectares, while the MapBiomas platform adopts a measurement of 0.3 hectares, thus being more specific.

In the view of this, the set of measurement, green seals and traceability instruments present in Brazil demonstrates that the country has already a range of tools capable of capturing environmental changes, especially with regard to deforestation and forest degradation and capable of guaranteeing the traceability and green sustainability of agricultural products. However, it is still uncertain whether these mechanisms will be recognised by the EUDR, especially given the vagueness of several of its provisions.

4.2.2 A deeper look into the coffee sector

According to data from the International Coffee Organisation Report¹⁴¹, South America is the world's leading region in coffee production. In 2024, it was responsible for producing 89.3 million bags of coffee, which in coffee year 2022/23 represented 48.3% of total world production. Of these, 57.4 per cent of South American bean production is arabica and 23.9 per cent robusta (the two most consumed worldwide). The largest producers in South America are Brazil, Colombia and Peru, with Brazil leading grain production.

Brazil is the largest producer and exporter of coffee not only in South America, but also in the world¹⁴². The country is responsible for around 32 per cent of the world's exports of

141 International Coffee Organization (ICO). Coffee Report and Outlook. Disponível em: https://icocoffee.org/documents/cy2023-24/Coffee_Report_and_Outlook_December_2023_ICO.pdf. Acessado em: 25 de junho de 2024.

142 See more at: “Exports of All Forms of Coffee by Exporting Countries to All Destinations” do International Coffee Organization (ICO). Available at: <https://ico.org/prices/m1-exports.pdf>; Coffee Report and Outlook (ICO). Available at: https://icocoffee.org/documents/cy2023-24/Coffee_Report_and_Outlook_December_2023_ICO.pdf.



unroasted beans, and annually exports around 35.15 million bags of the bean. Therefore, coffee exports account for a large part of the country's revenue. Furthermore, 50 per cent of total exports go to the European Union, being Germany, Italy, Belgium, Spain and France, in that order, the biggest importers of Brazilian beans in Europe¹⁴³.

Although coffee production is very old in the country, it is still expanding. According to data from CONAB¹⁴⁴, total production in 2024, including Arabica and Conilon, is estimated at 58.81 million bags, an increase of 6.8 per cent or 3.74 million bags over the crop harvested in 2023. This data also suggests that the total area destined for coffee growing in the country in 2024, for arabica and conilon types, will total 2.25 million hectares. This means an increase of 0.5 per cent on the area of the previous harvest, with 1.9 million hectares of crops in production and a growth of 1.5 per cent on the previous year. It is also worth noting that in the first four months of 2024, Brazil exported 16.4 million 60-kilo bags of coffee, which corresponds to an increase of 46.5 per cent compared to the 11.2 million bags exported in the same period in 2023.

According to CONAB data, Brazil exported coffee to 124 countries in 2024, with the United States and Germany being the main destinations, with respective shares of 17.5% and 14.4% in terms of quantity, followed by Belgium with 10.5%, Italy with 7.8% and Japan with 5.4%. In addition, during the first four months of 2024, two Brazilian ports stood out in terms of shipments of Brazilian coffee abroad: the port of Santos, with 69.2% of production, and the port of Rio de Janeiro, with 22.6%. The two ports together account for 91.8% of the country's coffee exports.

Coffee is one of the 'relevant commodities' listed in the EUDR. Thus, with the implementation of the standard, it is expected that Brazil, and in particular Brazilian coffee producers/exporters, will be affected. The EUDR stipulates that the production of grain, as well

143 Companhia Nacional de Abastecimento (CONAB). Acompanhamento da safra brasileira de café – v.1, n.1 (2014). Brasília: CONAB.

144 Companhia Nacional de Abastecimento (CONAB). Acompanhamento da safra brasileira de café – v.1, n.1 (2014-). Brasília: Conab, 2014. Disponível em <http://www.conab.gov.br>. Acessado em: 25 de junho de 2024.



as the various commodities included in the regulation, must be produced in an area free of deforestation and/or that does not cause forest degradation.

The concept of forest degradation is the same as that used by the FAO, which is ‘the reduction of the forest's capacity to provide goods and services’¹⁴⁵. Thus, the FAO establishes that the concept of ‘forest degradation’ encompasses a process of changes or anything that negatively affects the characteristics of a forest in such a way that the value and production of its goods and services decrease. This includes all processes, human or otherwise, that affect the wide range of ecosystem services offered by forests, such as protecting soils against erosion; regulating the water regime; capturing and storing carbon; producing oxygen; providing fresh water and habitat; maintaining biodiversity; protecting against the risk of fire (in the tropics); and producing timber and non-timber forest products.

Thus, various elements present in coffee crops, such as the use of water, the use of agrochemicals, the way the soil is used, the types of fertilisers used, among others, end up affecting the various systemic services offered by forests, and can therefore contribute to increased forest degradation. It's no wonder that the adoption of sustainable practices appears to be an extremely desirable action for various commodities, such as coffee, in order to minimise the impact they have on forests and the environment.

Like the various agricultural sectors, coffee production also contributes to forest and environmental degradation. Not only deforestation itself, such as the devastation of virgin forests for the production of the bean, but also various elements present in the production process can contribute to forest and environmental degradation. This is without taking into account the emission of greenhouse gases resulting from production itself, which affects the environment and contributes to global warming.

145 FAO, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS. Assessing forest degradation-Towards the development of globally applicable guidelines. Forest Resource Assessment Working paper, n. 177, 2011.



Brazil is the world's 4th largest consumer of nitrogen fertilisers, which means that 95% of imports of these fertilisers are destined for the country. In this context, nitrogen fertilisers are responsible for 2% of the world's GHG emissions¹⁴⁶. In Brazil, many coffee growers still use nitrogen fertilisers, thus contributing to greenhouse gas emissions and increasing coffee's carbon footprint. Furthermore, according to a study carried out by Cooxupé (*Regional Cooperative of Coffee Growers in Guaxupé*) in Minas Gerais, the largest co-operative of coffee bean producers in the world, and Embrapa (*Brazilian Agricultural Research Corporation*), the carbon footprint of arabica coffee in Brazil ranges from 1.9 to 4.6 kg CO₂ eq/kg coffee¹⁴⁷. In this sense, if 'green' fertilisation were used by coffee growers, coffee's carbon footprint could be reduced by 60%¹⁴⁸. Therefore, like many commodities, coffee production can still evolve in terms of environmental sustainability and consequently the reduction of GHG emissions and impacts on the environment.

Also, coffee growing is considered an ally in building strategies to reduce the effects of global warming. According to the Cecafé Project *greenhouse gas balance of conilon coffee from Espírito Santo*, coffee cultivation is considered an ally in reducing greenhouse gas emissions, since it is a crop that captures carbon during the growth of the coffee tree and stores this carbon in the biomass for a long period¹⁴⁹. Thus, there is great potential for carbon sequestration in coffee crops.

However, when considering the GHG balance of the crop's production system, there are also emissions caused by the different sources present in crop management, which involve, for example, mechanised operations, fertilisation and soil correction. As a result, adopting sustainable practices is becoming increasingly fundamental to reducing GHG emissions from

146 Brasil 2050: Rotas de Descarbonização da Economia, painel 4, “Diálogos setoriais sobre opções e desafios na trajetória de descarbonização” do Seminário (22 May 2024) <https://www.youtube.com/watch?v=KZyoE1lyFJ4> accessed 25 June 2024.

147 Forbes. Pegada de carbono do café arábica vai do pé à xícara. Available at: <https://forbes.com.br/forbesagro/2021/12/pegada-de-carbono-do-cafe-arabica-vai-do-pe-a-xicara/>. Access: 22 jun. 2024.

148 Ibidem 3.

149 IMAFLORA, Projeto Cecafé. Balanço de Gases de Efeito Estufa do Café Conilon Capixaba https://www.imaflora.org/public/media/biblioteca/relatorio_cecafe_imaflora.pdf accessed 25 June 2024.



this crop, since sustainable production aims to achieve production that not only sequesters the equivalent carbon it emits, but also removes more atmospheric carbon than it emits, thus becoming a carbon-negative crop. In this sense, in order to achieve a negative GHG balance, it is essential to adopt practices such as the use of organic and organo-mineral fertilisers with a lower nitrogen content, the use of solar energy and the use of pruning and coffee residues in the crop soil, or in other words, to adopt good agricultural management practices.

The EUDR aims to reduce the global environmental footprint by protecting forests and forest degradation. In this way, the carbon footprint of commodities, as in the case of coffee, and the adoption of sustainable agricultural practices can be another criterion to be taken into account for producers' compliance with the standard, as well as for calculating the risks attributed to commodity-producing countries.

With regard to EUDR compliance, a study carried out by the International Institute for Sustainability (IIS) mapped the production network of six agricultural commodities in Brazil and assessed that coffee stood out as the product most likely to meet the requirements of compliance with the EUDR, while beef was in the worst position¹⁵⁰. The research, using an unprecedented index, assessed the likelihood of compliance with the law according to the criteria of exports, deforestation, certifications and small producers. Thus, according to the index, the findings revealed that coffee is the closest to compliance with the new regulations, followed by soya; while the livestock and cocoa chains are the furthest from compliance¹⁵¹.

In the IIS study, one of the proxies used to measure the analytical index is the coverage of voluntary sustainability standards. For this, the researchers assumed that sectors that already had experience in implementing environmental certifications might be more prepared for

¹⁵⁰ Rafael Garcia, 'Café é o produto agrícola brasileiro mais próximo das novas exigências ambientais da UE. Carne é o mais distante' O Globo (10 February 2024) <https://oglobo.globo.com/um-so-planeta/noticia/2024/02/10/cafe-e-o-produto-agricola-brasileiro-mais-proximo-das-novas-exigencias-ambientais-da-ue-carne-o-e-mais-distante.ghtml> accessed 25 June 2024.

¹⁵¹ De Oliveira, S. E. M., Cesar, L., Nakagawa, G. R., Lopes, G. R., Visentin, J. C., Couto, M., Silva, D. E., d'Albertas, F., Pavani, B. F., Loyola, R., & West, C. (2024). The European Union and United Kingdom's deforestation-free supply chains regulations: Implications for Brazil. *Ecological Economics*, 217



compliance, having acquired know-how about sustainability mechanisms and deforestation-free production practices. In this metric, coffee had the highest percentage probability of compliance, reaching 33 per cent¹⁵².

This know-how on sustainability mechanisms and production practices in the coffee sector is related to the already existing international and national institutional initiatives in the sector that work in this direction. The Global Coffee Platform (GCP) is one such example. It is a multi-sectoral association dedicated to promoting sustainability in the coffee sector. The GCP enables coffee producers, traders, roasters, governments and NGOs to align their efforts, acting collectively on local priorities and critical issues, scaling up local sustainability programmes and expanding the global market for sustainable coffee throughout the coffee world¹⁵³.

According to GCP's Annual Report 2023, the coffee sector already has the Equivalence Mechanism (EM), which is a tool that helps stakeholders navigate the complexity of sustainability schemes in the sector. According to the platform's information, through the EM it is possible to better understand which sustainability schemes meet - at the very least - basic sustainability practices in a credible and efficient manner.

Furthermore, at a national level, institutions in the coffee sector already have technological-institutional apparatus capable of certifying compliance with national and international environmental standards and certifying the sustainable nature of many producers. The Minas Gerais Green Seal is a case in point. As highlighted in previous section, it is a platform developed by researchers from UFMG in partnership with the Government of Minas Gerais through the IEF and the Centre for Territorial Intelligence and with support from the European Union's AL-INVEST Verde programme. It provides individualised information on rural properties in Minas Gerais, mainly coffee producers, regarding compliance with national

152 De Oliveira, S. E. M., Cesar, L., Nakagawa, G. R., Lopes, G. R., Visentin, J. C., Couto, M., Silva, D. E., d'Albertas, F., Pavani, B. F., Loyola, R., & West, C. (2024). The European Union and United Kingdom's deforestation-free supply chains regulations: Implications for Brazil. *Ecological Economics*, 217

153 PLATAFORMA GLOBAL DO CAFÉ (GCP), Annual Report 2023 (GCP 2023) <https://www.globalcoffeeplatform.org/latest/2024/gcp-annual-report-2023/> accessed 25 June 2024.



legislation, traceability and socio-environmental criteria for exporting agricultural commodities.

The website, which is the result of a co-operation agreement signed between UFMG and IEF, with the support of the Secretariat of Agriculture, Supply and Livestock - SEAPA, provides relevant information on the sustainability of coffee production in Minas Gerais. It presents information on the territory of Minas Gerais, such as: land use, biomes, indigenous lands, deforestation after 2008, among others. The tool establishes a certification of socio-environmental compliance, based on an integrated and automated analysis of data from the *Rural Environmental Registry* (CAR), the Continuous Monitoring of Vegetation Cover by the *State Forestry Institute* (IEF) and high-resolution mapping of Minas Gerais' coffee plantations.

In addition to this initiative, the Cecafé Seal guarantees the sustainability of the coffee production chain and respect for labour and environmental laws throughout the production chain. This certificate ensures that coffee-growing areas make continuous efforts to protect water sources, adopt rational water management and apply advanced agricultural techniques to achieve significant productivity per hectare planted. It also guarantees that the coffee grower adopts the same labour laws applied to urban workers on his rural property, complying with strict requirements, such as the payment of a guarantee fund, public social security, and other social benefits established by Brazilian labor law to his employees, as well as using PPE when handling pesticides and having appropriate facilities for housing and feeding workers.

More recently Cecafé developed a traceability platform, called *Cafés do Brasil*, in order to measure and mitigate deforestation risks in its supply chain. It is a platform developed by Serasa Experian and institutionally managed by Cecafé and its members. This platform was developed from polygons and georeferenced data made possible by the CAR system and in view of the Brazilian Forest Code, which aims to ensure that grain production comes from areas that have not been deforested.



All of this institutional and technological apparatus demonstrates how the coffee sector is advancing in organisational terms in favour of sustainability and, in this way, can more easily adapt to the EUDR for regulating forests.

CONCLUDING REMARKS

Considering this report's analysis, several challenges and recommendations were identified concerning the EUDR's implementation in Brazil.

I – Definitions

The EU needs to further specify some of the EUDR definitions, such as 'forest', 'deforestation' and the minimum area considered to be deforested. The definitions adopted by Brazil may not be compatible with the standard, calling for greater engagement with European actors to harmonise these terms.

II – Information System and data privacy

The EUDR's Information System (IS) raises concerns regarding how it will be used to collect and process due diligence data submitted to it. 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.

Brazil has well-developed technological mechanisms, indicating a possible protagonism in a global discussion on the adoption of standards. In this sense, it could play a leading role in discussions with the EU, as well as when it comes to transferring technology and knowledge to third countries.

III – Risk assessment criteria



The EUDR lacks clearly defined criteria for assessing a country's deforestation risk. This raises concerns regarding the Regulation fairness and effectiveness. However, it is thought that the stricter criteria adopted in Brazil could mitigate possible negative effects.

IV – Certifications and Traceability

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. In this sense, it would be interesting to develop mutual recognition of standards between Brazil and the European Union. Furthermore, adapting these certifications to the provisions of the EUDR also may be an effective strategy.

V – 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. As this is a challenge recognised even by European countries, international alignment in favour of a sufficiently effective date, including with the support of stakeholders, can contribute to a smooth transition period.

VI – SMEs and vulnerable groups



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. Brazil needs to adopt measures to ensure that these groups are well advised on how to adapt to the standard, without displacing value chains.

VII – Partnerships

The network of dialogues established between the European Union and third countries on the implementation of the EUDR is still limited. In this sense, Brazil's expertise and mechanisms could be an opportunity to develop partnerships with the European Union to implement the EUDR in less developed countries. To this end, dialogues must be opened between the two sides.

VIII – Adequacy to the WTO framework

Some producing countries express concern that the Regulation's impact on their trade value chains might violate the GATT principle of non-discrimination. If dialogues cannot lead to a peaceful solution regarding the European Union's implementation of the EUDR, Brazil may seek to take the discussion to the WTO as an alternative.



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ANNEXES

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WORKING PAPER



**ANNEX 1 - FLEGT Voluntary Partnership Agreements on Forest Law Enforcement,
Governance and Trade**

Country	Date of entry into force of agreement	Date of ratification of agreement	Date of signature of agreement	Start of FLEGT licensing
Honduras	2022	2021	2021	
Vietnam	2019	2019	2018	
Indonesia	2014	2014	2013	2016
Liberia	2013	2013	2011	
Congo	2013	2013	2010	
Cameroon	2011	2011	2010	
Central African Republic	2012	2012	2011	
Ghana ²	2009		2009	
Democratic Republic of the Congo	[Under negotiations]			
Côte d'Ivoire			2024	
Gabon	[Under negotiations]			
Guyana	[Under negotiations]		2022	



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ANNEX 2 – EUTR v. EUDR

EUTR x EUDR - Comparative Analysis				
SCOPE OF APPLICATION				
ITEMS	EUTR		EUDR	
	Regulation Section	Content	Regulation Section	Content
Relevant commodities	Art. 1	Timber	Art. 1	Timber and cattle, cocoa, coffee, oil palm, rubber, soya.
Relevant timber products	Annex	EUTR list: products containing paper, paper-board, timber 1ber or timber.	Annex 1	EUTR list expanded to: charcoal, timber wool, books and newspapers, kitchen furniture, coffins, seats, etc.
Types of timber products covered	Art 1	Timber (by)products circulating within the EU market, whether domestically produced or imported.	Art 1	Timber and other products imported into the EU, produced and consumed in the EU and exported from the EU
TARGET PLAYERS				
ITEMS	EUTR		EUDR	
	Regulation Section	Content	Regulation Section	Content
Operators	Art. 2 (c)	Companies (importers and loggers) that place timber (by)products on the EU market.	Art. 2 (15)	Any natural or legal person who, in the course of a commercial activity, places timber (by)products on the EU market or exports them from the EU market.
Traders	Art. 2 (d)	Companies that buy or sell timber (by)products on the internal EU market after it has 1rst been placed on the market.	Art. 2 (17)	Any entity in the supply chain other than the operator who, in the course of a commercial activity, makes timber (by)products available in the EU market.
REQUIREMENTS				
ITEMS	EUTR		EUDR	
	Regulation Section	Content	Regulation Section	Content
Prohibition	Art. 4 (1)	The placing on the market of illegally harvested timber (by)products.	Art. 3	The making available or sale of timber (by)products in the EU market: that have contributed to deforestation and forest degradation; that were illegally harvested; or that are not covered by a due diligence statement.
Obligation of operators	Art. 4 (2)	Operators must demonstrate due diligence when placing timber (by)products on the EU market, using both a system and procedures. They must maintain and regularly evaluate their due diligence system.	Arts. 4, 12	Operators must carry out due diligence prior to placing timber (by)products on the EU market or exporting them out of the EU, using both a system and procedures, and must first submit a due diligence statement. Operators must provide their Due Diligence information to other operators and traders further down the supply chain. Each year, they must publish a report on their Due Diligence.
Exemption for SMEs operators		N/A	Arts. 4 (8), 12	SMEs are exempt from: Due Diligence, if the products have already been subject to Due Diligence; the publication of a report on their Due Diligence.
Obligation of traders	Art. 5	Keep records of timber purchases and sales for 1ve years and make them available to competent authorities upon request.	Art. 5 (1)	Large traders (non-SMEs) are subject to the same due diligence requirements as large operators (no more "shell" companies).
			Art. 5 (5)	SME traders must inform the competent authorities in the event of doubt.
			Art. 5 (1, 3, 4 and G)	All traders must gather and keep some information from their suppliers and customers for 5 years and cooperate with the competent authorities.
"Deforestation free" requirements and cut-off date		N/A	Art. 2 (13)	"Deforestation-free" means: (1) that the timber products are sourced from timber produced on lands that have not been subject to deforestation after 31 December 2020, and (2) specifically for timber products, that the timber was harvested from the forest without inducing forest degradation after 31 December 2020.
Traceability requirements	Art. 5	Traders must gather and keep information from suppliers throughout the supply chain and from their clients.	Art. 9 (1d)	As part of the Due Diligence process, operators must gather geolocation information on all of the plots of land where the timber of the relevant products was harvested and the date/period of production.
	Art. G (1b)	As part of due diligence, operators must assess the complexity of the supply chain for timber.	Art. 2 (28)	The "geolocation" means the GPS coordinates of the production plots of land, or the plot of land's perimeter (using polygon).



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DEFINITIONS				
ITEMS	EUTR		EUDR	
	Regulation Section	Content	Regulation Section	Content
Legality	Art. 2 (h)	Legislation in force in the country of harvest covering the following matters: right to harvest timber, payment of harvest rights and timber duties, timber harvesting, third parties' legal rights, trade and customs.	Art. 2 (40)	Laws applicable in the country of production in terms of: land use rights, environmental protection, forest management and harvesting, third-party rights, labor rights, human rights protected under international law, principle of FPIC (Free, Prior and Informed Consent), tax, trade and customs and anti-corruption regulations.
Deforestation		N/A	Art. 2 (3)	"Deforestation" means the conversion of forest to agricultural use, whether human induced or not;
Forest degradation			Art. 2 (4)	A "forest" is land that exceeds 0.5 hectares with trees higher than 5 meters and a canopy cover that exceeds 10%.
		N/A	Art. 2 (7)	"Forest degradation" means structural changes to the forest cover, taking the form of a conversion of: primary forests or naturally regenerated forests into plantation forests or other wooded lands, from primary forests into planted forests.
			Art. 2 (8)	A "primary forest" is a naturally regenerated forest of native tree species, without any human activities or ecological disturbances.
DUE DILIGENCE				
ITEMS	EUTR		EUDR	
	Regulation Section	Content	Regulation Section	Content
General principle	Art. G	When an operator places timber products on the EU market, it shall implement a due diligence system that contains the following items: access to information; risk analysis; risk mitigation.	Art. 8	Before placing timber products on the market or exporting them, operators shall carry out due diligence , which includes: 1. gathering information (art. 9) ; 2. risk assessment measures (art. 10) ; 3. risk mitigation measures (art. 11)
Gathering of information	Art. G (1a)	The information to be gathered regarding the products are: the description, the country/region/ concession of harvest, the quantity, the names and contact details of both the supplier and client, compliance and legality information.	Art. 9	The information is the same as for the EUTR (sometimes in greater detail) and includes: evidence that there is no deforestation or forest degradation, the geolocation of production plots of land and the dates/periods of production.
Risk assessment	Art. G (1b)	The risk assessment procedures are based on: The gathered information, assurance of compliance with legislation, such as third-party certification, the prevalence of illegal harvesting or illegal practices, sanctions (UN, EU Council), the complexity of the supply chain.	Art. 10	The risk assessment takes into account the EUTR's criteria, as well as the following: the EC's assignment of risk to the relevant country of production (v. Country assessment – art. 29), the presence of forests in the country / production area, the prevalence of deforestation or forest degradation, the presence of indigenous peoples, consultation and cooperation in good faith with indigenous peoples, the existence of justified claims by indigenous peoples to land and usage rights, concerns regarding corruption or the falsification of documents/data, the risk of mixing products, the conclusions of EC expert panels, Reports of justified concerns (art. 31), etc. The risk assessments are documented and are assessed at least once a year. They are made available to the competent authorities upon request.



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Risk mitigation	Art. G (1c)	In the event of a non-negligible risk, risk mitigation procedures may include: the requiring of additional information or documentation, and/or the requiring of third-party verification and/or other measures according to the information collected.	Art. 11	In the event of a non-negligible risk, risk mitigation procedures may include: the requiring of additional information or documentation, the conducting of independent inspections or audits, other measures depending on the information that is gathered, the enhancement of capacities and investments. Checks, measures and procedures must be in place prior the products are placed on the market. Additional requirements apply to non-SMEs: the appointment of a compliance officer at the management level, the conducting of independent audits to check the internal system. Decisions on risk mitigation measures are documented, evaluated at least once a year and made available to competent authorities upon request.
Establishment and maintenance of the due diligence system	Art. 4	The Due Diligence System must be maintained and evaluated on a regular basis.	Art. 12	Develop a Due Diligence System framework of procedures and measures and keep it up to date; The Due Diligence System must be revised once a year; The documents are to be kept for 5 years; For non-SMEs: publication of their Due Diligence System and its results / conclusions.
Simplified due diligence		N/A	Art. 13	For products coming from countries assessed by the EC as low risk (v. Country assessment – art. 29), it is possible to carry out simplified due diligence: Gathering of information (step 1), Exemption from risk analysis and mitigation measures (steps 2 and 3), after having analyzed the risk of mixing with products having an unknown origin.
Assessment of countries by the EC		N/A	Art. 29	The EC will conduct risk assessments by country (EU and other countries): The EC will publish a list of low and high risk countries. The results will be available via the EC's "information System". The system has 3 country assessment levels: low, standard or high risk.
Role of certification	Art. G (1b)	Third party certification/ verification can be used in the context of the risk assessment.	Art. 10 (2)	For the risk assessment, operators take into account information provided either by certification schemes or by other third-party verification systems (but this does not replace the operator's responsibility for Due Diligence).
Proof of compliance	Art. 3	FLEGT licensed products and CITES products with valid permits and licenses are considered legal.	Art. 10 (3)	In the context of risk analysis, timber products covered by a valid FLEGT license are deemed legal (only).
Support for due diligence	Art. 8	Operators can solicit EU-recognised Monitoring Organisations to help them meet their key obligations in terms of the EUTR.	Art. G	Removal of the status of monitoring organizations. Operators or traders may choose to appoint an "authorized representative" to make the Due Diligence statement available on their behalf. The Operator or Trader retains responsibility for the conformity of the products. The Mandatory shall provide a copy of the mandate to competent authorities upon request.
INFORMATION SYSTEM AND CUSTOMS PROCEDURES				
ITEMS	EUTR		EUDR	
	Regulation Section	Content	Regulation Section	Content
"Register" information system		N/A	Art. 33	The EC establishes and maintains an information system ("register") enabling operators to submit their due diligence statement and to verify the statements that have already been recorded. This register will be interconnected with customs authorities and will be accessible to competent authorities so that they may conduct their checks.
Customs procedures		N/A	Art. 2G	An agreement between competent authorities and customs authorities will be established. Customs authorities will have to verify the status of the Due Diligence statement prior to authorizing a "release for free circulation" or export.



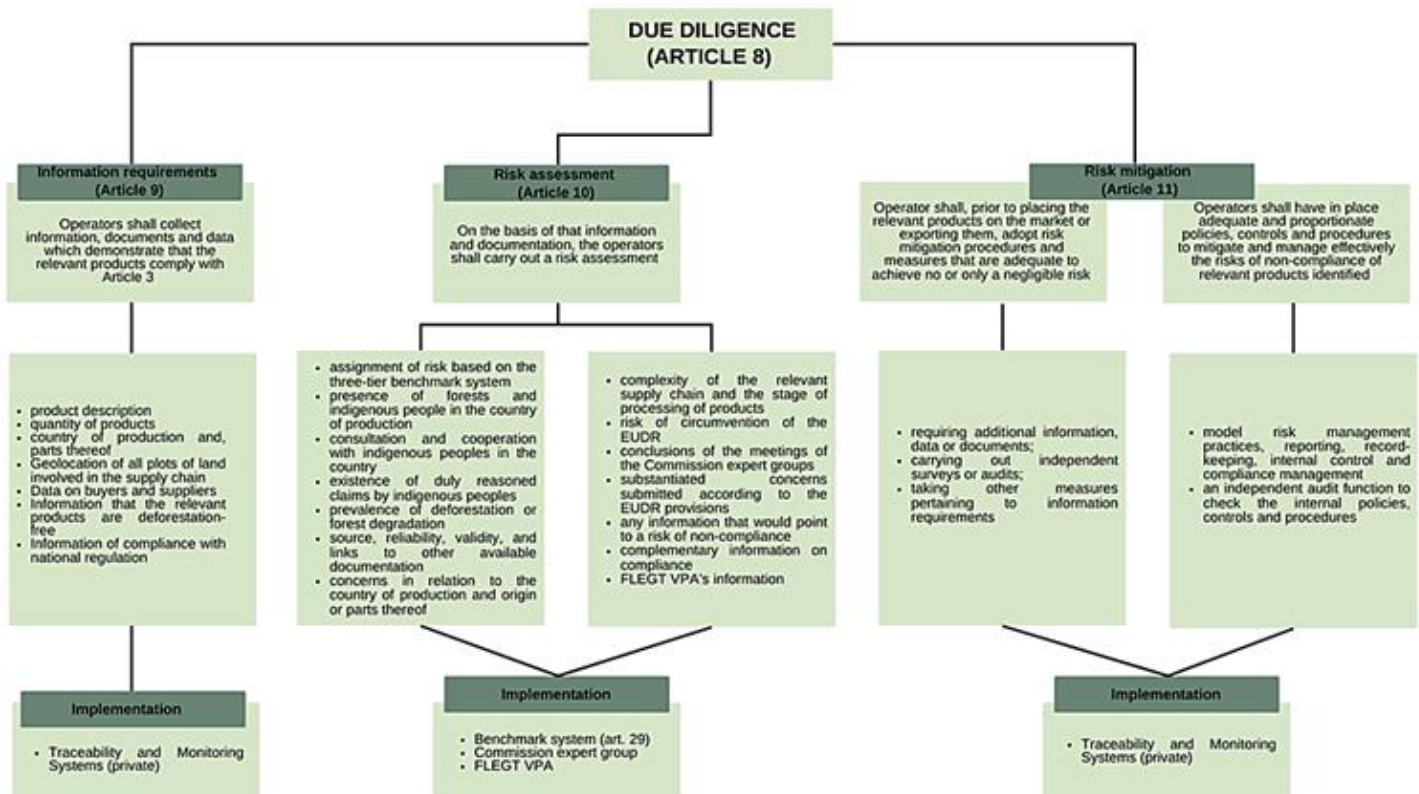
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MONITORING, CHECKS AND SANCTIONS				
ITEMS	EUTR		EUDR	
	Regulation Section	Content	Regulation Section	Content
Persons in charge	Art. 7	Each Member State designates one or more competent authorities in charge of implementing the	Art. 14	The Member States shall designate one or more competent authorities (CA) to carry out the regulation's requirements.
Checks	Art. 10	The competent authorities will carry out inspections to verify that operators are complying with requirements, according to a periodic plan, and a risk-based approach.	Art. 16	The competent authorities shall carry out checks on operators using an approach that is based on: risks, according to the Information System, reports, provided by third parties. The inspection annual plan are developed according to the origin of the products and the risk level: standard: at least 3% of operators, high: at least 9% of operators and 9% of products, low: at least 1% of operators.
			Art. 22	Competent authorities provide a public report to the EC once a year on their inspection activities and programmes. They may charge for the costs incurred in relation to any non-compliance that is observed.
Interim measures	Art. 10 (5)	Depending on the nature of the shortcomings that are found, Member States may take immediate interim measures, including: the seizure of timber (by)products; a ban on the sale of timber (by)products.	Art. 23	Member States shall allow their competent authorities to take immediate provisional measures, including the seizure or suspension of the placing on the EU market and of the export of any relevant products, in the event of infringements. Member States shall immediately inform the Commission and the competent authorities of the other Member States of such measures.
Corrective actions	Art. 10 (5)	When shortcomings are detected following the checks, the competent authorities may inform the operator of the corrective measures that need to be taken.	Art. 24	Competent authorities may require operators to take appropriate and proportionate corrective measures to remedy non-compliances, such as: Corrective action of any identified non-compliances, Bans on the placing of the relevant product on the EU market or its export, Immediate withdrawal or recall of the relevant product, Donation of the relevant product for charitable or public interest purposes. Elimination of the product.
Penalties	Art. 19	Member States shall determine the penalty system: proportionate fines, the seizure of the timber (by)products, the immediate suspension of the authorization to engage in trade.	Art. 25	Member States shall determine sanctions such as: Fines proportionate to the environmental damage, the value of the relevant products and the turnover (maximum 4%), Confiscation of the relevant products, Confiscation of the operator's and/or trader's revenue from a transaction involving the relevant products, The temporary exclusion from public procurement tender procedures (up to 12 months), A temporary ban on the placing on the EU market or export of the products, A suspension of the use of the simplified due diligence procedure (art. 13).



ANNEX 3 - Summary of the due diligence requirements





ANNEX 4 - Selected forest-related Brazilian regulation

Regulatory Level	Diploma	Entry into force	Summary
National – Legal	Brazilian Federal Law n. 12.651 (New Brazilian Forest Code)	25/05/2012	Addresses the preservation of native vegetation and repeals the Brazilian Forest Code of 1965, determining the responsibility of the owner of protected environments between the Permanent Preservation Area (APP) and the Legal Reserve (RL) to preserve and protect all ecosystems. The New Forest Code raises controversial points between rural and environmental interests to this day.
National – Legal	Brazilian Federal Law n. 6.938 (National Environmental Policy)	31/08/1981	Establishes the National Environmental Policy, its purposes, and mechanisms for formulation and implementation, and provides for other measures. Aims at the preservation, improvement, and recovery of environmentally beneficial quality of life, intending to ensure favorable conditions for socioeconomic development, national security interests, and protection of human life quality. Prohibits pollution, requires licensing, and regulates the appropriate use of environmental resources.
National – Legal	Brazilian Federal Law n. 9.985 (National System of Nature Conservation Units)	18/07/2000	Among its objectives are the conservation of biological species and genetic resources, the preservation and restoration of the diversity of natural ecosystems, and the promotion of sustainable



			development based on natural resources.
National – Legal	Brazilian Federal Law n. 6.902 (Environmental Protection Area Law)	27/04/1981	Establishes guidelines for the creation of Ecological Stations and Environmental Protection Areas (APAs). Ecological Stations are representative areas of different ecosystems in Brazil that must have 90% of their territory unchanged, and only 10% can undergo alterations for academic purposes. APAs, on the other hand, comprise private properties that can be regulated by the competent public authority regarding economic activities to protect the environment.
National – Infralegal	Normative Instruction MMA n. 2/2001	10/05/2001	Determines that the economic exploitation of forests on rural properties located in the Legal Amazon, including areas of legal reserve and subject to permanent preservation areas established by current legislation, shall be carried out through sustainable multiple-use forest management practices.
National – Infralegal	Ordinance MMA n. 183/2001	10/05/2001	Establishes, within the scope of the Ministry of the Environment, the Monitoring and Evaluation System for Environmental Licensing on Rural Properties in the Legal Amazon, with the aim of monitoring and evaluating licensing instruments and procedures for land use conversion, forest management, and burnings, as well as



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			advising the Ministry of the Environment on these matters.
National – Infralegal	Normative Instruction MMA n. 2/2014	05/05/2014	Establishes procedures for the integration, execution, and harmonization of the Rural Environmental Registry System (SICAR) and defines the general procedures for the Rural Environmental Registry (CAR).
National – Infralegal	Ordinance MMA n. 365/2015	21/11/2015	Establishes the Brazilian Biomes Environmental Monitoring Program with the aim of mapping and monitoring national vegetation.
National – Infralegal	Federal Decree n. 11.367/2023	01/01/2023	Establishes the Permanent Interministerial Commission for the Prevention and Control of Deforestation, reinstates the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon - PPCDAm, and outlines Action Plans for the Prevention and Control of Deforestation in the Cerrado, Atlantic Forest, Caatinga, Pampa, and Pantanal.



National – Bill	Brazilian Federal Law Project n. 3961/2020	Not in force	Summary: Declares a state of climate emergency, establishes the goal of neutralizing greenhouse gas emissions in Brazil by 2050, and provides for the creation of policies for sustainable transition. Status: Ready for Agenda in the Committee on Environment and Sustainable Development (CMADS)
National – Bill	Brazilian Federal Law Project n. 3867/2021	Not in force	Summary: Imposes environmental criteria for granting government subsidies to the productive chain of animal products, aiming to achieve sustainable development goals. Status: Ready for Agenda in the Committee on Environment and Sustainable Development (CMADS)
National – Bill	Brazilian Federal Law Project n. 4450/2021	Not in force	Summary: Provides for the prohibition of registration in the Rural Environmental Registry (CAR) of rural properties in protected areas and undesignated public forests, the suspension of CAR validity on properties with illegal deforestation, and mandatory remote automatic embargo in case of illegal deforestation on rural properties, and provides for other measures. Status: Transiting in Group



International	Regulation (EU) 2018/828 of the European Parliament and of the Council on organic production and labelling of organic products	01/01/2021	Establishes the principles of organic production and lays down the rules concerning organic production, related certification and the use of indications referring to organic production in labelling and advertising, as well as rules on controls additional to those laid down in Regulation (EU) 2017/625. It aims to revise and strengthen the European Union's (EU) rules on organic production and the labelling of organic products in relation to: the control system, the trade regime and production rules.
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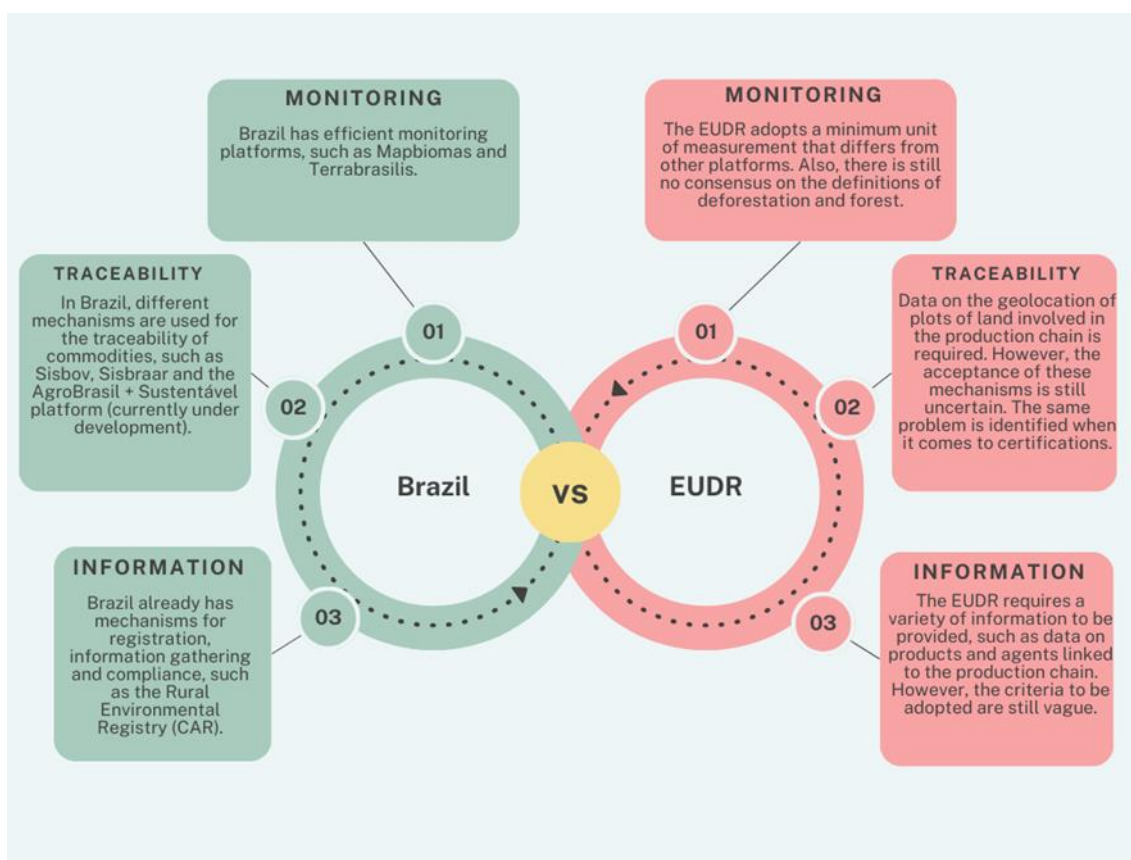
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ANNEX 5 - Selected Brazilian forest-related mechanisms

Supporting Tools	Type	Responsible Organization	Management	Definition	Objectives	Characteristics	Link
TerraBrasilis	Instruments for measuring deforestation	National Institute for Space Research (INPE)	Federal Public	Spatial data analysis of Brazilian land cover and uses	Organizing, accessing and using, through a web portal, geographic data produced by INPE	Complex algorithms; web application; interoperable; public programs database (PRODES/DETER)	https://terrabrasis.dpi.inpe.br
Mapbiomas	Instruments for measuring deforestation	NGOs, universities and technology startups	Private	Spatial data analysis of Brazilian land cover and uses	Reveals the transformations of the Brazilian territory with precision, agility and quality, and make knowledge about coverage and land use	Collaborative network; spatial data analysis; complex algorithms; web application; present throughout Latin America	https://brasil.mapbiomas.org/
Rural Environmental Registry (CAR)	Instruments for measuring deforestation	Brazilian Forest Service/Federal Government	Federal Public	National electronic public registry of all rural properties	Integrates environmental information on rural properties and possessions to control and monitor, environmental and economic planning and to combat deforestation in Brazil	Electronic system; Federation Unit (UF) as competent state body; rural property information	https://www.car.gov.br/#/
Selo Verde Brasil (Brazil Green Seal)	Certifier	Federal Government	Federal Public	Federal public certification for all products	Develops a national strategy for certification and conformity assessment of Brazilian products and services that have proven to have a socio-environmentally responsible life cycle	Unique certification; international sustainability standards; all economy sectors included	https://www.gov.br/participamosbrasil/programa-selo-verde-brasil
Selo Verde do Minas Gerais (Green Seal-MG)	Certifier	Government of the State of Minas Gerais Minas Gerais	State Public	A Platform and State public certification for agricultural commodities of MG	Highlights relevant information about the sustainability of coffee production in Minas Gerais to certify their agricultural commodities	Cooperation agreement; information about the Minas Gerais territory; sustainability of coffee production in the state; compliance with CAR and IEF	https://seloverde.meioambiente.mg.gov.br/
Brazilian Agro-Traceability System (SIBRAAR)	Tracker	Federal Government/INMETRO	Federal Public	Federal government traceability system for agro-industrial products	Tracks agro-industrial products, offering information about their quality and origin, in a transparent and reliable way	Blockchain technology; various agricultural crops included; information about the entire production chain	https://www.embrapa.br/en/busca-de-solucoes-tecnologicas/-/produto-servico/8599/sibraar---sistema-brasileiro-de-agrorastreabilidade



ANNEX 6 - Brazilian mechanisms vs the EUDR





ANNEX 7 – Main EUDR’s Challenges

Topic	Challenge
Forest Definition	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.
Type of deforestation	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.
Minimum area of deforestation	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).
Data Privacy	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 specify 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
Risk Assessment Criteria	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.
Certification and Traceability	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).



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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 affectation

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 affectation

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.

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