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# POLICY BRIEF

## Special Issue: Implementing the EUDR in Brazil

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## Special Issue: Implementing the EUDR in Brazil

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# PRESENTATION

The newly adopted European Deforestation-Free Regulation (EUDR) presents both opportunities and challenges for producing countries. This regulation brings a different approach in international forest governance as it lays down rules regarding the 'placing and making available on the European Union (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 order to place products from regulated commodities in the EU, producing countries will have to adapt to the EUDR's provisions. However, this will probably entail a series of costs and challenges. This Policy Brief aims to discuss the main challenges for the EUDR's indirect implementation in third countries, notably in Brazil, and to highlight further necessary steps.

This Policy Brief was elaborated by FGV Rio Law's Centre for Global Law (CPDG), with the support of Instituto Clima e Sociedade (iCS). The CPDG stands as a hub of expertise on Global Law and Governance within Brazil and Latin America. Our mission is to spearhead research initiatives aimed to enrich the academic landscape by fostering collaboration, facilitating intellectual exchange, and promoting synergy among scholars, practitioners, policymakers, and civil society stakeholders.

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# ASSESSING THE CHALLENGES FOR THE EUDR'S INDIRECT IMPLEMENTATION IN BRAZIL: WHAT LIES AHEAD?


## ABSTRACT

The newly adopted European Deforestation-Free Regulation (EUDR) presents both opportunities and challenges for producing countries. Nations dependent on commodity exports and suffering from deforestation issues, such as Brazil, are the most likely to be affected by the provisions of the new European regulation. In this context, in order to identify the main regulatory challenges faced by affected countries, this Policy Brief provides a comprehensive analysis of the EUDR's indirect implementation in Brazil and its challenges. Brazil is a major producer and exporter of regulated commodities. Thus, the country is expected to be affected by the EUDR. This work is divided into three sections. The first section analyses the EUDR and its main challenges considering the regulation's indirect implementation in Brazil. The second section addresses some unanswered questions regarding the EUDR, unravelling what still needs to be done for its effective implementation. In the third section, this Policy discusses possible scenarios and brings recommendations on what are the next steps to be taken. In the fourth and last section, the Policy concludes by highlighting its recommendations vis-à-vis the challenges found.



**KEYWORDS:** European Union Deforestation-Free Regulation; Brazil; international trade ; forest regulation; normative challenges.


## INTRODUCTION

The growing perception of the harm caused by climate change to humankind persuaded States to acknowledge it as a common concern. As climate change themes are being increasingly acknowledged as issues of global apprehension, they require collective action.

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, the European Commission has taken a new step with the adoption of the European Deforestation-Free Regulation ('EUDR') in 2023. The EUDR is a demand-side measure that seeks to reduce Greenhouse Gases (GHG) emissions and biodiversity loss driven by the EU's contribution to deforestation and forest degradation worldwide.

Some producing countries are concerned that the EUDR will affect their production chains and generate high costs in order to comply with the European regulation, which represents potential extraterritorial effects. Although the EUDR does not directly apply to other countries normative framework, its potential extraterritorial effects require them to comply with the regulation in order to be able to introduce their products into the European Union's market ('indirect implementation'). In this context, Brazil, as a major producer and dependent on the export of its commodities, is also concerned regarding how it can be affected by said process.

In the face of this, what are the main challenges to the indirect implementation of the EUDR in third countries? This study aims to answer that question by considering analysing forest-related framework vis-à-vis the EUDR. Considering the EUDR's status, many stakeholders fear that the extraterritorial nature of the EUDR does not consider the specificities of other countries, thus not recognizing possible compatibility with other regulatory mechanisms.

This study is structured as follows. The first section analyses the EUDR and its main challenges considering the regulation's indirect implementation in Brazil. The country, a major trader of many commodities listed in the EUDR, has shown special concern with the EU interventionist policy since it may be included in the forthcoming risk-based system. Also, exports to the EU comprise a great share of Brazil's revenue.

The second section addresses some unanswered questions regarding the EUDR by September 2024, less than three months prior to the entry into force of its effects, unravelling what still



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needs to be done for its effective implementation and to reduce major concerns.

In the third section, this Policy discusses possible scenarios and brings recommendations on the next steps to be taken. Taking into account the many challenges and topics that still need further guidance, decision-makers might consider adopting some measures to decrease the risk of non-compliance.

This Policy Brief aims to bolster suggestions and strategies to lower risks regarding the indirect implementation of the EUDR and aims to highlight the next steps to ensure a smooth implementation.

# 1 AN OVERVIEW OF THE EUDR AND ITS MAIN CHALLENGES

## 1.1 THE EUROPEAN DEFORESTATION-FREE REGULATION

Some authors[1] argue that there is an unilateralization of the European Union (EU) trade policy, which constitutes a 'turn'. 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.

Regarding sustainable instruments, said 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. For instance, this is in line with the State of the Environment Report 2020[2], 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 found that, to an increasing degree, Europe is externalizing its pressures on key environmental issues.

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 issues[3]. In that way, integration of international trade with environmental measures has become a contentious subject[4].

1 Kalimo H et al. (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, p. 15–34.

2 6 European Environment Agency – EEA (2019) The European Environment. State and Outlook 2020: Knowledge for Transition to a Sustainable Europe. https://www.eea.europa.eu/soer/2020. Accessed 06 March 2024.

3 Gstohl S; Schnock J (2024) Towards a Coherent Trade-Environment Nexus? The EU's Critical Raw Materials Policy. Journal of World Trade 58 (1), p. 35-60.

4 Shukla A (2024) The Future of Trade and Environment: A Roadmap for Reconciling Two Competing Goals. Journal of World Trade 58 (1), p. 115–130.



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Regarding deforestation issues, the 2020 document 'An EU legal framework to halt and reverse EU-driven global deforestation: European added value assessment'[5] states that the EU is a substantial importer of forest-risk commodities (FRCs), 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 FRCs. The report concludes for the need for 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 European Deforestation-Free Regulation (EUDR).

In this sense, some authors[6] view the EUDR's creation favourably, proposing that the EU must use trade regulations to lessen its deforestation footprint. Their argument emphasizes the concept of complicity, demonstrating how moral, legal, and pragmatic concerns converge when determining shared responsibility for environmental harm. However, there is no consensus regarding the matter, especially due to many criticisms from both governments and institutions[7].

Fo instance, in May 2024, in a first-of-its-kind legal action, the German cocoa company Albrecht & Dill Trading has filed a lawsuit[8] over the EUDR against the German Federal Office for Agriculture and Food with the Cologne Administrative Court claiming that the regulation provisions are unclear, burdensome, and suffer from implementation issues.

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5 European Parliamentary Research Service – EPRS (2020) An EU legal framework to halt and reverse EU-driven global deforestation: European added value assessment. https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654174/EPRS_STU(2020)654174_EN.pdf. Accessed 06 March 2024.

6 Dur‡n G; Scott J (2022) Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. Journal of Environmental Law, 34(2), p. 245-.

7 EU cross-commodity coalition on EUDR implementation (2024) Joint cross-commodity call to EU Commission and Member States to provide urgent clarifications and workable solutions for EUDR implementation; Unites States Senate (2024) March 8, 2024 letter to Ambassador Katherine Tai; World Trade Organization – WTO (2023) Communication from Argentina, Colombia, Dominican Republic, Guatemala, Honduras, Panama, Paraguay, and Peru. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W912.pdf&Open=True. Accessed 20 June 2024.

8 Handelsblatt (2024) Hamburger KakaohŠndler will EU-Verordnung vor Gericht stoppen. https://www.handelsblatt.com/unternehmen/handel-konsumgueter/hamburger-kakaohaendler-will-eu-entwaldungsverordnung-vor-gericht-stoppen/100037601.html. Accessed 20 June 2024.

The creation of the EUDR is an example of the EU turning from a multilateral approach on environmental issues to a unilateral policy. However, the EU's contemporary forest framework dates from the beginning of the 2000s[9], which includes initiatives such as the 'EU's Forest Law Enforcement Governance and Trade' (FLEGT) Action Plan[10], the 'Timber Due Diligence Regulation' (EUTR)[11], the European Green Deal[12], and the 'EU Biodiversity Strategy for 2030'[13].

Therefore, the EUDR came as a product within the European regulatory framework on the environment and, more precisely, related to forests. On June 2023, it came into force as the Regulation (EU) 2023/1115, but its dispositions are expected to come into force only in December 2024 for larger business and June 2025 for small and medium enterprises (SMEs).

The EUDR[14] lays down rules on placing and making available in the EU Market, as well as the export from the EU, of certain products 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'). This scope can be further expanded through future revisions of the EUDR.

In order to comply with the EUDR, 'operators' (Article 2.15) and 'traders' (Article 2.16) must observe three cumulative conditions: products must be deforestation-free; be produced following the

9 Dur‡n G; Scott J (2022) Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. Journal of Environmental Law, 34(2), p. 245-.

10 European Commission, 'Forest Law Enforcement, Governance and Trade (FLEGT): proposal for an EU action plan' COM (2003) 251 final. European Commission, 'The European Green Deal' COM (2019) 640 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN accessed 22 February 2024.

11 EUR-Lex (2010) Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995. Accessed 22 February 2024.

12 European Commission, 'The European Green Deal' COM (2019) 640 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN accessed 22 February 2024.

13 European Commission, 'EU Biodiversity Strategy for 2030' (2021) https://eur-lex.europa.eu/resource.html?uri=cellar:a3c806a6-9ab3-11ea-9d2d-01aa75ed71a1.0001.02/DOC_1&format=PDF accessed 22 February 2024.

14 EUR-Lex (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. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115&qid=1687867231461. Accessed 22 February 2024.

relevant legislation of the country of production; and be accompanied with due diligence statements showing no more than a negligible risk of non-compliance.

The due diligence statements must include detailed information that proves the products comply with the EUDR; risk assessment for each product, to define the risk of non-compliance, including the establishment of a three-tier benchmark risk system; and, if necessary, risk mitigation measures. Those statements will be contained in the Information System (IS), which is to be implemented by 30 December 2024.

In a non-compliance event, the EUDR provides for both corrective actions and penalties, such as fines, confiscations, 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.

In order to implement the EUDR's provisions, the EU adopted some supporting mechanisms. In this sense, the EU launched the 'Observatory on Deforestation and Forest Degradation Monitoring'[15] 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.

## 1.2 CHALLENGES FOR THE EUDR'S INDIRECT IMPLEMENTATION IN BRAZIL

Brazil has shown special concern with the EU interventionist policy since the country may be included in the forthcoming risk-based system. Brazil is a major trader of many commodities listed in the EUDR and its exports comprise a great share of the country's revenue. According to the World Trade Organization (WTO) 2022

15 European Commission (2024) EU observatory on deforestation and forest degradation. https://forest-observatory.ec.europa.eu/. Accessed 22 February 2024.

report[16], Brazil is heavily dependent on exporting its commodities production. Additionally, Brazil houses the most important rainforest in the world, the Amazon biome, whose territory is in danger of deforestation, which also can be seen in other biomes such as the Cerrado.

Brazilian players have spoken out a few times in favour of postponing the regulation. In September, for the first time, the Brazilian government issued a letter calling for the entry into force of the EUDR to be postponed due to the risk of an impact on the country's foreign trade and other producing countries[17].

The country has been aiming to establish normative and policy framework regulating its forests. This includes Brazilian Forest Code and other key regulations[18], specific programs such as the Rural Environmental Registry (CAR)[19] and the Action Plan for the Preservation and Control of Deforestation in the Legal Amazon[20]; as well as certification, monitoring and traceability tools[21]. However, there are still several challenges for its compatibility with the EUDR as seen below.

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16 World Trade Organization – WTO, 'Trade Policy Review: Brazil 2022' (2023) <https://www.wto-ilibrary.org/content/books/9789287072849> accessed 22 June 2024.

17 O Globo (2024) Ministros de Lula enviam carta ˆ Uni‹o Europeia pedindo a n‹o implementa‹o de lei antidesmatamento. https://oglobo.globo.com/economia/noticia/2024/09/11/ministros-de-lula-enviam-carta-a-uniao-europeia-pedindo-a-nao-implementacao-de-lei-antidesmatamento.ghtml. Accessed 13 September 2024.

18 Brazil (2023) Decree 11.548/2023. http://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/D11548.htm. Accessed 22 June 2024; Brazil (2024) Decree 12.023/2024. https://www.in.gov.br/en/web/dou/-/decreto-n-12.063-de-17-de-junho-de-2024-566218411. Accessed 22 June 2024; Brazil (2000) Law 9.985/2000. https://www.planalto.gov.br/ccivil_03/leis/l9985.htm. Accessed 22 June 2024; Brazil (2006) Law 11.284/2006. http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/L11284.htm. Accessed 22 June 2024; Brazil (2014) 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, and addresses related issues. http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12651.htm. Accessed 22 June 2024.

19 Brazil (2024) Sicar. https://www.car.gov.br/#/. Accessed 20 June 2024.

20 MinistŽrio do Meio Ambiente e Mudana do Clima – MMA (2023). Plano de A‹o para Preven‹o e Controle do Desmatamento na Amaz™nia Legal. https://www.gov.br/mma/pt-br/assuntos/combate-ao-desmatamento/amazonia-ppcdam-1. Accessed 22 June 2024.

21 Brazil (2024) Sibraar. https://www.embrapa.br/busca-de-solucoes-tecnologicas/-/produto-servico/8599/sibraar---sistema-brasileiro-de-agrorrastreabilidade. Accessed 20 June 2024; Brazil (2024) Sisbov. https://www.gov.br/agricultura/pt-br/assuntos/sanidade-animal-e-vegetal/saude-animal/cgtqa/dpc/sisbov. Accessed 20 June 2024; Portal da Morat—ria da Soja (2024) Soy moratorium. https://moratoriadasoja.com.br/home. Accessed 22 June 2024.



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### 1.2.1 Conceptual challenges

Some important concepts in the EUDR's text are still not precise. For instance, the EUDR's adopts United Nation's (UN) Food and Agriculture Organization's (FAO) forest concept, while 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.

Another issue is the lack of distinction between legal and illegal deforestation, which poses a challenge for the compatibility with the Brazilian legislation, since it provides for these two types of deforestation. For instance, it is estimated that more than 95% of deforestation in Brazil shows signs of illegality[22], which mean near 5% of Brazilian deforestation is conducted legally. Thus, the lack of differentiation can cause commodities legally extracted to not be accepted by European authorities. Instead, the EUDR text use, although do not define, the expression 'sustainable forest management' (21, 29 and 58 of the 'Whereas' section and Article 30.4), comprising 'protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation and contribute to the global effort of addressing climate change'.

Other challenge concerns the risk assessment of non-EU producing countries, which 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' (Article 3, c). The lack of more precise guidelines makes it impossible to establish objective criteria to be met by the players involved. What's more, no universal metric has been established for the size of the area to be

22 CNN Brasil (2023) Mais de 95% do desmatamento na Amaz™nia Ž ilegal, diz climatologista. https://www.cnnbrasil.com.br/nacional/mais-de-95-do-desmatamento-na-amazonia-e-ilegal-diz-climatologista/. Accessed 20 June 2024.

considered deforested, which can create incompatibilities between different regulations.

Similar challenges can be seen regarding the definition for Small and Medium Enterprises (SMEs). The concept utilized by EUDR is solely based on the EU legislation[23], which differ from Brazilian regulations. Although both regulations use similar gross accounting parameters, the European regulation fails to consider the disparity in the purchasing power of currencies. Furthermore, there is no specification regarding the use of parity or conversion indexes to stabilize the values.

Lastly, uncertainty related to the provisions of the EUDR is also due to its current wording. A clear example is the distinction between operator and trader, where the former refers to anyone who, in the course of a commercial activity, places the regulated products on the EU market or exports them; while the latter refers to anyone other than the operator who, also in the course of a commercial activity, makes these products available on the European market. In view of these definitions, doubts arise as to the classification of producers, exporters, importers and distributors under the EUDR, which therefore depends on a case-by-case analysis that has not yet been precedented.

The problem deepens when considered the complexity of value chains. This is the case with processing operations in which a product, originally covered by the EUDR, undergoes an industrial procedure that transforms it into a new good that is not listed in the regulation, thus no longer being subject to its obligations. This can happen, for example, when primary products are transformed into manufactured goods. Other points that may raise questions include, for example, whether packaging and other materials used to pack cargo also fall within the scope of the EUDR; and whether regulated products that qualify as waste need to be subject to the

23 EUR-Lex (2013) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance. https://eur-lex.europa.eu/eli/dir/2013/34/oj. Accessed 22 February 2024.



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provisions of the regulation. These operational doubts are likely to increase as the EUDR effects are applied, requiring guarantees for operators and traders to adapt to it.

### 1.2.2 Mechanisms of monitoring and traceability

Another challenge is concerned to mechanisms of implementation of the forest-related framework. 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 these type of information, 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.

In Brazil, 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[24] and cattle commodity chains[25], 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)[26], and Mapbiomas[27].

In terms of monitoring systems, TerraBrasilis is a platform developed by the INPE that organizes and provides access,

24 Brazil (2024) Soy Moratorium. https://moratoriadasoja.com.br/home. Accessed 22 June 2024.

25 Brasil (2024) Sistema Brasileiro de Identifica‹o Individual de Bovinos e Bœfalos (SISBOV). https://www.gov.br/agricultura/pt-br/assuntos/sanidade-animal-e-vegetal/saude-animal/cgtqa/dpc/sisbov. Accessed 22 June 2024.

26 INPE (2024) TerraBrasilis. https://terrabrasilis.dpi.inpe.br/. Accessed 22 June 2024.

27 MapBiomas (2024) MapBiomas Brasil. MapBiomas Brasil. Accessed 22 June 2024.

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.

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)[28]. 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[29], 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,

28 Instituto Nacional De Pesquisas Espaciais – INPE (2024) DETER-B Project. http://www.inpe.br/cra/projetos_pesquisas/deter.php. Accessed 22 June 2024.

29 Brasil (2024) Instituto Nacional de Pesquisas Espaciais (INPE). DETER Project. http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/deter/deter. Accessed 22 June 2024.

the DETER-B project was created, as it identifies and maps, in near real time, deforestation with a minimum area close to 1 hectare. 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[30] 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. The tool qualifies land cover and land use in deforested areas in the Amazônia and Cerrado biomes, covering the years 2018, 2020 and 2022, highlighting the reasons and pointing out the possible causes of tree felling.

MapBiomas[31] is another technological-informational instrument built by a collaborative network, formed by NGOs, universities and technology startups, which, in a similar way to TerraBrasilis[32], 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.

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

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30 Brasil (2024) Terraclass. https://www.terraclass.gov.br/. Accessed 22 June 2024.

31 Mapbiomas (2024) Mapbiomas alerta. Available at: <https://plataforma.alerta.mapbiomas.org/mapa?monthRange[0]=2019-01&monthRange[1]=2024-02&sources[0]=All&territoryType=all&authorization=all&embargoed=all&locationType=alert_code&activeBaseMap=7&map=-14.288794%2C-54.290447%2C4>. Access: 17 jun. 2024.

32 Mapbiomas (2024) Mapbiomas alerta. Available at: <https://plataforma.alerta.mapbiomas.org/mapa?monthRange[0]=2019-01&monthRange[1]=2024-02&sources[0]=All&territoryType=all&authorization=all&embargoed=all&locationType=alert_code&activeBaseMap=7&map=-14.288794%2C-54.290447%2C4>. Access: 17 jun. 2024.

Regarding traceability, Brazil has different mechanisms to track its supply chain. The Brazilian government agency Embrapa developed, in 2022, the 'Brazilian Agro-Traceability System' (SIBRAAR)[33] 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)[34], 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 required by official health controls or programs. Also, the 'Animal Transit Guide' (GTA) provide data essential for domestic and international trade.

Lastly, the upcoming 'AgroBrasil+Sustentável'[35] platform is a voluntary, universal and free digital government tool that is expected to provide organised, traceable and reliable information on sustainable agricultural production. The initiative has been praised by Brazilian stakeholders and may contribute to the EUDR's compliance.

33 Embrapa (2024) Sibraar - Sistema Brasileiro de Agrorrastreabilidade. https://www.embrapa.br/busca-de-solucoes-tecnologicas/-/produto-servico/8599/sibraar---sistema-brasileiro-de-agrorrastreabilidade. Accessed 22 June 2024.

34 Brasil (2024) Sistema Brasileiro de Identifica‹o Individual de Bovinos e Bœfalos (SISBOV). https://www.gov.br/agricultura/pt-br/assuntos/sanidade-animal-e-vegetal/saude-animal/cgtqa/dpc/sisbov. Accessed 22 June 2024.

35 Brasil (2024) Plataforma AgroBrasil+Sustent‡vel Ž apresentada pelo Mapa a representantes de oito pa'ses. https://www.gov.br/agricultura/pt-br/assuntos/noticias/plataforma-agrobrasil-sustentavel-e-apresentada-pelo-mapa-a-representantes-de-oito-paises. Accessed 22 June 2024.

Despite a rigid system, it still not clear if the Brazilian framework will be recognized by the European authorities. The lack of more precise criteria and bilateral dialogues makes it impossible to reach a consensus on the mutual recognition of initiatives. Also, there is no universal parameterization of these systems, since the EUDR does not provide for this type of standard. For example, the EU's Observatory on Deforestation and Forest Degradation[36] adopts a minimum measurement area of 0.5 hectares, while the MapBiomas platform adopts a measurement of 0.3 hectares, thus being more specific.

### 1.2.3 Certification

Another key concern regarding the EUDR's implementation is the lack of clear guidance on producer certification. Regarding the risk assessment, the EUDR provides that the process will also take into account complementary information on compliance with this Regulation, which may include information supplied by certification or other third-party verified schemes. However, the EU has yet to specify what type of certification will demonstrate compliance with national laws, creating uncertainty for producers.

Certification is an important strategy included in the Brazilian framework. For instance, 'Brazil Green Seal Program'[37] 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 labelling initiatives established by governmental and private entities. Furthermore, it intends to harmonize the requirements established by governments

36 European Commission (2024) 'EU observatory on deforestation and forest degradation' (2024) https://forest-observatory.ec.europa.eu/ accessed 22 February 2024.

37 Brasil (2024) Programa Selo Verde Brasil. https://www.in.gov.br/en/web/dou/-/decreto-n-12.063-de-17-de-junho-de-2024-566218411. Accessed 22 June 2024.

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[38] (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'[39] (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 supported by the AL-INVEST Verde program of the EU. It offers individualized information on rural properties in the state of Minas Gerais regarding compliance with national legislation, traceability and socio-environmental criteria for the export of agricultural commodities. The website[40], 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 CAR system[41], the Continuous Monitoring of Vegetation Cover by

38 For more information about INMETRO, see https://www.gov.br/inmetro/pt-br.

39 Brasil (2024) Selo verde de Minas. http://www.ief.mg.gov.br/selo-verdemg. Accessed 22 June 2024.

40 For more information, see https://seloverde.meioambiente.mg.gov.br/.

41 Brasil (2024) Cadastro Ambiental Rural. https://www.car.gov.br/#/. Accessed 22 June 2024.

the State Institute of Forests (IEF) and high-resolution mapping of the Minas Gerais coffee park.

Brazil's soybean sector also 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)[42] offer further mechanisms for responsible soybean production.

In the view of this, the set of certification 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. However, it is still uncertain whether these mechanisms will be recognised by the EUDR, especially given the vagueness of several of its provisions.

### 1.2.4 Information System (IS) and data privacy

The Information System (IS, Article 33) has raised concerns regarding how it will be used to collect and process due diligence data submitted to it. There is also a lack of specifications regarding the system's compliance with data protection laws and, since the IS is not yet operational, preparatory efforts on the part of stakeholders may be disrupted. The implementation of the EUDR raises potential privacy concerns, particularly related to the extensive data collection required for due diligence practices. The regulation requires operators and traders 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 (for instance, Article 9, 10, 11, 12 and 33). Even though the EUDR emphasizes the importance of complying with existing EU's data protection legislation like the 'General Data Protection Regulation' (GDPR), concerns have

42 RTRS (2024) RTRS. https://responsiblesoy.org/sobre-la-rtrs?lang=pt-br. Accessed 22 August 2024.

been risen about the potential over-collection of personal data, exceeding what is strictly necessary for demonstrating compliance with the Regulation.

In this sense, some countries have expressed criticism[43] concerning challenges related to the IS. Some demands include the need for more rounds of testing with the business community; the need to improve technical requirements, such as lifting the 25MB IS's limitation or substantially increasing file size for uploading, as well as accepting other data formats; and opening up the IS for all users as soon as possible and, at the very latest, beginning of November.

### 1.2.5 Transition period

The EUDR provides for an transitional period of 18 months to end in December 2024. When compared to other regulations that impose restrictions on the entry of products into the EU, such as the 'Carbon Board Adjustment Mechanism' (CBAM)[44], which provides for an initial transitional period from 2023 to 2026, the EUDR's shorter adaptation period raises concerns on the ability of producers to successfully prepare for the regulation.

Therefore, 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.

### 1.2.6 Adequacy to WTO framework

Significant concern lies in the EUDR's potential to conflict with existing trade rules enshrined in the General Agreement on Tariffs and Trade (GATT), under the World Trade organization (WTO) framework, due to possible import restrictions on forest products for environmental purposes.

43 EU coalition (2024) EUDR information system not yet on track to meet requirements of properly functioning supply chains. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.etrma.org/wp-content/uploads/2024/05/Letter-to-Commission-President-Von-der-Leyen-EUDR-Information-System.pdf. Accessed 22 June 2024.

44 European Commission (2024) Carbon Border Adjustment Mechanism. https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en. Accessed 22 June 2024.



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There is an ongoing debate about whether the EUDR falls under the exceptions outlined in GATT's Article XX. Following the US–Tuna Dolphin cases under GATT's Panels, WTO's Appellate Body has devised an original approach for analyzing Article XX, called the "two-tiered test". In this procedure, the WTO first checks[45]: (i) whether the restrictive measures can be classified as exceptional situations – 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 discrimination.

Some authors[46] point out that not all extraterritorial measures falling under GATT's Article XX 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 resources. Regarding the EUDR, commentators understand that the chapeau of Article XX GATT requires that the measure at issue does not result in arbitrary or unjustifiable discrimination between countries[47]. Thus, the discrimination between compliant and non-compliant commodities is likely justifiable and hence WTO-compatible, although the EUDR text still need to be better designed to meet the chapeau conditions.

The discussion, however, is still limited until the entry into force of the regulation. Its implications require the operationalization of the regulation in order to assess if it has a discriminatory bias or not. Also, the WTO's Appellation Body paralysis, ongoing since 2019 due to blocked appointments of members, has hampered the resolution of trade disputes and stalled further consideration of environment-related trade measures. Even though, a recent case opens up dialogues on similar themes, as observed in the DS 600 Case[48].

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

46 Vij V (2022) Changing Realities: Evolution and Extraterritoriality Within Article XX(G) of GATT for Global Environmental Concerns, Trade Law and Development 195.

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

48 WTO (2024) DS600: European Union and certain Member states — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds600_e.htm. Accessed 22 June 2024.

On 15 January 2021, Malaysia requested consultations with the European Union (EU), France and Lithuania with respect to certain measures imposed by the EU and EU Member States concerning palm oil and oil palm crop-based biofuels from Malaysia. Malaysia claimed that certain measures imposed by the EU (the EU renewable energy target, the criteria for determining the high ILUC-risk feedstock, and the sustainability and GHG emission savings criteria) appear to be inconsistent with the WTO framework.

On 26 April 2024, the panel confirmed the overall compatibility of the EU regulation with the WTO, but noted that certain aspects of application and design were incompatible with WTO rules, such as regarding its accordance with Article XX of the GATT. For instance, since the European Union did not carry out a data review to determine which biofuels actually presented high risks and no deficiencies were found in the application and design of the relative certification criteria and procedures by third countries, the panel understood that there was some inconsistency with the GATT. Therefore, this understanding can implicate in possible litigation on the implementation of the EUDR.



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# 2 UNANSWERED QUESTIONS

## 2.1 WHAT STILL NEED TO BE ADDRESSED?

The challenges posed by the EUDR are exacerbated by uncertainties about the next steps to come. Although the regulation provides for a series of mechanisms and initiatives, so far many of them have been delayed with no forecast for implementation.

### 2.1.1 Information System

The Information System (IS) aims to facilitate the submission and processing of the Due Diligence Statements (DDS) for relevant operators, traders (which are not SMEs), competent authorities and customs to ensure a smooth transition at the end of 2024, when the rules enter into application.

The DDS consists of three steps:

1. Information referred to in Article 9 must be collected, such as the commodity or product to be placed and made available on the market or exported. This includes, among other things, respective quantity, supplier, country of production, and evidence of legal harvest. A key requirement is to obtain the geographic coordinates of the plots of land where the commodity was produced and to provide relevant information in the DDS to be submitted via the IS. If information cannot be collected, operators and traders must refrain from placing the affected products on the European Union's (EU) market or exporting from it. Failing to do so would result in a violation of the EUDR, which could lead to potential sanctions.
2. Companies have to feed the information gathered under the first step into the risk assessment pillar of their DDS to verify and evaluate the risk of non-compliant products entering the supply chain (according to the criteria described in Article 10). Operators need to demonstrate how the information gathered was checked against the risk assessment criteria and how they determined the risk.
3. Operators and traders have to take adequate and proportionate mitigation measures in case they find under step two more

than a negligible risk of noncompliance in order to make sure that the risk becomes negligible (following criteria described in Article 11). These measures need to be documented, and certification schemes can be used by supply chain members to help their risk assessment. Operators sourcing commodities entirely from areas classified as low risk will be subject to simplified DDS. Thus, they will not be required to assess and mitigate risks, unless the operator obtains or is made aware of any relevant information, including substantiated concerns, that would point to a risk that the relevant products do not comply with the EUDR.

The IS and, subsequently, its interconnection with the EU Single Window Environment for Customs[49], which still not yet operational, are expected to be aligned with the relevant and applicable provisions in terms of data protection. In line with the EU's Open Data Policy, the European Commission aims to provide access to the wider public to the complete anonymised datasets of the IS in an open format that can be machine-readable and that ensures interoperability, re-use, and accessibility.

Originally, the IS was expected to observe the following schedule: in May, publication of API technical specifications; in June, API conformance testing; in July/August, Publication of informative videos; in September, distribution of user instructions; in October, beginning of the training sessions; in November, opening of registration; in December, the opening of the system. However, by September 2024, there's still little information about the IS and the timetable is behind schedule. Currently, the IS, which is managed by JRC[50], is in its second test period, with training period due to start in October.

Also, there are several doubts on the IS's operationalisation, learning time and technical limitations, such as data issues. This is relevant, since the size and format limit may disturb the sending of requested information such as geolocation data.

49 For more information, see https://taxation-customs.ec.europa.eu/eu-single-window-environment-customs_en.

50 See https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/joint-research-centre_en.

### 2.1.2 Benchmarking

The benchmarking system is provided in Article 29 of the EUDR with the purpose of establishing a three-tier system for the assessment of Member States and third countries in 'high risk', 'low risk' and 'standard risk' categories, with all countries assigned as 'standard risk' as of 29 June 2023.

The classification of low-risk and high-risk shall be based on an 'objective and transparent assessment' (Article 29.3) by the Commission, taking into account the 'latest scientific evidence and internationally recognised sources' (Article 29.3), and shall be based primarily on the rate of deforestation and forest degradation, rate of expansion of agriculture land for relevant commodities, and production trends. Also, it may take into account reports, agreements, national law and transparency of data.

For this assessment, the EU has stated that a sound and technically scientific methodology is being developed to be applied to the three-tier risk benchmarking for classifying countries regarding their deforestation levels. So far, the benchmarking has not been publicised and there have been rumors[51] of a possible postponement of its entry into force. Also, so far there has been no engagement, as planned, to discuss the issue with third countries.

### 2.1.3 Guidelines and other missing documents

The European Commission was expected to issue guidelines (Article 15.5) to assist in the EUDR's practical interpretation and implementation, but by September 2024 no document was published. Currently, it is up to the Frequently Asked Questions (FAQ)[52] document to help future operators and traders. The FAQ document, although helpful, is not updated since December 2023[53] and does

51 See https://www.confectionerynews.com/Article/2024/03/18/European-Union-to-delay-high-risk-element-of-deforestation-bill#:~:text=The%20European%20Union%20(EU)%20has,and%20a%20potential%20breach%20of.

52 https://green-business.ec.europa.eu/deforestation-regulation-implementation_en.

53 See https://circabc.europa.eu/ui/group/34861680-e799-4d7c-bbad-da83c45da458/library/e126f816-844b-41a9-89ef-cb2a33b6aa56/details.

not cover the entirety of today's uncertainties. Currently, updates are expected by the first half of September[54].

Other overdue documents originally include the development of the engagement framework (Article 30), the impact assessment for the inclusion of other forest ecosystems in the EUDR (Article 34) and the updating of the FAQ.

### 2.1.4 Focal points in European countries

Each EU country is expected to appoint focal points in charge of implementing the EUDR (Article 14.1). However, despite some of the EU's main economies having already established their focal points by September 2024[55], Cyprus, Greece, Hungary, Latvia, Malta and Romania are yet to appoint their own.

### 2.1.5 Mutual recognition of certifications

The EUDR provides that certifications can be used as evidence in the risk assessment process (Article 10.2, n), although not mandatory nor sufficient. The EUDR also lacks further guidance on how it will consider these certifications. On this regard, the international community was calling for a process for mutual recognition of certifications, such as Indonesia and Malaysia, which is not expected to be implemented[56].

Certifications also face problems regarding credibility, since some sustainability certification schemes fell short in providing a comprehensive prohibition of deforestation and forest degradation[57].

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54 The Edge Malaysia (2024) New FAQs on deforestation-linked goods regulation to be published next week, says EU counsellor. https://theedgemalaysia.com/node/726337. Accessed 13 September 2024.

55 See https://circabc.europa.eu/ui/group/34861680-e799-4d7c-bbad-da83c45da458/library/b52a6d25-e365-4301-a90a-59cf7ce2e8d3/details

56 EEAS (2024) Joint Press Release: The 2nd Meeting of the Ad Hoc Joint Task Force on the EUDR. https://www.eeas.europa.eu/delegations/indonesia/joint-press-release-2nd-meeting-ad-hoc-joint-task-force-eudr_en?s=168. Accessed 20 June 2024.

57 Cosimo et al (2024) Voluntary sustainability standards to cope with the new European Union regulation on deforestation-free products: A gap analysis. Forest Policy and Economics, 164.

### 2.1.6 Single window

The EU intends to use the EU Single Window Environment for Customs as a centralised portal for services (Article 28), thus providing support to the implementation of the EUDR. This system aims to establish a centralised system to interconnect the import, export and transit systems of the Member States with EU non-customs systems that manage non-customs formalities. The implementation of the EU Single Window Environment for Customs will be phased and the first phase will come into effect by 2025 and focus on enhancing intergovernmental exchanges at EU borders.

Brazil has a top tier single window system, such as the 'Sistema Integrado de Comércio Exterior' (Siscomex)[58]. The platform aims to unify all procedures regarding international trade in one single system and has been successfully implemented in the country. Also, according to the World Bank[59], Brazil ranked as the second-best country in the digital public services. Therefore, the country has the technical capacity not only to meet its own demands, but also to develop dialogue with other countries, including the EU, to improve and facilitate the use of digital services and systems.

### 2.1.7 Other Practical issues

Given the many doubts that persist and the fact that the effects of the EUDR will enter into force on 30th December 2024, operators and traders have been concerned about several practical aspects that they will face during their operations. Some examples of questions and their respective answers include:

**Q1:** 'In the scenario where regulated commodities are imported before 30th December 2024, then placed on the market after that date, are they in-scope or not?1

**A:** While there are some exceptions, Article 1(2) states that "this Regulation does not apply to relevant products listed in Annex I produced before the date indicated in Article 38(1)". However, even

58 See https://www.gov.br/siscomex/pt-br.

59 World Bank (2022) GovTech Maturity Index, 2022 Update: Trends in Public Sector Digital Transformation. Equitable Growth, Finance and Institutions Insight - Governance http://hdl.handle.net/10986/38499. Accesses 22 June 2024.

in this case, if this product is transformed into another regulated good after that date and placed on the EU market, then it would be subject to the EUDR.

**Q2:** 'If a company is buying relevant products, but these products are not directly used to make new product to be sold, is this company an operator?'

**A:** It depends on the case. The EUDR defines an operator as "who, in the course of a commercial activity, places relevant products on the market or exports them". So even if it doesn't make a new product but the company is the first to place that product on the market (like an importer), the company will be considered an operator.

**Q3:** 'If a consumer good under the EUDR framework is just one ingredient in a final consumer good that is nor regulated by the EUDR, is it out of the scope when imported as that finished product?'

**A:** Yes. However, if a company, for instance, imports that ingredient for the purpose of making the finished product, the company will be required to comply with the EUDR.



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# 3 POSSIBLE SCENARIOS AND NEXT STEPS

The challenges posed by the EUDR, if not properly addressed, can create obstacles to the global environmental and trade agenda. Therefore, its efficient and non-discriminatory implementation is a prerequisite for establishing a scenario in which the objectives sought by the EU regulation are achieved without harming third countries. In other words, whether or not these challenges are resolved can generate positive or negative scenarios internationally, requiring decision-makers to adopt certain measures to lower forthcoming risks.

## 3.1 SCENARIOS

The challenges of the EUDR indirect implementation in third countries can generate positive and negative results. On one edge of this balance there is a possible 'smooth' implementation scenario in which international dialogue ensures a harmonic implementation and the outcomes of the EU regulation contribute to lower deforestation rate and climate change. On the other edge, a contentious implementation scenario can be seen, resulting in litigation and sanctions, the increase of the burden on producing countries and the failure to achieve the EUDR main objectives.

### 3.1.1 'Smooth' implementation

Recommendations for a more tailored and flexible implementation of the EUDR are fully embraced by the EU, leading to significant positive outcomes. International interaction helps to foster an environment of cooperation and consensus-building between the EU, commodity-exporting countries, and other stakeholders. This collaborative approach allows for the adaptation of the EUDR's indirect implementation to better fit the diverse realities of commodity-producing regions, by acknowledging existing due diligence and certification systems and countries' advances in environmental policies. As a result, there is no duplication of efforts and less burden is generated for producing countries, thus maintaining good economic relations with the EU.

The positive outcomes extend beyond immediate regulatory compliance. The EUDR, backed by a strong foundation of international cooperation and stakeholder engagement contributes to a tangible reduction in targeted deforestation rates without jeopardizing other countries socioeconomic realities.

### 3.1.2 Contentious implementation

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

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

## 3.2 RECOMMENDATIONS: WHAT ARE THE NEXT STEPS?

Decision-makers must adopt certain measures to lower forthcoming risks. However, there is great uncertainty about the next steps to be taken. Considering this, some recommendations can help stakeholders face and mitigate possible negative scenarios.

### 3.2.1 Conceptual challenges

The EU needs to further specify some of the EUDR definitions, such as ‘forest’, ‘deforestation’ and the minimum area considered to be deforested. However, players must ensure that they comply with both national regulations and international sustainability standards in order to mitigate any future incompatibilities. Also, dialogue needs to be developed with EU’s actors to harmonise these concepts, considering the need to recognise disparities between the realities of the EU and third countries.



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### 3.2.2 Mechanisms of monitoring and traceability

Monitoring mechanisms must be constantly updated. This includes the development of the best parameters and criteria, as well as the adoption of cutting-edge technologies. For instance, this is the case of improving the use of satellite monitoring, in order to cover more specific areas and with greater image quality and detail.

### 3.2.3 Certification

A key concern regarding the EUDR's implementation is the lack of clear guidance on producer certification. The EU has yet to specify if and what type of certification will demonstrate compliance with national laws, creating uncertainty for producers.

Players need to review their certifications to ensure that they meet the provisions of the EUDR and international sustainability standards. From a governmental point of view, certification mechanisms need to ensure that they comply with national standards, which require the enhancement of monitoring and traceability systems.

### 3.2.4 Information System

The EUDR's Information System (IS) raises concerns regarding how it will be used to collect and process due diligence data submitted to it. The IS is not yet operational and has fallen behind schedule. Also, there is a lack of specifications regarding the system's compliance with data protection laws.

Players need training to familiarise themselves with IS, but they can draw on the expertise of their national systems and/or institutions. Alignment with EU stakeholders also contributes to updating the requirements to be mapped in the value chains.

### 3.2.5 Transition period

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.

Various organisations have taken a stand in favour of postponing the entry into force of the EUDR, also demonstrating the persistent difficulties faced that require a bigger timeframe to adapt. In the face of a general rejection of these claims, dialogue with EU players could lead to more specific solutions, such as specifically postponing the effects of penalties or establishing intermediary transitional rules.

In any case, players need to conduct dialogues with others stakeholders of its value chain, whether in the EU or in their country of origin, in order to seek coordination within its operations dynamics.

### 3.2.6 Adequacy to 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. In fact, potential discussions should only be observed when the EU regulation is actually implemented.

However, as observed in the WTO's DS 600 case, there is a prospect that environmental regulations need to respect a series of criteria in order to ensure compliance with Article XX of the GATT, highlighting a possible line of defence for producing countries.

On the other hand, alternative dispute resolution methods, such as mediation, negotiation and arbitration, should be discussed in favour of appeasing potential conflicts. These mechanisms could replace a frozen WTO's Appellate Body and bring greater speed and eventually lower costs.



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# CONCLUDING REMARKS

Considering this analysis, several challenges were identified concerning the EUDR's implementation in Brazil and other third countries, which demonstrate the potential bottlenecks to be faced globally. In this sense, the EUDR needs to be debated in international forums in order to provide a harmonious implementation inside and outside the EU (indirect implementation).

In this context, a first notable challenge is the need of the EU to further specify some of the EUDR definitions, such as 'forest', 'deforestation' and the minimum area considered to be deforested. For instance, the definitions adopted by Brazil may not be compatible with the regulation, calling for greater engagement with European actors to harmonise these terms.

Other challenges are related to the IS as they raise 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 and, since the IS is not yet operational, preparatory efforts on the part of stakeholders may be disrupted.

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 already have established some green certification and traceability systems. However, these mechanisms can be further developed by adapting to the provisions of the EUDR as an effective strategy. Similar challenges are faced by monitoring and traceability systems.

Concerns have also been raised regarding the tight timeframe for implementing the EUDR. Some producing 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. As this is a challenge recognised by many countries and players, international alignment in favour of a sufficiently effective date can contribute to a smooth transition period.

Lastly, one should highlight that there is an intersection between the EUDR and international trade. Although it is not possible to see practical discussions before the EUDR effects comes into force, players must look at potential dispute resolution within the WTO legal framework or, preferably, other ways of bringing the EUDR' text into line with international trade regulations.



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# REFERENCE

## Articles


1. Banda, M (2018) Climate Adaptation Law: Governing Multi-Level Public Goods Across Borders. Vand J Transnat'l L 51: 1027-.
2. Cosimo et al (2024) Voluntary sustainability standards to cope with the new European Union regulation on deforestation-free products: A gap analysis. Forest Policy and Economics, 164.
3. Durán G; Scott J (2022) Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. Journal of Environmental Law, 34(2), p. 245-.
4. Gstohl S; Schnock J (2024) Towards a Coherent Trade-Environment Nexus? The EU's Critical Raw Materials Policy. Journal of World Trade 58 (1), p. 35-60.
5. Kalimo H et al. (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, p. 15–34.
6. Shukla A (2024) The Future of Trade and Environment: A Roadmap for Reconciling Two Competing Goals. Journal of World Trade 58 (1), p. 115–130.
7. Vij V (2022) Changing Realities: Evolution and Extraterritoriality Within Article XX(G) of GATT for Global Environmental Concerns, Trade Law and Development 195.


## Books


1. Mitsuo Matsushita et al (2015) The World Trade Organization: Law, Practice, and Policy, Oxford University Press 3rd ed.
2. Books Chapters.
3. Moura A (2016) Trajetória da política ambiental federal no Brasil. In: Moura A (ed.) Governança ambiental no Brasil: instituições, atores e políticas públicas, Ipea.


## Brazil


1. Brazil (2023) Decree 11.548/2023. http://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/D11548.htm. Accessed 22 June 2024.
2. Brazil (2024) Decree 12.023/2024. https://www.in.gov.br/en/web/dou/-/decreto-n-12.063-de-17-de-junho-de-2024-566218411. Accessed 22 June 2024.
3. Brazil (2024) Guia de Trânsito. https://www.gov.br/agricultura/pt-br/assuntos/sanidade-animal-e-vegetal/saude-animal/cgtqa/t_nacional/gta. Accessed 20 June 2024.

4. Brazil (2000) Law 9.985/2000. https://www.planalto.gov.br/ccivil_03/leis/l9985.htm. Accessed 22 June 2024.
5. Brazil (2006) Law 11.284/2006. http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/L11284.htm. Accessed 22 June 2024.
6. Brazil (2014) 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, and addresses related issues. http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12651.htm. Accessed 22 June 2024.
7. Brazil (2024) Sibraar. https://www.embrapa.br/busca-de-solucoes-tecnologicas/-/produto-servico/8599/sibraar---sistema-brasileiro-de-agrorrastreabilidade. Accessed 20 June 2024.
8. Brazil (2024) Sicar. https://www.car.gov.br/#/. Accessed 20 June 2024.
9. Brazil (2024) Sisbov. https://www.gov.br/agricultura/pt-br/assuntos/sanidade-animal-e-vegetal/saude-animal/cgtqa/dpc/sisbov. Accessed 20 June 2024.
10. Brazilian Institute of the Environment and Renewable Natural Resources – IBAMA (2024) SINAFLOR – the National System for Controlling the Origin of Forest Products. https://www.gov.br/ibama/pt-br/servicos/sistemas/sinaflor. Accessed 22 June 2024.
11. Ministério do Meio Ambiente e Mudança do Clima – MMA (2023). Plano de Ação para Prevenção e Controle do Desmatamento na Amazônia Legal. https://www.gov.br/mma/pt-br/assuntos/combate-ao-desmatamento/amazonia-ppcdam-1. Accessed 22 June 2024.
12. Senado Federal (2024) Comissão Mista Permanente sobre Mudanças Climáticas. https://legis.senado.leg.br/comissoes/comissao?codcol=1450. Accessed 22 June 2024.

## European Union

1. Council of the European Union (2024) Urgent Call For Action: Challenges for European agriculture and forestry businesses posed by the Deforestation Regulation in the context of the current agricultural crisis.
2. EUR-Lex (2013) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance. https://eur-lex.europa.eu/eli/dir/2013/34/oj. Accessed 22 February 2024.
3. EUR-Lex (2010) Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995. Accessed 22 February 2024.



This document was elaborated by FGV Rio Law's Centre for Global Law (CPDG) with the support of Instituto Clima e Sociedade (iCS).

4. EUR-Lex (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. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115&qid=1687867231461. Accessed 22 February 2024.
5. European Commission (2024) Carbon Border Adjustment Mechanism. https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en. Accessed 22 June 2024.
6. European Commission (2023) COP28: EU steps up cooperation with partner countries on deforestation-free supply chains and outlines further support measures. https://environment.ec.europa.eu/news/cop28-eu-steps-cooperation-partner-countries-deforestation-free-supply-chains-and-outlines-further-2023-12-12_en. Accessed 22 February 2024.
7. European Commission (2024) Deforestation Regulation implementation. https://green-business.ec.europa.eu/deforestation-regulation-implementation_en. Accessed 22 February 2024.
8. European Commission (2024) EU observatory on deforestation and forest degradation. https://forest-observatory.ec.europa.eu/. Accessed 22 February 2024.
9. European Environment Agency – EEA (2019) The European Environment. State and Outlook 2020: Knowledge for Transition to a Sustainable Europe. https://www.eea.europa.eu/soer/2020. Accessed 06 March 2024.
10. European Parliamentary Research Service – EPRS (2020) An EU legal framework to halt and reverse EU-driven global deforestation: European added value assessment. https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654174/EPRS_STU(2020)654174_EN.pdf. Accessed 06 March 2024.

## Letters

1. EU coalition (2024) EUDR information system not yet on track to meet requirements of properly functioning supply chains. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.etrma.org/wp-content/uploads/2024/05/Letter-to-Commission-President-Von-der-Leyen-EUDR-Information-System.pdf. Accessed 22 June 2024.
2. EU cross-commodity coalition on EUDR implementation (2024) Joint cross-commodity call to EU Commission and Member States to provide urgent clarifications and workable solutions for EUDR implementation.

3. Unites States Senate (2024) March 8, 2024 letter to Ambassador Katherine Tai.
4. World Trade Organization – WTO (2023) Communication from Argentina, Colombia, Dominican Republic, Guatemala, Honduras, Panama, Paraguay, and Peru. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W912.pdf&Open=True. Accessed 20 June 2024.

## News

1. Brazil (2023) Governo lança 4 fase do plano de ação contra desmatamento do Cerrado. https://agenciabrasil.ebc.com.br/geral/noticia/2023-11/governo-lanca-4a-fase-do-plano-de-acao-contra-desmatamento-do-cerrado. Accessed 22 June 2024.
2. CNN Brasil (2023) Mais de 95% do desmatamento na Amazônia é ilegal, diz climatologista. https://www.cnnbrasil.com.br/nacional/mais-de-95-do-desmatamento-na-amazonia-e-ilegal-diz-climatologista/. Accessed 20 June 2024.
3. EEAS (2024) Joint Press Release: The 2nd Meeting of the Ad Hoc Joint Task Force on the EUDR. https://www.eeas.europa.eu/delegations/indonesia/joint-press-release-2nd-meeting-ad-hoc-joint-task-force-eudr_en?s=168. Accessed 20 June 2024.
4. Handelsblatt (2024) Hamburger Kakaohändler will EU-Verordnung vor Gericht stoppen. https://www.handelsblatt.com/unternehmen/handel-konsumgueter/hamburger-kakaohaendler-will-eu-entwaldungsverordnung-vor-gericht-stoppen/100037601.html. Accessed 20 June 2024.

## Platforms

1. Global Forest Watch – GFW (2024) Global. 2024. https://www.globalforestwatch.org/dashboards/global/?lang=pt_BR. Accessed 06 March 2024.
2. IEF (2024) Sele Verde de Minas. http://www.ief.mg.gov.br/selo-verdemg. Accessed 22 June 2024.
3. INPE (2024) TerraBrasilis. https://terrabrasilis.dpi.inpe.br/. Accessed 22 June 2024.
4. Instituto Nacional De Pesquisas Espaciais – INPE (2024) DETER-B Project. http://www.inpe.br/cra/projetos_pesquisas/deter.php. Accessed 22 June 2024.
5. MapBiomas (2024) MapBiomas Brasil. MapBiomas Brasil. Accessed 22 June 2024.
6. Portal da Moratória da Soja (2024) Soy moratorium. https://moratoriadasoja.com.br/home. Accessed 22 June 2024.

7. World Bank (2022) GovTech Maturity Index, 2022 Update: Trends in Public Sector Digital Transformation. Equitable Growth, Finance and Institutions Insight - Governance;. © Washington, DC. http://hdl.handle.net/10986/38499.

## World Trade Organization

1. World Trade Organization – WTO, 'Trade Policy Review: Brazil 2022' (2023) <https://www.wto-ilibrary.org/content/books/9789287072849> accessed 22 June 2024.
2. Wto (2024) DS600: European Union and certain Member states — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds600_e.htm. Accessed 22 June 2024.

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