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Evaluating the Legality of the EU Deforestation Regulation (EUDR) Under WTO Non-Discrimination Principles: A Developing Country Perspective

Mustafa[1]; Eka Prasetya[2]
[12]Universitas Proklamasi 45 Yogyakarta
Email: abumus66@gmail.com; ekrisna1@gmail.com

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Abstract

The European Union Deforestation Regulation (EUDR)aims to curb global deforestation by restricting the import of key commodities (cattle, cocoa, caffee, oil palm, rubber, soya, and wood) unless they are deforestation free, legally produced, and accompanied by due diligence statements. While ecologically noble, the EUDR faces severe scrutiny from developing nations (such as Indonesia, Malaysia, and Brazil) regarding its compatibility with World Trade Organization (WTO) law, spesifically the General Agreement on Tarisffs and Trade (GATT) 1994. This paper evaluates whether the EUDR violates the core non-discrimination principles of Most-Favored-Nation (MFN) treatment (Article I;1) and National Treatment (Article III;4) and whether it can be justified under the general exceptions of GATT Article XX.

Keywords EU Deforestation Regulation (EUDR); WTO non-discrimination principle; legality; developing country perspectives.

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INTRODUCTION

Climate shangeand the global loss of biodiversity have promted the European Union (EU) to take aggressive unilateral action through the enactment of the EU Deforestation Regulation (EUDR). This regulation aims to ensure specific products such as palm oil, timber, soy, beef, caffee, cocoa, and rubber entering the EU market do not originate from land subjected to deforestation after December 31, year 2020.

While these environmental objectives are morally and ecologically legitimate, the implementation mechanisms a massive compliance burder (Pauwelyn, Joost. 2023). For developing nations ini tropical regions such as Indonesia, Malaysia, Brazil, and various African countries exports of these commodities constitute the backbone of national economic and a source of livelihood for millions of smallholders. The “one-

size-filts-all" approach adopted by the EU ofter overlooks the legal, social, and administrative realities within these producer nations (Meijer, B. 2023).

Conversely, the international trading system governed by the World Trade Organization (WTO) rests on rules that balance environmental protection with free market openness (WTO. 2023). The principle of non iscrimination enshrined in Article I (Most- Favored-Nation/MFN), and Article III (National Treatment) of the GATT year 1994, serves as a fundamental pilar prohibiting discrimination between like products from different trading partners, as well as between imported and domestic goods.

The EUDR transformasi the global commodity trade landscape by mandating rigorous diligence. Business operators must demonstrate, the legality of production under the laws of the country of origin, accurate geolocation dara the land where the commodity was produced, and that the product is deforestation free. From the perspective developing nations, a primary challenge lies in the country benchmarking system, which categorizes countries as low, standar, or high risk. There are concerns that this system is subjective and could create a disguised restriction on international trade,effectively disadvantanging products from developing countries compared to domestic substitutes or products from developed nations (Karsenty, Alain. 2023).

The Non-Discrimination Principle protects exporters from unfair treatment; article I of GATT year 1994 (Most Fevored Nation/MFN) requires that any advantage, favour, or privilege granted by a WTO member to a product from other member countries (GATT 1994, Art. I:1). Article III of GATT year 1994 (National Treatment) prohibits the application of taxes, internal regulation, or laws that treat imported products less favourably that like domestic products (GATT 1994, Art. III:4). With the implementation of the EUDR, questions aries as to whether specific traceability system or exemptions inderctly confer a discriminatory advantage or impose disproportionate transaction costs on producers in developing countries. For developing countries (Horn, Henrik, and Petros C. Mavroidis. 2023), the EUDR is viewed as a form of ecological imperialism or environmental protectionism. Smallholders in developing countries face technological constraints, high certification costs, and complex issus regarding the recognition of costomary or traditional land rights. If this regulation is deemed to violate WTO law, developing countries have legal grounds to bring the dispute before the WTO Settlement Body (Patel, Raj, and Philip McMichael. 2023).

METHOD

This study employs normative juridical research menthod (doctrinal legal research), focusing on a review of international legal literature. This approach was selected because the issue at hand concerns the evaluation of legal norms specifically, the compliance of unilateral regulations with multilateral agreements within the framework of the World Trade Organization (WTO). The reseatch utilizes two primary approaches. The statute approach, which examines the text of the EU Deforestation Regulation (EUDR) alongside fundamental provisions of the General Agreement on Tariffs and Trade (GATT 1994), particularly Article I (Most Favored National/MFN), Article III (National Treatment), and the general exceptions under Article XX; and the conceptual approach, which analyses international trade law doctrines, the principle of non discrimination, and the perspectives of developing nations within global supply chains. (Joost, Pauwelyn, 2023).

The study relies on secondary data obtained through document analysis, classified into thee categories, primary legal materials (the official text of the EUDR/Regulation EU 2023/1115, the GATT 1994 text, and relevant official WTO documents or jurisprudence); secondary legal materials (international scholarly journals, international trade law textbooks, and policy research reports regarding the EUDR's impact on developing commodity producing nations), and tertiary legal materials (legal dictionaries and International encylopedias to clarify technical terms). (European Commission, 2024)

Data collection was conducted via library research, involving a review of literature, official European Union documents, WTO archives, and digital databases such as EUR lax and international academic journals. Data analysis was performed using a qualitative normative menthod, with the collected data interpreted systematically. The analysis involves an inventory of the EUDR regulations, an assessment of their consistency with WTO non discrimination principle (MFN and National Treatment), and an evaluation of whether they meet requirements for the Article XX GATT year 1994 exceptions. The findings are presented though a descriptive analystical approarch to address the legal issues from the perspective of developing countries.

FINDINGS AND DISCUSSION

The EUDR mandates that commodities such as palm oil, cocoa, caffee, soy, timber, rubber, and beef be deforestation free and produced in accordance with the laws of the country of original before entering the European market. From an international law perspective, this unilateral regulation directly intersects with key pillars of the General Agreement on Tariffs and Trade (GATT) year 1994. Thus, there are three

articles related to the prohibition of discrimination, namely: Article I. 1. GATT (MFN) Prohibits discrimination between like products from different WTO member countries. Article III. 4. GATT (National Treatment). Probhibis less favourable treatment for imported products compared to like domestic products. Article XX GATT (General Exceptions) (Colchester, M. 2024). Provides justification for measures to protect human, animal or plant health, or to conserve natural resources, provided they do not cocntititute a disguised restriction on trade.

1. Most-Favored-Nation (MFN) Treatment and the Risk-Benchmarking System

The bechmarking or country risk assessment system (low, standard, high) implemented by the EUDR creates potential violation of the MFN principle.

Differential Treatment; Exporting countries are categorized baset on their deforestation risk levels. these categories trigger diferences in monitoring and due diligence procedures.

Subjective Standards; The risk assessment criteria established by the European Union are considered locking in transparency and may subject certain developing countries to more burdensome requirements than other national or internal producers.

Potential De Facto Discrimination; Heavier administrative burdens on countries in the "standard" or "high" risk categories directly discriminate based on the product's geographical origin, without a scientific basis applied aqually to all trading partners.

2. National Treatment under Article III:4 of GATT

Traceability requirements extending to specific geolocation coordinates create asymmetrical barriers for imported products.

Similar Products; Commodities from developing countries must meet strict traceability requirements that are ofter not matched or monitored wits the same level of digital sophistication for local products within EU jurisdictions.

Competitive Disanvantage; These obligations significantly increase transactio conts for foreign exporters, artificially rendering imported products less competitive that European domestic products. Extraterritorial Standards; The EUDR unilaterally imposes European domestic definitions of legality and environmental standards onto production processes in other sovereigb nations.

3. Justification under GATT Article XX (General Exceptions)

The EU will likely defend the EUDR by invoking Article XX, subparagraphs (b) and (g), regarding environmental production and conservation. Hawever, the measure must pass the test of the Article XX "chapeau" (introductory clause);

Policy Objective; Reducing global deforestation is a legitimate objective under

international law

Constraints of the "Chapeau" The EU must demonstrate that the rule does not constitute arbitrary discrimination or a disguitsed restriction on international trade.

Lack of Flexibility; The EU's failure to fairly accommodate the domestic laws of producer nations, combined with minimal transition support for smallholders, weakens the argument for environmental justification.

4. Developing-Country Perspective: Sovereignty and Smallholders

For developing nations that produce thesecommodities, the EUDR entails adverse structural impacts;

Burden on Smallholders; Millions of independent palm oil cocoa farmers lack the technological or financial capacity to digitally map land coorinates in compliance with EU standards.

Market Shifting; The regulation risks fragmenting global supply chains, as non comliant commodities are diverted to domestic markets pr third countries that do not enforce strict standards, without addressing the root causes of deforestation itself.

Violation of Sovereignty; The regulation is considered to disregard the national legality certification systems valid in producer countries (such as the SVLK in Indonesia).

CONCLUSION

The EUDR is vulnerable to legal challenges before the WTO Dispute Settlement Body because it creates discriminatory trade barriers and violate the principles of National Treatment and Most Favored Nation (MFN) treatment. The European Union must demonstrate that this instrument is proportionate and non arbitrary to withstand legal scrutiny under Article XX of the GATT. This research focoses on a comprehensive legal analysis of the European Union Deforetation Regulation (EUDR) in relation to the WTO's non discrimination principle (GATT Article I and III). White previous studies have primarily concentrated on general trade compliance or environmental impacts, this study specifically integrates the perspectives of developing nations with the structural realities faced by smallholders. It evaluates how the EUDR's administrative burdens and geolocation tracking systems could create a "disguised restriction" that disproportionately disadvantages small scale products, while also presenting alternative legal arguments regarding the limits of environmental justice within the Wold Trade Organization framework.

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