

**GREEN BARRIERS IN INTERNATIONAL TRADE:
A POLICY ANALYSIS OF THE EUROPEAN UNION
DEFORESTATION REGULATION IN REVIEW OF
THE GATT TREATY**

I Nyoman Giri Kusuma^{1*}, I Gede Pasek Eka Wisanjaya²

^{1,2} Master of Laws, Faculty of Law, Universitas Udayana
E-mail: ¹⁾ girikusuma77@gmail.com, ²⁾ eka_wisanjaya@unud.ac.id

Abstract

The European Union Deforestation Regulation (EUDR) is a regulation introduced by the European Union that aims to address deforestation and forest degradation by preventing the entry of products that contribute to deforestation into the European market. The existence of strict requirements for commodities imported into the EU market has been considered to create green trade barriers that contradict the principle of free trade. This research aims to examine the EUDR policy in the review of the GATT 1994 agreement specifically to understand more deeply the position of green trade barriers and their relation to the EUDR policy. The research method used is normative legal research with a statutory approach (Statue Approach) and conceptual approach (Conceptual Approach). The results of this study state that the explanation of Article XX paragraphs (b) and (g) of the GATT Agreement can be used as a legal basis to justify the application of environmentally motivated barriers in international trade. In other words, environmentally friendly forms of trade barrier protection are legitimate under the GATT Agreement, even though such policies may deviate from the principles of free trade, provided that such policies are not used as a means for unfair discrimination or restriction of trade.

Keywords: EU Deforestation Regulation, GATT 1994, Green Barriers, International Trade

1. INTRODUCTION

The rapidly growing flow of international trade has actually given greater freedom to the international community in carrying out trade practices aimed at fulfilling the needs of human life. International trade is trade that contains foreign elements. A foreign element is an element in trade relations arising from differences in the nationality of the seller and the buyer, or differences in the nationality of the seller and the buyer with the location of the trade, or with the currency used in the transaction (Wyasa, 2017). In the 18th and 19th centuries, the industrial revolution pushed globalisation further with technological advances in transportation and communication. The emergence of international trade activities is due to economic globalisation. The era of economic globalisation, where trade is key in the fulfilment of goods and services as well as a means of improving the economic level of a country.

The development of international trade has brought the world into a new era of market liberalisation. The 20th century was marked by the establishment of international organisations such as GATT (General Agreement on Tariffs and Trade) which later became the WTO (World Trade Organization), which played an important role in regulating and promoting free trade. Free trade is a mechanism of trade between countries around the world that takes place without barriers such as export and import taxes. The benefits of free trade can actually be seen in various aspects including access to wider

markets, innovation and technology, job creation, and increasing foreign exchange which can prosper the community.

Advocates of trade liberalisation, such as Rafael Leal-Arcas, also argue that trade has the potential to improve the economy and prosperity of the country (SENDE, 2023). However, the concept of liberalism in the international trading system has been criticised. One of the main arguments that is often debated is the impact of trade liberalisation on the environment, particularly regarding climate change. This issue is important because trade liberalisation often has a negative impact on the environment as seen through extractive approaches and exploitation of natural resources, which risks damaging and destroying ecosystems (Fauzi, 2023).

The relationship between the environment and trade is receiving increasing attention in the international arena. In the era of economic globalisation, increased competition between countries due to trade liberalisation has created a situation where countries compete to lower their environmental standards. In other words, countries may relax environmental policies to remain competitive, either to protect domestic industries from global competition or to attract foreign investment.

Different conditions occur in Europe, on 29 June 2023 the European committee has conducted a trial for the implementation of the EUDR (European Union Deforestation Regulation) policy. A new movement in international trade to welcome the era of green trade. EUDR is a policy that initiated the EU's concern for addressing increasing greenhouse gas emissions, particularly those caused by high levels of consumption. This regulation is part of a comprehensive action plan to address the degradation of forest ecosystems, first outlined in the European Commission's 2019 Communication on enhanced EU measures to restore and protect forests worldwide (European Commission, 2024). The existence of environmental challenges, especially related to changes in the structure of forest cover, deforestation and animal and plant scarcity, has led to the adoption of preventive policies to tackle environmental damage, but these policies have an impact on international trade activities.

Something interesting in this discussion is the paradox between the environment and trade. This contradiction between environment and trade refers to the concept of trade liberalisation. Where, the concept in WTO-based trade regulations promotes trade liberalisation between countries. Trade liberalisation has introduced the spirit of free trade by developing efforts to reduce tariffs and remove other trade barriers, this is done as the main driver of the formation of world economic integration (Erawaty, 2022). However, the achievement of this free market cannot only rely on reducing tariff protection but also other factors, namely non-tariff issues which are one of the obstacles to the formation of a free market (Wiko & Kinanti, 2021).

In its development, measures related to environmental protection are increasingly being used as arguments to restrict international trade, due to the fact that they are non-tariff measures, one of which is green trade barriers. Green Trade Barriers are often considered a form of non-tariff barriers. This definition refers to restrictions imposed by importing countries on imported goods through strict green tariffs, green technical standards, sanitary and phytosanitary measures, and other means aimed at protecting the ecological environment, human health, and animal and plant health (W. Wei, 2019). In another sense, green barriers specifically refer to the efforts of the government of the importing country to protect limited resources, ecological environment, human and animal and plant health to restrict import protection trade as a fundamental goal, through

legislation, the development of complex environmental conventions, specific laws, regulations and standards (G. Wei, 2017).

The European Union is one of the most advanced regions in implementing green barrier formation, which has had a tremendous impact on world trade. The existence of green trade barriers is often considered not to facilitate the interests and even tend to harm developing countries. Economic inequality and technological capabilities in the production process are ultimately considered to only add to the burden amidst their limited capabilities. Therefore, developing countries argue that the measures taken by the EU have created a new form of barriers to international trade. This unilateral action is often done by setting strict standards under the pretext of protecting the environment. However, these measures actually widen the gap in environmental standards between developed and developing countries (Hardiawan & Sutrisno, 2023).

Overall, green barriers are put in place with the aim of protecting the environment which is a global interest, this policy is designed to ensure that trade practices do not damage the ecosystem. On the other hand, green barriers can be seen as non-tariff barriers that hinder free trade. Therefore, this research then aims to examine the EUDR policy in the review of international trade law, specifically to understand more deeply the position of green trade barriers in the review of international trade law and its relation to the EUDR policy. Based on the background explanation above, this research aims to examine and analyze the legal aspects of environmental protection in international trade, specifically focusing on the European Union Deforestation Regulation Policy through the lens of international trade law.

2. RESEARCH METHOD

The type of research used in this study is descriptive research with normative legal research methods that discuss environmental protection in international trade. The approach applied includes a statutory approach (Statute Approach) and a conceptual approach (Conceptual Approach). This research examines legal materials consisting of primary and secondary legal materials. Primary legal materials are legal materials that are binding, and in this context, the primary legal materials come from: GATT 1994 and EUDR (European Union Deforestation Regulation). Meanwhile, secondary legal materials serve to explain primary legal materials. In this research, secondary legal materials are taken from studies on environmental protection in international trade, which are listed in various relevant literature and journals. The technique of collecting legal materials was carried out using the document study method through library research. After the legal materials were collected, they were organised systematically according to the topic discussed, then analysed descriptively qualitatively to obtain a comprehensive answer to the focus of the problem under study.

3. RESULTS AND DISCUSSION

3.1. EUDR (European Union Deforestation Regulation)

The European Union has implemented a new policy, the European Union Deforestation Regulation (EUDR). The EUDR Regulation is the latest addition to the EU's regulatory framework, specifically addressing the issue of deforestation. The policy is embodied in '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'. Basically, this policy emphasises the impact of international deforestation and forest degradation on the EU market. Whereas, the EUDR policy mandates thorough due diligence on the trade value chain of seven specific products such as livestock, coffee, cocoa, rubber, palm oil, timber, and soya (Forwood et al., 2023).

Increased global trade flows have fuelled the growth of industrial activity in the agricultural sector, which goes hand in hand with increased deforestation practices. The global expansion of agriculture is one of the main factors driving deforestation, accounting for between 90% and 99% of total deforestation in tropical regions (Pendrill et al., 2019). In response, the European Union through the EUDR prohibits the import of goods, services or commodities related to deforestation and forest degradation. The EU's proactive approach aims to reduce greenhouse gas emissions, carbon footprint, and ensure compliance with responsibilities outlined in the United Nations COP15 agreement.

After being published on the website of the Official Journal of the European Union, the EU Regulation on Deforestation comes into force gradually. There is an adaptation period of 18 months for most businesses, and 24 months for small and micro businesses, starting after 29 June 2023. This adaptation period is utilised by businesses to prepare themselves to fulfil the requirements set by the EU Commission. Based on article 3 of the European Union Deforestation Regulation, some of the product requirements that must be met include:

1. They are deforestation-free;
2. They have been produced in accordance with the relevant legislation of the country of production; and
3. They are covered by a due diligence statement.

In its regulations, the EUDR stipulates the criteria of 'no deforestation.' The concept of deforestation in the EUDR is defined as land conversion to agriculture after 31 December 2020. As such, the EU will ban the sale of products such as livestock, coffee, palm oil, timber, rubber, soya and cocoa that originate from forests converted after that date. Products entering the EU market after 31 December 2020 will need to be free from links to forest clearance, comply with local laws and regulations, and have evidence of thorough checks to ensure compliance with EUDR requirements (NADRAS et al., 2024).

The due diligence process involves several stages, starting with collecting data, information, and documents that demonstrate the product's compliance with established requirements. Next, a risk assessment is conducted based on the available documents to identify potential non-compliances. If risks are found, mitigation measures are implemented by collecting further information, conducting surveys, and carrying out independent audits. In addition, compliance reports are required to be published periodically every year. The implementation of this measure promotes accountability and increases transparency in supply chains, facilitating better monitoring of regulatory compliance. In establishing the 'country benchmark' system, the European Commission will classify countries into low, standard or high risk categories based on their level of commodity production and compliance with the EUDR rules. For now, all countries are categorised under standard risk until further classification is undertaken in 2025.

Violations of this provision will be penalised with fines of up to 4% of the company's total annual EU-wide turnover from the previous financial year, confiscation of products, and reimbursement of costs by Competent Authorities.

The implementation of strict EUDR policy standards and due diligence procedures by the European Union in order to protect the environment and human rights has actually raised concerns that the policy could hamper trade access by agricultural producers from exporting countries to the EU market, especially from developing countries that rely heavily on their agricultural exports. This then raises the question of the legitimacy of the policy within the framework of the GATT treaty, as despite the noble aims of the policy, its overly strict implementation could potentially be considered a trade barrier.

3.2. Overview of the GATT Agreement

GATT is a multilateral agreement that governs international trade regulations before the formation of the WTO. Over time, GATT functioned as an official intergovernmental forum to discuss various issues related to international trade. Then a multilateral trade organisation was formed, the WTO, which was born from a negotiation process called the 'Uruguay Round' in 1968-1994. The WTO is a development of the GATT that is tasked with overseeing multilateral trade agreements, providing a forum for trade dispute settlement, cooperating with international institutions, monitoring member countries' trade policies, and providing technical assistance to developing countries. Although the WTO was established as an official international organisation, its operations are still based on the pre-existing GATT agreement. This means that the existence of the WTO is fully supported by the GATT as its main legal framework. The basic structure of the WTO agreement includes:

- 1) Regulations regarding trade in goods, namely GATT.
- 2) Regulations regarding trade in services, namely GATS.
- 3) Regulations regarding intellectual property ownership, namely TRIPs.
- 4) Regulation on investment, namely TRIMs.
- 5) Dispute settlement i.e. Dispute Settlements Body.

The WTO is the only global organization that focuses specifically on trade issues between countries. The multilateral trading system in the WTO is based on a series of agreements covering the basic principles of international trade, which are formulated by member countries through a collective negotiation process. These agreements adopt the principle of 'a single undertaking', which means that WTO member countries are obliged to accept and implement the entire contents of the agreements agreed in the Uruguay Round.

WTO law establishes rules that link free trade with existing social values and interests, with the aim of creating conditions of reciprocity for all countries. The WTO endeavours to develop a trade model that is expected to facilitate smooth trade activities between countries. Essentially, the WTO serves as a platform to promote orderly and fair free trade around the world. In its efforts to promote free trade, the WTO applies a number of principles that form the foundation of the organization, one of which is the principle of non-discrimination. This principle requires that all member countries are treated equally and benefit equally from the trade policies implemented. This principle then becomes the main guideline in the implementation of equitable trade relations.

The GATT agreement contains principles based on non-discrimination, namely the “Most Favoured Nation” principle. This principle is explicitly stated in Article I GATT regarding General Most Favoured Nation Treatment which states:

“With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”*

The article means that every WTO member must provide equal and unconditional treatment for imports and exports, regardless of origin or destination as long as it involves a WTO member. In other words, a country is not allowed to give preferential treatment to certain countries. Equal treatment must be applied immediately and unconditionally to products originating from or destined for all GATT members (Roulina & Parikesit, 2023).

3.2.1. General Exemption to Article XX of the GATT

In the WTO rules, these rules are manifested in various forms, one of which is the form of exceptions to the fundamental principles of the WTO. Such exceptions allow WTO members to implement and maintain policies and measures aimed at protecting socially important values and interests in certain situations, even though such policies or measures may be contrary to the substantive provisions set out in the GATT 1994. The type of exception is Article XX of the GATT 1994. Article XX can be used in determining whether an action that would otherwise be inconsistent with existing rules in the GATT can be justified under Article XX of the GATT 1994 (Suherman, 2022). Article XX GATT on General Exception states:

“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”

Furthermore:

Paragraph (b) explains *“necessary to protect human, animal or plant life or health”* and Article XX paragraph (g) states *“relating to conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption”*

The elucidation of this article explains that restrictions for environmental protection are exceptions to trade. Article XX paragraphs (b) and (g) thus provide the legal basis for states to establish environmental policies to protect human health and the environment, and to conserve natural resources. However, the condition is that such policies must not create unfair discrimination or restrictions on trade 21 (Ahn, 1998).

To show how the EUDR relates to Article XX of the GATT, paragraphs (b) and (g), it is argued that forests provide a wide range of environmental, economic, and social

benefits, important in supporting human life, as they hold most of the Earth's terrestrial biodiversity. In addition, forests provide livelihoods and income for about one-third of the world's population. Forest destruction has serious impacts on the livelihoods of the most vulnerable groups, including indigenous peoples and local communities who depend on these ecosystems.

Deforestation and forest degradation contribute to reducing essential carbon sequestration capacity, increasing greenhouse gas emissions and undermining climate resilience in affected regions. In addition, deforestation increases the risk of contact between wild animals, livestock and humans, which can lead to the spread of new diseases and the risk of epidemics and pandemics. Therefore, measures to protect forests may be considered 'necessary to protect human, animal, or plant life or health' as stipulated in Article XX paragraph (b) of the GATT.

Furthermore, efforts to prevent deforestation and forest degradation are also in line with Article XX paragraph (g) of the GATT, which provides for '*relating to conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.*' Deforestation and forest degradation are major threats to exhaustible natural resources, including biodiversity and carbon sink capacity. Therefore, measures aimed at reducing or avoiding deforestation, such as those provided for in the EUDR, qualify as measures 'relating to the conservation of exhaustible natural resources' in accordance with Article XX paragraph (g) of the GATT. Through this explanation, the EUDR is then understood as a set of rules regarding environmental protection in trade activities, prioritising the motif of the relationship between human rights and the environment. This stems from the understanding that the right to a good and healthy environment is a human right.

In the relationship between GATT and EUDR, the enforcement of the obligation to conduct due diligence on trade commodity products by producers is carried out in accordance with the provisions of Article 8 of the EUDR to fulfil the criteria in Article 3 of the EUDR, namely '*(1) The area is deforestation-free (2) The products are produced in accordance with the relevant laws and regulations of the country of production (3) They are covered by a statement of due diligence*'. The due diligence method is the legal basis for classification through a benchmarking system based on a three-tier system to classify countries based on low, standard or high risk. The classification of high-risk products indicates that there is non-compliance of the producer's commodities with the criteria in the EUDR policy, which in turn will receive sanctions in the form of fines.

The explanation of Article XX, paragraphs (b) and (g), can be used as a basis to justify the application of environmentally motivated barriers in international trade. In other words, environmentally friendly forms of trade barrier protection are legitimate. According to the relevant WTO provisions, governments have the right to take appropriate trade protection measures with the aim of protecting their own environment. This, then, makes environmental trade barriers a valid basis for certain countries to restrict imports, even though these restrictions often put greater pressure and challenges on developing countries' export trade (Mou, 2023).

In addressing these issues and establishing a favourable correlation between trade liberalisation and environmental conservation, it is fundamentally important to incorporate environmental factors into trade policies. Governments hold the power to implement various measures such as environmental regulations, sustainability standards, and ecological labelling requirements, which can effectively promote sustainable trade

practices. A combination of international trade law, environmental policy, and even politics is necessary to create a sustainable green trading system with environmental ethics in mind.

Overall, the interaction between trade liberalisation and environmental protection is complex and multidimensional. While trade liberalisation has the potential to promote economic growth and technological progress, it can also have adverse ecological consequences in the absence of adequate environmental protection. In order to achieve sustainable development and ensure that trade policies support environmental protection efforts, international trade law and policy can be a regulatory tool to realise sustainable development.

4. CONCLUSION

On the World Trade Organisation (WTO) terms described in the GATT agreement, green trade barriers are legitimate and essential for environmental protection. According to the interpretation of Article XX of the GATT, it means that a country is allowed to set trade barriers for reasons of protecting health such as humans, animals, and plants, as well as to prevent the import of goods that are contrary to morals and for forest conservation and other purposes. Thus, the EUDR policy, which sets strict requirements for agricultural products imported into the EU to ensure that there is no deforestation or environmental damage in the production process, has a direct link to Article XX of the GATT on general exceptions. Article XX of the GATT provides a legal basis for WTO member states to enact trade policies that are in line with environmental objectives, even though such policies may deviate from the principles of free trade, provided that such policies are not used as a means for unfair discrimination or restriction of trade. Thus, the EUDR can be seen as an attempt by the EU to fulfil its commitment to environmental protection in international trade, which is legitimately regulated under the legal framework of the GATT 1994.

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