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# FORESTS, FOREIGN POLICY AND TRADE

What the EU Deforestation Regulation means  
from a foreign policy perspective

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# SUMMARY

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The EU's Regulation for Deforestation-free Products (EUDR) marks an important milestone in addressing demand-side deforestation governance, being the first regulation targeting deforestation driven by agriculture. Yet it must be understood as more than an effort to protect the world's forests – it showcases the European Commission unilaterally acting to promote values and policy ideas abroad. It displays issues of transnational social justice and power discrepancies, shedding light on shifting market power dynamics in global structures. And it questions the EU's standing as a trustworthy partner on the international stage as well as its relationships with important producer countries.

Analysing the EUDR from these angles offers valuable insights that can be transferred to other due diligence instruments that are currently being drafted or negotiated, such as the Corporate Sustainability Due Diligence Directive (CSDDD). Unilateral action may provide a semblance of control but is by nature limited in the depth of scope.

As its market influence wanes, the need for the EU to position itself as a reliable partner becomes increasingly important. To prevent leakage, demand-side measures such as the EUDR must be paired with supply-side measures. The EUDR's success will hinge on careful and efficient implementation, accompanied by meaningful consultations and engagements with producer countries. Overall, prioritising the external dimensions of such legislation must first and foremost uphold trust and strengthen collaborative relationships with partner countries.



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## INTRODUCTION

In the intricate web of international trade, introducing rules and regulations for global supply chains has emerged as a priority issue for the EU. European consumers are increasingly concerned about environmental and human rights implications down a product's value chain. Under the EU's Paris commitments and the EU Green Deal, the EU's evolving stance on supply chain regulation represents not only an economic interest but also a matter of foreign policy significance. The most recent development in this regard is the Regulation on Deforestation-free Products (EUDR), which entered into force on 29 June 2023.

Whilst the Carbon Border Adjustment Mechanism (CBAM) and the EU Corporate Sustainability Due Diligence Directive (CSDDD) garnered considerable media attention, the EUDR passed by with comparatively little notice. The perception of deforestation as a niche topic endures, often viewed as a distant issue confined to areas like the Amazon or Indonesia. However, deforestation extends far beyond this narrow scope. Whilst burning fossil fuels receives most public attention, emissions from agriculture, forestry and other land use are the second biggest cause of climate change, accounting for 23 % of all greenhouse gas emissions (2007-2016).

The EU, as a major importer of forest-risk commodities, is directly responsible for deforestation on the demand side. It is estimated that the EU contributed to 16 % of the deforestation embodied in international trade, second only to China with 24 %. Civil society organisations have long urged the EU to acknowledge its responsibility in fighting

**AN ANALYSIS OF THE EUDR EXTENDS FAR BEYOND THE REALM OF PROTECTING THE WORLD'S FORESTS – IT SHOWCASES THE EUROPEAN COMMISSION UNILATERALLY ACTING TO PROMOTE VALUES AND POLICY IDEAS ABROAD.**

deforestation resulting from EU consumption and implement a more stringent approach. The EU has taken a crucial step in responding to these calls by adopting the EUDR.

An analysis of the EUDR extends far beyond the realm of protecting the world's forests – it showcases the European Commission unilaterally acting to promote values and policy ideas abroad. It delves into issues of transnational social justice and

power discrepancies, shedding light on shifting market power dynamics in global structures. Finally, it questions the EU's standing as a trustworthy partner on the international stage, and its relationships with important producer countries.



## THE EU DEFORESTATION REGULATION IN A NUTSHELL

The EUDR is a demand-side measure that aims to curb deforestation and forest degradation that's caused by EU consumption and production. The regulation fits into the broader scheme of the European Green Deal, the EU Biodiversity Strategy and the Farm to Fork Strategy, which collectively form the backbone of the EU's environmental governance approach.

Additionally, the EUDR contributes to the EU's overarching objective of introducing more assertive trade policy tools to create a level-playing field with higher environmental and social standards, just like the CBAM and the CSDD. It repeals the EU Timber Regulation (EUTR) – the prior instrument to fight deforestation within the EU's 2003 Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. This section reviews the EUDR's most important aspects.

### A FOCUS ON FOREST-RISK COMMODITIES

In terms of its scope, the EUDR is the first of its kind to focus on forest-risk commodities, rather than timber legality. The single most important driver of tropical deforestation and loss of biodiversity is the industrial production of agricultural commodities. The land area used only for soybeans in South America increased by approximately 29 million hectares between 2001 and 2019 – an area roughly equivalent to the size of Argentina.

Notably, 90 % of deforestation associated with EU27 imports is due to the production of 10 commodities, with soy and palm oil making up the vast majority. The EUDR covers seven of these 10 commodities, namely cattle, timber, palm oil, soy, cocoa, coffee, and rubber – as well as some derived products including leather, chocolate, furniture, tyres and printed products. This marks a significant expansion of scope as compared to the EUTR, which only focused on timber.

### DUE DILIGENCE REQUIREMENTS – LEGAL, DEFORESTATION- AND FOREST DEGRADATION-FREE

The regulation establishes two fundamental due diligence criteria – legality and freedom from deforestation. Companies placing the relevant commodities on the EU market or exporting them from the EU must ensure compliance with the relevant legislation of the producing country, to confirm legality.

'Deforestation-free' means that commodities and products in question – including those used for or contained within relevant products – were produced on land that hasn't been subject to deforestation after 31 December 2020. Deforestation is defined in the EUDR as 'the conversion of forest to agricultural use, whether human-induced or not', based on the UN's Food and Agricultural Organisation's definition. The deforestation-free



requirement extends to forest degradation, which encompasses converting primary forests into plantation forests or other wooded land.

Operators and traders must provide a due diligence statement with each relevant product placed on or exported from the EU market to show compliance with these two main criteria. These statements must include the geolocation of all plots of land where the relevant commodities were grown. In the case of products traded in bulk – like soy or palm oil – this involves identifying all plots of land connected to a shipment. Using satellite data, it should then be possible to determine whether a piece of land has been deforested for agricultural usage.

Any deforestation or forest degradation on a plot of land after 31 December 2020 automatically disqualifies all products originating from that plot from entering the EU market. For bulk traded products, if only one part is identified as non-compliant and the shipment cannot be separated then the entire shipment is rendered non-compliant.

Each Member State must designate a competent authority by 30 December 2023 to oversee the compliance of relevant products with the EUDR's requirements. For this, the competent authorities will carry out checks utilising a risk-based approach.

### EXTERNAL DIMENSIONS — BENCHMARKING AND PARTNERSHIPS

The EUDR has two important elements with a direct external dimension. First, it introduces a benchmarking system of high-, normal- and low-risk countries. Assessment criteria include rates of deforestation and forest degradation, and the production trends of relevant commodities. Depending on the risk classification, competent authorities must perform on-the-ground checks for 9 %, 3 %, or 1 % of operators and traders to verify effective compliance, with key obligations laid down in the regulation.

The Commission is currently still working out the benchmarking and has not issued the country rankings yet. It has been noted that before classifying a country as 'high-risk' the Commission is supposed to enter a dialogue with that country first. This opens a route for cooperation with producer countries, for example in identifying measures that the country could and should take to receive a lower risk rating. However, it's still unclear whether the EU will actually use this pathway for improving cooperation with producer countries.

The second channel for cooperation is more straightforward, whilst still lacking specificity – the regulation foresees the development of a strategic framework for partnerships with third countries. These partnerships may include structured dialogues or administrative arrangements and should be focused on the needs of indigenous peoples, local communities and smallholders. It remains to be seen what specific measures the Commission will put forward.



## ENFORCEMENT

If traders or operators do not fulfil their obligations, competent authorities can confiscate non-compliant products and apply penalties. These penalties, to be detailed under national law, must be proportionate to the environmental damage caused and to the value of items, with a maximum penalty of at least 4 % of EU turnover in the preceding year. Penalties may also include being excluded from forthcoming public procurement processes or public funding.

The EUDR introduces a new enforcement mechanism, the 'access-to-justice' clause. Any natural or legal person could already under the EUTR flag substantiated concerns about infringement to a competent authority. The competent authority must then investigate whether these concerns are well-founded. Under the EUTR, it was not possible to challenge competent authorities' findings on these matters. The new enforcement mechanism now allows parties to use administrative or judicial procedures to review the decision taken by the competent authority. This mechanism should thus strengthen the possibility for legal action by civil society and affected peoples.

## AN OPEN DOOR FOR REVIEW

By the end of June 2024, there will be a review of the EUDR's scope that will consider including other wooded lands. A year later, a similar exercise will be conducted, this time examining whether other ecosystems and further commodities should be included, such as maize. Including financial institutions will also be on the table.

Currently, ecosystems like the Cerrado in Brazil are not covered by the legislation, despite their critical ecological significance. The Cerrado, the world's most biodiverse savannah, a crucial carbon sink, and a vital water source, is under threat from agricultural expansion, particularly for soy plantations. The danger is that as agricultural expansion in the Amazon becomes less profitable for the European market, it may shift to the Cerrado, exacerbating environmental challenges already observed there. This potential shift represents a form of 'leakage' to other ecosystems which could be prevented if the regulation's scope is broadened.

Since the EUDR entered into force, companies have an 18-month window to implement the required measures before it enters into application on 30 December 2024. SMEs are provided with an additional six months to adapt. This poses a challenge to companies that have SMEs in the middle of their supply chain, as they may struggle to demonstrate compliance before such SMEs themselves are obliged to comply.

## A SEMBLANCE OF CONTROL: THE UNILATERAL TURN IN DEFORESTATION GOVERNANCE

Significant – from a foreign policy lens – is the unilateral character of this approach, depicting a broader trend in EU trade policy<sup>1</sup>. Following the 2006 'Global Europe' Strategy and the 2015 'Trade for All' Strategy, there has recently been a shift towards unilateralism with more than half a dozen unilateral trade instruments, including the CBAM and the

**EVEN THOUGH THE EUDR IS MAINLY AN ENVIRONMENTAL POLICY INSTRUMENT, IT IS DESIGNED AS AN AUTONOMOUS MEASURE AND THEREBY EQUALLY FALLS WITHIN THE EU'S TRADE DOMAIN.**

CSDDD. Even though the EUDR is mainly an environmental policy instrument, it is designed as an autonomous measure and thereby equally falls within the EU's trade domain.

The EUDR's unilateral nature is not entirely new as the previous EUTR legislation also applied a comparable due diligence approach. However, the instrument at the heart of the prior approach and

the 2003 FLEGT Action Plan took a more cooperative approach – the Voluntary Partnership Agreements (VPAs). These are voluntary bilateral trade agreements that become legally binding once ratified. VPAs allow countries to receive a so called FLEGT-license, exempting them from legality due diligence requirements. To obtain such a license, countries must create a Timber Legality Assurance System (TLAS) which demonstrates that their timber conforms to jointly agreed legality definitions. In return, the EU provides financial assistance and capacity training. Whilst these VPAs are still valid under the EUDR, their importance has waned due to the additional due diligence requirement for all timber to be 'deforestation-free'.

It seems that the Commission has now shifted its approach to gain a sense of control. VPA negotiations involve a variety of stakeholders including civil society organisations and forest communities, from the very outset of discussions right through to implementation. They are tailored to the local context. Instead of imposing a standard definition of what legality means, the definition is agreed together with the partner country based on existing domestic laws and international agreements.

Negotiations for the VPAs were thus lengthy and progress in their implementation very slow. Over 17 years, only two countries managed to get through the entire FLEGT VPA process and FLEGT licensing: Indonesia, and most recently, Ghana. Whilst VPAs were signed with several countries, such as the Republic of the Congo (Brazzaville), Cameroon, the Central African Republic, Liberia and Vietnam, and negotiations are ongoing with six

<sup>1</sup> De Ville, F., Happersberger, S. and Kalimo, H. (2023), 'The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU's New Trade Instruments', *European Foreign Affairs Review*, Vol. 28, Issue SI, pp. 15-34, <https://kluwerlawonline.com/journalarticle/European+Foreign+Affairs+Review/28.SI/EERR2023012>

other countries, implementation stalled. The reasons for this are plentiful and differ depending on the local context – yet recurrent causes include the difficulty of reforming forest governance, corruption, and inadequate law enforcement<sup>2</sup>. Other factors include the scarcity of funds, the lack of intermediate rewards for progress and of clearly defined milestones.

As deforestation garners more public interest and the EU increasingly strives for measurable impact, the Commission has turned towards a tangible instrument which offers quantifiable results. But it's important to understand the VPAs' original objectives before dismissing them as ineffective. These agreements were aimed at tackling the root causes of illegal logging hand-in-hand with producer countries. These causes are often rooted in long-term complex governance issues – poverty, corruption, forest management practices – that would not be solved overnight.

VPAs aimed to change local practices and legislation in partnership with local actors and civil society. They provided impetus for governments, the private sector, civil society and forest communities to discuss how forests should be managed. Such engagement led to a noticeable positive effect in terms of improved forest governance and enhanced stakeholders participation – and, although not quantifiable, should not be underestimated when evaluating the effectiveness of this approach.

This said, a significant drawback of the cooperative VPA approach was that it could only reach countries already willing to engage and work on the problem of deforestation – a common challenge when approaching topics multilaterally. Despite growing global concerns, there is currently no international agreement to stop deforestation.

**AS AN AUTONOMOUS MEASURE, THE EUDR CAN BE IMPLEMENTED WITHOUT ANY FORMAL TRADE AGREEMENTS OR NEGOTIATIONS WITH OTHER COUNTRIES, PLACING THE EU FIRMLY IN CONTROL AND PREVENTING LENGTHY PROTRACTED NEGOTIATIONS.**

Negotiations to create a legally binding instrument on forests were either blocked, like the 1992 UN Forest Convention, or failed, like the Intergovernmental Forum on Forests.

In contrast, a unilateral instrument automatically targets all countries involved in the EU market. As an autonomous measure, the EUDR can be implemented without any formal trade agreements or negotiations

with other countries, placing the EU firmly in control and preventing lengthy protracted negotiations. However, it also means that the scope is different – the approach may ensure that supply chains from the EU are deforestation-free but combatting deforestation more widely requires demand-side measures to be matched with supply-

<sup>2</sup> Alhassan Adams, M. et al. (2020), 'A Comparative Analysis of the Institutional Capacity of FLEGT VPA in Cameroon, the Central African Republic, Ghana, Liberia, and the Republic of the Congo', *Forest Policy and Economics*, Vol. 112, <https://doi.org/10.1016/j.forpol.2020.102108>.





side measures. Root causes can only be effectively addressed in a strong partnership approach. In its wider external action, the EU acknowledges this, explicitly moving from ‘development aid’ to ‘international partnerships’. But for the EUDR, the emphasis on ‘partnership’ is certainly missing.

This is especially significant from a humanitarian lens. There’s an inherent danger in the unilateral approach, that the costs of compliance are passed down from multinational corporations to smallholders. There is also concern that smallholders will be excluded from global supply chains due to too high compliance and transaction costs. The complexity of gathering all the relevant data from smallholders may lead traders to choose bigger suppliers instead. Whilst the Impact Assessment recognises the risk of additional costs and ‘fluctuations to the income of smallholders’, the legislation’s design didn’t sufficiently take this critical aspect into account. It’s therefore imperative that the implementation phase and the strategic partnership approach prioritises drawing considerable attention to the needs of smallholder farmers in global supply chains.

## SHIFTING MARKET POWERS

The EUDR is an autonomous measure, ensuring EU trade is in line with key objectives outlined within the EU Green Deal. Strictly speaking, the EUDR’s objective is primarily focused on cleaning up supply chains from products grown on deforested land and thus minimising the EU’s contribution to deforestation and forest degradation worldwide. However, ultimately, the EUDR goes further and beyond this immediate objective, by also leveraging the power of the EU market as a tool to induce desired changes in trading partners’ domestic policies.

Whether you call it ‘Market Power Europe’ or the ‘territorial extension’ of EU law, the EUDR is like the CSDDD – an instrument used by the EU to pursue objectives beyond its jurisdiction, thereby exerting legal impact both at home and abroad.

These instruments rely on the global significance of the EU market. Yet whilst being the third largest market and the world’s biggest single market, the EU suffers from decreasing market power in several of the commodities covered. An increasing proportion of the global trade in forest-risk commodities now flows through South-South supply chains<sup>3</sup>.

China and ASEAN offer a market which is at a minimum as attractive as the EU market. Whilst the EU market remains the world’s largest importer of cocoa, accounting for 60 % of world imports, for commodities like soy and palm oil its significance is a lot lower. China has long been the main soybean importing country, followed by the EU with only a fifth

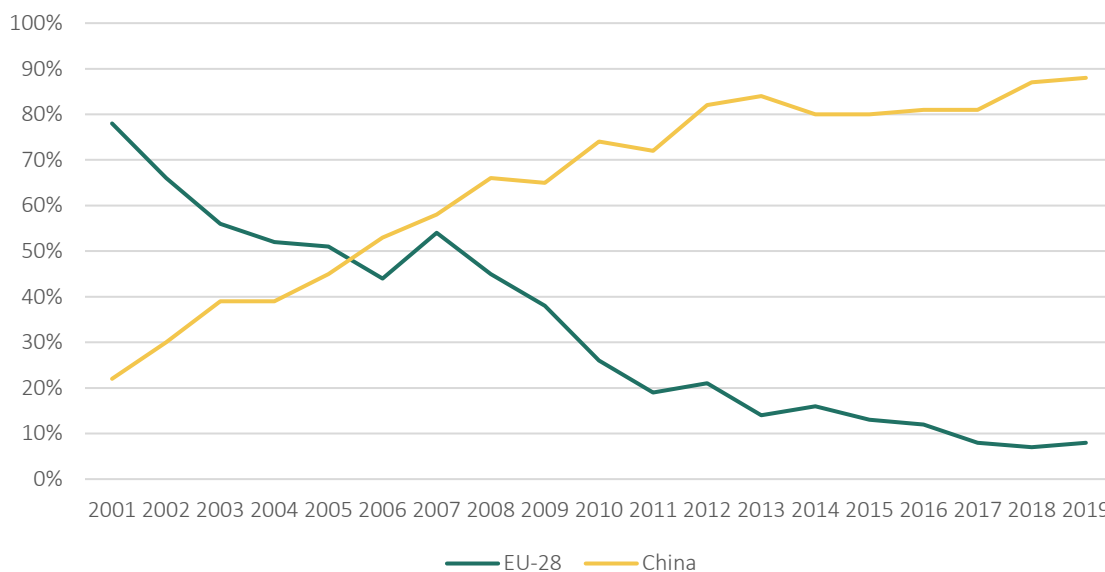
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<sup>3</sup> Schleifer, P. (2023), *Global Shifts: Business, Politics, and Deforestation in a Changing World Economy*, Earth System Governance, The MIT Press, Cambridge, Massachusetts.

in quantity for 2020. The shift in market powers can be seen particularly well in the case of Brazil – the world’s largest exporter of soybeans. Since 2007 the EU’s share of Brazilian soy exports has diminished to be merely a fraction of those to China (see Figure 1 below).

Palm oil flows are of a similar nature. For Malaysia, the world’s second biggest palm oil producer, China has been its top trading partner since 2009, and with the economic relations between the two continuing to deepen, there are now plans afoot for Malaysia to double its palm oil exports to China in response to the EUDR.

*Figure 1. Share of Brazilian soybean and soymeal exports, in value terms*



Source: Schleifer, P. (2023), *Global Shifts: Business, Politics, and Deforestation in a Changing World Economy*, Earth System Governance, The MIT Press, Cambridge, Massachusetts. The graph is based on data from ITC International Trade Statistics, <https://www.intracen.org/itc/market-info-tools/trade-statistics/>

The lever of EU market power thus differs strongly depending on the commodity in question. The cases of Malaysia and Brazil illustrate how shifting global market powers may undermine the EUDR’s intended impact.

A crucial concern in this approach is that crops from already existing agricultural production sites, in line with the EUDR, will be supplied to the EU market, whilst non-compliant crops find their way to other markets – Asia being the strongest competitor. Such a separation of supply chains, also referred to as leakage, means that deforestation for agricultural expansion will continue, even though no longer evident in the EU’s supply chains.



## THE EU – A TRUSTWORTHY INTERNATIONAL PARTNER?

The EUDR has sparked considerable backlash in producer countries. Indonesia and Brazil filed a joint letter in November 2022 with 14 signatories to the World Trade Organisation (WTO) reprimanding the EU for choosing unilateral legislation instead of an international engagement. This letter was followed by a more recent letter of mutual concern addressed to the Commission. It was signed by 17 like-minded countries, namely Argentina, Brazil, Bolivia, Colombia, the Dominican Republic, Ecuador, Ghana, Guatemala, Honduras, Indonesia, Ivory Coast, Malaysia, Mexico, Nigeria, Paraguay, Peru, and Thailand.

A key point of concern in both letters was the benchmarking system, which is seen as ‘inherently discriminatory and punitive in nature’. The countries fear trade distortions, diplomatic tensions, and reputational risks for companies without corresponding environmental benefits. The second letter calls on the EU to initiate a more meaningful and open dialogue with producing countries, and provide stronger implementation guidelines and support.

The way the EUDR negotiations were conducted inevitably harmed the EU’s image as a reliable partner. Like with most issues with global reach, there is a fine line between acknowledging the demand-side responsibility and imposing ‘European’ standards on other countries. Whilst the regulation provides a response to the calls of NGOs from around the world, the EU missed the opportunity to engage meaningfully with the

**WHILST THE REGULATION PROVIDES A RESPONSE TO THE CALLS OF NGOS FROM AROUND THE WORLD, THE EU MISSED THE OPPORTUNITY TO ENGAGE MEANINGFULLY WITH THE GOVERNMENTS OF PRODUCER COUNTRIES AND STRENGTHEN PARTNERSHIPS.**

governments of producer countries and strengthen partnerships. Instead, conversations and partnerships were initiated too late and too unilaterally, leaving partner countries dismayed and disappointed.

As mentioned above, the VPA negotiations required significant time

and resources from all parties involved. When entering into these bilateral agreements, importers were promised primary market access. Now, instead of receiving this benefit, they face even more stringent requirements for their products under the EUDR. The decision to expand the scope of requirements became necessary as insights on agricultural-driven deforestation grew. However, communication with third countries fell far short of upholding trust in long-term agreements with the EU.

Consequently, the EU is now actively engaged in damage control. It’s in the process of setting up a joint task force over implementing the EUDR with Indonesia and Malaysia, facilitated by the Council of Palm Oil Producing Countries. It’s a step towards ensuring



producer countries' engagement and aims to establish a consultative process for implementing the regulation.

The EU's Global Gateway initiative, originally conceived as a greener and more transparent alternative to China's Belt and Road Initiative, could provide a meaningful framework to support implementation hurdles. It has not yet been sufficiently leveraged but this is envisaged for the future. A step towards a Team Europe initiative on the EUDR has been taken by the German Federal Ministry for Economic Cooperation and Development in cooperation with the Commission. The Sustainable Agriculture for Forest Ecosystems (SAFE) project aims to provide technical assistance, scaling up traceability systems and fostering exchange among a wide range of actors. The project will be implemented in Brazil, Indonesia, Ecuador and Zambia. A further Team Europe Initiative will launch at COP28, which is taking place in the UAE in November-December 2023.

## CONCLUSIONS AND THE WAY FORWARD

The EUDR marks an important milestone in addressing demand-side deforestation governance, being the first regulation targeting deforestation driven by agriculture. For better or worse, this regulation will significantly impact all operators and supply chains of the relevant commodities under its scope. For the big operators the regulation means reorganising logistical processes in a way that can ensure traceability. For smaller players, the regulation may pose more of an existential challenge, as smallholders may be eliminated from supply chains, thus threatening their livelihood. This regulation's success will hinge on considerate and efficient implementation, accompanied by meaningful consultations and engagement with international partners.

As its market influence wanes, the need for the EU to position itself as a reliable partner becomes increasingly important – trust is a precious commodity in the international arena.

Unfortunately, the EUDR's legislative process has, to some extent, tarnished the EU's reputation as a reliable partner. The benchmarking system may likely cause more conflicts with third countries, as classifications are perceived as highly political, and there is risk of legal challenges before the WTO.

The EUDR is just one of several due diligence instruments currently being negotiated or implemented at EU-level. It offers valuable insights for other due diligence instruments, such as the CSDDD, showcasing that 'going it alone' has its challenges and limitations. Demand-side initiatives need to be paired with supply-side initiatives. Dialogue and collaboration with trading partners are crucial – not only after the regulation has been passed but throughout the entire process, from formulation and publication right through to implementation.



Perhaps most importantly, these initiatives must be understood for what they are besides their environmental or humanitarian aspirations – a foreign policy tool. The EU is yet to leverage its available foreign policy instruments – like Global Gateway – to a meaningful extent. If we can draw one clear lesson, it's that prioritising the external dimensions of legislation like the EUDR must be placed first to uphold trust and strengthen collaborative relationships with the EU's international partners.



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