

Achieving sustainability while maintaining sovereignty: Do the United States Forest Act and European Union Deforestation Regulation violate the General Agreement on Tariffs and Trade?

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ABSTRACT

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New policy instruments in the EU and US aim to combat global deforestation by requiring additional obligations on producers to show that commodities such as soy, cocoa, and rubber products were produced without contributing to deforestation.

The approach proposed by the United States, the Fostering Overseas Rule of Law and Environmentally Sound Trade Act (commonly referred to as the "US Forest Act"), would allow countries to develop territorial compliance standards through the submission of country-wide action reports. The approach focuses narrowly on restricting commodities linked to illegal forms of deforestation. In contrast, the European Union Deforestation Regulation (EUDR) applies to all forms of deforestation, making no distinction between legal and illegal land use changes. Under the EUDR, all producers must demonstrate, through a detailed chain of custody that includes geolocation data and a substantial due diligence report, that their products do not originate from areas affected by deforestation, including forest degradation.

A review of previous environmental rulings from the World Trade Organization (WTO) suggests that applying extranational constraints and environmental restrictions, as done in the EUDR, may violate the General Agreement on Tariffs and Trade (GATT). Although the WTO does not issue judicial opinions with the binding power of stare decisis, past rulings do serve as persuasive authority for future decisions. Thus, the precedent established in cases such as Dolphin-Tuna and Shrimp-Turtle indicates that the EUDR is inconsistent with GATT principles of least impact on trade. By contrast, the Forest Act, which limits its enforcement to commodities linked to illegal deforestation, is more likely to comply with GATT obligations.

INTRODUCTION

Concerns about the condition of the world's forests continue to grow, particularly as these ecosystems face ongoing conversion to plantation forestry, agriculture, and other land uses. In addition to land use changes, many forests have experienced progressive degradation due to unsustainable harvesting practices. Efforts to protect forests are further complicated by the lack of a universally accepted definition of what constitutes a forest. As Putz and Redford (2010) emphasize, ambiguity in forest definitions undermines effective conservation and policy enforcement. Consequently, any policy framework aimed at curbing deforestation must clearly and transparently define the types of forests it seeks to protect.

Proposed legislative and regulatory instruments in the United States and the European Union aim to enhance forest protection by mandating greater transparency in the supply chains of forestry and agricultural products that may contribute to deforestation and forest degradation¹. One notable example is Vijay et al. (2016), which showed that oil palm plantations have replaced primary forests in twenty countries, primarily in Southeast Asia. Oil palm was responsible for an average of 270,000 hectares of forest conversion annually from 2000 to 2011 in major palm oil exporting countries, which are located in moist tropical forests. Mai (2024) outlines the necessary changes in Vietnam's coffee production, including the improvement of traceability systems and support for smallholders to ensure their inclusion in sustainable supply chains and combat deforestation. These are the agricultural products that are often associated with deforestation.

Currently, many countries have laws and regulatory measures in place that restrict trade in forest products to prevent illegal activities. In the United States (US), the Lacey Act, 16 U.S.C. § 3371 et seq., prohibits the importation into the United States of forest products obtained illegally in their countries of origin. For example, in 2012, the Gibson Guitar Company was charged with importing timber illegally logged in Madagascar in 2002. Gibson was fined, and the government seized the illegal timber. The key component of the Lacey Act (16 U.S.C. §§ 3371-3378) is that it does not extend the sovereign powers of the United States to other countries but strengthens the laws in other countries by making it illegal to import illegally sourced products from the host country into

¹ which is broadly defined as reduction in ecosystem process and includes the conversion to plantation forests.

the US (§ 16 U.S.C. 3372(a)(2)(B)(i)(I-IV)). Thus, the forest products are currently regulated in the United States.

Building on this framework, two primary policy instruments aimed at combating deforestation are the US-based Fostering Overseas Rule of Law and Environmentally Sound Trade Act, as well as the US Forest Act (S. 3371) and the European Union Deforestation Regulation (EUDR). Both acts aim to promote sound trade in products while reducing forest degradation and conversion. This paper examines the policy approaches adopted by both groups to determine whether they are consistent with the existing policy framework outlined in the General Agreement on Tariffs and Trade (GATT). One criticism of the GATT is that it promotes the "race to the bottom," as countries with lower environmental standards can attract business from countries with higher environmental requirements. However, Article XX of GATT does allow countries to impose trade restrictions for environmental protection, provided they are not discriminatory or disguised as protectionism.

THE EUROPEAN UNION DEFORESTATION REGULATIONS AND THE US FOREST ACT

The US Forest Act prohibits the importation of commodities produced on illegally deforested lands. As the Lacey Act prohibits the importation of products that are illegally produced in the host country, the US Forest Act extends this prohibition to commodities derived from illegally deforested lands. For example, soybeans produced are legally traded; however, if their origin is from illegally converted forests, such as land cleared from an existing national park, the product becomes illegal. The list of commodities restricted by the US Forest Act and EUDR is shown in Table 1.

The European Union Deforestation Regulation shares goals with the US Forest Act. It lists seven commodities, including coffee and wood, which are not included in the US list; only wood and cattle are produced in the European Union. Thus, there is an opportunity to view these regulations as protective measures for European industries.

Table 1. Commodities regulated under the European Union Deforestation Act and the US Forest Act.

EUDR	US Forest Act
Cattle	Cattle
Cocoa	Cocoa
Coffee	-----
Oil palm	Oil palm
Rubber	Rubber
Soya	Soya
Wood	-----

There are differences in satisfying the requirements of each act. The US Forest Act adopts a programmatic approach to assessing country-level compliance with anti-deforestation standards. Every two years, the US Trade Representative, through Customs and Border Protection, reviews trends in illegal deforestation, enforcement capacity, and violence against Indigenous communities in exporting countries to reassess the level of compliance required to meet the US standard, as outlined in Table 2. This table highlights key legal and procedural distinctions between the US Forest Act and the EU Deforestation Regulation, with a specific focus on how each aligns with World Trade Organization obligations under the General Agreement on Tariffs and Trade.

Table 2. Comparison of the US Forest Act and the European Union Deforestation Regulation (EUDR).

Feature	US Forest Act	EU Deforestation Regulation
Type of restriction	Legality-based restriction	Process-based restriction can include those activities that are legal in host countries.
Targeted deforestation	Only illegal deforestation (i.e., violating the producer country's laws)	All deforestation, regardless of legality, in the home country
Definition of deforestation	Determined by laws of the producing country	Defined by the EU, including forest degradation and conversion to plantations
Scope of application	Tailored to country-specific legal frameworks and capacity	Universal application across all trading partners
Compliance mechanism	Country-level assessments, action plans, and standard due diligence	Mandatory due diligence at the product level, including geolocation and satellite verification
Policy approach	Cooperative enforcement to support legal compliance abroad	Prescriptive regulations applying EU-defined environmental standards globally
WTO/GATT compatibility risk	Lower – reinforces the rule of law without extraterritorial overreach	Higher – may violate principles of non-discrimination and least-restrictive means

Based on these evaluations, the US collaborates with governments to develop action plans that aim to reduce deforestation, protect rural communities, and strengthen legal enforcement. Countries with approved action plans are permitted to export covered commodities to the US. In contrast, countries without approved plans must satisfy more stringent due diligence requirements, proving that their goods were not sourced from illegally deforested lands.

The European Union Deforestation Regulation (EUDR) imposes a more prescriptive compliance framework in comparison. All covered commodities must be accompanied by a due diligence statement that identifies their origin and confirms they are not linked to deforestation occurring after December 31, 2020. Notably, the EUDR applies an expanded definition of deforestation that includes both forest degradation and the conversion of natural forests to plantation forests, regardless of whether these activities are legal under the laws of the country of origin. To meet the due diligence requirements, producers must provide three key elements: (1) product and company information identifying the producer and the nature of the commodity; (2) a deforestation-free declaration supported by geolocation data, including latitude and longitude for areas exceeding four hectares, supplemented by satellite imagery; and (3) a forest degradation assessment, which may draw from independent forest certification systems. Initially, the EUDR applied uniform compliance obligations across all countries but has adopted a three-tier risk classification system (low, standard, and high-risk). These classifications will be determined using a combination of satellite and national data.

GATT requires that all member nations be treated as "most favored nations," meaning no country's goods should receive preferential or discriminatory treatment. It is designed to minimize trade barriers between countries. However, Article XX allows for environmental protection under GATT. Under Article XX, a country can impact trade as long as the barriers are transparent and do not act as a disguised barrier to trade by failing to adopt the least trade-restrictive measures. Kusuma and Wisanjay (2024) argue that the EUDR is compliant with the WTO, as the regulations are consistent with Article XX paragraphs (b) and (g) of the GATT Agreement. However, we argue that EUDR violates GATT and is inconsistent with previous rulings.

ENVIRONMENTAL RULINGS UNDER GATT

Several rulings by the WTO determine whether environmental measures unfairly influence trade among its members. The first example is referred to as Dolphin-Tuna. In the 1990s, the United States (US) established standards under the Marine Mammal Protection Act to reduce incidental dolphin mortality resulting from tuna harvesting practices. The US subsequently required other nations that import tuna into the US to prove their fishing practices met those same US-based standards for dolphin protection.

Article XX of the GATT permits deviations from trade to protect the environment and natural resources. The US believed the exception required for importing tuna into the United States was necessary to protect animal life as allowed under Article XX. It was related to conserving an exhaustible natural resource, specifically dolphins. However, Mexico filed a grievance against the US, arguing that the restriction constituted a restriction on articles III, XI, and XIII. These are quantitative restrictions on trade under GATT in Article XI, which prohibits trade for failure to adopt the environmental standard. The WTO agreed with Mexico that the trade limitation was not necessary and failed the "least trade-restrictive means" test under Article XX exceptions to protect the dolphins. The second reason the WTO denied the US claim was that the US was forcing an adoption of US policy in an extraterritorial manner.

A second example involved the environmental goals in the Shrimp-Turtle case. In this case, the United States listed five species of sea turtles as threatened or endangered under the United States Endangered Species Act (ESA). Domestic shrimp producers were required to adopt a Turtle Excluder Device (TED) to reduce the number of turtle deaths during fishing operations. The US imposed embargoes on several South Asian countries, arguing that their fishing practices harmed the sea turtles as they refused to adopt similar fishing standards to protect them. The WTO ruled that the shrimp embargo was a quantitative restriction, like the Tuna-Dolphin findings, and undermined multilateral trading systems by imposing US environmental standards.

The final example occurred in 2000 when Brazil imposed an import ban on retreaded tires. The European Community argued that the import ban violated the GATT and was a form of national protection for Brazil's domestic tire production. Brazil allowed the importation of retreaded tires from Argentina, Uruguay, and Paraguay (The MERCOSUR countries). Brazil justified the ban

under Article XX(b), which allows trade restrictions necessary to protect human, animal, or plant life or health, as the discarded tires were often breeding grounds for disease-carrying mosquitoes. The WTO panel ruled that the Article XX provisionally justified an import ban for health and environmental protection. However, the MERCOSUR exception was a violation of Article XX, which requires that any exception must not be applied in a way that results in arbitrary or unjustifiable discrimination between countries where the same conditions prevail.

The WTO is a diplomatic forum for resolving trade disputes, not a judicial body. Therefore, it is not bound by legal precedent in the way that courts practicing *stare decisis*.² Each case is interpreted on its own merits, and prior rulings serve only as persuasive authority rather than binding precedent. Thus, our interpretation draws upon legal reasoning rooted in standard law theory, where prior rulings serve as persuasive guidance for future cases, even in the absence of formal precedent at the WTO. However, the goal of any ruling should be consistent and transparent with past rulings.

APPLYING THE GUIDANCE FROM PREVIOUS GATT DECISIONS TO EUDR

The US Forest Act does not apply any extranational regulations outside of the United States. Thus, it only requires illegally sourced material to be restricted from entering the United States. Often, it relies on country-level reporting to achieve its results. This criterion meets the "least impact on trade" requirement found in GATT.

First, the EUDR applies to all importing countries. Thus, it meets the standard of being treated no less favorably than domestic goods. However, commodities that do not meet the requirements of the EUDR are excluded from import. Thus, as in the fishing examples of Dolphin-Tuna and Shrimp Turtle, in which the US attempted to control the fishing process, not the fish, it then becomes a process-based restriction. The EU is attempting to regulate agricultural and forestry practices rather than the products themselves.

² *stare decisis* is translated as let the decision stands. It is a dominant principle in common law jurisdictions to use precedence from previous court rulings to evaluate current controversies

Process-based import bans are not per se illegal under GATT, but they face a high threshold for justification. If a country's domestic standards are imposed extraterritorially or applied in a discriminatory or inflexible manner, they are likely to be ruled inconsistent with WTO-GATT obligations. This decision distinguishes it from the Brazil-Tire case. The recycling of tire products was being restricted, not the recycling process or the fishing process in Shrimp-Turtle or Dolphin-Tuna.

Although GATT does not prohibit the use of extranational regulations, such measures must represent the least trade-restrictive means available to achieve their policy objectives. For example, the US Forest Act mitigates extraterritorial overreach by focusing solely on illegal deforestation in the source country. This is the identical approach used by the Lacey Act, which prevents the legal import of products that have violated the laws of their source countries. Additionally, offering nationwide assessments to reduce the compliance burden for low-risk nations. These assessments are updated every two years, help identify countries with adequate enforcement and governance structures, and reduce the compliance burden.

The EUDR applies a single global standard, meaning deforestation might be flagged by the EU even if it is legal where it happens. In many developing countries, clearing forests for farmland is not only allowed but often essential for feeding growing populations. However, under the EUDR, such conversions can result in trade exclusion on the products from these legal activities. This approach risks disproportionately penalizing countries with different land-use priorities. It may violate the WTO requirement that environmental regulations not be applied in a manner that constitutes discrimination or trade barriers.

This distinction mirrors the WTO's reasoning in the Shrimp-Turtle case, where the US lost for failing to offer adequate flexibility or cooperative mechanisms to its trading partners. The appellate body later upheld a revised US measure only after the United States engaged in meaningful negotiations, provided technical assistance, and applied its environmental standards in a non-discriminatory manner.

By contrast, the EUDR currently lacks a cooperative framework or differentiated application before it adopts the risk-tier system in June 2023. By failing to incorporate flexibility or offer avenues for cooperation, the EUDR's uniform standard risks violating WTO requirements for fair and balanced environmental regulation.

CONCLUSIONS

There is a broad consensus that effective policies are needed to address global deforestation. However, the European Union Deforestation Regulation (EUDR) imposes broad process-based requirements on commodity producers despite acknowledging that these practices are legal under domestic law. This extraterritorial approach can impose significant demands on supply chain operations and may disproportionately impact developing countries that are potential or existing trade partners. The EUDR's rigid, initial one-size-fits-all approach may not satisfy the WTO's expectation that environmental trade measures be implemented with procedural fairness and diplomatic engagement. Although the introduction of a three-tier risk classification system was intended to address concerns about procedural rigidity, it introduces new conflicts by raising the cost of compliance for countries deemed high-risk. The results could drive producers from those countries out of the desired markets or into informal trade channels, reducing allocative efficiency and increasing shadow economic activity. In contrast, the US Forest Act builds upon the Lacey Act framework and targets only commodities linked to illegal deforestation or forest degradation, aligning more closely with existing legal norms and enforcement capacity in producer countries.

From a legal and economic standpoint, we find that the EUDR's structure is more likely to conflict with the World Trade Organization's General Agreement on Tariffs and Trade (GATT), particularly under the principles of non-discrimination and the least trade-restrictive means, as it regulates processes rather than products. Thus, it is inconsistent with past WTO rulings and thereby undercuts competitive neutrality, creating inefficiencies in global trade. The US approach, which focuses on the legality of practices in exporting countries and incorporates cooperative compliance tools, offers a more pragmatic approach to environmentally driven trade policy. By contrast, the EUDR's broad scope could conflict with WTO rules and hinder prospects for multilateral collaboration.

CONFLICTS OF INTEREST

The authors confirm they have no conflicts of interest.

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