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European Union Deforestation-Free Regulation: Avoiding Unilateralism

By Arif Havas Oegroseno

SYNOPSIS

In an interconnected world confronting an unprecedented climate crisis and worsening inter-state relations because of intensifying geopolitical competition, multilateral cooperation and a rules-based international order are essential for co-existence and humanity's future. The efforts of the European Union in slowing deforestation and preserving biodiversity cannot be at the expense of the established international environmental agreements and the multilateral trading system and progress made on environmental sustainability.

COMMENTARY

After a two-day meeting (15-16 April) in Sapporo under Japan's 2023 Presidency of the G7, climate, energy and environment ministers issued a [communiqué](#) setting out "aims to strengthen energy security and accelerate progress on clean energy transitions."

The communiqué included a reiteration of the commitment to halt and reverse forest loss and land degradation by 2030, these being important drivers of climate change and biodiversity loss – two key environmental challenges of our time.

Earlier, in December 2021, at the United Nations Framework Climate Change Conference (UNFCCC) held in Glasgow, more commonly known as COP26 (the 26th Summit of the Conference of the Parties), 137 countries also made a similar [commitment](#) to "halt and reverse forest loss and land degradation" by 2030.

European Union and Deforestation

On 6 December 2022, in consonance with green developments around the world, the

EU reached an [agreement](#) on a new law to prevent companies from placing commodities linked with deforestation and forest degradation, onto the EU market, or from exporting them from the EU.

Known as the European Union Deforestation-Free Regulation (EU-DR), the agreement is in line with global aspirations for a greener world and should therefore have international political support. Instead, it has been met with unhappiness in many quarters, especially among countries of the global South.

Out of Step with International Agreements

The purpose of the EU-DR is legitimate and laudable. It is for the conservation and sustainable management of forests, and through this to combat climate change. Forests serve as carbon sinks to capture and store carbon dioxide.

While this is undeniable, the design of the EU-DR and the proposed actions to implement the deforestation-free regulation do not seem to respect international environment and trade agreements such as the 1992 UN Rio Declaration on Environment and Development environmental law, UN's Sustainable Development Goals, the Paris Agreement on Climate Change, and the rules of the WTO. At the same time, a perception is growing that the EU-DR can be used for protectionist purposes to protect EU industry in products such as beef, soya, palm oil, and timber.

There are several ways in which the EU-DR might not be coherent with these international agreements.

First, the EU-DR is unilateral and punitive. Its unilateral aspects include definitions that are not multilaterally agreed upon; the use of retroactive cut-off dates; a burdensome due diligence mechanism and subjective risk assessment criteria; costly and impractical traceability and geo-localisation requirements; and insufficient unilaterally defined transition period, which could increase costs and have negative social and economic consequences for developing countries.

Principle 12 of the [Rio Declaration](#) is categorical that “Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global problems should, as far as possible, be based on an international consensus”. There is an obligation on the EU to address deforestation through genuine, and constructive multilateral cooperative dialogues with the developing countries concerned.

Second, the use of trade measures to address deforestation is not in keeping with the understanding that environmental problems should be addressed at their root cause. Trade is not the cause of deforestation. Rather, unsustainable production and consumption processes in the forestry sector contribute to deforestation. Hence, solutions should address the root causes which are of unsustainable production and consumption processes.

Third, the EU's plan to use trade restrictions is not in line with the WTO nor the UN agreements which require countries to “Cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable

development in all countries, to better address the problems of environmental degradation”.

Fourth, the discriminatory nature of the EU-DR is not consistent with the fundamental non-discriminatory provisions of the WTO and the UN. The WTO and UN agreements require that trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

a. The list of targeted products are exported by developing countries. In particular, products such as beef, soya, palm oil, and timber seem to be in direct competition with EU's own products.

b. The EU-DR is discriminatory in its scope. The EU-DR seems to have excluded millions of hectares of degraded and destroyed peatlands in the EU geography, which are emitting potentially massive amounts of greenhouse gases.

Fifth, the one-size-fits-all approach of the EU-DR does not accommodate the UN principle of "common but differentiated responsibility". The additional controls inherent in the EU-DR and reputational risks for companies which are not able to meet the EU-DR requirements are more likely to hurt producers in developing countries, especially smallholder farmers and small and medium enterprises (SMEs).

Relatedly, the EU has to respect the UN principle that all countries have the sovereign right to make their own judgements on the standards which they apply within their own territories. As such, the EU needs to ensure flexibility and fairness in the implementation of the EU-DR so that the sustainable development objectives of developing countries are not hindered. In this regard, the following three UN Rio principles are pertinent.

a. Rio Principle 2: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

b. Rio Principle 6: The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

c. Rio Principle 11: Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Last but importantly, the EU, as a grouping of developed countries, is required to provide financial, technical and technological assistance to developing countries to help build up their environment management capacity. This capacity building

expectation has become a regular feature of international environmental cooperation and treaty practice.

Going Forward

The EU-DR is laudable from the global consensus on halting and reversing forest loss by 2030. However, the issue with the EU-DR is the manner in which it seeks to achieve its objectives. It smacks of unilateralism; it seems to be discriminatory vis-à-vis concerned developing countries; and could be used for protectionist purposes.

Although the European Parliament and the European Council are expected to adopt the new EU-DR to protect against deforestation around this time, the EU should consult the affected countries to find a multilateral cooperative approach, avoid disproportionate burdens and costs for developing country farmers and SMEs, and render capacity building support to the developing countries.

The Glasgow Climate Pact (GCP) from COP27 and the Sharm el-Sheikh Implementation Plan (SHIP) from COP28 had emphasised the critical role of multilateralism based on United Nations' values and principles, and the importance of international cooperation for addressing global issues, including climate change. Unilateralism as manifested through the EU-DR is not in keeping with GCP and SHIP. As a party to and major member of the UN system and the WTO, the EU's leadership is important to promote multilateralism and international cooperation. Multilateralism is arduous but cannot be avoided anymore to manage the looming climate crisis and biodiversity loss.

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