

THE LEGALITY OF PALM OIL BAN IN EU AND ITS IMPLICATION ON INTERNATIONAL MARKET

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On December 6, 2022, the European Union has agreed to phase out a new law by 2030 in banning palm oil, soy, and derivation products.² The reasoning behind this ban is due to the cultivation of palm oil results in excessive deforestation, human rights violations, and usage of harmful biofuel towards feedstocks. Additionally, in order to ensure the sustainability goal is reached, EU aims to reduce carbon footprint in the following future. Through this ban, it creates a comprehensive discussion and debates on the true purpose of this ban especially towards world's largest producer and consumer of palm oil such as Indonesia, Malaysia, Thailand, Brazil and other concerning countries.

EU highlights palm oil, soy, and it's derivation causes in excessive deforestation. However, in comparison to other type of vegetable oils, palm oil can produce more oils with the same amount of land usage. This can be seen as a single hectare of palm oil can produce 4.17 metric tons of oil in a year while sunflower oil simply produces 0.39 metric tons of oil, and soybean produces 0.39 metric tons of oil.³ Through the aforementioned information, it can be understood that palm oil produces the largest quantity of oil with the smallest amount of land. Thus, if palm oil were to be banned, the demand of alternative oil will remain. The issue of deforestation will remain as other type of oil requires larger amount of land to

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² Nikoro, R. (2022) *Eu agrees law to ban imports of soy and palm oil derivatives linked to deforestation*, *Mintec Global Food Commodity Price Data & Market Intelligence*. Available at: <https://www.mintecglobal.com/top-stories/eu-agrees-law-to-ban-imports-of-soy-and-palm-oil-derivatives-linked-to-deforestation> (Accessed: 22 June 2023).

³ Asian Agri (2018) *The Benefits of Palm Oil*, *Asian Agri*. Available at: <https://www.asianagri.com/en/media-publications/articles/the-benefits-of-palm-oil/#:~:text=The%20palm%20oil%20industry%20has,to%20own%20their%20own%20land.> (Accessed: 22 June 2023).

produce the same quantity of palm oil. Such ban, can be seen as redundant as it does not solve the actual issue of deforestation.⁴

It is widely known that palm oil ingredients can be used as a versatile ingredients in the market ranging from cosmetics to biofuel with a market price below its competitors.⁵ To avoid issues regarding sustainability and debates, as well as in order to comply with the 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDG), palm oil companies resort to certification by third party to provide assurance of the product, process, and/or service as well as the supply chain is in accordance with certain standards as well as in order to ensure it is in compliance with Nationally Determined Contributions (NDC) within the Paris Agreement.

The aforementioned certification is separated into two based on voluntary basis such as Roundtable on Sustainable Palm Oil (RSPO) and International Sustainable and Carbon Certification (ISCC) as well as mandatory government certification schemes such as Malaysian Sustainable Palm Oil (MSPO) and Indonesia Sustainable Palm Oil (ISPO).⁶ The purpose of the aforementioned certifications is to provide objectives, scope, criteria, and methodologies that are applied on the palm oil industry as of now.⁷

As of now, RSPO is the largest voluntary certification for sustainable palm oil with its aim to ensure credibility and transparency as well as for developing and strengthening the requirements of the industry and consumers.⁸ Mandatory certification such as MSPO and ISPO were able to be interpreted and adopted by national laws and regulations.⁹ As MSPO and ISPO is a mandatory scheme it can be said that it provides more compliance towards the state itself and/or producer in order to ensure a strictive requirement for sustainable production. Thus, with the existing ban, as long the state and/or companies can provide that their products are in compliance with the certification and can be prove not to participate in deforestation then such ban would not be imposed towards the company.

⁴ Ibid.

⁵ Majid, N.A. *et al.* (2021) *Sustainable Palm Oil Certification Scheme Frameworks and Impacts: A Systematic Literature Review* [Preprint]. doi:<https://doi.org/10.3390/su13063263>.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

Previously on January 2018, the European Parliament has amended the draft of Renewable Energy Directive (RED) in order to ban the usage of palm oil biofuels in Europe by 2021 and RED will be phased out by 2030.¹⁰ The basis behind this ban is due to EU plans to reduce biofuels from food crops by 2023. Through this ban, it is undebatable that there will be direct impact towards concerning states especially towards states who rely on palm oil for its economy and GDP as well as profits. Additionally, there will also be direct and indirect impact towards labors especially farmers who works in the field of palm oil if such ban impact greatly on the states.

Through the lens of international law and in accordance to European Union 2023/1115 of the European parliament and of the Council, such ban is imposed towards companies that conduct deforestation pursuant to 2021. Thus, as long as the companies, countries, and/or institution are able to provide certification which proves that there are no deforestation conducted pursuant to 2021 then the ban shall not be imposed towards the concerning companies, countries, and/or institution.¹¹ According to the law, since 1990 – 2020, the Food and Agriculture Organization of the United Nations (FAO) estimated there are 420 million hectares of forest being cut down. Thus, the law highlights regarding the effect of such deforestation towards climate change, destruction of natural ecosystem and human rights violation.¹²

Furthermore, in accordance to the FAO of the United Nations, the ban will most likely affect global economy in a sense where it will increase the cost of food prices.¹³ Such ban will also affect every day necessitates such as toothpaste and detergent as 50% of packaged goods contains palm oil.¹⁴ Therefore, basic living necessities will be affected even further for

¹⁰ Wicaksono, T.A. (2021) *Indonesia's fight against the EU Palm Oil Ban*, *Geopolitical Monitor*. Available at: <https://www.geopoliticalmonitor.com/indonesias-fight-against-the-eu-palm-oil-ban/> (Accessed: 22 June 2023).

¹¹ *Council Adopts New Rules to Cut Deforestation Worldwide*. (2023, May 16). European Council. Retrieved July 12, 2023, from <https://www.consilium.europa.eu/en/press/press-releases/2023/05/16/council-adopts-new-rules-to-cut-deforestation-worldwide/>
#:~:text=The%20regulation%20sets%20a%20cut,be%20exported%20from%20the%20EU.

¹² Treaty on the Functioning of the European Union (TFEU), Article 225 and Article 192 (1).

¹³ Nguyen, T. (2022) *Why Indonesia's Palm Oil Export Ban could backfire*TR, *Carnegie Endowment for International Peace*. Available at: <https://carnegieendowment.org/2022/04/28/why-indonesia-s-palm-oil-export-ban-could-backfire-pub-87014> (Accessed: 03 July 2023).

¹⁴ Ibid.

livelihood especially with the ongoing inflation that has been challenging towards a lot of individuals and/or families.

Pursuant to the World Trade Organization (WTO), the ban may violate Article 1 (1) of General Agreement on Tariff and Trade Law as this will mean there will be custom 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.¹⁵ Moreover, Article 2 (3) of the Foreign Trade Law regarding Most Favored Nation Treatment. In accordance to the law, such ban will impact the internal sale, offering of sale, purchase, transportation, distribution or use of palm oil within EU.¹⁶ As EU and a plethora of states who relies on palm oil, soy, and it's derivation are member of the WTO, the aforementioned law will be subjected towards the states.

The basis of the creation of the ban and EU Deforestation Law is based on the principle of subsidiarity.¹⁷ Whereas, all member states has agreed upon the ban and the aforementioned law, thus, making it possible to be phased out by 2030. The purpose of such law is to protect the environment and to fight climate change. However, the ban and the law itself may hinder the economy of its own member states. Lastly, the regulation impacts the relationship of EU and other states this is because its implication towards Most Favored Nation Treatment of WTO and GATT.

¹⁵ *The General Agreement on Tariffs and Trade (GATT 1947)* (no date) *WTO*. Available at: https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#articleI (Accessed: 11 August 2023). Article 1(1)

¹⁶ Foreign Trade Law, Article 2 (3)

¹⁷ Treaty of European Union, Article 5 (3)