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COMMODITIES AND SUSTAINABILITY IN INTERNATIONAL TRADE TREATIES: INSIGHTS FROM THE EU-INDONESIA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

LORENZO COTULA*

Due to the nature of trade relations between Indonesia and the European Union (EU), the EU-Indonesia Comprehensive Economic Partnership Agreement (CEPA) provides an opportunity to assess how “state-of-the-art” trade treaty provisions address sustainability issues related to trade in commodities such as palm oil and nickel. In conducting such an assessment, this Article first explores the complex nexus that exists between commodities, trade, and sustainability, by discussing sustainability issues that affect the palm oil and nickel sectors in trade relations between Indonesia and the EU. The Article then critically reviews the main provisions of the CEPA related to sustainability in commodity trade. This review primarily covers the chapters on Trade and Sustainable Growth and Development, Energy and Raw Materials, and on Sustainable Food Systems as well as the Protocol on Sustainable Palm Oil. Finally, the Article outlines a preliminary appraisal of how these provisions respond to real-life sustainability challenges. The findings point to innovations in legal technologies for integrating sustainability considerations into international economic agreements, including arrangements centred on certain commodity sectors. However, the findings also highlight the need for new approaches that can be more responsive to “bottom-up” visions of sustainability, particularly those advanced by the people most impacted by the expanding commodity frontier.

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I. INTRODUCTION

In September 2025, the EU and Indonesia concluded the negotiation of a comprehensive trade agreement, the EU-Indonesia CEPA.¹ Launched in 2016, the negotiations unfolded in a context shaped by both structural and conjunctural factors related to international trade in commodities. Structural factors underpin long-term trade patterns between the two sides, such as the significance of agricultural and mineral commodities in Indonesia’s exports to the EU (and of industrial goods in EU exports to Indonesia),² and the reliance by wealthy economies such as the EU on the production of commodities overseas in order to sustain their domestic living standards.³ In the final segment of the negotiations, a more

¹ Comprehensive Economic Partnership Agreement between the Republic of Indonesia and the European Union, EU-Indon., Sept. 23, 2025 [hereinafter CEPA] (at the time of writing, the agreement was yet to be signed and ratified); see European Commission Press Release IP/25/2168, EU and Indonesia Conclude Negotiations on Free Trade Agreement (Sept. 23, 2025) (the EU and Indonesia also announced the conclusion of negotiations on a separate Investment Protection Agreement, which is outside the scope of this analysis).

² *European Union Imports from Indonesia*, TRADING ECON. (June, 2026), <https://tradingeconomics.com/european-union/imports/indonesia>; *European Union Exports to Indonesia*, TRADING ECON. (June, 2026), <https://tradingeconomics.com/european-union/exports/indonesia>.

³ See, e.g., Günther Fischer et al., *Quantifying the Land Footprint of Germany and the EU Using a Hybrid Accounting Model*, UMWELT BUNDESAMT, at 69 (Sept., 2017), https://pure.iiasa.ac.at/id/eprint/14806/1/2017-09-06_TEXTE_78-2017_Quantifying-land-footprint.pdf (discussing the concept of “land footprint” to “reveal the extents of land resources required all over the world for satisfying a country’s food and non-food consumption”, based on consumption of commodity-derived products in the EU and Germany) [hereinafter Günther Fischer et al.].

competitive global geopolitical context and the use of trade policy levers in strategic rivalries made raw materials supplies a particularly pressing concern in international economic diplomacy.⁴ These trade patterns intersect with wide-ranging sustainability issues and measures, such as the role of international commodity trade in sustaining transitions to lower-carbon energy systems; initiatives in some consumer economies to promote sustainability throughout commodity supply chains; and actions by governments, civil society and community-based organisations in commodity producing countries to address social and environmental impacts, maximise local benefits and advance energy transitions on their own terms.

The CEPA negotiations also took place against the backdrop of trade disputes between Indonesia and the EU, including dispute settlement proceedings at the World Trade Organization (WTO). The commodities, trade and sustainability nexus featured prominently in these disputes. For example, Indonesia initiated WTO dispute settlement proceedings to challenge the legality of EU regulatory measures on promoting renewable energy, which affected palm oil exports from Indonesia to the EU; while the EU brought WTO proceedings to challenge the legality of Indonesia's measures to promote local processing of nickel, a key material for electric vehicles (EV) and thus for the energy transition, among other uses.⁵ In addition, Indonesia vocally raised concerns about the WTO consistency and likely impacts of the EU Deforestation Regulation (EUDR), a piece of legislation the EU adopted to ensure that its importing certain agricultural commodities, including palm oil, does not cause deforestation in producer countries.⁶

⁴ See, e.g., Lewis Jackson, *China's Rare Earth Exports Grind to a Halt as Trade War Controls Bite*, REUTERS (Apr. 11, 2025), <https://www.reuters.com/markets/commodities/chinas-rare-earth-exports-grind-halt-trade-war-controls-bite-2025-04-11/>.

⁵ Panel Report, *European Union — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WTO Doc. WT/DS593/R (adopted on Feb. 24, 2025) [hereinafter EU — Palm Oil]; Panel Report, *Indonesia — Measures Relating to Raw Materials*, WTO Doc. WT/DS592/R (yet to be adopted) [hereinafter Indonesia — Raw Materials] (besides its use for EV batteries, nickel is also used in the production of steel, for example, and thus for wide-ranging applications. Demand for nickel in battery production is expected to evolve with technological shifts).

⁶ Council Regulation 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, 2023 O.J. (L 150) 206 (EU) [hereinafter Council Regulation 2023/1115]; see Gayatri Suroyo et al., *Indonesia Accuses EU of 'Regulatory Imperialism' with Deforestation Law*, REUTERS (June, 2023), <https://www.reuters.com/business/environment/indonesia-accuses-eu-regulatory-imperialism-with-deforestation-law-2023-06-08/> [hereinafter Gayatri Suroyo et al.].

Once signed and ratified by both parties, the CEPA is expected to provide a way forward on these disputes and to deepen economic relations between the EU and Indonesia,⁷ with research forecasting economic gains for both sides,⁸ but also highlighting social and environmental risks such as increased deforestation and pressures on Indigenous (*Adat*) territories.⁹ Reflecting the reality of trading relations between the two parties, and of trade disputes between them, commodities loom large in the text of the treaty, which includes a chapter on Energy and Raw Materials (ERM) and a Protocol on Sustainable Palm Oil, alongside related provisions in chapters on trade in goods, services, intellectual property, food systems, and other issues. Sustainability language also features prominently. This includes a full chapter on Trade and Sustainable Growth and Development (TSGD) as well as sustainability provisions in the ERM chapter, the Protocol on Sustainable Palm Oil and the Sustainable Food Systems (SFS) chapter.

In these respects, the EU-Indonesia CEPA offers the opportunity for a case study to assess how “state-of-the-art” trade treaty provisions address real-life sustainability issues related to trade in commodities. In conducting such an assessment, Part II of the Article explores the complex nexus that exists between commodities, trade and sustainability, discussing sustainability challenges in trade relations between Indonesia and the EU. Part III then critically reviews the main provisions of the CEPA related to sustainability in commodity trade. In examining both sustainability challenges and treaty provisions, the Article focuses on the palm oil and nickel sectors. This sectoral focus enables interrogating sustainability challenges and treaty provisions with regard to two commodities that, over time, have been at the centre of policy efforts related to the energy transition and of trade disputes between the two parties. In Part IV, the Article outlines a preliminary appraisal of how the CEPA provisions respond to sustainability challenges. The conclusion (Part V) summarises key findings.

Overall, the findings highlight innovations in the legal technologies deployed to integrate sustainability considerations into international economic agreements. This specifically includes arrangements related to the governance of certain commodity

⁷ *EU and Indonesia Finalise Trade Deal after Nine Years of Talks*, EU TODAY (Sept. 18, 2025), <https://eutoday.net/eu-and-indonesia-finalise-trade-deal-after-nine-years-of-talks/>.

⁸ Yose Rizal Damuri et al., *Seizing Gains from a Transformative Agreement: A Study on the Indonesia-EU Comprehensive Economic Partnership Agreement* (Ctr. for Strategic & Int'l Stud., Working Paper, 2021).

⁹ See, e.g., James Harrison & Axel Marx, *The EU-Indonesia Comprehensive Economic Partnership Agreement and the EU-Indonesia Investment Protection Agreement: What Is It, and What Will It Mean for Forests and Human Rights?*, FERN (Apr. 02, 2026), https://www.fern.org/fileadmin/uploads/fern/Documents/2026/Fern_The_EU-Indonesia_Comprehensive_Economic_Partnership_Agreement_and_the_EU-Indonesia_Investment_Protection_Agreement_2026.pdf [hereinafter Harrison & Marx].

sectors. However, the findings also highlight that trade treaty provisions ultimately crystallise a particular vision of sustainability, which in its current form prioritises increasing commodity production and trade to sustain the “global” energy transition, and which manages local impacts primarily through social and environmental safeguards. While such safeguards can improve practices in commodity supply chains, the approach may be in tension with “bottom-up” visions of sustainability that emerge from the territories most impacted, particularly where the expansion of the commodity frontier affects Indigenous Peoples and other people who have a strong connection to the land and the territory. Developing arrangements that can be more responsive to such bottom-up visions is a key challenge ahead in efforts to align trade agreements with sustainability goals.

II. THE COMMODITIES, TRADE AND SUSTAINABILITY NEXUS

The material world hinges on the mass production and consumption of commodities, from fuel for transport to agricultural products and the building blocks of industrial technologies. But while commodities have fuelled economic growth in many resource-rich societies, their mass-scale production has also caused extensive environmental harm and social dislocation in the form of deforestation, biodiversity loss, water pollution, land seizures, and the adverse integration of workers and small-scale producers into transnational supply chains.

These patterns and impacts are unevenly distributed. High-consumption societies tend to have a particularly large ecological footprint, due to their consumption of goods derived from commodities extracted or processed elsewhere.¹⁰ Meanwhile, the production and export of commodities is a particularly important part of the economy in many low and middle-income countries.¹¹ This also means that the social and environmental costs of commodity production are often disproportionately borne by these countries. Such interrelated processes are mediated through trade arrangements that connect production and consumption sites across geographic distances.

For example, EU demand for biodiesel derived from palm oil, partly linked to legislation aimed at reducing reliance on fossil fuels (the EU Renewable Energy

¹⁰ See, e.g., Günther Fischer et al., *supra* note 3 (discussing, as already mentioned, the concept of “land footprint” to “reveal the extents of land resources required all over the world for satisfying a country’s food and non-food consumption”).

¹¹ See U.N. CONF. ON TRADE & DEV., *State of Commodity Dependence 2023*, at 2, UNCTAD Doc. UNCTAD/DITC/COM/2023/3 (Rodrigo Cárcamo-Díaz et al., (June 22, 2023) (the United Nations classifies a country as “resource-dependent” “when its merchandise exports are heavily concentrated on primary commodities”).

Directive, RED, subsequently revised and recast as RED II),¹² contributed to the rapid expansion of the palm oil industry in Indonesia. Commercial oil palm plantations were first introduced in Southeast Asia during the colonial era.¹³ After independence and in more recent years, the Indonesian government has championed the industry's expansion as part of its strategies to promote economic growth, with demand from export markets such as the EU sustaining this expansion.¹⁴ The palm oil sector employs millions of people in Indonesia, including as plantation workers and as smallholders integrated into corporate supply chains. At the same time, the spread of oil palm has engendered transformations in Indonesia's countryside, encroaching on Indigenous Peoples' territories and fostering land and labour disputes, deforestation, pollution and the destruction of natural habitats.¹⁵

Developments related to the nickel sector also illustrate the intersections between commodities, trade and sustainability. Indonesia is the world's largest producer of nickel. Nickel mining permits in Indonesia covered an estimated one million hectares of land as of 2023, driven by global nickel demand for use in EV batteries and steel, including in Europe.¹⁶ Through domestic processing requirements and export

¹² Council Directive 2023/2413, 2023 O.J. (L 2413) 1 (EU); The discussion of oil palm trade between Indonesia and the EU draws on earlier work; see, e.g., Lorenzo Cotula, *Climate Justice in Trade: Environment, Rights and the Palm Oil Dispute between Indonesia and the European Union*, INT'L INST. FOR ENV'T & DEV. (Aug. 30, 2023), <https://www.iied.org/climate-justice-trade> [hereinafter Cotula].

¹³ JONATHAN E. ROBINS, *The Oil Machine in Southeast Asia*, in OIL PALM: A GLOBAL HISTORY 142, 142–172 (2021).

¹⁴ *Id.* at 224–227.

¹⁵ On the complex social, economic and environmental issues surrounding the spread of oil palm in Indonesia. See, e.g., THE OIL PALM COMPLEX: SMALLHOLDERS, AGRIBUSINESS AND THE STATE IN INDONESIA AND MALAYSIA (Rob Cramb & John F. McCarthy eds., 2016); CHRISTIAN LUND, NINE-TENTHS OF THE LAW: ENDURING DISPOSSESSION IN INDONESIA (2020); TANIA MURRAY LI & PUJO SEMEDI, PLANTATION LIFE: CORPORATE OCCUPATION IN INDONESIA'S OIL PALM ZONE (2021); Ward Berenschot et al., *Forest Politics in Indonesia: Drivers of Deforestation and Dispossession*, FOREST PEOPLES PROGRAMME (Mar. 2, 2023), <https://www.forestpeoples.org/publications-resources/reports/article/forest-politics-in-indonesia-drivers-of-deforestation-and-dispossession/> [hereinafter Berenschot et al.]; B. Okarda et al., *Indonesian Palm Oil towards Sustainability: A System Dynamic Approach*, 1379(1) IOP CONF. SERIES: EARTH & ENV'T SCI. 012037 (2024); A. Halimatussadiah et al., *The Potentials of Indonesian Biofuel Policy's Replanting Scheme to Reduce Poverty and Enhance Regional Economy*, 157 LAND USE POL'Y 107623 (2025); Hansika Agrawal et al., *Responsible Land Governance for a Just Energy Transition: Lessons and Strategies for Indonesia and Zambia*, INT'L INST. FOR ENV'T. & DEV. (Mar. 27, 2026), <https://ccsi.columbia.edu/responsible-land-governance-for-a-just-energy-transition/> [hereinafter Hansika Agrawal et al.].

¹⁶ Viriya Singgih, *China in the Downstream: Beijing Tightens its Stranglehold on Indonesia's Nickel Industry*, PROJECT MULTATULI (July 22, 2024), <https://projectmultatuli.org/en/beijing->

restrictions on unprocessed nickel ore, the Indonesian government supported the rapid development of a substantial nickel refining industry.¹⁷ However, nickel mining and refining in Indonesia have also caused social and environmental harms, reflected in reports of deforestation, land seizures, workplace accidents, air pollution, and water contamination.¹⁸ Additionally, the nickel smelters rely on coal-fired plants,¹⁹ which undermines the sustainability of nickel processed in Indonesia.

In commodity producing countries, governments, civil society and community-based organisations have taken actions to address such sustainability issues in commodity production and trade, in the context of complex political economy factors that often structurally deprioritise social and environmental policies, laws, institutions and enforcement mechanisms. Besides actively engaging in international climate diplomacy,²⁰ the Indonesian government has taken steps to increase environmental compliance monitoring (a recurring concern affecting both nickel and palm oil sectors) and reclaimed large areas of forest land illegally used for oil palm and mining operations.²¹ In addition, many Indonesian civil society and community-

tightens-its-stranglehold-on-indonesias-nickel-industry/; The discussion of Indonesia's nickel sector partly draws on earlier work; see, e.g., Lorenzo Cotula & Brendan Schwartz, *Indonesia's Nickel Refining Boom: Lessons for Other Mineral-rich Countries*, INT'L INST. FOR ENV'T & DEV. (Jan. 28, 2026), <https://www.iied.org/indonesias-nickel-refining-boom-lessons-for-other-mineral-rich-countries>.

¹⁷ *The Geopolitics of the Energy Transition: Critical Minerals*, INT'L RENEWABLE ENERGY AGENCY (July 2023), https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2023/Jul/IRENA_Geopolitics_energy_transition_critical_materials_2023.pdf.

¹⁸ See, e.g., *The Indonesia Nickel Pickle: The Labor and Employment Disarray at Indonesia Morowali Industrial Park IMIP*, TREND ASIA, (Sept. 05, 2024), <https://trendasia.org/en/the-indonesia-nickel-pickle-the-labor-and-employment-disarray-at-indonesia-morowali-industrial-park-imip/>; "Does Anyone Care?": *The Human, Environmental, and Climate Toll of Indonesia's Nickel Industry*, CLIMATE RTS. INT'L (Oct., 2025), <https://cri.org/reports/does-anyone-care/>; See Hansika Agrawal et al., *supra* note 15.

¹⁹ Alin Halimatussadiah et al., *Balancing Act: Complementary Strategies for Indonesia's Sustainable Nickel Downstream Industry*, INST. ECON. SOC. RSCH. (June 05, 2025) <https://lpem.org/balancing-act-complementary-strategies-for-indonesias-sustainable-nickel-downstream-industry/> [hereinafter Alin Halimatussadiah et al.].

²⁰ *COP30: Indonesia Pledges Stronger Climate Action at Leader Summit*, ANTARA: INDONESIAN NEWS AGENCY (Nov. 07, 2025), <https://en.antaranews.com/news/390457/cop30-indonesia-pledges-stronger-climate-action-at-leader-summit>; For a more critical analysis, see Hans Nicholas Jong, *As Indonesia Turns COP30 into Carbon Market Showcase, Critics Warn of 'Hot Air'*, MONGABAY (Nov. 14, 2025), <https://news.mongabay.com/2025/11/as-indonesia-turns-cop30-into-carbon-market-showcase-critics-warn-of-hot-air/>.

²¹ Hans Nicholas Jong, *Indonesia Says 4 Million Hectares of Plantation, Mining Lands Reclaimed in Crackdown*, MONGABAY (Jan. 14, 2026), <https://news.mongabay.com/2026/01/indonesia-says-4-million-hectares-of-plantation-mining-lands-reclaimed-in-crackdown/>.

based organisations have long done extensive work to advance sustainability in the nickel and palm oil sectors. This work has included promoting the recognition of Indigenous communities and of customary tenure rights; protecting heavily forested and biodiversity-sensitive areas; supporting small-scale oil palm growers; strengthening environmental compliance monitoring; and promoting accountability throughout commodity supply chains.²²

In some high-consumption societies, greater public awareness about sustainability challenges in trade policy, including the negative transnational impacts of commodity consumption, has prompted the development of legal instruments aimed at tackling those challenges. This encompasses measures in both international treaties and domestic legislation. Since concluding its trade agreement with South Korea in 2010,²³ the EU has negotiated chapters on trade and sustainable development in its bilateral trade treaties, to elevate standards in its relations with trading partners and avoid a “race to the bottom” in social and environmental matters.²⁴ Over the years, the EU has also adopted domestic legislation on wide-ranging sustainability issues. This includes legislation to reduce reliance on fossil

²² See, e.g., Paulus A. Dhanarto et al., *Visions of Territory: Whose Reality Counts? The Dayak Peoples' Struggle to Save Their 'Life World' in Central Kalimantan, Indonesia*, INT'L INST. FOR ENV'T. & DEV. (Oct., 2025) [hereinafter Paulus A. Dhanarto et al.]; *Walhi Highlights the Impact of International Policies on Palm Oil Expansion in Indonesia*, INFOSAWIT (Jan. 01, 2025), <https://en.infosawit.com/news/15039/walhi-highlights-the-impact-of-international-policies-on-palm-oil-expansion-in-indonesia>; MUTMAINNAH ET AL., KNOWLEDGE PRODUCTION: A COLLECTION OF MENTORING LESSONS LEARNED IN SOUTHEAST SULAWESI (2025).

²³ Free Trade Agreement, EU–S. Kor., Oct. 6, 2010, 2011 O.J. (L 127) 6.

²⁴ On integration of sustainability considerations in trade agreements, including as regards treaties concluded by the EU, see, e.g., James Harrison et al., *Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters*, 57(2) J. COMMON MKT. STUD. 260, 260–277 (2018); CLAIR GAMMAGE & TONIA NOVITZ, *The Concept of Sustainability and Its Application in International Trade, Investment and Finance*, in SUSTAINABLE TRADE, INVESTMENT AND FINANCE: TOWARD RESPONSIBLE AND COHERENT REGULATORY FRAMEWORKS 1, 1–29 (Clair Gammage & Tonia Novitz eds., 2019); GREGORY MESSENGER, *The Legal Links between Free Trade Agreements and Multilateral Environmental Agreements*, in THE SUSTAINABILITY REVOLUTION IN INTERNATIONAL TRADE AGREEMENTS 145, 145–162 (Geraldo Vidigal & Kathleen Claussen eds., 2024); Elisa Baroncini, *Promoting and Enforcing Sustainability: The Dispute Settlement Practice in the New Generation of EU Trade Agreements*, IV(1) ARCHIVIO GIURIDICO 64, 64–106 (2025); CLARA BRANDI ET AL., *Taking Climate Change Seriously in the Design of Trade Agreements*, in THE CONCEPT DESIGN OF A TWENTY-FIRST CENTURY PREFERENTIAL TRADE AGREEMENT: TRENDS AND FUTURE INNOVATIONS 316, 316–339 (Kathleen Claussen et al. eds., 2025); Markus W. Gehring, *EU External Relations Law on Trade and Sustainable Development: The Evolving Nature of EU Law and Policy Constraints*, 30(SI) EUR. FOREIGN AFFR. REV. 157, 157–176 (2025).

fuels and promote renewable energy sources, such as RED II, which also includes measures to address environmentally harmful land use changes induced by the spread of non-fossil fuel crops.²⁵ Indeed, besides destroying local habitats and a natural carbon sink, burning forest to clear land for biofuel production releases greenhouse emissions that can offset any emission savings from the move away from fossil fuels.

The adoption of the EUDR fits within this wider context, requiring businesses to only place certain specified agricultural commodities, including palm oil, on the EU market if those commodities are produced without causing deforestation.²⁶ More recently, however, concerns about economic competitiveness in the EU, which have gained traction in an increasingly tense global geopolitical context, have led to regulatory rollbacks on the EU's domestic sustainability agenda, including revisions to the EUDR and a delayed timeline for its operationalisation.²⁷

Governments in commodity producing countries have often seen unilateral sustainability measures adopted by high-consumption polities as a form of trade protectionism. Tensions over the EUDR originated from its application to certain commodities, such as palm oil, that the EU primarily imports, often from commodity exporting low and middle-income countries, including Indonesia. The unilateral nature of the measures and perceptions of limited space for engagement and consultation with trading partners further compounded the concerns.²⁸

Similarly, the fact that RED II implementation measures identified palm oil as the only biofuel feedstock that is at high risk of creating climate-harmful indirect land use changes, and which was thus excluded from EU renewable energy incentives, led to claims of protectionism and discrimination.²⁹ Indonesia initiated WTO dispute

²⁵ Commission Delegated Regulation 2019/807 of 13 March 2019, supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council as regards the Determination of High Indirect Land-Use Change-Risk Feedstock for Which a Significant Expansion of the Production Area into Land with High Carbon Stock Is Observed and the Certification of Low Indirect Land-use Change-risk Biofuels, Bioliquids and Biomass Fuels, 2019 O.J. (L 133) 1 (EU).

²⁶ Council Regulation 2023/1115, *supra* note 6, at arts. 3–4.

²⁷ Council Regulation 2025/2650 of the European Parliament and of the Council of 19 December 2025 Amending Regulation (EU) 2023/1115 as Regards Certain Obligations of Operators and Traders, 2025 O.J. (L 2650), at art. 1 (EU).

²⁸ See Gayatri Suroyo et al., *supra* note 6.

²⁹ *Commission Report on the Status of Production Expansion of Relevant Food and Feed Crops Worldwide*, at 19, COM (2019) 142 final (Mar. 13, 2019); see Rilus A. Kinseng et al., *Unraveling Disputes between Indonesia and the European Union on Indonesian Palm Oil: From Environmental Issues to National Dignity*, 19(1) SUSTAINABILITY: SCI., PRAC. & POL'Y 1, 8–9 (2023); Adam Tyson &

settlement proceedings to challenge the legality of EU RED II measures. The WTO panel held that considering differential levels of risk linked to indirect land use change can be justified under applicable environmental exceptions, particularly Article XX of the General Agreement on Tariffs and Trade (GATT). However, the panel also found that the EU measures did not comply with certain notification and consultation requirements and were administered in a discriminatory manner, thereby breaching WTO rules.³⁰

Aspirations in commodity producing countries to move up the value chain, challenging an international division of labour that has often confined them to exporting raw materials, highlight additional dimensions of the commodities, trade and sustainability nexus. This issue is relevant to several commodities but has gained particularly prominent traction in recent global policy discussions about the mining sector. The Guiding Principles on Critical Energy Transition Minerals, developed in 2024 by a panel of experts convened by the United Nations Secretary-General, establish domestic value addition and fair benefit sharing among the key principles of a just energy transition.³¹ In the face of deep and longstanding structural constraints shaped by international political economy factors, supporting local value addition in mineral-rich low and middle-income countries is, in many cases, likely to require deliberate policy action. In Indonesia, the development of a domestic nickel processing industry was the outcome of deliberate policy measures, including measures that mandated mining companies to refine nickel locally or sell it to existing local smelters, and that restricted and ultimately banned the export of unprocessed nickel ore.³²

As discussed, however, mineral processing can entail a substantial social and environmental footprint. And as Indonesia is the world's largest nickel producer, its reliance on lower-cost coal power can put downward pressure on global nickel prices, potentially making it harder for others to produce more sustainable nickel.³³ In addition, policy measures to promote local value addition can enter into tension

Eugenia Meganingtyas, *The Status of Palm Oil under the European Union's Renewable Energy Directive: Sustainability or Protectionism?*, 58(1) BULL. INDON. ECON. STUD. 31, 31–54 (2022).

³⁰ See EU — Palm Oil, *supra* note 5, at ¶ 8.1.

³¹ U.N. Secretary-General, Panel on Critical Energy Transition Minerals, *Resourcing the Energy Transition: Principles to Guide Critical Energy Transition Minerals toward Equity and Justice* (Sept. 11, 2024).

³² See Alin Halimatussadiyah et al., *supra* note 19.

³³ See, e.g., INT'L ENERGY AGENCY, GLOBAL CRITICAL MINERALS OUTLOOK 2024 40, 44 and 48–49 (May 17, 2024) (discussing the impact that changes in Indonesia's supply of nickel can have on global market prices and on competitors).

with multilateral trade rules.³⁴ In dispute settlement proceedings at the WTO, the EU challenged the legality of Indonesia's export restrictions on unprocessed nickel ore and of its domestic processing requirements applicable to the sector. The panel that was established to settle this dispute found that both measures constituted export restrictions for purposes of Article XI of the GATT and were in violation of WTO rules.³⁵

This brief exploration highlights the multiple intersecting questions that are linked to the commodities, trade and sustainability nexus. These questions connect not only to the sphere of international political economy and to core economic interests at national and transnational levels, but also to socio-economic and ecological transformations in commodity production sites. In this way, treaty provisions on sustainability engage relations well beyond the treaty parties and their respective firms. They highlight questions about how to piece together different and possibly competing priorities, including those of Indigenous Peoples who are dispossessed by land and forest clearances, and of workers and small-scale producers who are integrated into commodity supply chains. With the stakes so high and matters so complex, it is unsurprising that issues related to commodities, trade and sustainability have found a central place in the text of the CEPA. It is also unsurprising that the negotiation of the CEPA, particularly its provisions related to commodities, trade and sustainability, attracted sustained public attention and scrutiny, with several calls for action issued at different times by transnational coalitions of civil society organisations from across the two sides.³⁶

III. COMMODITIES AND SUSTAINABILITY IN A TRADE TREATY CONTEXT: AN OVERVIEW OF CEPA PROVISIONS

Many provisions throughout the CEPA are relevant to questions of sustainability in the international trade of commodities such as palm oil and nickel. For example,

³⁴ Lorenzo Cotula et al., *Critical Minerals, Trade Rules and Industrial Strategies: Who Benefits?*, INT'L INST. FOR ENV'T & DEV. (Feb., 2026), <https://www.iied.org/sites/default/files/pdfs/2026-02/22695iied.pdf>.

³⁵ See Indonesia — Raw Materials, *supra* note 5.

³⁶ See, e.g., *Joint Statement on Raw Materials in EU-Indonesia CEPA*, THE TRANSNAT'L INST. (Feb. 12, 2025), <https://www.tni.org/en/article/joint-statement-on-raw-materials-in-eu-indonesia-cepa> (the statement warned that the CEPA would threaten “the environment, climate, and the rights of women, Indigenous Peoples, workers, small farmers and fisherfolk” and called for the two sides to halt negotiations. The statement was signed by over 120 civil society organisations and trade unions in Indonesia and the EU); See also Roeline Knottnerus, *The EU – Indonesia CEPA Negotiations Responding to Calls for an Investment Policy Reset: Are the EU and Indonesia on the Same Page?*, SOMO (Feb. 15, 2018), <https://www.somo.nl/eu-indonesia-cepa-negotiations/>.

commitments in the chapter on trade in goods to liberalise trade between the two sides, including palm oil trade, have raised concerns about a possible new acceleration in oil palm-induced deforestation in Indonesia.³⁷ But while a comprehensive appraisal of the trade agreement would require analysing the CEPA in its entirety, the provisions most directly relevant to sustainability in commodity trade are contained in the chapters on TSGD, on ERM and on SFS as well as in the Protocol on Sustainable Palm Oil.³⁸ These texts address sustainability issues through somewhat different prisms: while the TSGD chapter establishes an overarching sustainability framework and regulates a range of sustainability issues, the chapters on ERM and SFS and the Protocol on Sustainable Palm Oil address sustainability, among other considerations, in relation to specific sectors or commodities.

The first part of the TSGD chapter is an adapted version of the trade and sustainable development chapters that the EU has long included in its trade treaties. The more explicit emphasis on growth, reflected in the chapter title, seems to align with recent policy shifts in the EU, particularly around the competitiveness agenda, as well as with policy priorities in Indonesia. Similarly to earlier EU trade treaty practice, the text affirms the right of each party “to determine its sustainable development objectives, strategies, policies and priorities” and “to establish its own levels of domestic environmental and social protection”; while at the same time requiring each party to “strive to ensure that its relevant laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas”.³⁹ The agreement also commits each party not to weaken, waive or derogate from its environmental or labour laws in order to encourage trade or investment.⁴⁰

Beyond a broad definition of sustainable development as encompassing interrelated economic, social and environmental dimensions,⁴¹ several operative provisions of the TSGD chapter focus primarily on labour and the environment, though the text covers other sustainability issues as well. The TSGD chapter includes, for example, commitments on the ratification and/or implementation of key international instruments on labour rights;⁴² a clause on trade and gender equality;⁴³ and a more general provision on trade and responsible business conduct, whereby each party “shall . . . encourage the use of relevant international instruments” such as the UN Guiding Principles on Business and Human Rights and international sector-specific

³⁷ See Harrison & Marx, *supra* note 9, at 2.

³⁸ Protocol on Sustainable Palm Oil, EU–Indonesia Comprehensive Economic Partnership Agreement, Oct. 8, 2025 [hereinafter CEPA Palm Oil Protocol].

³⁹ See CEPA, *supra* note 1, art. 15.2.

⁴⁰ *Id.* art. 15.3.

⁴¹ *Id.* art. 15.1.2.

⁴² *Id.* art. 15.4.

⁴³ *Id.* art. 15.5.

instruments.⁴⁴ Unlike some other bilateral trade treaties concluded by the EU, this responsible business conduct provision specifically identifies a number of sector-specific instruments, such as the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) and the Principles for Responsible Investment in Agriculture and Food Systems, both of which address issues related to land governance and the production of agricultural commodities.⁴⁵

In highlighting the role of trade in climate action,⁴⁶ the TSGD chapter requires the parties to effectively implement multilateral climate change treaties, including with regard to each party's Nationally Determined Contribution under the Paris Agreement;⁴⁷ and to "remain a party, in good faith, of the Paris Agreement".⁴⁸ Unlike most earlier EU trade agreements, the obligation to remain a party of the Paris Agreement is expressly stated to constitute an "essential element" of the CEPA.⁴⁹ This is significant because, under the Vienna Convention on the Law of Treaties, a breach of a provision essential to the object or purpose of the treaty constitutes ground for terminating the treaty or suspending its operation in whole or in part.⁵⁰ The TSGD chapter also includes provisions on trade and biodiversity,⁵¹ on timber

⁴⁴ *Id.* art. 15.12.

⁴⁵ See footnote 4 to Article 15.12, which clarifies that relevant sector-specific guidelines "may include" a set of listed instruments. See Comm. on World Food Sec., *Voluntary Guidelines on Tenure* (2012), <https://www.fao.org/tenure/voluntary-guidelines/en/> (Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security); Comm. on World Food Sec., *Principles for Responsible Investment in Agriculture and Food Systems* (2014), <https://www.fao.org/cfs/policy-products/rai/en/>; An earlier cross-reference to these two soft-law instruments is found in the trade and sustainable development chapter of the EU-Kenya Economic Partnership Agreement, see The Economic Partnership Agreement, EU-Kenya, annex V & art. 11.3, Dec. 18, 2023 O.J. L(2024/1648) (entered into force July 1, 2024) (However, while the EU-Kenya Economic Partnership Agreement required the parties to "promote awareness" of these instruments, Article 15.12 of the CEPA more actively requires the parties to "encourage the use" of the instruments). For policy research calling for the cross-referencing of soft-law instruments on land governance, including the VGGT, in the context of international economic treaties, see e.g. Lorenzo Cotula, *Land Rights and Investment Treaties: Exploring the Interface*, INT'L INST. ENV'T. DEV. 47 (2015), <https://www.iied.org/sites/default/files/pdfs/migrate/12578IIED.pdf>; See also Cotula, *supra* note 12.

⁴⁶ CEPA, *supra* note 1, art. 15.7.1.

⁴⁷ *Id.* art. 15.7.2(a).

⁴⁸ *Id.* art. 15.7.3.

⁴⁹ *Id.*

⁵⁰ Vienna Convention on the Law of Treaties, art. 60, May 23, 1969, 1155 U.N.T.S. 331.

⁵¹ CEPA, *supra* note 1, art. 15.8.

trade and sustainable forest management,⁵² and on trade and marine biological resources.⁵³

The second part of the TSGD chapter goes beyond earlier EU practice on trade and sustainable development to deal with trade-related sustainability requirements. While not directly mentioned, controversies over RED II and the EUDR loom large in this part of the CEPA. The text stresses that, “[c]onsistent with WTO law, trade-related sustainability regulatory requirements should be proportionate, non-discriminatory, and implemented in a transparent manner”.⁵⁴ It also envisages mechanisms for ongoing dialogue, cooperation and capacity support,⁵⁵ including cooperation on sustainability assurance schemes, traceability systems and support to compliance,⁵⁶ as well as dialogue in the context of a specialised committee.⁵⁷ Unlike many earlier bilateral trade treaties concluded by the EU, disputes over the interpretation or application of the TSGD chapter are to be settled through the general dispute settlement procedures established by the CEPA.⁵⁸

The chapters on ERM and SFS and the Protocol on Sustainable Palm Oil complement these generally applicable sustainability provisions with tailored arrangements for specific sectors or commodities. Building on earlier EU trade treaties that include chapters on energy and raw materials, the ERM chapter aims to enhance trade and investment in energy goods and raw materials while also improving sustainability.⁵⁹ Its coverage encompasses minerals and metals such as nickel, as well as biofuels such as palm oil.⁶⁰ The text reaffirms the right of the parties “to adopt, maintain, and enforce measures necessary to pursue legitimate public policy objectives”, which can include a range of social and environmental objectives.⁶¹

In line with recent EU treaty practice, the ERM chapter establishes obligations related to sustainability in the production of energy goods and/or raw materials, such as by requiring the conduct of an environmental impact assessment according to specified parameters.⁶² Further, the text contains several references to responsible investment and to adherence to environmental, social and governance (ESG)

⁵² *Id.* art. 15.9.

⁵³ *Id.* art. 15.10.

⁵⁴ *Id.* art. 15.13.1.

⁵⁵ *Id.* arts. 15.14, 15.15.

⁵⁶ *Id.* art. 15.15.

⁵⁷ *Id.* art. 15.20.

⁵⁸ *Id.* art. 15.21.4, ch.22.

⁵⁹ *Id.* art. 14.2.

⁶⁰ *Id.* arts. 14.3(d); (f).

⁶¹ *Id.* art. 14.1.2.

⁶² *Id.* art. 14.8.

standards.⁶³ A novel provision on the energy transition envisages commitments to achieve a transition to net zero emissions as well as cooperation and technical assistance for realising this goal, including through facilitating foreign investment in clean and reliable energy.⁶⁴ This clause may be of relevance to initiatives to decarbonise Indonesia's nickel supply chains, which as discussed rely on coal to power the smelters. With regard to renewable fuels such as palm oil, the ERM chapter includes a requirement for the parties to comply with WTO rules.⁶⁵

Echoing the (non-binding) memoranda of understanding on critical minerals that the EU has concluded with several producer countries,⁶⁶ the ERM chapter envisages bilateral cooperation on raw materials, particularly to facilitate trade and investment linkages, promote responsible business practices, create spaces for dialogue and consultations and support joint initiatives on research, development and innovation as regards technologies, processes and practices across the raw materials supply chains.⁶⁷ This provision also includes nods to encouraging local value addition.⁶⁸

While the ERM chapter does not directly regulate quantitative export restrictions such as those that Indonesia deployed to promote domestic refining of nickel, the chapter on trade in goods prohibits these measures, with limited exceptions as provided by WTO rules.⁶⁹ Further, the trade in goods chapter prohibits export duties, with exceptions made for the initial (i.e. pre-smelting) stage of mineral processing and for certain measures applicable in Indonesia as of 2025.⁷⁰ The latter cover commodities such as palm oil and processed mineral products, and are partly aimed at promoting local value addition.⁷¹

⁶³ See, e.g., *id.* art. 14.13.1(a).

⁶⁴ *Id.* art. 14.11.

⁶⁵ *Id.* art. 14.10.

⁶⁶ For a fuller discussion of these agreements see Lorenzo Cotula, 'Critical Minerals': *International Economic Law in a Global Resource Rush*, 15(2) *TRADE L. & DEV.* 19, 19–48 (2023); Sunayana Sasmal, *Let's Get Critical: Critical Minerals Mini Deals as Evolving Models of Trade Cooperation*, 25 *WORLD TRADE REV.* 267, 267–302 (2026).

⁶⁷ CEPA, *supra* note 1, art. 14.13.

⁶⁸ *Id.* art. 14.13.1(b).

⁶⁹ *Id.* art. 2.8. (this provision incorporates into the CEPA Article XI of the GATT, on the basis of which Indonesia's domestic processing requirements and export restrictions on unprocessed nickel ore were found to be in breach of WTO rules).

⁷⁰ *Id.* art. 2.6.

⁷¹ See Andzar Ibrahim, *Main points of Indonesian Ministry of Finance Regulation No. 38/2024 on Export Goods Subject to Export Duties and Export Duty Tariffs*, ANDZAR IBRAHIM (2024), <https://andzaribrahim.com/main-points-of-indonesian-ministry-of-finance-regulation-no-38-2024-on-export-goods-subject-to-export-duties-and-export-duty-tariffs/> (discussing Indonesia's pre-2025 export duty measures).

That said, the ERM chapter provides some flexibility on policies related to the pricing of raw materials. This is relevant to questions about local value addition because arrangements may, for example, set prices for exports higher than for domestically marketed products, thereby supplying domestic processors with cheaper raw materials and stimulating local industry. The ERM chapter prohibits such differential pricing arrangements.⁷² However, it allows exceptions for export duties that are permissible under the chapter on trade in goods.⁷³ It also exempts measures that regulate the price of raw materials for domestic processors if the measures pursue a public policy objective, are based on objective, clearly defined, transparent and non-discriminatory criteria, and are proportionate to the policy objective pursued.⁷⁴

Following on a longer history of commodity protocols annexed to trade agreements,⁷⁵ the CEPA contains a bespoke Protocol on Sustainable Palm Oil, which is embedded in the wider trade agreement through cross-linkages to chapters on trade and sustainable development, trade in goods, investment liberalisation, and institutional arrangements.⁷⁶ The protocol affirms a dual aim of facilitating trade and promoting sustainability.⁷⁷ Again, the history of disputes over trade-related sustainability requirements, including RED II and EUDR, looms large: reaffirming WTO obligations and facilitating compliance with such measures feature among the protocol's objectives.⁷⁸

Similarly to other sustainability-related provisions featured in the CEPA, the Protocol on Sustainable Palm Oil emphasises dialogue, cooperation and technical assistance, through bilateral cooperation initiatives, including in support of smallholders, and through institutional arrangements for ongoing dialogue and stakeholder engagement.⁷⁹ Compared to the chapters on TSGD and ERM, the language is more hortative, even discursive, than normative: for example, the parties “acknowledge that sustainability assurance schemes . . . can be useful in supporting

⁷² CEPA, *supra* note 1, art. 14.14.1.

⁷³ *Id.*

⁷⁴ *Id.* art. 14.14.2.

⁷⁵ See, e.g., the 1989 Lomé Convention concluded between the EU and African, Caribbean and Pacific (ACP) states, which included protocols on bananas, beef, rum and sugar; see Fourth ACP–EEC Convention, Dec. 15, 1989, 1991 O.J. (L 229) 3 (The Lomé Convention was replaced by subsequent treaties between the parties).

⁷⁶ See, e.g., CEPA Palm Oil Protocol, *supra* note 38, arts. 1.1(i) and 6.

⁷⁷ See *id.* art. 1.

⁷⁸ *Id.* arts. 1.1(ii) & (iii).

⁷⁹ *Id.* arts. 5, 6; Smallholders are specifically referred to in the third preambular paragraph see *id.* arts. 2.2, 3.4, & 5.1.

sustainability efforts” and they “recognise the importance of promoting sustainability assurance schemes”.⁸⁰

The Protocol on Sustainable Palm Oil also contains provisions aimed at facilitating compliance with trade-related sustainability requirements. This includes supporting sustainability assurance schemes such as the Indonesian Sustainable Palm Oil (ISPO) scheme. It also involves cooperation measures oriented towards facilitating compliance by economic operators, including smallholders and small and medium-scale enterprises.⁸¹ In a rare use of mandatory language, the protocol requires each party to take into account available scientific and technical information and to “give due regard” to information exchanged between the parties when implementing trade-related sustainability requirements.⁸²

The Protocol on Sustainable Palm Oil is framed in reciprocal language. However, it is clear from the economic reality of palm oil trade that the concern is about the sustainability of production in Indonesia (as further evidenced by the references to the ISPO) and about trade-related sustainability requirements adopted by the EU, particularly the EUDR. Unlike the EU-Mercosur Partnership Agreement,⁸³ which also deals with issues related to trade-related sustainability requirements,⁸⁴ the CEPA contains no freestanding commitment on limiting or halting deforestation, and it entails somewhat less detailed provisions on facilitating compliance with trade-related sustainability measures.⁸⁵

The language about sustainability assurance schemes is general enough to cater for diverse schemes – including the Roundtable on Sustainable Palm Oil (RSPO), which is the leading industry-based sustainability assurance scheme. However, the express mention of the ISPO seems significant. The Indonesian government created the ISPO in 2009 to reassert control over the regulation of a key export commodity, making the ISPO a legally mandated standard for larger firms and challenging the dominance of standards developed by industry bodies such as the RSPO.⁸⁶

⁸⁰ *Id.* arts. 2, 2.2.

⁸¹ *Id.* arts. 2, 3.

⁸² *Id.* art. 3.3.

⁸³ Partnership Agreement, EU–Mercosur, Jan. 17, 2026, COM (2025) 356 final. (“[e]ach Party . . . shall implement measures, in accordance with its national laws and regulations, to prevent further deforestation and enhance efforts to stabilize or increase forest cover from 2030”. See paragraph 15 of Annex 18-A to the EU-Mercosur Partnership Agreement).

⁸⁴ *Id.* see particularly Part B of Annex 18-A to the EU-Mercosur Partnership Agreement.

⁸⁵ As compared to the measures outlined in paragraphs 53, 54 and 55(a), (b) and (c) of Annex 18-A to the EU-Mercosur Partnership Agreement.

⁸⁶ See Harrison & Marx, *supra* note 9, at 23.

Compared to the RSPO, however, the ISPO has been critiqued as a weaker standard, including in relation to the monitoring and enforcement of compliance.⁸⁷

The SFS chapter includes broadly worded commitments on cooperating to “pursue collaborative efforts in developing and ensuring the sustainability of their respective food systems”.⁸⁸ The chapter outlines a notion of sustainability in food systems that partly departs from the more encompassing definition in the TSGD chapter. This is due to this notion’s primary emphasis on food security (an important but not all-encompassing sustainability issue in food systems) and to its framing sustainability primarily around inter-generational equity (undoubtedly a key aspect but potentially neglecting intra-generational dimensions such as those related to the position of workers and small-scale farmers or to gender issues in agri-food supply chains).⁸⁹ The wording of the chapter is largely hortatory (e.g. “shall endeavour to cooperate”, “such cooperation may include”⁹⁰) and operationalisation rests on the development of an annual action plan for cooperation and on ongoing dialogue.⁹¹ The chapter is excluded from the application of the dispute settlement proceedings under the CEPA.⁹²

In line with the emphasis on dialogue and cooperation throughout these sustainability-related provisions, the CEPA establishes elaborate institutional arrangements, including a Trade Committee composed of representatives from the

⁸⁷ Nia Kurniawati Hidayat et al., *Sustainable Palm Oil as a Public Responsibility? On the Governance Capacity of Indonesian Standard for Sustainable Palm Oil (ISPO)*, 35(1) AGRIC. & HUM. VALUES 223, 227–233 (2017); Shofwan Al Banna Choiruzzad et al., *The Ambiguities of Indonesian Sustainable Palm Oil Certification: Internal Incoherence, Governance Rescaling and State Transformation* 19(2) ASIA EUR. J. 189, 202–204 (2021); Harrison & Marx, *supra* note 9, at 23.

⁸⁸ CEPA, *supra* note 1, art. 16.2, Sept. 23, 2025.

⁸⁹ *Id.* art. 16.3.1 (sustainable food systems are “food systems that deliver food security and nutrition for all in such a way that the economic, social and environmental bases to generate food security and nutrition for future generations are not compromised”. The wording appears to echo the language of the 1987 Brundtland Report, which famously defined sustainable development as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”; see UN Secretary-General, World Comm’n on Env’t & Dev., *Our Common Future*, UN Doc. A/42/427, ¶27 (Aug. 4, 1987); Since then, notions of sustainable development have evolved considerably, including with regard to the food and agriculture sector). On the need to broaden prevailing notions of food security see, e.g., High Level Panel of Experts on Food Security & Nutrition, *Food Security and Nutrition: Building a Global Narrative Towards 2030* (2020), <https://openknowledge.fao.org/server/api/core/bitstreams/8357b6eb-8010-4254-814a-1493faaf4a93/content>; See also Jennifer Clapp et al., *Vienpoint: The Case for a Six-Dimensional Food Security Framework*, 106 FOOD POL’Y 102164 (2022).

⁹⁰ See CEPA, *supra* note 1, art. 16.4.

⁹¹ *Id.* arts. 16.6, 16.7.

⁹² *Id.* art. 16.10.

two parties;⁹³ a Civil Society Forum linked to the operation of this committee;⁹⁴ and a number of specialised committees, including a Committee on Trade and Sustainable Growth.⁹⁵

IV. A PRELIMINARY APPRAISAL

A. Overall configuration

The CEPA establishes an elaborate sustainability architecture that builds on, and goes beyond, earlier EU practice on trade and sustainable development, and that offers more granular arrangements in which certain commodity sectors feature prominently. Real-life sustainability concerns and sustainability-related disputes affecting trade between Indonesia and the EU appear to have had a bearing on the development of the treaty text, as illustrated by clauses on palm oil, on trade-related sustainability requirements and on export of raw materials.

This sustainability architecture rests on a complex set of interlocking and partly overlapping provisions spread across different chapters and a protocol, with palm oil trade being potentially covered by the TSGD chapter, the ERM chapter, the SFS chapter and the Protocol on Sustainable Palm Oil; with references to WTO compliance in the application of trade-related sustainability measures being reflected in the TSGD chapter, the ERM chapter and the Protocol on Sustainable Palm Oil; and with strong links established with other substantive chapters, such as on trade in goods, and to chapters on institutional arrangements and dispute settlement. Overall, sustainability clauses located in different chapters appear to dovetail and complement each other, though there are also areas where approaches do not fully align, such as in the way the chapters on TSGD and SFS articulate the notion of sustainability.

This bilateral arrangement for managing sustainability issues is framed as deepening and reinforcing multilateral commitments, rather than departing from them. By reaffirming WTO obligations with regard to trade-related sustainability requirements and to the palm oil sector, and by incorporating WTO rules on export restrictions, the CEPA establishes a clear choice by the two sides on the continued relevance of WTO rules to resolving their trade disputes and to regulating their trade relations, including with regard to sustainability issues, and it does so at a time when multilateral trade arrangements have come under unprecedented challenge. Cross-linkages to multilateral agreements in other domains, such as climate change,

⁹³ *Id.* arts. 24.1–24.3.

⁹⁴ *Id.* art. 24.2.3.

⁹⁵ *Id.* art. 24.4.

biological diversity, and labour rights, further crystallise the articulation between bilateral and multilateral arrangements.

In the context of protracted trade disputes originating from the adoption of unilateral measures related to commodities, trade and sustainability, such as EU RED II and the EUDR, and of unilateral restrictions on the export of unprocessed commodities, such as in Indonesia's nickel sector, emphasis on ongoing dialogue and cooperation offers a path for the parties to address sustainability issues in their trade relations going forward. This emphasis on dialogue and cooperation also marks a contrast with a global context increasingly characterised by geopolitical rivalries and zero-sum approaches to international trade policy.

Such an emphasis also means, however, that any appraisal of the text of the CEPA can only be preliminary, and subject to revision over time in the light of the actual operation of the treaty and of its institutional arrangements. At the same time, dialogue and cooperation do not exist in a vacuum; the normative content of the treaty's substantive provisions establishes parameters that are bound to affect the trajectory that the treaty can chart over the longer term. In this respect, it is helpful to distil preliminary reflections on the ways in which the substantive provisions of the CEPA identify and frame sustainability issues and the extent to which they offer effective means for addressing them.

B. A sustainability architecture that combines normative direction with dialogue and cooperation

Further developing prior treaty practice on trade and sustainable development, and on ERM, the CEPA establishes substantive provisions as well as cooperation mechanisms on a wide range of sustainability issues, including with regard to trade in commodities. These provisions provide normative direction along a spectrum that ranges from legally binding obligations to more hortatory commitments. In addition, they can offer entry points for the two sides to discuss over time sustainability challenges linked to commodity trade, particularly in the context of the standing institutions that are established by the CEPA.

For example, while framed in formally mandatory but largely soft language (such as "shall encourage the use of"), the express reference to certain international sector-specific guidelines for responsible business practice (such as the VGGT) can provide an entry point for the parties to discuss issues (such as land and forest rights) that are directly engaged by the production of commodities such as palm oil and nickel. Similarly, the nods to the role and specific circumstances of smallholder farmers, particularly in the palm oil sector, entail an at least implied recognition of the additional challenges smallholders tend to face in complying with trade-related sustainability requirements, providing a policy marker for possible discussions about tailored technical support.

Relative to many earlier bilateral trade treaties concluded by the EU, the CEPA also enhances the depth of the integration of sustainability issues in trade arrangements. This includes, for example, the application of the general dispute settlement system envisaged by the treaty, rather than a bespoke expert panel process, for disputes between the two sides over the interpretation or application of the TSGD chapter. It also includes the CEPA's integration of the implementation of multilateral climate treaties into a trade agreement, potentially bringing compliance with the Nationally Determined Contributions that are submitted under the Paris Agreement within the purview of bilateral trade dispute settlement arrangements. A further example is the clause that makes the parties' continued commitment to the Paris Agreement an essential element of the CEPA, the violation of which could justify suspension or even termination of the treaty.

Textual comparisons with the parties' earlier trade treaty practice highlight the influence of the EU in shaping important aspects of the TSGD and ERM chapters. However, there are also significant departures from prior approaches and, to varying degrees, the legal technologies that underpin the sustainability architecture of the CEPA bear the fingerprints of both negotiating sides. For example, the emphasis on sustainability assurance schemes in the Protocol on Sustainable Palm Oil resonates with the EU's wider regulatory model, which has long relied on sustainability standards in order to build on existing practices, reduce auditing and compliance costs for participating firms, and provide a flexible framework capable of evolving over time in both substantive standards and oversight systems.⁹⁶ At the same time, the express recognition of the role of the ISPO as a key sustainability assurance scheme resonates with Indonesia's longstanding policy drive to assert agency in standard setting related to a key export commodity – promoting a public regulation approach under national control that challenges the dominance of sustainability assurance schemes developed by industry bodies. That said, the emphasis on ongoing dialogue in the sustainability architecture of the CEPA highlights questions about how negotiating power asymmetries between the two parties will affect the unfolding and outcomes of dialogue processes in the implementation phase.

C. Reflections on gaps and limitations

While recognising the legal innovations on how to meaningfully integrate sustainability issues in international trade treaty making, a close analysis of the CEPA in the light of the real-life challenges that have long affected the commodities, trade and sustainability nexus in relations between Indonesia and the EU also reveals gaps in prevailing policy approaches, even in the context of a recent, comprehensive

⁹⁶ Andrew Lang, *Performances of Responsibility: Market-based Sustainability Governance and the 'Responsibility Economy'*, 12(3) LONDON REV. INT'L L. 373, 375–379 (2024).

agreement such as the CEPA. This relates both to blind spots and to questions about the effectiveness of the arrangements envisaged in the treaty.

As discussed, for example, the TSGD chapter highlights the positive role that international trade can play in sustaining climate action.⁹⁷ And indeed, international trade in materials such as nickel is widely seen as essential for the transition to EV technologies, not least due to the geographic divides that exist between areas where mineral reserves are located, countries hosting mineral processing and EV manufacturing capabilities, and ultimate consumption sites. In this vein, the CEPA requires the parties “to facilitate trade and investment concerning goods and services of particular relevance for respective climate action policies”.⁹⁸

However, developments in the palm oil sector illustrate how trade can also drive deforestation, which can, in turn, foster climate change through greenhouse gas emissions from forest burning and through the destruction of a natural carbon sink. As discussed, other commodity sectors, such as nickel, have also caused deforestation. Yet, the mandatory provisions contained in the TSGD clause on sustainable forest management are primarily concerned with trade in timber and timber products,⁹⁹ rather than in the agricultural or mineral commodities that drive deforestation at scale.¹⁰⁰ Similarly, the clause on trade and biodiversity includes encompassing provisions on the conservation and sustainable use of biological diversity, but it is primarily concerned with issues such as illegal wildlife trade and genetic resources.¹⁰¹ The EUDR addresses deforestation driven by the production of certain agricultural commodities through unilateral EU legislation and the Protocol on Sustainable Palm Oil establishes a bilateral space through a sector-specific instrument, albeit with a strong emphasis on dialogue and cooperation rather

⁹⁷ CEPA, *supra* note 1, art. 15.7.1.

⁹⁸ *Id.* art. 15.7.2(c).

⁹⁹ *Id.* art. 15.9, which for example requires the parties to: “implement respective measures to combat illegal logging and related trade, including, as appropriate, with respect to third countries”; “encourage the conservation and sustainable management of forest, and trade and consumption of timber and timber products from sustainably managed forests and harvested in compliance with applicable laws in EU and Indonesia respectively, in particular through the effective implementation and monitoring of the EU-Indonesia Forest Law Enforcement Governance and Trade Voluntary Partnership Agreement (FLEGT VPA)”; and “exchange information with the other Party on trade-related initiatives on sustainable forest management, forest conservation, forest governance and cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies of mutual interest”.

¹⁰⁰ However, the CEPA does require the parties to “exchange knowledge and experiences on ways to encourage the consumption and trade in products from supply chains not related to deforestation”; *see* art. 15.9.4.

¹⁰¹ *Id.* art. 15.8.

than on legal obligation. Unlike the EU-Mercosur Partnership Agreement, however, the CEPA does not contain specific commitments to limit or halt deforestation.

As regards the effectiveness of arrangements, several key provisions of the CEPA seem more likely to lend themselves to offering entry points for dialogue and cooperation than to directly producing significant effects. For example, while as discussed the Protocol on Sustainable Palm Oil identifies the special circumstances of smallholders, it offers little by way of operational commitments towards them, in terms of funding mechanisms or of addressing the structural constraints smallholders tend to face in complying with trade-related sustainability requirements, including challenges related to land documentation, access to finance, and traceability systems.¹⁰²

Further, the ERM chapter discusses responsible investment and ESG standards primarily in the context of cooperation between the parties.¹⁰³ The reference in the TSGD chapter to voluntary instruments related to land governance, such as the VGGT, though significant, lacks legal bite.¹⁰⁴ This caution in cross-referencing may reflect the political sensitivities associated with issues such as land governance, both in general and in the context of a trade agreement. Considering the critiques about the effectiveness of the ISPO as a sustainability assurance scheme, its endorsement by the Protocol on Sustainable Palm Oil as a possible compliance pathway raises questions about ensuring that treaty implementation will facilitate compliance with EUDR requirements, rather than diluting them.

As discussed, ERM clauses that envisage cooperation on the energy transition and on innovation related to environmentally sound technologies could support efforts to decarbonise Indonesia's nickel sector. However, the CEPA does not include express legal obligations for the parties to decarbonise specific supply chains. Nor does it establish binding obligations on the transfer of clean technologies,

¹⁰² See Harrison & Marx, *supra* note 9, at 21.

¹⁰³ See, e.g., CEPA, *supra* note 1, art. 14.13 (recognises the parties "shared commitment to responsible and sustainable production and sourcing of raw materials" and envisages cooperation between the parties "with a view to ... promoting responsible business conduct in accordance with relevant international standards that have been endorsed or are supported by the Parties, and working jointly towards adoption of such international standards in their supply chains"). The same article also envisages cooperation on "responsible mining practices and raw materials value chains sustainability"; on effective and efficient implementation of environmental and social impact assessments; on environmental, social and governance standards; and on establishing a centre of excellence for sustainable raw materials).

¹⁰⁴ *Id.* art. 15.12 (requires the parties to "encourage the use of relevant international instruments... including international sector-specific guidelines, as appropriate". This provision is accompanied by a footnote clarifying that sector-specific guidelines "may include" certain specified instruments, such as the VGGT).

emphasising instead the facilitation of investment and cooperation on innovation, research and development.¹⁰⁵ Concrete outcomes will hinge on the extent to which firms will take up business opportunities to decarbonise activities in commodity supply chains, and on any follow-on policy cooperation between the two sides to create any more specific incentives for such business action.

When it comes to the use of trade-related measures to promote local value addition, the CEPA broadly reaffirms WTO disciplines, particularly with regard to quantitative export restrictions.¹⁰⁶ As discussed, a WTO dispute settlement panel found such restrictions to encompass Indonesia's domestic processing requirements applicable in the nickel sector. In effect, the CEPA provisions reaffirm the constraints on the policy space that is available to mineral-rich countries such as Indonesia to promote local value addition across diverse commodity sectors. While domestic processing requirements have now helped Indonesia to develop domestic refining capabilities in the nickel sector, Indonesia's policy objectives around local value addition apply to a wider range of agricultural and mineral commodities. That said, the CEPA does provide some flexibilities, particularly for permissible export duties and (in certain regulated circumstances) for pricing arrangements on raw material supplies that favour domestic processors.¹⁰⁷

In these various respects, it seems legitimate to wonder whether even a reasonable degree of implementation of the CEPA is likely to fundamentally address key sustainability challenges affecting the production and trade of commodities, such as deforestation, land dispossession, the marginalisation of small-scale producers, the carbon intensity of commodity supply chains, and trading arrangements that lock commodity producing countries into a raw materials exporter role. Part of the problem is that several of these issues are grounded in structural features of the global and national political economy, so a bilateral trade agreement will inevitably present inherent limitations. Effective responses would also require, for example, revisiting multilateral disciplines on industrial strategies through coordinated action at the WTO, and strengthening national legislation and enforcement on issues such as deforestation and land governance.

D. Sustainability for whom? "Top-down" vs "bottom-up" sustainability

¹⁰⁵ See also K. Audina Permana Putri & Cahaya Arga P. Diponegoro, *IEU CEPA: Who Controls Indonesia's Critical Minerals?*, INDON. FOR GLOB. JUST. 1, 7 (2025), <https://igj.or.id/wp-content/uploads/2025/12/IEU-CEPA-WHO-CONTROLS-INDONESIAS-CRITICAL-MINERALS.pdf>.

¹⁰⁶ CEPA, *supra* note 1, art. 2.8.

¹⁰⁷ *Id.* arts. 2.6 & 2.8.

On a deeper level, the sustainability architecture of major economic treaties such as the CEPA aligns with an increase in the production and consumption of commodities to be traded under the terms set by the agreement. For example, the Protocol on Sustainable Palm Oil expressly envisages the expansion of trade in palm oil, while also enhancing its sustainability,¹⁰⁸ and a similar approach underpins the ERM chapter.¹⁰⁹ The title of the TSGD chapter is explicitly linked to economic growth. The assumed mutual reinforcement between trade and climate policy, discussed above, is in line with this approach, as an increase in the production and trade of certain commodities is considered a step towards effective climate action. Nothing in the CEPA points to an underlying rethink of unsustainable consumption patterns, particularly in the EU (as the higher-income party to the treaty), such as by reducing dependence on cars, albeit electrified ones, and to a more systemic shift towards more sustainable societies.

This approach to sustainability addresses the social and environmental harms of commodity production and trade through a range of institutional technologies that are, in effect, designed to establish social and environmental safeguards. These include: national law measures specifically mandated in the CEPA, such as requiring the conduct of an environmental impact assessment for projects aimed at producing energy goods or raw materials; the ratification and implementation of multilateral treaties, particularly on labour and the environment; measures to encourage the application of ESG standards and of international soft-law instruments on responsible business conduct; and support to compliance with sustainability assurance schemes and with transnational trade-related sustainability requirements.

Deployment of such sustainability technologies can indeed improve practices in commodity supply chains and ultimately their social and environmental outcomes, even though some of these technologies have also formed the object of critique, such as in the case of some sustainability assurance schemes. However, the approach to sustainability reflected in the CEPA does not fundamentally question, and can in fact enhance, the expansion of the commodity frontier and the extractive economic model that underpins it. This approach may enter into tension with visions of sustainability advanced by the people whose land, forest, water, territories, livelihoods, culture, and ways of life stand to be upended by commodity production activities.

Action-research work in support of Indigenous Dayak communities impacted by agribusiness plantations, logging concessions and mining activities in Indonesia's

¹⁰⁸ See CEPA Palm Oil Protocol, *supra* note 38, second preambular paragraph & art. 1.1(a).

¹⁰⁹ Article 14.2 includes among the objectives of the ERM chapter "to facilitate and increase existing and future trade and investment . . . between the Parties in the areas of energy and raw materials".

Central Kalimantan province highlighted scepticism towards top-down sustainability agendas that, in practice, enable continued industrial-scale forest conversions.¹¹⁰ In 2023, when talking about the sustainability provisions being discussed at the time between the EU and Indonesia as part of their CEPA negotiations, the then chairperson of the relevant provincial chapter of the national association of Indigenous Peoples articulated these issues as follows:

The first question is sustainability for whom? Is it sustainability according to the village community or sustainability according to the government and businessmen? What we see is sustainability in the version of government and companies, which results in unfairness when their decisions or agreements claim the village community supports this vision. Discussions about sustainability should take place in the community: they will be victims, directly affected, so sustainability should be according to the village version as well. For village communities, sustainability relates not only to palm oil or companies but to their living space, their food, their generations, which will be lost when all their living space is converted into palm oil plantations.¹¹¹

In discussing the commodification of land that has resulted from the spread of logging, mining and agribusiness activities in Central Kalimantan, a group of Indigenous authors articulated elements of a vision of sustainability that is grounded in traditional knowledge:

Over countless generations, the Indigenous Dayak peoples of Indonesia have developed a cycle of life in synergy with nature and external entities that is dynamic and mutually influencing. This synergistic relationship is their basis for adapting to changes from both within and outside of *ruang hidup*, their life world. Because they

¹¹⁰ See Cotula, *supra* note 12; see also Pratiwi Febry et al., *Bringing Coherence and a Rights-based Approach to Indonesia's Climate and Investment Governance*, INT'L INST. FOR ENV'T & DEV. (2023), <https://www.iied.org/21561iied> (discussing the need for more effective policy coherence between economic and environmental governance arrangements); See also *Palm oil trade between Indonesia and Europe: promoting corporate accountability*, INT'L INST. FOR ENV'T & DEV. (May, 2023), <https://www.iied.org/palm-oil-trade-between-indonesia-europe-promoting-corporate-accountability>; On integration of bottom-up perspectives in international economic treaties see also Nicolás M. Perrone, *Investment Treaty Law and Matters of Recognition: Locating the Concerns of Local Communities*, 24(3) J. WORLD INV. & TRADE 437, 437–460 (2023).

¹¹¹ INT'L INST. FOR ENV'T. DEV., *Palm Oil in Indonesia: Human Rights and Environmental Impacts – An Interview with Ferdi Kurnianto, the local coordinator for the Indigenous Peoples Alliance of the Archipelago (AMAN) in Central Kalimantan*, YOUTUBE, at 3:55–5:07 (Aug. 30, 2023) https://www.youtube.com/watch?v=basBT_W8qa4.

rely on a balanced and mutually sustaining relationship with nature, Indigenous customs do not treat nature exploitatively. This has led to the development of holistic conservation practices that balance knowledge and spirituality.¹¹²

These framings outline the contours of a bottom-up vision of sustainability that involves more than just applying safeguards in order to more sustainably or humanely shrink Indigenous territories in favour of large-scale commodity production. Such a vision may require charting a genuinely alternative pathway that can support enhancements in standards of living while also respecting nature, culture, social identity, and systems of values and beliefs. Baked into the sustainability provisions of a trade treaty, then, lie complex questions about whose voices count and whose vision of sustainability, and of “development”, is being prioritised.

This recognition highlights the importance of centring, when appraising the sustainability provisions of a trade treaty, the perspectives of those who stand to be most affected, and the extent to which the treaty provisions can meaningfully respond to their concerns and priorities. Of course, such concerns and priorities are likely to vary across contexts and to evolve over time. There is bound to be diversity between and within communities even in the same locality, partly reflecting often significant social, economic and political differentiation. There are also complex questions about the relationship between national and local development priorities and about arrangements for political representation and accountability in relations between national political elites and their grassroots constituencies. At root, however, tensions between different notions of sustainability – between a notion that addresses global sustainability challenges by mobilising institutional safeguards to continue and expand commodity production, and visions that question the foundations of extractive development models – show that the quest for more effectively integrating sustainability considerations into trade agreements is far from accomplished.

V. CONCLUSION

The CEPA reflects a further step in efforts to integrate sustainability into bilateral trade agreements. Rather than confining sustainability to a single chapter and a bespoke dispute settlement arrangement, the CEPA regulates sustainability across different chapters, particularly when it comes to international trade in commodities such as palm oil and minerals. These provisions centre dialogue and cooperation, as well as providing normative markers that range from binding obligations to softer commitments. Normative direction is established partly in the treaty itself, partly

¹¹² Paulus A. Dhanarto et al., *supra* note 22, at 5.

through cross-linkages with multilateral treaties, particularly on labour and the environment, and through references to soft-law instruments. The bulk of this sustainability architecture is subject to the treaty's main dispute settlement mechanism.

At the same time, the CEPA also illustrates the limits of bilateral trade agreements as tools for sustainability. These are partly linked to the inherent limitations of a bilateral instrument in addressing systemic issues and to the political sensitivities that characterise those issues. More fundamentally, the limitations stem from the very premise of a trade agreement designed to expand trade in commodities, and thus their underlying production, including as a strategy to support the energy transition. Even if managed through sustainability technologies such as impact assessments and environmental standards, the expansion of the commodity frontier may come into tension with alternative visions of sustainability that resist converting Indigenous territories to large-scale mines or monoculture plantations.

For international law specialists working on major economic treaties, a challenge ahead lies in crafting legal framings, substantive provisions and implementation arrangements that are capable of catering for, and doing justice to, a diversity of economic, social and ecological models, rather than commodity-centred blueprints; of being genuinely responsive to bottom-up visions of sustainability, considered in their diverse and evolving forms; and of creating space for people living at the commodity frontier to advance their own visions of sustainability and territorial development.