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Technical and statistical report

Voluntary sustainability standards and sustainable development due diligence

The evolving landscape of sustainable trade

United Nations

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This report sets out developments in due diligence regulatory initiatives in global trade governance for sustainability and their interactions with voluntary sustainability standards. It draws from the research findings and discussions at the annual meeting, held on 12 October 2023 at the European University Institute in Florence, of the Academic Advisory Council of the United Nations Forum on Sustainability Standards (UNFSS) initiative (see also the report annex).

The Academic Advisory Council provides UNFSS informed advice on all aspects of voluntary sustainability standards design, impact and interactions with public policy. The 34 academics of the Academic Advisory Council meet every year to discuss and present ongoing research on voluntary sustainability standards.

Further information on the 2023 Academic Advisory Council meeting is available at https://unctad.org/meeting/unfss-academic-advisory-council-meeting-2023

Abbreviations

EUDR	European Union Deforestation-free Products Regulation
EUCSDDD	European Union Corporate Sustainability Due Diligence Directive
ESG	Environment, Social and Governance
GVC	Global Value Chain
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
VSS	Voluntary Sustainability Standards
WTO	World Trade Organization

Abstract

International trade, particularly trade through global value chains (GVCs), is increasingly associated with significant sustainability issues such as deforestation, climate change, and labour and human rights violations. To address sustainability issues in GVCs, many voluntary governance instruments have been developed, such as voluntary sustainability standards (VSS). Such VSS have been at the forefront of sustainable GVCs governance for the past two decades.

However, these voluntary instruments have overall fallen short of generating large-scale transformative changes, partly due to a relatively limited uptake. As a result, many sustainability concerns remain. In response, a shift towards mandatory approaches towards sustainable trade governance has been observed in recent years, such as the emergence and proliferation of due diligence regulatory initiatives, which aim to tackle the adverse sustainability impacts of business operations along GVCs. Sustainability due diligence is a process through which companies need to identify, address, cease, prevent and/or mitigate actual or potential risks of contributing to any adverse sustainability impacts associated with their activities or sourcing decisions, as well as keep track of and communicate their actions to address these risks.

These regulatory developments mark a shift for international trade and sustainability governance in GVCs, and discussions are now turning to the implementation of such due diligence regulations. In particular, questions are being raised about the potential role of existing governance instruments such as VSS in supporting due diligence implementation, with important concerns arising about the impact of due diligence initiatives for developing countries. Developing countries have been relatively distanced from the discourse around due diligence, which is more prevalent in developed countries. While they are on the frontline of due diligence implementation, these requirements are likely to be highly challenging for them.

This report is based on current ongoing work and discussions from both academic researchers and policymakers. It takes stock of current questions and concerns about due diligence developments and their implications for international trade, for the role of VSS in GVCs sustainability governance, and for developing countries. The main takeaways of the report are:

- Due diligence regulatory initiatives are proliferating, complex, and will have important implications – both direct and indirect – for international trade and developing countries, including through trade diversion, trade segregation, sourcing diversion, and exclusion of vulnerable economic actors.
- Developing countries will be the primary targets of due diligence regulations and will face significant challenges in implementing due diligence requirements.
- VSS present synergies with the due diligence process and could be used as supporting tools for the implementation of due diligence requirements.
- The emergence and proliferation of due diligence initiatives will likely influence VSS, the VSS market, and the sustainability benefits they can deliver.
- Lessons can be learned from past research on VSS to inform an effective and inclusive implementation of due diligence requirements, including on audit systems, complaint and grievance mechanisms, and inclusiveness.
- Lessons can be learned from past research on VSS about developing countries' concerns about unilateral due diligence regulatory initiatives emerging from developed countries, as well as regarding the conditions necessary for sustainable GVCs governance instruments to be effective in specific contexts.
- There is a need for enhanced engagement among stakeholders and for the creation of multilateral avenues for dialogue and cooperation, capacity-building, and support.

Introduction

Over the past 50 years, international trade has both grown and evolved. It is increasingly structured along global value chains (GVCs), whereby parts and components are traded across national borders before being incorporated into final products (Hoekman, 2014). Trade policy has traditionally relied on the assumption that participation in GVCs delivers developmental benefits, such as economic growth, poverty reduction, job creation, and innovation (United Nations, 2015; World Bank, 2020). Yet there is increasing evidence and recognition that trade through GVCs is also strongly linked to sustainability issues broadly defined, such as deforestation, labour and human rights violations, climate change, growing inequalities, and many others (OECD, 2021; UNCTAD, 2023b). Of particular concern in this context are developing countries, which are often the first link in GVCs as producers of primary commodities. While these countries face challenges in aligning with sustainability efforts, they are also the primary victims of sustainability concerns (IPCC, 2023). For example, agricultural expansion is a major driver of deforestation, yet climate change also threatens the livelihoods of their smallholder farmers. In addition, these countries often lack the institutional and financial capacity to deal with pervasive issues such as labour rights violations and environmental deterioration.

Many private initiatives have been developed to address these sustainability concerns within GVCs. In particular, Voluntary Sustainability Standards (VSS) emerged in the 1990s as key private tools for transnational sustainability governance throughout GVCs (UNCTAD, 2022). VSS are “standards specifying requirements that producers, traders, manufacturers, retailers or service providers may be asked to meet, relating to a wide range of sustainability metrics, including respect for basic human rights, worker health and safety, the environmental impacts of production, community relations, land use planning and others” (UNFSS, 2013, p.3). They have gained increasing importance across various sectors, notably in tropical agricultural sectors. However, despite some evidence of positive impacts in specific sectors and contexts (Marx et al., 2022), these private initiatives for the sustainable governance of value chains have overall fallen short of generating transformative change partly because there has been only a limited uptake.

In parallel, sustainability issues in GVCs have also increasingly been addressed through trade policy. Experts highlight that trade policy is transforming from a policy area mainly concerned with trade liberalisation to a policy area which increasingly addresses non-economic objectives related to trade. Unilateral trade measures, such as due diligence based measures, are increasingly being used to pursue these non-economic objectives through GVCs (Hoekman et al., 2023). These non-economic objectives include sustainability concerns such as environmental protection, labour rights, and human rights, but also national security and strategic autonomy.

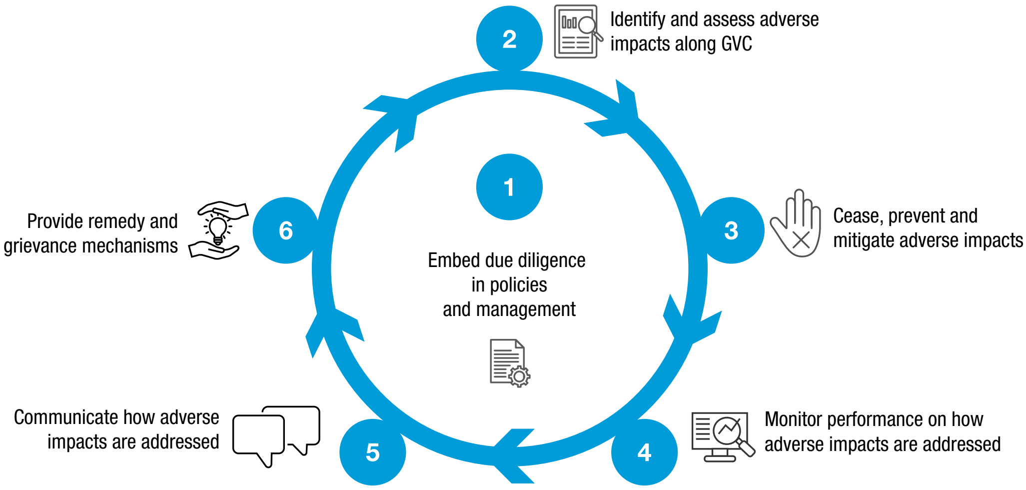
Against this background, many countries, and developed countries in particular, have begun adopting mandatory due diligence regulatory initiatives to tackle the adverse sustainability impacts of business operations along GVCs. Sustainability due diligence, as conceptualised by the OECD (2018), is an on-going, proactive, and reactive process that can be categorised into 6 distinct steps (see Figure 1) by which companies need to identify, mitigate and/or prevent the actual or potential risks of contributing to adverse sustainability impacts which are associated with their activities or sourcing decisions. Sustainability due diligence also requires companies to track and communicate the effectiveness of their actions. While the concept of due diligence has been around for more than a decade, the past few years have seen an important shift from soft due diligence instruments towards mandatory due diligence through the emergence of due diligence regulations. Notable examples include the European Union's Deforestation-free Products Regulation[1] (EUDR) (2023), the United States of America's Uyghur Forced Labor Prevention Act[2] (2021), the European Union's new Batteries Regulation[3] (2023), the United Kingdom's Environment Act[4] (2021), the German Supply Chain Due Diligence Act[5] (2021), and the French Duty of Vigilance Law[6] (2017).

The shift towards mandatory due diligence regulations marks an important change for international trade and sustainability governance in GVCs, and discussions are now turning to the implementation of these due diligence regulations. In particular, questions about the potential role of existing instruments such as VSS in supporting due diligence implementation are emerging. In addition, important concerns about the impact of due diligence initiatives for developing countries are materializing. Developing countries have been relatively distanced from the discourse around due diligence, which is more prevalent in developed countries. While they are on the front line of due diligence requirements, as a result of having to meet the criteria of their export markets such as the European Union and the United States of America, the implementation of these requirements is likely to be a significant challenge for them.

This report aims to take stock of current questions and concerns about due diligence developments and their implications for international trade, for the role of VSS in GVCs sustainability governance, and for developing countries. It is based on discussions with both academic researchers and policymakers. Chapter 1 assesses the state of play of due diligence developments

1 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115
2 https://www.congress.gov/bill/117th-congress/house-bill/1155/text
3 https://eur-lex.europa.eu/eli/reg/2023/1542/oj
4 https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted
5 https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/Gesetz-Unternehmerische-Sorgfaltspflichten-Lieferketten/gesetz-unternehmerische-sorgfaltspflichten-lieferketten.html
6 https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/

Figure 1
Due diligence process



Source: authors based on OECD (2018)

in international trade and their implications for global trade. Chapter 2 delves into the challenges of due diligence regulations from the lens of developing countries more specifically. Chapter 3 looks into the role of VSS in supporting the implementation of due diligence regulations and the implications of these regulatory developments for VSS. It also draws lessons from research on the shortcomings of VSS systems to inform the careful integration of mechanisms for due diligence implementation. Chapter 4 takes stock of existing evidence on the impacts of VSS in developing countries specifically to inform due diligence implementation. It identifies important challenges that remain for effective governance of sustainable value chains. Lastly, Chapter 5 suggests possible ways to overcome the challenges of due diligence developments and the role of VSS therein. It highlights the need for enhanced discussion and cooperation in multilateral settings, as well as inclusiveness, capacity-building, and the development of support systems to effectively implement due diligence and exploit synergies with existing tools such as VSS.

Chapter 1

State of play: Due diligence developments in international trade

State of play: Due diligence developments in international trade

Sustainability challenges such as climate change, deforestation, biodiversity loss, together with concerns about poverty, and inequality are accelerating and demand stronger action (UNCTAD, 2023b). International trade, through GVCs, is an important influence on these sustainability challenges. Since the 1990s, the global landscape of GVC sustainability governance has been dominated by private voluntary instruments – such as corporate codes of conduct, industry pledges, and VSS – and by voluntary intergovernmental guidelines – such as the United Nations Guiding Principles on Business and Human Rights[7] or the OECD Guidelines for Multinational Enterprises.[8] However, voluntary instruments for sustainability governance have overall fallen short of generating a transformative change in international trade.

Due diligence regulatory frameworks which aim to tackle sustainability issues in GVCs and introduce a new approach to sustainability governance through trade have emerged in response. These rapidly evolving regulatory developments are complex in several ways. For example, there is a lot of diversity in how due diligence regulations are designed, what they target, and how they are implemented (Bright et al., 2020; Dehm, 2023; Deva, 2023; Schilling-Vacaflor & Lenschow, 2023). Moreover, some of these regulatory developments may have important implications for international trade flows. This chapter takes stock of the current research on due diligence regulations, setting out terminological intricacies, describing recent developments in due diligence, and assessing the possible implications of these regulations for international trade and the structure of GVCs.

The implementation of due diligence regulations calls for careful consideration of their implications

1.1. The landscape of due diligence developments

The landscape of due diligence regulations is complex, and increasingly so as these regulatory initiatives are proliferating rapidly. This section sets the scene by exploring the evolution of due diligence initiatives, providing typological clarifications and examples of due diligence developments.

While due diligence as a concept can be traced back to 2011 with the creation of the United Nations Guiding Principles on Business and Human Rights, early due diligence initiatives remained non-binding in nature. More recently, there has been a significant shift towards mandatory due diligence with the emergence of regulations to uphold sustainability standards, from human rights and labour rights to environmental protection. Figure 2 depicts the evolution in due diligence regulations (in number of new regulations adopted per year and in cumulative number over the years) and shows the significant proliferation that has taken place since the mid-2010s. There are currently more than 30 due diligence regulations in force.

However, due diligence regulations are diverse. Due diligence regulations can be delineated based on a variety of factors, such as the type of obligations placed on companies or their mode of implementation. A recently developed database[9] maps due diligence instruments in the coffee sector and distinguishes between disclosure-only legislations; disclosure, diligence and

[7] https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
[8] https://mneguidelines.oecd.org/mneguidelines/
[9] https://ico.thecosa.org/legislation/

remediation legislations; and trade-based legislations (Grabs & Fatimah, 2023).[10] These are summarised in Table 1.

1.1.1 Disclosure-only instruments

The first type, disclosure-only legislation, requires companies to report issues in their value chains and communicate the actions they are undertaking to mitigate these. Examples include the European Union's Non-financial Reporting Directive[11] (2014) and the United States of America's California Supply Chain Transparency Act[12] (2012), which both require broad Environmental, Social, and Governance (ESG) reporting, or the Australian Commonwealth Modern Slavery Act[13] (2019) and the United Kingdom's Modern Slavery Act[14] (2015), which are focused on more specific issues such as modern slavery. These legislations are binding only in terms of the reporting obligations they impose on companies.

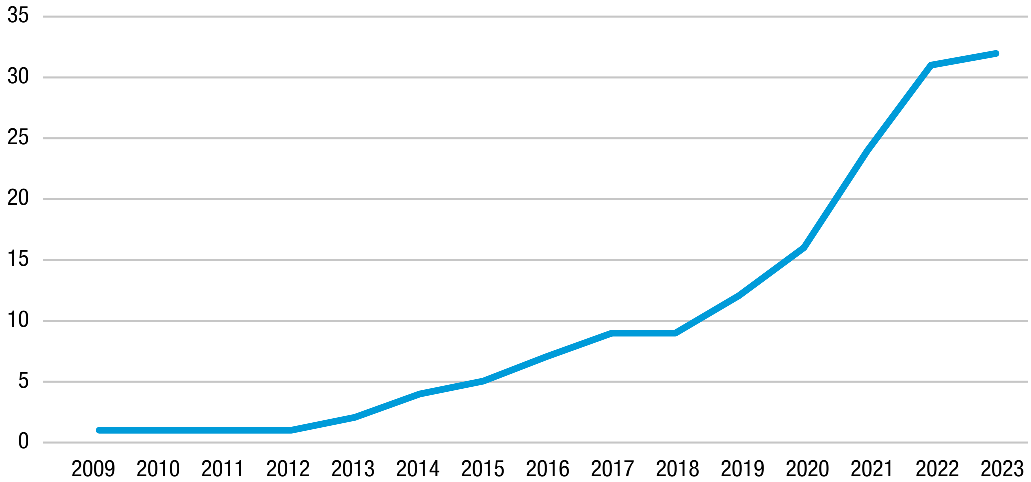
1.1.2 Disclosure, diligence and remediation legislations

In contrast, the second type, disclosure, diligence, and remediation legislation, places positive obligations on companies not only to report on but also to mitigate the adverse impacts of activities along their value chains. Examples include the Dutch Child Labor Due Diligence Law[15] (2019) and the European Union's proposed Corporate Sustainability Due Diligence Directive[16] (EUCSDDD).

1.1.3 Trade-based legislations

The third type, trade-based legislation, can be distinguished from the previous two through the mode of implementation. These legislations focus on preventing the imports of products that are associated with

Figure 2
Evolution in the number of due diligence regulations



Source: authors' calculations, expanded from Grabs & Fatimah (2023)

[10] Grabs & Fatimah's database is specifically developed for the coffee sector; yet, since most due diligence-based measures are not sector-specific but include most economic sectors, their database is quite complete on due diligence measures. Notable omissions are the European Union's Conflict Minerals Regulation (2017) and new Batteries Regulation (2023). We expand their database, adding these omissions (see also Figure 2).

[11] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464

[12] https://oag.ca.gov/SB657

[13] https://www.legislation.gov.au/Details/C2018A00153

[14] https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted

[15] https://zoek.officielebekendmakingen.nl/stb-2019-401.html

[16] https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en

specific environmental, social, or economic harms. It hence requires companies to demonstrate that their products were produced free of such harms. This type of due diligence regulations therefore directly affect trade flows. Examples include the United States of America's Uyghur Forced Labor Prevention Act (2021), the Mexican Forced Labor Regulation[17] (2023), and the EUDR (see box 1).

1.1.4 Further distinctions

Further distinctions between types of due diligence regulation can be put forward. For example, some regulations target all firms, while others target only large firms, as determined by the number of employees and annual turnover. For example, the EUCSDDD is expected to apply to companies in the European Union with over 500 employees and global net turnover over EUR150 million; to companies in the European Union with over 250 employees and global net turnover over EUR40 million, provided that 50 percent of turnover was generated in high impact sectors (textiles, agriculture, forestry, and extraction of minerals); and to non-European Union companies doing business in the European Union with a turnover generated in the European Union at or above the aforementioned thresholds.

Moreover, due diligence regulations vary in their focus. Some target ESG or sustainability issues broadly defined, such as the United States of America's California Supply Chain Transparency Act and the EUCSDDD. Others are issue-specific, focusing for example on modern slavery, such as the Canadian Fighting Against Forced Labor and Child Labor in Supply Chains Act[18] (2023), or deforestation, such as the EUDR and the United States of America's proposed FOREST Act.[19]

While due diligence regulations are much more prominent in developed countries, some due diligence considerations are also arising in developing countries. Many of these are emerging in the context of the National Action Plans (NAPs) related to the United Nations Guiding Principles on Business and Human Rights (2011), which introduced the concept of due diligence in the human rights sphere. However, these remain mostly soft or non-binding instruments (i.e. not mandatory). Examples include Brazil's National Guidelines on Business and Human Rights (Decree No 11.772/2023)[20] and the Indonesian National Action Plan on Business and Human Rights.[21]

These due diligence developments and associated typological intricacies

Table 1
Typology of due diligence instruments based on obligations for companies

Due diligence instruments	Type of obligations for companies
Disclosure-only instruments	*Report and communicate* their actions to mitigate adverse impacts of their activities in their value chains
Disclosure, diligence and remediation legislations	*Report and mitigate* adverse impacts of their activities in their value chains
Trade-based legislations	*Demonstrate* that products were produced free of adverse impacts along their value chains

17 https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_885140/lang--en/index.htm
18 https://www.parl.ca/DocumentViewer/en/44-1/bill/S-211/third-reading
19 https://www.congress.gov/bill/117th-congress/senate-bill/2950
20 https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Decreto/D11772.htm#art10
21 https://globalnaps.org/country/indonesia/

illustrate the increasingly complex regulatory landscape of international trade sustainability governance. This complexity is generating a variety of responses from concerned stakeholders who will have to implement due diligence requirements, in particular from developing countries. Some are taking a proactive role and are starting to embed the due diligence processes into their operations, while others are displaying more hesitant behaviour. Many stakeholders are also expressing frustration towards the proliferation of due diligence regulations as well as the lack of harmonisation, clarity on their requirements, and guidance on how to implement them. There are also significant concerns about the implications of due diligence for international trade and integration in GVCs. The next section explores this, and Chapter 2 delves further into developing countries' perspectives on due diligence more specifically.

1.2. Implications of due diligence developments for international trade

The proliferation and complexity of due diligence regulations has important implications for international trade and the structure of GVCs, both directly and indirectly. Some due diligence regulations, especially those that are trade-based and ban the import of products that are not compliant with due diligence obligations (e.g. EUDR, see previous section), will directly affect trade flows. In parallel, other due diligence regulations, such as the disclosure, diligence, and remediation type of regulations (see previous section), will have more indirect impacts on trade flows since their enforcement relies not on denying market access to products but on imposing fines on firms that do not fulfil their due diligence obligations.

These direct and indirect implications of due diligence regulations on trade might generate three types of responses, possibly undermining the purpose of these regulations: trade diversion, trade segregation, and sourcing diversion. This was documented by previous studies analysing the effects of environmental regulations for supply chain management (Michida et al., 2017).

1.2.1. Trade diversion

First, trade diversion involves exporting countries or companies diverting their activities and exports to other, less regulated markets. However, this effect will depend on the importance of the regulated markets for exporting countries. It will also depend on the diffusion of due diligence regulations to other jurisdictions, potentially levelling the playing field – through the so-called "California effect" (Vogel, 1997) and the "Brussels effect" (Bradford, 2020). The "California effect" refers to a phenomenon where stringent regulations in one region lead to higher standards in other regions. Companies often standardize their practices to comply with the strictest regulations they face to simplify operations, thus elevating standards more broadly (Vogel, 1997). The "Brussels effect" describes how the European Union's regulatory standards, particularly those related to market access, can influence regulations globally. Non-European companies often adopt European standards to maintain access to the large and lucrative European market, leading to a global harmonization of regulations (Bradford, 2020).

1.2.2. Trade segregation

Second, trade segregation involves companies only submitting part of their supply chains to the due diligence requirements, keeping compliant products for regulated markets and non-compliant products for non-regulated markets. This is particularly the case for trade-based due diligence regulations.

1.2.3. Sourcing diversion

Lastly, sourcing diversion refers to the risk that companies will shift suppliers, sourcing from lower-risk areas and better-performing suppliers. This could leave out the suppliers that are most in need of the benefits of trade participation, such as smallholder farmers. Due diligence developments are likely to create consolidation in GVCs to reduce risks. The significant implementation costs that due diligence regulations will generate may potentially leave out vulnerable actors that only have small profit margins (UNIDO, 2023).

1.2.4. Potential positive implications

Some possible positive implications of due diligence regulations on GVCs can also be put forward. Past research on food safety standards has highlighted that the ensuing vertical integration of smallholders has generated economic opportunities that partly offset the exclusionary effects of standards (Maertens & Swinnen, 2009). More broadly, researchers in the field of global value chains have shown that adherence to standards can lead to social and environmental upgrading (Barrientos et al., 2011; Ponte, 2019). In addition, due diligence regulations can generate investments in cost-saving technologies and improve efficiency (UNIDO, 2023).

Due diligence regulations and their implementation call for careful consideration of their implications. In particular, cooperation and support systems will be necessary for developing countries and vulnerable actors to be able to comply with the requirements and to share implementation costs. This is further detailed in the next Chapter.

Chapter 2

Leaving no one behind: Developing countries' perspectives on due diligence

Leaving no one behind: Developing countries' perspectives on due diligence

Scholars and policymakers from developing countries have raised important concerns about the possible impacts and additional challenges resulting from due diligence legislations. From the perspective of suppliers, especially in developing countries, export costs can be expected to increase as firms have to provide evidence of their compliance with due diligence requirements separately for each importer through bureaucratic processes. This could lead to a loss of export business or even market exit. This chapter discusses the challenges of due diligence regulations through the lens of developing countries.

Developing countries are expressing many concerns regarding due diligence regulations (Negi et al., 2020; Sun & van der Ven, 2020). Currently, the EUDR in particular is being strongly debated as it was recently adopted but involves a short timeline for implementation, and focuses on tropical commodities produced mainly in developing countries – which are hence the primary targets of the regulation.

In particular, concerns are being expressed[22] by developing countries about the fact that the EUDR regulation will create significant barriers and exclusionary effects for producers in developing countries, with excluded farmers being pushed back into activities that are more detrimental to their socio-economic conditions or to environmental protection. Of particular concern is the country-risk benchmarking system that will be implemented in the regulation, which classifies countries according to deforestation risks (low, standard, or high) and will determine the level of obligations and scrutiny on imported products. The country-benchmarking system does not account for subnational risk differentiation or for differentiation across commodity sectors in its current form (Bellfield et al., 2023). The negotiations on EUDR have also notably lacked the inclusion of developing countries (WTO, 2023).

Furthermore, the EUDR and other due diligence regulations do not sufficiently take into account the developmental priorities of developing countries. Developing countries have made efforts to tackle pervasive issues specific to their national contexts, such as addressing poverty and formalising the informal sector, yet some of these regulations require countries to take action on a much broader range of sustainability goals, some of which are not their immediate priorities. In addition, there has so far been no recognition and no adjustment of the regulation's standards to local efforts to tackle sustainability issues, such as deforestation, through their own systems, such as national standards. The rapid timeline for implementing the EUDR – in force since 29 June 2023 and fully effective by 30 December 2024 – is particularly challenging, and calls are being made to allow for a longer transition and adaptation period. The overall approach of the EUDR is also criticised in that it punishes non-compliers rather than rewarding compliers. Companies in both developed and developing countries also insist on the EUDR's potentially dramatic impacts on smallholder farmers in developing countries, and are therefore demanding that the regulation be softened.

Due diligence regulations do not sufficiently take into account the developmental priorities of developing countries

[22] https://www.atibt.org/files/upload/news/RDUE/Trading_partners_joint_letter_on_EUDR_7_September_2023.pdf

On the other hand, some recent research suggests that representatives of smallholder producers in developing countries are actually supportive of the EUDR, perceiving it as a positive external push to tackle sustainability issues which are left unaddressed by their governments (see previous research from Lambin & Thorlakson, 2018; Marques & Eberlein, 2020). However, these voices are currently in minority.

The concerns about the EUDR specifically, but also about due diligence regulations more broadly, are particularly salient for countries whose exports are highly dependent on increasingly regulated markets, such as the European Union, and who operate in sectors where competition is strong. The ITC developed a tool showing the "exposure" of commodities trade flows to the EUDR for exporting countries (ITC, 2023). For example, **61 per cent** of Burundi's coffee is exported to the European Union, and coffee accounts for 23 per cent of the country's exports, yet the European Union imports only 0.1 per cent of its coffee from Burundi. The EUDR might result in a significant loss of export market for Burundi if its exporters cannot comply with the regulation and if insufficient collaboration and support mechanisms are deployed. Such effect is already manifesting in the Ethiopian coffee sector, with coffee traders turning away from Ethiopian producers due to the costs involved to make producers compliant with the regulation (Reuters, 2023).

Conversely, cases in which producing countries and the European Union are interdependent (i.e. producing countries being dependent on the European Union as an export market for specific commodities and, reciprocally, the European Union being dependent on specific producing countries for their imports of certain commodities) would call for strong commitments and cooperation to ensure that the regulation is enforced and its purpose served. For example, 56 per cent of Côte d'Ivoire's cocoa is exported to the European Union, and cocoa represents 26 per cent of the country's exports. However, the European Union is also highly dependent on Côte d'Ivoire, which accounts for 43 per cent of the European Union's cocoa imports. Hence, conflicts of interests might arise as both parties might benefit from a poor enforcement of the regulation (see also Bastos Lima & Schilling-Vacaflor, 2024).

Chapter 3

VSS in due diligence

VSS in due diligence

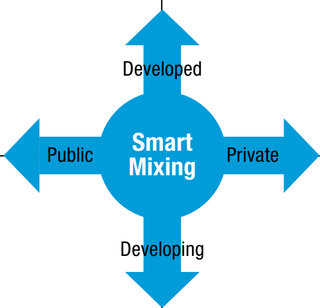
Due diligence regulations and VSS share some common ground in that both instruments are trade-related and reflect sustainability principles as embodied in the United Nations Sustainable Development Goals. However, they represent different dimensions of sustainability governance. Research has conceptualised international trade sustainability governance along two dimensions: public/private and developed/developing countries (see Figure 3). Various instruments exist in each of the four possible combinations. Developed countries' public instruments include due diligence regulations such as the EUDR. Developed countries' private instruments include VSS, such as the Rainforest Alliance and Fairtrade International, and other market-based private tools emerging from these countries. Developing countries' public instruments include national standards and regulations, such as the Indonesian National Action Plan on Business and Human Rights. Developing countries' private instruments include producer-driven sustainability initiatives, such as the South African Wine and Agricultural Ethical Trading Association (Ponte et al., 2023). Arguably, for international trade sustainability governance to be effective, "smart mix" policies need to be developed, which combine different types of instruments in order to tap into the complementarities and synergies between them (Schleifer & Fransen, 2022).

Hence, there are grounds to explore the role that existing instruments, such as VSS, can play in this evolving landscape of due diligence regulations. VSS have proliferated since the 1990s, especially in the agricultural and forestry sectors, where they certify an increasing share of the global production area. Figure 4 illustrates the evolution in the number of VSS in existence, based on two VSS databases, the ITC Standards Map[23] and the Ecolabel Index.[24] While these databases differ in their methodology, they overall display similar trends: a proliferation of VSS from the 1990s onwards, and a

Lessons can be drawn from documented weaknesses in VSS design to inform the implementation of due diligence obligations

Figure 3
A "smart mix" for sustainable supply chains

Geography/sector	Public	Private
Developed countries	Public demand-side governance: e.g., mandatory supply chain due diligence regulations	Private demand-side governance: e.g., company- or civil society-led voluntary sustainability standards
Developing countries	Public supply-side governance: e.g., national "homegrown" sustainability standards	Private supply-side governance: e.g., producer-driven sustainability initiatives



Source: Schleifer & Fransen (2022)

[23] https://standardsmap.org/en/identify
[24] https://www.ecolabelindex.com/

relative deceleration in more recent years, with a consolidation of the VSS market. VSS have become important governance instruments for sustainable GVCs, linking producers, mostly from developing countries, to consumers, mostly from developed countries (UNCTAD, 2022).

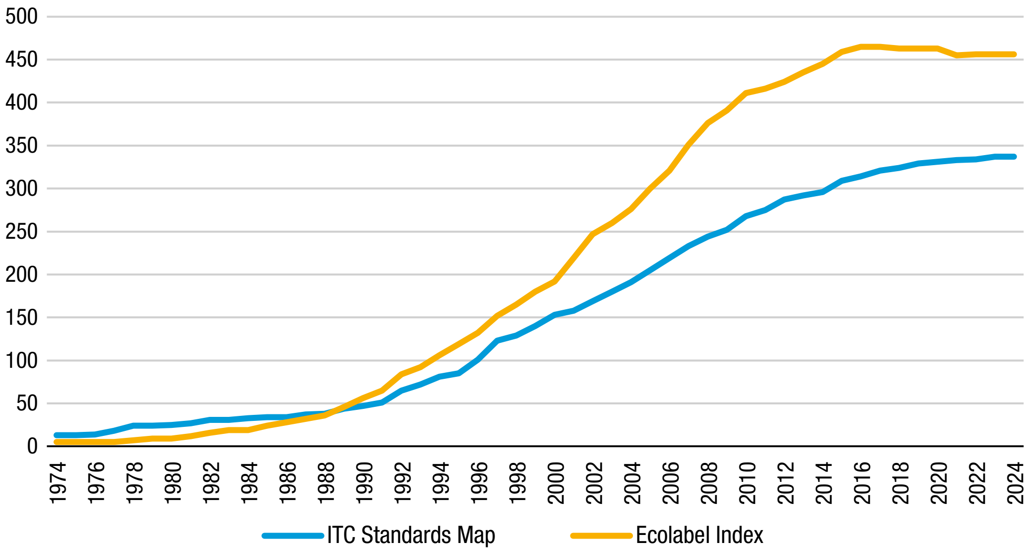
Essentially, VSS set standards related to sustainability that often operationalise commitments in international conventions or agreements, related for example to preventing child labour, human rights violations, deforestation, environmental degradation, and other sustainability issues associated with international trade (UNFSS, 2013). Economic actors along GVCs can voluntarily commit to complying with these standards in order to demonstrate the sustainability of their production and/or operations and access markets where there is demand for sustainable products. Most VSS have top-down conformity assessment systems, such as audits, in place to regularly verify compliance with their standards, and issue a certificate that economic actors can use as a proof of compliance (Marx, 2013; Marx & Depoorter, 2021). In addition, some VSS also have bottom-up conformity assessment mechanisms in the form of grievance systems, which allow for continuous monitoring of compliance as any affected stakeholder can raise complaints about adverse practices of certified entities (Harrison & Wielga, 2023; UNCTAD, 2022).

In light of their importance, some VSS organizations and other stakeholders are calling for their recognition as tools to support the implementation of due diligence regulations (see for example Fairtrade International, 2021; Rainforest Alliance et al., 2022). However, some academics are also questioning the legitimacy and desirability, as well as warning about the potential pitfalls, of including voluntary tools such as VSS within mandatory due diligence regulations (e.g. LeBaron et al., 2017; Schilling-Vacaflor & Lenschow, 2023). This chapter presents the potential synergies and gaps between VSS and due diligence implementation, the implications of due diligence regulations on VSS, as well as the lessons learned from the weaknesses of VSS for due diligence implementation.

3.1. VSS role in due diligence: synergies and gaps

VSS can be seen as tools that support companies in the implementation of due diligence obligations and as pre-existing

Figure 4
Evolution in the number of VSS (1974-2024)



Source: authors

frameworks to prevent duplication of efforts. By virtue of their design, they can present certain synergies with the traditional 6 steps of the due diligence process (OECD, 2018) (see Figure 1). Table 2 below provides a summary of the VSS infrastructures that align with each of the due diligence steps.

- Step 1 Embedding responsible business conduct: VSS often require their adopters to develop policies and management systems for sustainable production practices, hence embedding their commitment to responsible business conduct into their strategies, policies and activities. In addition, adopting VSS can in itself demonstrate a company's commitment to responsible business conduct.
- Step 2 Identifying and assessing adverse impacts: VSS often require certified entities to conduct risk assessments, and VSS often rely on traceability systems to track these risks.
- Step 3 Ceasing, preventing and mitigating adverse impacts: VSS often issue corrective action plans following certification, verification audits, or risk assessments. These corrective action plans require companies to address the identified adverse impacts.
- Step 4 Tracking implementation and results: VSS often track outcomes through audits (top-down monitoring) which allows them to follow up on the required corrective actions. VSS can also offer complaint systems which allow for bottom-up assessments.
- Step 5 Communicating how impacts are addressed: VSS can provide reporting templates to certified entities and can require audit reports to be made publicly available.
- Step 6 Providing remediation and grievance mechanisms: VSS often have complaint systems in place which allow a broad range of stakeholders to report adverse impacts, and which can provide avenues for remediation.

Hence, **the existing infrastructures and expertise of VSS in organizing supply chains, providing traceability, assessing risks, requiring corrective actions, and providing transparency and complaint systems, present strong synergies with due diligence obligations**. VSS could therefore be used as tools to support companies in implementing due diligence obligations without duplicating these systems.

However, ongoing empirical assessments of VSS against due diligence regulations,

Table 2
Due diligence process and VSS infrastructures

Due diligence steps		VSS infrastructures
1. Embed due diligence in policies and management		VSS requirements on policies and management systems related to sustainable production practices VSS adoption demonstrating commitment to responsible business conduct
2. Identify and assess adverse impacts along GVC		VSS risk assessment requirements VSS traceability systems
3. Cease, prevent and mitigate adverse impacts		VSS corrective action plans VSS audits VSS risk assessment requirements
4. Monitor performance on how adverse impacts are addressed		VSS audits (top-down monitoring) VSS complaint systems (bottom-up monitoring)
5. Communicate how adverse impacts are addressed		VSS reporting templates VSS public audit reports
6. Provide remedy and grievance mechanisms		VSS grievance and complaint systems

Box 1
VSS and the EUDR

To address deforestation, the European Union has introduced a Regulation on Deforestation-Free Products, or EUDR, which came into force on 29 June 2023. The regulation targets seven key "forest-risk" commodities, namely cattle, cocoa, coffee, palm oil, rubber, soya, and wood, as well as their derivative products. According to the regulation, affected companies will have to fulfil due diligence obligations, meaning that any operator or trader who either places one of the commodities in question on the European Union's market or exports it from there must be able to prove that the product does not originate from deforested land and has not contributed to forest degradation (after 31 December 2020).

The EUDR provides an illustration of due diligence processes. It requires operators to collect detailed information, including geolocation data, to show that products comply with the regulation. It also sets out risk assessment requirements as well as mitigation obligations for operators through conducting audits, collecting more information, reporting, working with suppliers, capacity building, etc.

VSS have surfaced as a potential tool for addressing the challenges associated with the implementation of the EUDR. Many VSS set guidelines and criteria for sustainable practices in the production and trade of commodities which are linked to deforestation, such as the Forest Stewardship Council (FSC), the Roundtable on Sustainable Palm Oil (RSPO), or the Rainforest Alliance. In addition, through their tools for assessing, mitigating, and monitoring deforestation risks, as well as their tools for data collection and traceability, VSS have the potential to support most aspects of due diligence.

As acknowledged in the EUDR, VSS can be used as instruments to conduct risk assessments. VSS comprise systems of assurance based on rigorous assessments through audits by independent third-party organisations to determine whether the certification-seeking entity complies with the requirements of the VSS. These requirements often include supply chain risk assessment as well as risk mitigation obligations. In addition, many VSS are explicitly aligning with EUDR requirements, for example by developing further risk assessment systems which could be leveraged to support companies in compliance with the regulation, such as:

- the automated risk assessment maps for deforestation provided by Rainforest Alliance along with GPS tracking facilities;
- the FSC GIS Portal that tracks forest borders including Indigenous Peoples' lands, protected lands, and territories with forest loss and gain;
- the RSPO Hotspot Hub, which uses satellite technology to provide near real-time information on detected hotspots and potential fires in oil palm plantations in Malaysia and Indonesia.

In addition, VSS can support the implementation of the EUDR's due diligence obligations through their data collection and traceability systems. The geolocation data requirements of the EUDR will present a massive challenge as they require operators to collect geolocation data from all suppliers, including polygon data for farms larger than 4 hectares. VSS can hence be leveraged as they also increasingly include geolocation data requirements. VSS chain-of-custody requirements (for example, FSC, Rainforest Alliance, Fairtrade) and traceability systems, which ensure the integrity of certified products and keep records of their sales along supply chains, can also provide assurance for importers that imported products are coming from a sustainable and legal source, hence reducing the risk of deforestation in the supply chain.

in particular against the EUDR, highlight that many misalignments remain (see for example Rainforest Alliance, 2023).[25] For example, VSS can be misaligned with the EUDR on aspects such as the definitions of deforestation and forest degradation; schedules (i.e. audits required only once per certification cycle, which can be longer than the annual assessment required under the EUDR); traceability systems; or the deforestation cut-off date (31 December 2020 under the EUDR). While many VSS are adapting their policies to align with the EUDR, companies should still carefully select which VSS to work with and for which due diligence obligations.

Research is also being conducted into the position of different actors on the integration of VSS in due diligence regulations, especially during the EUDR negotiations (Berning & Sotirov, 2023; Schleifer & Fransen, 2022). This research suggests that overall, VSS and businesses align in that they favour the recognition of VSS as tools that support the implementation of EUDR requirements. NGOs, on the other hand, tend to oppose this on the grounds that it might weaken or displace companies' responsibilities. Overall, there is consensus that VSS should not be recognised as full proof of compliance with due diligence obligations (no so-called "green lane" or "fast access" for certified companies). While VSS can provide support, expertise, and lower costs for companies when implementing due diligence obligations, they should not negate companies' due diligence responsibilities and the burden of proof of compliance should remain on the companies (see for example Fairtrade International, 2021; Rainforest Alliance, 2022).

3.2. Implications of due diligence developments for VSS

Several implications of due diligence developments for VSS can be put forward. First, due diligence regulations might generate consolidation in the VSS market, with the most advanced and established VSS gaining market share. In addition, they may create lock-in effects, with companies sourcing from VSS certified suppliers and leaving out the non-certified.

Furthermore, it is yet to be fully understood how VSS respond to due diligence developments. Some VSS are integrating due diligence elements into their standards; but the most common approach of VSS is to develop customer-tailored tools parallel to their existing certification standards, such as add-on certification modules or enhanced technology-supported risk assessments systems. Examples include Rainforest Alliance's automated risk assessment maps for deforestation[26] and Fairtrade International's partnership with Satelligence to provide satellite monitoring data on deforestation to producer organisations.[27] VSS are diversifying their offer beyond sustainability certification.

Lastly, due diligence regulations might jeopardise the very channels through which VSS generate developmental benefits. Research shows that the provision of capacity-building, such as training activities, and market benefits, such as price premiums, are key determinants for VSS to yield impacts such as enhancing farmer welfare (Boonaert et al., 2024; Depoorter & Marx, 2023; Dietz et al., 2019;

[25] See also https://vimeo.com/876152764/57c1b4e30a

[26] https://www.rainforest-alliance.org/business/certification/rainforest-alliance-tools-to-promote-deforestation-free-supply-chains/

[27] https://www.fairtrade.net/news/fairtrade-producers-set-to-expand-deforestation-monitoring-through-new-partnership-with-satelligence

Grabs, 2020). However, due diligence regulations, by levelling the playing field and reducing differentiation in consumer markets, threaten the very existence of price premiums. These price premiums, however, are key for offsetting the costs of due diligence implementation. This might further exacerbate the vulnerability of smallholder farmers in developing countries.

3.3. Lessons learned from VSS design

As VSS have been operating across multiple sectors for over two decades, lessons can be drawn from documented weaknesses in VSS design to inform the implementation of due diligence obligations.

In particular, extant research has repeatedly shown pitfalls in the auditing systems on which VSS rely, including conflicts of interest, tick-the-box approaches to compliance assessment, and many other issues (LeBaron et al., 2017; Marx & Wouters, 2016; Schilling-Vacaflor et al., 2021). More recently, research has been focusing on a deeper examination of the audit market and the role played by individual auditors in providing assurance (Renckens & Auld, 2020). There is ongoing research on understanding the impact of different types of auditors and the diversity of audit markets engaged by VSS. Preliminary findings show a dominance of some auditing firms and a concentration of the audit market, which has potentially important implications for the independence and performance of audits. In addition, due diligence regulations will likely create significant space for audit firms to play a role in assessing compliance with due diligence obligations and thus developing their business. Questions therefore arise on how to regulate the auditing market, ensure coherent and consistent interpretation of due diligence obligations, and guarantee the performance and independence of audits. These questions need to be addressed by policymakers and accreditation bodies.

Studies have also delved into VSS grievance mechanisms, providing insights into their effectiveness in addressing grievances (Harrison & Wielga, 2023; Wielga & Harrison, 2021). Major gaps have been identified. First, many VSS do not have grievance mechanisms. Second, those VSS that have these mechanisms in place are not all equally transparent, and only a few VSS have fully transparent grievance systems in place. Third, when assessing the performance of VSS grievance systems (for those that are transparent and hence for which information is available), research shows that only a fraction of complaints filed are actually investigated, and that only a marginal number of these result in remediation, whether adequate or not. This line of research highlights that VSS grievance systems can be useful, especially in contexts where state-based systems are not functional, but that important improvements are needed in terms of transparency and accessibility, the processing of complaints, and the provision of adequate remediation. Complaint systems also need to be carefully designed, depending on the sector, national context, and value chain structures.

The highlighted weaknesses of VSS systems provide lessons not only for the potential use of VSS but, more broadly, for the development of mechanisms that will support the implementation of due diligence regulations. The next Chapter delves into the lessons learned on VSS from developing countries' perspectives more specifically.

Chapter 4

Developing countries and VSS: Lessons learned for due diligence regulations

Developing countries and VSS: Lessons learned for due diligence regulations

Several lessons valuable for the implementation of due diligence regulations can be learned from research on perceptions of VSS and their effectiveness as sustainability governance initiatives in developing countries.

First, VSS, as governance tools for sustainable GVCs emerging mostly from developed countries, have, similarly to due diligence regulations, been perceived as tools that impose burdens on developing countries in a top-down fashion (Negi et al., 2020). Significant research has called for enhanced inclusion of developing countries' stakeholders in the standard-setting and decision-making bodies of VSS (Schleifer et al., 2019). For example, only **25 per cent** of VSS ensure that producers from developing countries have a say in their governance structure (Bennett, 2017). Enhanced inclusiveness would not only help improve the acceptance of VSS but also their fit with local contexts.

In addition, research shows the importance of tackling inequalities as a pre-condition before international trade governance initiatives for broader sustainability can be envisaged. Research on the South African wine industry for example shows that even sustainability governance initiatives driven by developing countries themselves – which are supposedly better suited to address specific local challenges – have not only largely fallen short of reducing inequalities, but might even have worsened them (Ponte et al., 2023). This is explained by the fact that sustainability is not only costly to implement but is also taken for granted on (developed countries') buyer markets in some sectors (i.e. in some sectors, it has become a de facto mandatory requirement that does not yield premiums), hence failing to compensate for extra costs. By further levelling the playing field on consumer markets in all sectors, due diligence regulations might hence aggravate inequalities for developing countries. This line of research hence also highlights the need for financial support and capacity-building mechanisms to implement these initiatives.

Additional research corroborates the importance of understanding and tackling specific pre-existing conditions and problems in developing countries more broadly for international trade sustainability governance initiatives to work. Rubiano Lizarazo et al. (2020) for example studied the challenges of VSS adoption in small-scale gold mining in Colombia. They show that while VSS have the potential to deliver developmental benefits for small-scale miners, including price premiums, there are important barriers to VSS adoption (see also Rueda & Lambin, 2013). In particular, VSS require formalisation and organisation, but these remain challenging in Colombia and in many other middle-income and least developed countries, because of complex legal processes, poor administration, a lack of interest from workers in getting organised, or even workers being discouraged from doing so.

Hence, due diligence regulations have much to learn from insights on VSS to provide effective and inclusive consultation mechanisms, as well as to carefully create implementation support systems (e.g. capacity-building). These will allow due diligence regulations to tackle the sustainable development issues that form necessary pre-conditions for further sustainability governance instruments to be effective. This is of particular importance for building support for due diligence regulations and ensuring their effectiveness without compromising on fairness and inclusiveness.

Due diligence regulations might aggravate inequalities for developing countries

Chapter 5

The way forward

The way forward

Due diligence regulations aim to improve sustainability in GVCs, and VSS have a potential role to play in supporting their implementation. However, these developments come with important challenges, especially for developing countries. Several recommendations can be made for the way forward.

5.1. Addressing sustainability in the context of international trade rules

The discourse surrounding sustainability within international trade regulations remains a complex arena in which various interests, perspectives, and challenges intersect. There is need for a balanced approach to integrating sustainability objectives into trade rules. Some experts question the way sustainability should be endorsed in the international trade system and underline the increased polarisation among countries. They point to the discrepancies among WTO members' unilateral measures and their varying perceptions of the evolving sustainability demands placed on developing countries (Hoekman et al., 2023). Developing countries, while supportive of including sustainability objectives in the international trade agenda, need inclusivity and support in doing so. Hence, the top-down approach of current due diligence developments needs to be counterbalanced, for example by using trade preferences as incentivizing tools, incorporating lessons learned from the implementation of VSS, opening up discussions to increase inclusivity, or providing locally adapted financial and technical support for implementation. Moreover, it is important to understand problems beyond capacity-building, and more holistic policies are needed to address core developmental issues rather than solely relying on trade policy.

5.2. Learning from and leveraging tools such as VSS for due diligence regulations

Because of their expertise and existing infrastructures, VSS offer potential avenues for supporting companies in implementing due diligence regulations. However, despite their potential to promote sustainability, persistent issues such as compliance costs, capacity constraints, and the (lack of) independence and quality of audit systems call for broader perspectives beyond VSS and trade policy to address sustainability challenges comprehensively. Governance tools for sustainable GVCs should be adapted to local contexts and used in combination with one another in order to maximise synergies and minimise trade-offs (Brandi, 2020).

5.3. Supporting developing countries to leverage benefits and overcome challenges

The introduction of due diligence regulatory approaches in trade has sparked discussions on challenges and opportunities, particularly from the perspective of developing countries and the global trading system. Of the utmost salience is the short timeline for implementing due diligence obligations, their proliferation, and their potential exclusionary, market diversion, and segmentation effects. These developments, however, also provide opportunities to advance and speed up the sustainability agenda and re-think cooperation beyond trade policy in new multilateral settings, including in cross-regional fora and through South-South cooperation (Bermúdez & Sarmiento, 2023). This is particularly relevant in light of the increasing intra-regional trade flows among developing countries, which

More holistic policies are needed to address core developmental issues

have grown (in value) by **50 per cent** over the past 10 years (UNCTAD, 2023a).

5.4. Priorities for the future

The discourse surrounding sustainability, VSS, due diligence measures, and their integration into international trade rules reveals complex challenges and calls for multi-dimensional solutions. Addressing these challenges requires a holistic approach that integrates the perspectives of various stakeholders, promotes inclusivity in policy formulation, and fosters dialogue and cooperation among nations, international organisations, and experts across the globe.

In contemplating the future trajectory of VSS in the landscape of due diligence regulations, the role VSS can play in supporting implementation, providing capacity-building, and fostering inclusive cooperation should be explored further. There is also a need for enhanced engagement and multilateral cooperation more broadly to advance the discussions on due diligence and policy developments in international trade, to increase transparency, and to promote collaboration. In particular, South-South cooperation is emerging and should be supported in order to encourage developing countries to develop solutions specific to their local challenges.

The pursuit of a more sustainable global trading system demands a nuanced balance and careful integration of voluntary and mandatory measures, robust mechanisms for compliance and oversight, and sustained efforts to address the diverse needs and capacities of nations.

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Annex

UNFSS Academic Advisory Council Annual Meeting 2023: Building a Sustainable Future for Trade: A Multi-Dimensional Assessment of VSS in Global Sustainability Governance and Due Diligence for Developing Countries

12 October 2023
Hosted at the European University Institute (+ online)

The content of this report derives from the discussions held at the UNFSS Academic Advisory Council (AAC) annual meeting held at the European University Institute on 12 October 2023. The meeting gathered 51 academic experts and practitioners around the world who study and practice VSS (see the list of participants below).

The Academic Advisory Council of the UNFSS brings together an international mix of academic experts from various disciplines and backgrounds to consolidate the knowledge on Voluntary Sustainability Standards (VSS) and contribute to a comprehensive understanding of VSS effectiveness. Currently, different disciplines approach questions related to the effectiveness of VSS from different theoretical perspectives and focus on different dimensions of effectiveness. The AAC's objective is to bring these different perspectives into one overarching network that critically examines the issues related to VSS.

The 34 academics in the Academic Advisory Council meet every year to present and discuss ongoing research on VSS. They interact with policymakers and practitioners and provide UNFSS independent and informed advice on all aspects of Voluntary Sustainability Standards design, impact, and interactions with public policy.

The UNFSS Academic Advisory Council meeting 2023 focused on exploring the synergies between due diligence and voluntary sustainability standards (VSS) within the context of global sustainability governance. Through a multidimensional assessment, the discussions delved into the potential of these approaches to drive sustainable trade.

The discussions were structured along four panels:

- Panel 1 provided a state of play of VSS and due diligence developments in international trade. Many regulatory initiatives have started to emerge to govern sustainability requirements across global value chains. This panel explored the evolving landscape of due diligence regulatory developments and the role VSS can play in them. The panel assessed the potential for VSS to act as a facilitation or a verification tools for due diligence requirements.
- Panel 2 explored the positioning of VSS vis-à-vis due diligence regulations and the implications of these latter on VSS. Traditionally, VSS were tools for producers and firms who wanted to play a leading role in sustainability to signal their commitment. But new regulatory initiatives basically transform soft law approaches on corporate social responsibility into hard law and level the playing field for all companies. Against this background, the panel looked at how VSS can position themselves vis-à-vis these

developments. The discussions in the panel assessed the possible implications of regulatory initiatives on VSS, including on their theories of change, and examined how these developments influence the substantial and procedural aspects of VSS. The panel also analysed the potential impact of due diligence regulations on the uptake of VSS, considering the possibility of increased adoption or potential obsolescence. Lastly, it explored the effect of these due diligence regulations on the VSS market, whether it would lead to a possible proliferation of new initiatives or consolidation of standards.

- Panel 3 focused on the principle of "Leaving no one behind" by exploring the perspectives of developing countries. Scholars and policymakers from developing countries have raised important concerns about the possible impacts and additional challenges resulting from social and environmental due diligence legislations as well as interactions with VSS. From the perspective of suppliers, especially in developing countries, export costs can be expected to increase as firms have to provide evidence of their compliance with due diligence requirements separately for each importer through bureaucratic processes. This could lead to a loss of export business or even market exit. This panel discussed these challenges from the lens of developing countries and explored the potential contribution of VSS in mitigating these challenges.
- Panel 4 brought together the main takeaways from the previous panels and provided further reflections on the way forward for sustainable trade governance.

List of participants

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