AGRICULTURAL POLICIES IN DEBATE

SHORT BRIEF

The EU Regulation on Deforestation-free products at odds with forest conservation in Brazil?

A commentary*

Background

The European Union's latest regulatory endeavor, the Regulation on Deforestation-free products (EUDR), marked as Regulation (EU) 2023/1115, stands as a pioneering move to mitigate the adverse effects of EU imports on global forests, climate change, and biodiversity loss[1]. Enforced starting from December 31st, 2024, this legislation imposes compulsory due diligence obligations on market participants who import relevant products that contain, have been fed with or have been made using the forest-risk commodities (FRC) cattle, cocoa, coffee, oil palm, rubber, soya, and wood on the EU market.[2]

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[1] https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en

[2] Article 1, *caput*, Regulation (EU) 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 ("EUDR").

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To comply with the EUDR, operators must document that these products were produced in line with the applicable legislation in the country of origin.[3] This can include, among others, national labor and environmental law. Importantly, FRC must also have been produced on land not deforested (in case of wood products also forests not degraded) after the regulation's 2020 cut-off year.[4] If effectively enforced, operators may face heavy sanctions if they import products that violate these provisions.[5]

Some have hailed the EUDR as a game changing intervention to prevent tropical forest loss[6]. Yet, others worry about high additional transaction costs, especially for small and medium producers and importers[7], or expect little benefits for forests[8]. This is because many of the so-called forest risk imports to the EU could actually be sourced from regions with low deforestation risk at only marginally higher transport costs.

Beyond purely mechanistic perspectives on how the new EU rules may affect trade flows and corresponding impacts on forests, policy analysts have recently pointed out that we must consider impacts on governance systems in both producer and other food and biomass importing countries around the world[9].

Here we look at Brazil, one of the countries with the highest tropical deforestation rates in the world, and choose three arguably relevant impact pathways of the EUDR to discuss necessary conditions for desirable impacts on forests, namely: (1) effective private sustainability standards for agricultural and forest commodity exports from Brazil's Amazon region, (2) coherence with existing and effective public and private forest conservation regulations, such as the Amazon Soy Moratorium (ASM) and Brazil's Forest Code (FC), and (3) national commitment to forest conservation goals.

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3 Article 9, 1, h, EUDR.

4 Article 2, 13, EUDR.

5 Article 24, EUDR.

6 https://www.climatealliance.org/fileadmin/Inhalte/4_Activities/Policy_papers/2022-02_EN_Civil_Society_Position_Statemet_Proposed_EU_regulation_on_deforestation-free_products.pdf

7 https://odi.org/en/publications/the-green-squeeze-an-explainer/

8 https://de.apdbrasil.de/wp-content/uploads/2023/09/European_Deforestation_Regulation_EN.pdf

9 https://doi.org/10.1016/j.forpol.2024.103183

EUDR and private sustainability standards

The EU has historically imported a relatively high share of FRC from the Amazon region due to the comparatively short maritime shipping routes from Northern Brazilian ports. Despite Brazil's ambitious public environmental regulations for agricultural production, especially in the Amazon biome, illegal conversion of natural forests is notoriously high in the region. Since the early 2000s, many international traders have introduced private sustainability standards for FRC exports to EU and non-EU destinations with mixed success[10]. For the EUDR to reduce FRC-related deforestation in the Amazon, we must assume that these private standards will be aligned with the corresponding mandatory due diligence rules at least in those value chains that feed into trade with the EU. Often this will imply upgrading of current standards[11]. We must also assume, that these standards do at least not deteriorate in those value chains that feed into trade with non-EU destinations.

However, as the EUDR implies compliance costs and substantial business and reputational risks for companies importing from the Amazon region, some companies may decide to shift to the less risky sourcing regions in the Southern Cone, including the Brazilian Cerrado, where many landscapes either do not fall under the current forest definition of the EUDR or have been cleared from forests decades ago. Producers of FRC in the Amazon region would then be relatively more exposed to demand from non-EU regions with arguably less ambitious demand for sustainability standards[12]. To the extent that private standards had the intended impact on the sustainability of FRC production in the Brazilian Amazon, a shift towards more trade with non-EU regions could offset positive EUDR impacts in the region. Net positive impacts through this pathway thus require relatively strong assumptions regarding the stability of existing trade links and environmental standards therein.

[10] https://doi.org/10.1016/j.ecolecon.2022.107546

[11] https://www.sciencedirect.com/science/article/pii/S1389934124000893

[12] https://doi.org/10.1111/1758-5899.13326

Coherence with domestic forest conservation initiatives[13]

The EUDR adds a new external layer of governance to an already quite complex system of existing private and public forest conservation initiatives and regulations in Brazil and other affected countries. However, the governance systems of FRC producing countries may not always be perfectly compatible with the EUDR. So-called "policy incoherence", i.e. conflicting goals or impacts of multiple policy instruments, is known to be a potential source of unintended results from well-intentioned policy action[14].

Brazil's ASM, established in 2006 and indefinitely extended in 2016, is a collaborative effort of non-state actors, including NGOs and agribusiness associations, in combating deforestation driven by soy expansion. Despite being a voluntary commitment, the ASM incorporates robust monitoring and sanctioning mechanisms. Notably, its initial 2006 cut-off date was later adjusted to 2008 to synchronize with a legal reform of the Forest Code (FC), Brazil's flagship forest conservation law, that provided partial amnesty to land users who had illegally deforested before 2008[15].

The EUDR establishes 2020 as a cut-off year implying the existence of land eligible for the production of FRC for EU imports that may be subject to substantial land use restrictions under the ASM or the FC. This discrepancy in cut-off years constitutes an incoherence between the regulations independently imposed by Brazil and the EU. In the period from 2008 to 2020, over 91.500 sqkm (an area close to the size of Portugal) of forestland were, mostly illegally, converted in Brazil's Amazon region. About three quarters of this deforested area is potentially suitable for soy production (Figure 1). Such a relevant amount of land represents an incentive, for the country's agricultural lobby to push for an alignment of the ASM's cut-off year with that of the EUDR in pursuit of greater policy coherence. Resistance to the ASM among producers and local leaders is not uncommon in Brazil[16] and a perception that the EUDR puts some of Brazil's competitors with lower overall deforestation risk at a comparative advantage, provides a case in point for such lobby interest.

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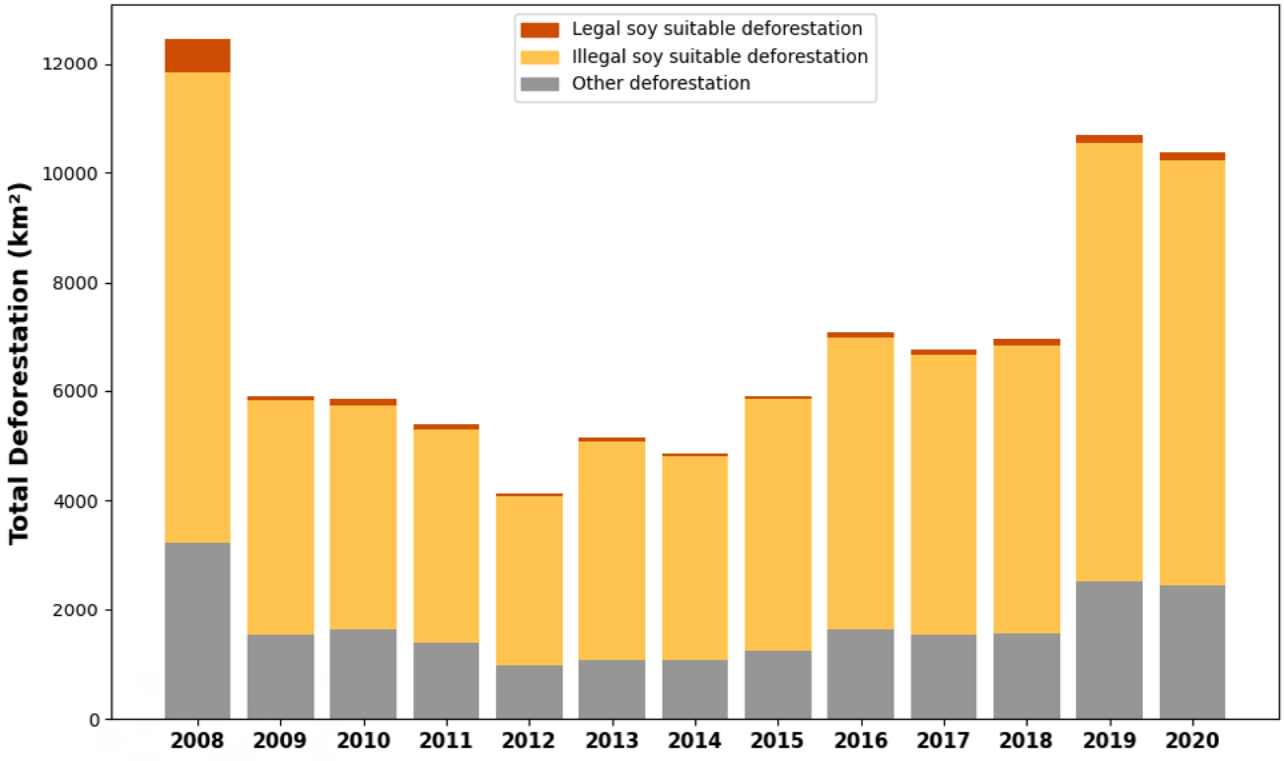
[13] See also: https://www.nature.com/articles/s41559-024-02465-x

[14] https://doi.org/10.1002/eet.2057

[15] Article 42, Brazilian Forestry Code (Law n. 12.651, 2012).

[16] See https://www.noticiasagricolas.com.br/noticias/soja/377446-impactos-da-moratoria-da-soja-sao-debatidos-em-evento-da-aprosoja-mt-e-tce.html

Figure 1 – Types of deforestation in the Brazilian Amazon biome (2008-2020)



Data sources: INPE-PRODES, CAR and rural property data provided by the Centro de Sensoriamento Remoto (CSR), University Federal of Minas Gerais. Note, there may be deforestation detected by INPE that falls outside of registered rural properties and are thus not included here.

A shift of the 2008 cut-off year to 2020 could have adverse consequences with soy expansion into the previously restricted areas probably being the least worrisome. As a *de facto* amnesty, such a shift would come as an encouragement for all those who have cut primary forests in expectation of speculative profits from appreciating values on formal and informal land markets[17].

[17] https://iopscience.iop.org/article/10.1088/1748-9326/ab003a/meta

National commitment to forest conservation goals

Eventually, a so-called "Brussels effect" of the EUDR would encourage governments in producer countries to engage in additional environmental regulation, so as to reduce the level of deforestation risk embodied in their FRC and thereby increase prospects of trade with the EU. As another necessary condition for the EUDR to reduce deforestation, we have to assume at least no loss in the effectiveness of the existing forest governance system in FRC producer countries.

However, the lion's share of forest loss across Brazilian biomes continues to be caused by domestic consumption or demand from Brazil's non-EU trade partners, including China. A recent study finds few reasons to expect that China will adopt trade policies similar to the EUDR in the short or medium term[9]. Without additional leverage from international markets, the fate of Brazil's forests thus continues to depend mainly on the balance of internal political forces.

Research has documented that past shifts in internal political support for conservation had substantial impacts on annual forest loss in the Brazilian Amazon[18]. At the same time, a recent survey among key Brazilian stakeholders indicates considerable discontent with specific aspects of the EUDR among both supports and opponents of the current national forest conservation agenda[8].

Contrary to the "Brussels effect", it thus appears prudent to also consider the possibility of so-called political backlash[19] movements to emerge with the objective to weaken domestic conservation commitments. This is arguably the most speculative conjecture put forward in this commentary, but it could have undesirable implications for forests at a much larger scale than the other two.

[18] https://doi.org/10.1038/s41598-024-52180-7

[19] https://doi.org/10.1177/1369148120947956

Implications

EU legislators have designed the EUDR in support of conserving the world's most biodiverse and carbon-rich forests. Effective action towards this goal was long overdue. But, for the EU's market leverage to change the economics and politics of expansion at the world's most dynamic agricultural frontiers, many factors must align and most of them are not under the EU's control. Since the opportunity costs of compliance with the EUDR will accrue predominantly in producer countries, we must expect avoidance behavior at multiple levels including in the political sphere. Actual impacts on deforestation will thus also depend on whether the EUDR's Article 30 on cooperation with third countries results in effective partnerships towards strengthening national forest governance systems.

Research on the drivers of deforestation and the effectiveness of conservation policies has shown that well-targeted regulatory disincentives must align with compensatory measures and structural change for conservation to be sustainable in the long-term[20]. If mutually beneficial trade results in environmental externalities at the supply side, both exporting and importing countries must share the responsibility. The EUDR, however, by relying on market power to influence production decisions, *de facto* imposes the polluter pays principle and creates substantial transaction costs for all FRC-market participants, including in the EU.

An alternative approach, that relies on the principle of common but differentiated responsibilities, could be a border tax on the average deforestation footprint of FRC commodity trade flows. Such a tax could be combined with cooperation and reward mechanisms for documented efforts to reduce deforestation linked to the production of FRC. Tax revenues could be turned into a constant source of support to the chronically underfunded environmental policy agendas of the countries that provide the EU with bio-based food, feed, fuel and fiber. This may also more likely result in buy-in from political leaders who have to balance the costs of environmental protection against support from an electorate with strong ties to the primary sector. In the meanwhile, we need interdisciplinary research and rigorous counterfactual-based methods to monitor and evaluate the direct and indirect effects of the EUDR.

[20] https://www.journals.uchicago.edu/doi/pdf/10.1093/reep/res022

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