BRIEFING:
EU-MERCOSUR vs the EUDR

How the Commission traded the EU Deforestation Regulation away and got a bad deal in return

June 2025

SUMMARY

The Amazon rainforest is the world's largest tropical forest. It is critical for a livable Earth: this forest absorbs massive amounts of carbon and regulates weather patterns. It's home to unparalleled biodiversity and provides livelihoods for millions of people. Yet, the Amazon is profoundly vulnerable. Approximately 17% of the Amazon has already been lost due to deforestation and studies show that 38% of the Amazon suffers from some kind of degradation. This means the rainforest is dangerously close to an irreversible collapse: its tipping point, also called its point of no return, is estimated by scientists to be between 20% and 25% of forest loss. Deforested areas in the Amazon are primarily converted into cattle pasture and croplands for animal feed, with pastures occupying 77% of deforested areas in 2020.

As the world prepares for COP30 in the Amazon, political leaders should act on their promises to halt deforestation and forest degradation - so that the Amazon rainforest can breathe and thrive. The recently concluded trade agreement between the EU and Mercosur (Brazil, Argentina, Paraguay, and Uruguay), however, goes in the opposite direction.

The deal:

- promotes an increase of trade in agricultural commodities, like beef or soy, whilst having only weak provisions that fail to prevent deforestation;
- threatens to create a chilling effect against new environmental and human rights measures and weakens the implementation and enforcement of the EU Deforestation Regulation (EUDR);
- sets a dangerous precedent for trade deals with other countries where large areas of forest are located, such as Indonesia and Malaysia.

For the sake of the Amazon rainforest, and of other biomes in the Mercosur countries that are under threat of conversion or degradation (such as the Cerrado, the Pantanal, the Gran Chaco and the Mata Atlantica), of the rights of Indigenous People and of our collective future on this planet, policy-makers must reject the EU-Mercosur deal and instead stand up for a strong EUDR and ensure that this Regulation is strictly enforced from the end of 2025.

This briefing illustrates the expected effects of certain provisions of the EU-Mercosur deal on the implementation and enforcement of the EUDR and, potentially, on other EU environmental legislation.

BACKGROUND: THE EU DEFORESTATION REGULATION

The EU Deforestation Regulation (EUDR) is a landmark law that takes steps towards minimising the EU's impact on deforestation,forest degradation,associated human rights impacts, greenhouse gas (GHG) emissions, and biodiversity loss globally. It applies to products that derive from cattle, cocoa, coffee, palm oil, rubber, soya, and wood, when these are produced, imported into, sold in, or exported from the EU. For companies who wish to sell these products in the EU (or export them therefrom), the EUDR requires them to ensure that their products comply with the EUDR "deforestation-free" standard and are produced in accordance with the law of the country of production (including human rights).

In order to meet the law's requirements, companies must conduct due diligence on the products they import, trade, or export from the EU. On the basis of this due diligence they must be able to conclude that their products are "deforestation-free" and legal, or at least that the risk of noncompliance with these requirements is, at most, negligible.

The due diligence is based on the operator's own detection and assessment of risks. This means that official documents from the authorities in the country of production must be considered in light of the overall reliability of that country's governance system[1]. Likewise, certificates may be used as "complementary information", but they do not substitute the operators' due diligence, nor do they absolve them from liability in case such certificates prove flawed[2].

When importing, selling, or exporting a relevant product, companies must fill in a "due diligence statement", whereby they declare that the products conform with the law, and submit it through a central information system to the "competent authorities" in charge of the application and enforcement of the law. These proactive administrative steps ensure that competent authorities have a clear overview of the relevant products placed on the EU market and that operators take legal responsibility for the completion of the due diligence.

Member States' competent authorities must ensure the EUDR's effective enforcement. Therefore, these authorities must have adequate powers, resources, and independence to fulfill their tasks, like conducting checks on companies.

Companies that break the law are subject to penalties that can consist of, among others:
- fines;
- confiscation of unlawful products;
- confiscation of money made in the sale of unlawful products;
- temporary exclusion of the companies from public contracts and public funding;
- a temporary prohibition, for the company, to sell relevant products in the EU.

With a view to enhance the effectiveness of EUDR enforcement, the law foresees a system of "country benchmarking", whereby the European Commission is in charge of determining, for each country, the level of risk that products originating from that country may not be "deforestation-free".

With a Regulation adopted on 22 May 2025[3], the Commission has determined which countries qualify as "high", "standard", or "low" risk. The products will be subject to more or less checks depending on the risk category to which the country of production belongs and when the products originate from a country classified as low risk, they will be subject to less stringent or so-called "simplified" due diligence requirements. According to the law, the country benchmarking must be based on "an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognised sources"[4]. Therefore, it should not be influenced by political or economic considerations that would undermine its impartiality and objectivity[5].

The EUDR is set to become applicable on 30 December 2025, following a decision by the EU legislators to postpone the original date by one year.

1.Commission Guidance Document for Regulation (EU) 2023/1115 on deforestation-free products (Guidance Document) of 13 November 2024, as amended on 15 April 2025, C(2025) 2485 final, Section 6 (b).
2. EUDR, Article Article 10(j)
3. https://eur-lex.europa.eu/eli/reg_impl/2025/1093/oj/eng
4. EUDR, Article 29(3).
5. Open letter on the procedure and criteria for "country benchmarking" under article 29 of the eu deforestation regulation and the role of trade agreements', 14 november 2023

BOX 1: Timeline of events

- Negotiations between the EU and Mercosur countries resulted in an agreement in principle on the trade deal in June 2019.
- Massive Amazon destruction over the European summer of 2019 generated internal opposition to the trade deal within the EU.
- To address this opposition, the European Commission decided to negotiate an additional instrument demanding commitments concerning adherence to the Paris Agreement and combating deforestation. In March 2023, it sent its proposal to the Mercosur countries.
- In parallel, the Commission decided to legislate at EU level as part of the Green Deal to minimise the impact of EU consumption on the world's forests and thereby reduce the Union's contribution to GHG emissions and biodiversity loss. This initiative followed the publication of a Communication on stepping up EU action to protect and restore the world's forests in July 2019. It received wide public support and resulted in a legislative proposal for the EU Deforestation Regulation in November 2021.
- A political agreement on the EUDR was reached in December 2022 and in May 2023, the Final EU Deforestation legislation was adopted by an overwhelming majority of the Council and Parliament.
- During 2023-2024, the law became a contentious issue in trade talks between Mercosur countries and the EU, as media reports show[1].
- According to Reuters, from 11 September 2024, the Brazilian Ministers of Agriculture and Foreign Affairs wrote to the Commission to ask the EU not to implement the EUDR at the end of 2024 and urgently reassess its approach to the issue.
- Just one month later, on 2 October, the Von der Leyen Commission issued a proposal to delay the application of the EUDR by one year and then on 6 December, concluded negotiations for the EU-Mercosur agreement. The text of the agreement was published days later revealing the extent of the concessions made by the EU.

1. See for example, Folha de São Paulo, governo planeja propor a ue que brasil seja considerado de baixo risco de desmatamento, 15 June 2023 ; Europa Press Economía Finanzas, Argentina presentará una nueva propuesta para el acuerdo UE-Mercosur con la que frenar los efectos adversos, 14 June 2023 ; CNN Brazil, Em resposta à UE, Brasil quer blindagem ambiental e flexibilidade em compras públicas, 28 July 2023 ; Pronunciamento do ministro das Relações Exteriores, Mauro Vieira, em coletiva de imprensa após a Cúpula do G20, 11 September 2023 ; Reuters, Brazil says EU deforestation rules hamper Mercosur trade deal negotiation, 8 November 2023 ; Euractiv, Ball in EU court to reach agreement with Mercosur, Paraguayan official warns, 4 April 2024

LEGAL CONTENT ANALYSIS

Our assessment of the new text of the EU-Mercosur agreement is that the European Commission has failed in its mission and negotiated a deal which remains a threat to nature, the climate, and human rights.

In particular, to get the deal done, the Commission has made major concessions to Mercosur countries, as illustrated in the following sections, which threaten to jeopardise the way the EUDR is implemented and enforced.

Furthermore, the language on forest and nature protection is weak, unenforceable and inconsistent with what the EU and Mercosur countries committed to recently at the international level, in the context of the UN Climate Convention.

Similarly, the text of the agreement fails to offer adequate protection to the rights of Indigenous Peoples and Local Communities (IPLC's) and to protect them from land grabbing and displacement. Instead of including the internationally recognised right to "free, prior and informed consent" (FPIC), the text of the EU Mercosur agreement uses the expression "prior informed consent" (hence implying that consent can be obtained through coercion and intimidation) and it limits the scope of this reduced protection to the exploitation of forests, without taking other lands and ecosystems into consideration (TSD chapter, Articles 7 and 8).

Finally, the agreed text introduces a new avenue for complaints – the so-called "rebalancing mechanism" – which could threaten the EUDR, a number of other existing EU laws, and beyond this, the autonomy of the EU and Mercosur legislators to approve laws on social and environmental issues in the future. If these laws are considered to be affecting the benefits that corporations expect from the deal, there will be claims that a "rebalancing" is necessary, for instance in the form of new concessions (or the loss of benefits for the block that has enacted the new laws). This might create a state of "regulatory chill" similar to that created by ISDS.

In detail:

1. The rebalancing mechanism in the dispute settlement chapter – a threat to the EUDR and to the legislative autonomy of the EU and Mercosur countries

This mechanism allows Mercosur (and the EU) to raise complaints and seek compensations against range of EU measures, if such measures have an impact on Mercosur exports to the EU (and vice-versa) (i.e. if it *"nullifies or substantially impairs any benefit accruing to it under the covered provisions in a manner adversely affecting trade between the parties"*, (Art xx.4b)). The scope of the mechanism is not restricted to trade measures (e.g. tariffs or quotas), but also includes EU environmental, climate, and human rights laws.

The Commission claims that this mechanism will only apply to EU laws or other measures that the complainant *"could not have expected when the deal was closed"*[1]. This is based on the assumption that, since the rebalancing mechanism is based on a procedure that is similar to the one included in the General Agreement on Tariffs and Trade (GATT) and governed by the World Trade Organisation (WTO) Dispute Settlement Understanding, it will also be interpreted and applied in light of the GATT-WTO law.

If the Commission were right, existing environmental legislation such as the EU Deforestation Regulation (EUDR), the Carbon Border Adjustment Mechanism (CBAM), the Corporate Sustainability Due Diligence Directive (CSDDD), or the Pesticides Regulation (and their implementation and enforcement) would not be under threat nor give rise to disputes.

1. Commission Summary, https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/86fb1930-16ed-4ac6-af25-5e0ad0d0c816/details?download=true, para 8.

However, the text of the EU-Mercosur agreement does not support this assumption:

1. Indeed, Article XX.12 of the dispute settlement chapter (on the rules of interpretation) states that in all disputes referred to in the said chapter (thus including those arising from the re-balancing mechanism), *"The arbitration panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law"* (thus the agreement will not be interpreted in light of WTO law, as the Commission claims).
2. The same provision says that *"When interpreting an obligation under this Agreement which is identical to an obligation under the WTO Agreement"* (which could be understood to include the rebalancing mechanism) *"the arbitration panel shall take into consideration any relevant interpretation established in the rulings of the WTO Dispute Settlement Body"*. The use of the terms "take into consideration" means that such interpretation will not be binding for the application of the EU-Mercosur agreement and that the arbitration panel will be able to depart from it.
3. Most importantly, Article X3j of the EU-Mercosur agreement contains a new definition of *"Measure"*, which states that for *"greater certainty"* the term applies to already existing *"legislation that has not been fully implemented at the conclusions of the negotiations of this Agreement as well as its implementing acts"*.

This means, firstly, that the negotiators made the express and clear choice to include the EUDR and other important measures adopted under the European Green Deal in the scope of the rebalancing mechanism. Secondly, and given the absolute clarity of the definition of *"Measure"*, there will be no space to exclude those acts from the said mechanism by resorting to a WTO based interpretation.

There is more: the same definition of *"Measure"* has an extremely comprehensive scope, including not only laws, but also regulations, rules, procedures, decisions and administrative actions, requirements and practices. This means that Mercosur countries may have a claim against the EU, not only in relation to future laws or present laws not fully implemented, but also against the future application of present laws by administrative authorities.

In practice, this means that EU legislative and administrative authorities will be exposed to undue pressure by their Mercosur counterparts (or by companies that import Mercosur products in the EU) to prevent the approval of new rules or the strict and incisive application of existing ones.

Finally, the text of the agreement does not define the concepts of *"nullification"* or of *"substantial impairment"* of benefits: this opens the possibility of claims whose only objective is to deter the EU (or Mercosur) from adopting or implementing environmental or other public interest legislation that may affect the economic interest of trade actors.

In other words, and similarly to other trade policy mechanisms such as ISDS and regulatory co-operation, the rebalancing mechanism risks translating into an inappropriate tool for businesses to provoke a *"regulatory chill"* or even a *"regulatory rollback"*, to throw obstacles in the way of the adoption or the enforcement of public interest legislation.

2. The new Annex to the Trade and Sustainable Development (TSD) Chapter fails to protect forests and other terrestrial ecosystems...

The Commission claims that *"A key feature of the Annex are new commitments on deforestation. The Parties commit to take measures to stop further deforestation from 2030".* It also states that the Annex contains *"Cooperation and commitments to support Mercosur countries in facilitati[ng] the implementation of the EU Deforestation Regulation*".

The reality is neither as rosy, and surely not as green, as the Commission paints it in its summary of the EU-Mercosur deal.

The Annex contains a vague and unenforceable commitment to *"prevent further deforestation and enhance efforts to stabilise or increase forest cover from 2030".* This clause entirely relies on the laws and regulations that Mercosur countries or the EU may decide to adopt in the future and, therefore, commits to best efforts only, not to clear results. Furthermore, this aspirational commitment is meant to be implemented *"from 2030",* whereas the Glasgow Leaders' Declaration on forests and land use, adopted at the UN Climate Summit (COP26) on 2 November 2021, indicates 2030 as the deadline for halting and reversing *"forest loss and land degradation"*[1].

Another noticeable problem is that the said clause omits any reference to the objective of halting and reversing forest degradation, which is recognised by the Glasgow Declaration, referred to again in the Global Stocktake decision[2] at the UN Climate Summit (COP28) in December 2023, and addressed in the EUDR.

Instead, the Annex mentions the need of stabilising and increasing *"forest cover".* This language is problematic because while it may refer to the protection of primary and other natural forests, it also allows their replacement with tree plantations (an increase in *"forest cover"* does not say anything about forest quality and about its value from a biodiversity standpoint)[3].

Finally, while the Glasgow Declaration includes a commitment to *"strengthen shared efforts to conserve forests and* ***other terrestrial ecosystems*** *and accelerate their restoration",* the trade agreement between the EU and Mercosur countries entirely omits any reference to terrestrial ecosystems other than forests and to the international commitments made in this area by both sides, thereby ignoring the ongoing destruction of other sensitive and biodiverse ecosystems, such as the Pantanal wetlands and the Cerrado tropical savanna, and neglecting the risk that the trade deal might aggravate the situation.

In other words, when it comes to protecting forests and nature, the new Annex does too little (or nothing) and is certainly too late.

1. Commission Summary, para. 2.
2. Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, fifth session, held in the United Arab Emirates from 30 November to 13 December 2023, decision 1/CMA.5, Outcome of the first global stocktake: "33. Further emphasizes the importance of conserving, protecting and restoring nature and ecosystems towards achieving the Paris Agreement temperature goal, including through enhanced efforts towards halting and reversing deforestation and forest degradation by 2030, and other terrestrial and marine ecosystems acting as sinks and reservoirs of greenhouse gases and by conserving biodiversity, while ensuring social and environmental safeguards, in line with the Kunming-Montreal Global Biodiversity Framework".
3. In this regard, it is important to note that the definition of forest degradation in the EUDR precisely aim at excluding from the EU market products made of wood whose harvest - whether in the EU or outside - has induced "the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land; or primary forests into planted forests" (EUDR, article 2(7)).

3. ... and the rights of Indigenous Peoples and Local Communities...

While the European Commission claims that the agreement *"establishes a framework for the two sides to address human rights issues, including those concerning Indigenous Peoples",* the actual text of the agreement fails to offer adequate protection for the rights of Indigenous Peoples and Local Communities (IPLCs). Indeed, the Annex to the Trade and Sustainable Development (TSD) chapter only mentions a handful of commitments related to IPLCs that create no real obligation on the Parties to ensure the protection of their rights.

On this, the Annex to the TSD chapter grants the future Trade and Sustainable Development Sub-Committee the task to conduct an exchange of views on the implementation of a list of relevant international instruments, including the UN Declaration on the Rights of Indigenous Peoples, but puts no concrete obligations on Parties to effectively respect and protect the rights enshrined in these instruments. This is a clear step down from the European Commission proposal published in March 2023, which stated that the Parties had committed to cooperate for *"the promotion* ***and protection*** *of human rights"* included in international instruments, explicitly *"the rights of Indigenous Peoples, as defined inter alia in the UN Declaration on the Rights of Indigenous Peoples"* with clear reference to the inclusion of the rights to land under traditional use by them.

Furthermore, while the Annex recognises the *"role of traditional and Indigenous knowledge"* in sustainable land use and protecting biodiversity, as well as the *"importance of supporting Indigenous Peoples and local communities in sustainably managing forests",* it barely mentions respect for their collective land rights, whose protection are crucial to achieve this. Indeed, the Annex only links respect for collective land rights to the Parties' plans to provide *"increased market access opportunities for products obtained sustainably and in accordance with domestic laws, from smallholders, cooperatives, Indigenous Peoples and local communities",* failing to provide real protection against the adverse impacts of industrial agricultural production, and the trade of related products, both of which the agreement actively promotes.

This approach is reflected in the text of the TSD Chapter itself, where IPLCs are only considered in Article 8, which seeks to promote their inclusion in sustainable supply chains, *"with their prior and informed consent"*. Not only does the text use the expression *"prior informed consent"* as opposed to the internationally recognised right to *"free, prior and informed consent"* (excluding the crucial element that consent must be sought free from coercion and intimidation), it also limits the obligation to obtain their consent to the very narrow scenario of including them in supply chains, rather than protecting their rights from the threats that economic activities facilitated by the agreement can bring.

4. ...and is designed to weaken the implementation and enforcement of the EUDR.

Whilst being ineffective in ensuring forest and ecosystems protection, the Annex contains a number of clauses that are designed to weaken the EUDR's implementation and enforcement. If approved, these clauses would undermine the Regulation's effectiveness towards Mercosur products, at the same time setting a very dangerous precedent for other partner countries that are negotiating free trade agreements with the EU.

> **a) Clause 10 of the Annex sets the tone, by stating that "Unilateral measures to deal with environmental challenges outside the jurisdiction of the importing countries should be avoided".**

By agreeing to emphasise this language, the Commission has basically disavowed (in front of the EU's trade partners) the actions that the EU has taken so far to address the environmental footprint of its production and consumption at global level.

Recent measures such as the EUDR and CSDDD would fall in the range of the measures to be avoided, but the category is broad and also includes long standing legislation such as the EU Regulation on Illegal, Unreported and Unregulated Fishing (the IUU Regulation)) or the EU Timber Regulation (EUTR) adopted respectively in 2008 and 2010, both of which address the negative impacts of EU consumption within its borders and in third countries. Later in the document, the Commission agreed on a number of provisions specifically aimed at the EUDR, which will fundamentally change the context and manner in which this law will apply to products from Mercosur countries. Specifically:

> **b) Clause 55 states that Mercosur countries are "best placed to assess the compliance" or relevant products with their laws and therefore, when assessing compliance with the law of a Mercosur country, the EU Competent authorities "shall use the information provided by" the Mercosur authorities.**

This clause is inconsistent with the way the EUDR is meant to work, and contradicts the policy and practice developed under the EUTR for over a decade to fight illegal logging and related trade. Indeed, under the EUDR, it is the operator's responsibility to determine, on the basis of its due diligence, whether its products are compliant with the laws of the country of production. The operator can, of course, use official documents and other information provided by the authorities in the country of production, but they are not given any special standing or value in the detection, assessment, and mitigation of risks.

The essence of the due diligence obligation is that the operator must assess the reliability of this information in light of the strengths and weaknesses of the governance systems in producing countries.

In particular, operators must be able to access "adequately conclusive and verifiable information" on the legality of their products and consider "the source, reliability, validity and links to other available documentation of the information" in their risk assessment (Articles 9(1) and 10(2) EUDR).

At present, the fact that information of documents may come from Mercosur or other authorities does not change this rule. On the contrary, the Commission's own Guidance Document clarifies that "Operators should take reasonable measures to satisfy themselves that such [official] documents are genuine, depending on their assessment of the general situation in the country of production. In this regard, the operator should also take into account the risk of corruption (e.g. bribery, collusion, or fraud)".[1]

The EU-Mercosur agreement overturns this principle by stating that Mercosur authorities are "best placed to assess compliance" of products with Mercosur law, and by requiring EU authorities to use (not just to take into account) the information that Mercosur authorities provide. The agreement weakens the operators' duty to exercise due diligence and interferes with the competent authorities' autonomy to evaluate the evidence collected by operators and to enforce the law when there are risks that such evidence may be flawed.

1. Guidance Document, page 16.

BOX 2: Due diligence and official documents: lessons learned from illegal logging in the Brazilian Amazon

Greenpeace Brazil and the Silent Crisis in the Amazon: Unveiling Illegal Logging and Forest Crimes (2014–2018)

Beginning in 2014, shortly after the European Union Timber Regulation (EUTR) became applicable, Greenpeace Brazil launched the campaign "The Silent Crisis in the Amazon", initiating a series of investigations into illegal logging. These efforts exposed serious weaknesses in official documentation, which proved inadequate to guarantee the legal origin of Amazon timber. Fraudulent schemes, invasions of Indigenous territories, acts of violence — including the murder of Indigenous leaders — and links to consumer markets for high-value Amazonian timber were all documented.

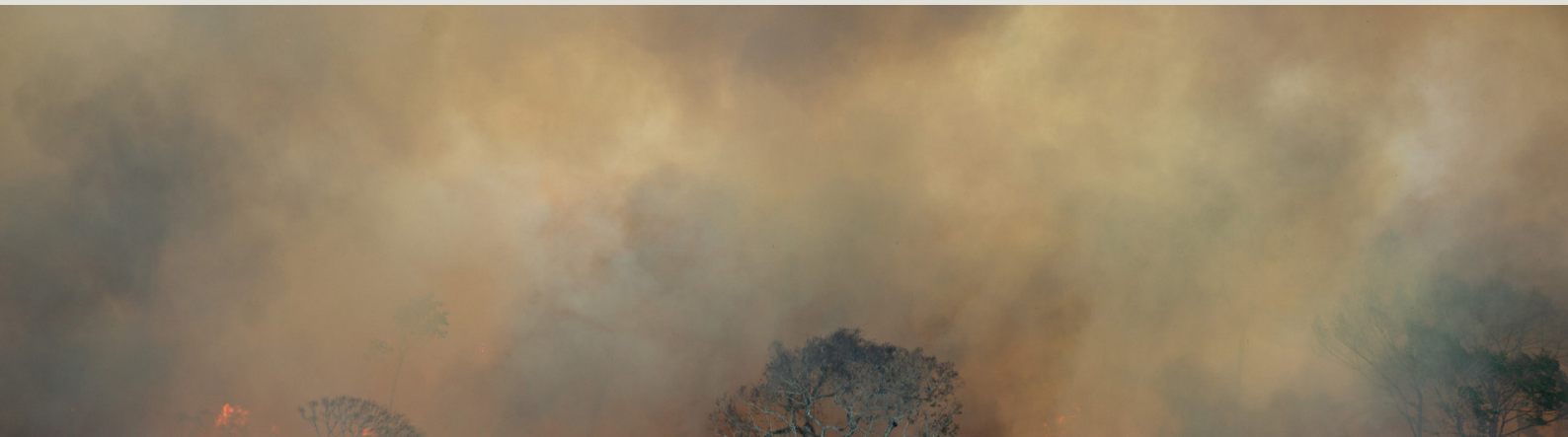
In May 2014, the organisation released the report "The Silent Crisis in the Amazon: Control of the Timber Sector and Five Methods of System Fraud". The report outlined regulatory recommendations to curb illegal logging and revealed five fraudulent methods employed by loggers to circumvent the existing regulatory framework. The findings demonstrated how vulnerable to abuse the system was , with illegal logging accounting for 78% of exploited areas in Pará and 54% in Mato Grosso between 2011 and 2012.

Between August and September 2014, Greenpeace used GPS tracking to monitor logging truck routes in western Pará. This investigation culminated in the report "The Silent Crisis in the Amazon: Crime at Dawn", which revealed how the local timber industry systematically laundered illegal wood.

In June 2015, the report "The Silent Crisis in the Amazon: Licence to Launder Timber — Guaranteed" was published. It detailed trade networks involving sawmills like Santa Efigênia, operating outside the law, and their commercial relations with European Union countries. Despite their due diligence obligations, various EU and international importers — whose connections to Santa Efigênia had already been exposed in October 2014 — continued trading in timber linked to illegal operations in Pará.

In September 2015, Greenpeace Brazil released "The Silent Crisis in the Amazon: The Invisibility of the Ka'apor". The report called public and governmental attention to the invasion of Indigenous Lands and highlighted the Ka'apor people's struggle to defend their rights.

Loggers' pressure on Ka'apor territories is directly linked to the pursuit of highly valuable tree species such as Ipê, whose processed and exported cubic metre can reach €1,300. In addition to threatening biodiversity and causing violence and conflict with local communities, the illegal harvesting of timber from protected areas accelerates forest degradation — often the first step towards deforestation.

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BOX 2: Continued

In March 2018, Greenpeace Brazil published "Imaginary Trees, Real Destruction". Following whistleblower reports, Ibama agents, together with Greenpeace and forestry experts from ESALQ/USP, conducted inspections of Sustainable Forest Management Plans (PMFS). These inspections uncovered widespread fraud. A study of 586 plans in Pará (2013–2017) revealed that 76.68% of Ipê logging inventories reported tree densities far above scientifically plausible levels. In some cases, these figures were inflated to more than ten times the amounts deemed possible by scientific research. The data presented in the report were corroborated by the scientific study "Fake Legal Logging in the Brazilian Amazon", published in the journal Science Advances. The study was conducted by a team from ESALQ–University of São Paulo (USP), the most prestigious university in Latin America, whose Faculty of Forestry Engineering holds the highest ranking in Brazil.

The risks documented in Greenpeace Brazil's investigations, were included in the notice (last updated on September 2018) prepared for the Commission by the UN Environment Programme World Conservation Monitoring Centre (UNEP-WCMC) and published on the Commission's website to warn operators about the risks of illegality affecting timber from the Brazilian Amazon, also to support EUTR competent authorities with enforcement.

Previously, the European Commission itself indicated in the 2016 guidance document on the application of the EUTR, that official documents from the country of harvest cannot always be considered as a proof of legality for timber, but must be assessed in light of the governance situation in that country. In particular (page 7), "the operator must also take into account the risk of corruption, specifically in relation to the forestry sector. In cases where the risk of corruption is not negligible, even official documents issued by authorities cannot be considered reliable".

Concretely, this means that neither operators, nor competent authorities, could simply and consistently rely on the assessment by the authorities from the country of harvest, but they had to carry out a concrete evaluation of all the available elements, including the governance in the country of harvest.

This approach was recently confirmed by French judges (Court of Appeal in Rennes), who convicted a French timber dealer (that qualified as an "operator" under the EUTR) for failure to exercise due diligence on timber from the Amazon. The judges recognised that the situation of forest governance in Brazil required operators to apply measures to mitigate the risk of illegality and that reliance on official documents and certificates could not be considered as sufficient to meet the EUTR due diligence obligation.

c) Clause 56 requires EU authorities to use documentation, licences, information, and data from certification schemes, as well as traceability and monitoring systems officially recognised, registered, or identified by Mercosur countries as a source to verify the compliance of Mercosur products with traceability requirements. Furthermore, Clause 57 requires the EU to "provide support for transparent and independent assessment of traceability, certification or third-party verification schemes and their alignment with requirements and good practices".

Under the EUDR, certificates can be used only in the context of the risk assessment as *"complementary information on compliance"* (Article 10(2)(n) EUDR). However, the law does not confer any particular status to certificates. They can complement the due diligence but they neither substitute the operators' duties to collect a complete set of information on their supply chain (and assess and mitigate related risks) nor do they shield them from liability in case the certificates are found to be faulty or otherwise unreliable.

This is long standing EU policy. Indeed, already under the EUTR the role recognised for certification is very limited.

Before tabling the proposal for the EUDR, the Commission carried out a study on "Certification and Verification Schemes in the Forest Sector and for Wood-based Products" and overall, identified several gaps in the considered certification schemes including, as far as the integrity of the supply chain is concerned, the fact that these schemes *"do not include the systematic ability to verify – in real time or otherwise – transactions of volumes, species, and qualities between entities, thus leaving the systems vulnerable to manipulation and fraud".*[1]

The legislator's decision to strictly define the conditions of certification as a tool for EUDR compliance is consistent with the Commission's findings and with the additional evidence it collected during the impact assessment for the EUDR proposal[2].

It is also echoed by the guidance on the use of certification schemes that the Commission included in its Guidance Document[3], which clearly indicates that *"while such schemes can be used in the risk assessment procedure under Article 10, they cannot substitute the operator's responsibility as regards due diligence further to Article 8. This means that the use of such schemes does not imply a 'green lane', since the operator is still required to exercise due diligence and is held liable if it fails to comply with the due diligence requirements of the EUDR."*

Against this background, Clause 56 of the Annex will require EU competent authorities to use data from certification schemes *"officially recognised, registered or identified by Mercosur Countries" "as a source" "for the purpose of verifying compliance of products"* with traceability requirements. This will put undue pressure on EU authorities, since they (and not the operator) will have the burden of determining whether the data from certificates is reliable or not, or of otherwise demonstrating that the law does not allow them to use such data as a source.

At the very least, Clause 56 will create a state of uncertainty on the value of certificates, provided that they are at least *"identified"* (not even recognised) by Mercosur authorities. This is compounded by the fact that under Clause 56(c), in case of divergence between the Mercosur documentation or certificates and the assessment of EU authorities, the latter will be required to *"promptly consider"* information or clarification provided by Mercosur authorities.

1. Guidance Document, Page 6.
2. https://environment.ec.europa.eu/document/download/7ab29a87-09a1-45f9-b83b-cd80765de10f_en?filename=SWD_2021_326_1_EN_impact_assessment_part1_v4.pdf, See: Section 5.4, page 48.
3. Guidance Document, Page 23.

This requirement will undermine the impartiality of the process and the autonomy of EU authorities in enforcing the EUDR. Without this clause, it would be for the operator to show conclusive evidence of the compliance of products with the regulation, without relying on an external intervention and support from Mercosur authorities (whose independence could be questioned in this context).

In addition, in Clause 57, the Commission has engaged the EU to *"provide support"* for the assessment of certification schemes upon request from Mercour authorities. This preempts any legitimate future decision that the EU may take on the role of certification, given that at present, assessing certificates is not a task for the Commission but is left entirely to the responsibility of the operator.

> **d) Clause 56(a) commits the EU to recognise that the EU-Mercosur deal and the actions taken to implement commitments thereunder "shall be favorably considered, among other criteria, in the risk classification of countries."**

The country benchmarking in Article 29 of the EUDR is meant to be *"based on an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognised sources"*.

The primary criteria that determine the risk profile of a country are, in accordance with Article 29(3):
(a) the rate of deforestation and forest degradation;
(b) the rate of expansion of agriculture land for relevant commodities;
(c) production trends of relevant commodities and of relevant products.

The optional criteria are set out in Article 29(4), which include *"agreements and other instruments between the country concerned and the Union and/or its Member States that address deforestation and forest degradation and facilitate compliance of relevant commodities and relevant products with Article 3 and their effective implementation"*.

The EU-Mercosur agreement does not fall into this category. It does not address forest degradation **at all;** it does not address deforestation in any meaningful, concrete, and verifiable way; and, it does not facilitate the compliance of Mercosur products with the EUDR (except by weakening the action of Competent Authorities).

Hence, there is no solid basis under the EUDR for the Commission to consider the deal as an element for country benchmarking. Besides this, the text of Clause 56(a) says that the agreement should be considered favorably, hence preempting an objective evaluation of its impacts on forests. It is clear, however, that both Mercosur countries and the Commission considered the EUDR country benchmarking as an item for political negotiations, and not as a rigorous and objective tool to facilitate compliance with, and enforcement of, the EUDR. Indeed, the country benchmarking includes only countries that are subject to EU or UN sanctions in the "high risk" category. Countries like Brazil, with consistently high deforestation rates linked to agricultural expansion, are qualified as "standard risk"[1].

This does not come as a surprise: this Financial Times newsletter from 18 December 2024 quotes Commissioner Roswall confirming that the EU-Mercosur deal "will matter for the risk classification" of Mercosur countries under the EUDR. She confirms that this could encourage other countries which have qualms about the deforestation law, such as Indonesia and Malaysia, to conclude their own trade deals with the EU as well.

5. Mercosur's threat to take action against the EUDR at the WTO is maintained

Despite all the troublesome EUDR-related clauses agreed by the European Commission, Clause 64 of the Annex to the TSD Chapter clarifies that Mercosur still does not accept that the EUDR is WTO-compatible and that the Mercosur countries retain their right to take action against the EUDR at the WTO.

1. https://green-forum.ec.europa.eu/deforestation-regulation-implementation/eudr-cooperation-and-partnerships/country-classification-list_en


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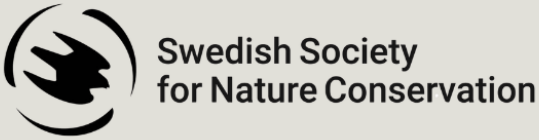
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