

Why the EU Deforestation Regulation won't sugar coat the EU-Mercosur Trade Agreement

April 2023

This briefing discusses why the EU Regulation on deforestation (EUDR) is not designed to prevent several foreseen negative impacts of European Union Mercosur Trade Agreement (EMTA) on forests and peoples. It shows, on the contrary, how EMTA could actually jeopardise the EUDR's integrity. It ends with recommendations on how to ensure that protecting forests and people are put at the heart of EMTA.

In June 2019, after more than 20 years of tortuous negotiations, a bilateral trade agreement was agreed between the European Union (EU) and the Mercosur bloc of nations - Brazil, Paraguay, Argentina and Uruguay (European Union Mercosur Trade Agreement). The Agreement's impact would be far-reaching: economically, environmentally and much else besides.

Yet following the election of Jair Bolsonaro as President of Brazil at the end of 2019 - and his government's subsequent stripping back of environmental protections, spiralling human rights abuses and surging deforestation rates – the deal's ratification was put on ice. Now that Bolsonaro has gone, and his successor as President, Luiz Inácio Lula da Silva, has pledged to stop illegal deforestation in the Amazon and elsewhere, the trade Agreement's proponents are pushing heavily for its ratification.

The European Commission and Mercosur governments are currently discussing adding an "instrument" to address the many complaints within the deal, in order to facilitate its ratification.

EMTA's promoters are also heavily relying on the recently adopted [EU Regulation on deforestation](#) as a tool for helping curtail potential negative impacts of the deal on South America's forests and forest people.

The negotiations around the EUDR finished in December 2022. It prohibits placing specific products on the EU market if they have been produced on recently deforested or degraded forest land.

During a [dialogue](#) with the European Parliament's Committee on International Trade, Commissioner Valdis Dombrovskis said that the EUDR "can play a meaningful part in addressing sustainability challenges in the region."

A new joint instrument?

Given wide-ranging concerns about the deal's lack of sustainability, European policy makers were focused on "pre-ratification conditionalities" soon after the 2019 text was agreed. Since Brazil's General Election, the Commission drew up a new "joint instrument" and restarted discussions in early 2023.

The joint instrument was developed without any consultation of civil society organisations, who only managed to see a leaked copy of the Commission's initial proposal to Mercosur countries. The text offers yet another example of why additional declarations have been historically criticised for their lack of teeth:

- Meaningful enforcement provisions are still unacceptably absent; as before, the Trade and Sustainable Development (TSD) chapter does not fall within the scope of the Agreement's sanction-based dispute settlement provisions.
- No consultation of local communities or indigenous Peoples took place.
- Its commitments on the environment and climate are more precise, but only aspirational and not linked to country-specific priorities.
- It foresees developing a roadmap to meet those commitments only after ratification, at which point any potential for leverage will have been lost.

Negotiators have set the agenda for the coming weeks, and hope to find political compromise by the Community of Latin America and Caribbean states (CELAC) and the EU summit in July 2023, during the Spanish Council Presidency.



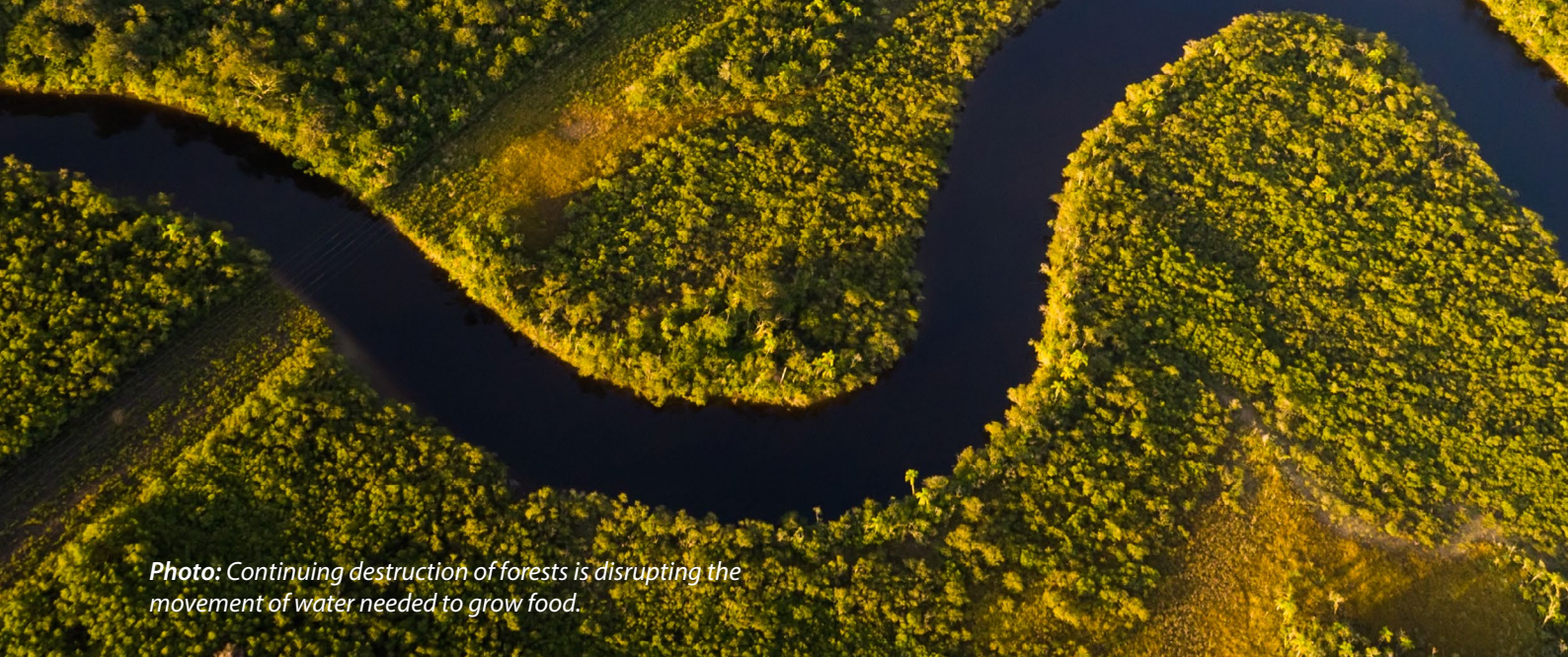


Photo: Continuing destruction of forests is disrupting the movement of water needed to grow food.

A flawed deal

The European Union has pledged to halt global forest cover loss by 2030. In order to achieve its commitment, all EU policies should have positive impacts on forests and forest communities.

It is well-documented that international trade is a major driver of global deforestation and climate change. The EU holds a particular role, as the second biggest importer of deforestation. In 2017, the EU was responsible for 16 per cent of deforestation associated with international trade.

Often presented as a “cars for cows”, the EU-Mercosur trade agreement in its current form is not in line with the EU’s commitments on climate, deforestation and human rights and contradicts the EU’s commitments on stopping deforestation.

A deal that will structurally encourage deforestation

Researchers found that EMTA will increase deforestation in South America.

For example, Brazilian academics have found that the EU’s annual deforestation footprint is set to increase with this trade agreement.

Another study commissioned by France found that deforestation in Mercosur countries would increase by 5 per cent yearly, for the first six years after ratification, while several French NGOs have concluded that this increase could actually go up to 25 per cent.

Finally, academics have also found evidence of a large and statistically significant increase in deforestation over the three years following the enactment of free trade agreements, which coincides with an increase in agricultural land conversion.

Insufficient safeguards to prevent deforestation and human rights violations

Researchers have highlighted that EMTA does not include specific and enforceable provisions to stop it from driving deforestation and human rights abuses.

Forests and human rights are only mentioned the TSD chapter, which does not fall within the scope of the Agreement’s sanction-based dispute settlement provisions. Forest provisions in the Agreement address illegal logging but not soy, beef or sugar grown on illegally deforested land - despite these crops being a much bigger driver of deforestation than logging.

Moreover, the European Ombudsman recently made it clear that the TSD approach is not primarily aimed at addressing human rights abuses.

EMTA’s negotiations have also been opaque and have failed to consult potentially affected peoples in Mercosur countries, local communities and Indigenous Peoples.

While the Commission has developed an increased yet incomplete approach towards trade and sustainable development in EU trade agreements, it will not apply to the EU-Mercosur Agreement.

The EU Deforestation Regulation is not designed to prevent all of the EMTA's negative impacts

The EU deforestation-free products regulation in a nutshell

All companies selling beef (including leather), soy, palm oil, timber, coffee, rubber printed materials, charcoal and cacao in the EU market, as well as the derivative products stemming from those commodities, should conduct “due diligence” to prove firstly that they are legal, and secondly that they have not caused deforestation or forest degradation after 2020.

Companies will need to do a different level of due diligence depending on a country's risk rating. The EU will assign a high, medium or low rating to producer countries based on deforestation rates verified through satellite monitoring, producer country legal frameworks and agreements between the EU and third countries.

The Regulation will formally be enacted by mid-2023, with companies required to start complying with its obligations at the end of 2024. For a full explainer of the EUDR, please [read this briefing](#).

Problematic omissions

While the EUDR is a historic first, it includes several omissions that are particularly concerning for America's [Southern Cone](#) and EMTA.

Missing ecosystems

The EUDR omits the protection of wooded lands, grasslands and wetlands. This will have significant repercussions on the Mercosur regions, particularly for the Brazilian Cerrado, which has been the “[new deforestation frontier](#)” since policies have been put in place to protect the Amazon. This also applies to other South American biomes, such as the Gran Chaco.

More imports of agricultural commodities, as foreseen with EMTA, will lead to an increased leakage of deforestation from ecosystems covered by the EUDR (forests) to “uncovered” ecosystems (wooded lands and savannahs).

[Studies on EMTA](#) have identified the Cerrados' specific regions that would be impacted by ramped up international trade in agricultural commodities stemming from EMTA, namely in the states of Maranhão, Tocantins, Piauí, and Bahia.

Missing commodities

The EUDR's scope leaves out key commodities such as sugar, ethanol and poultry, whose trade and production play a crucial role in accelerating deforestation.

Sugar: The EU is currently only importing relatively small volumes of sugar from Mercosur nations, because of high tariffs, even though Brazil is the world's largest sugar exporter. EMTA could change this significantly. Paraguay will be able to export 10,000 tonnes to the EU duty free, for Brazil it's 180,000 tonnes duty free. In Brazil, deforested areas will transition to croplands by a large margin and within croplands, [sugarcane is the most important driver of change](#).

Bioethanol: As well as producing sugar for use in foodstuffs, Brazil also converts huge quantities of sugar cane into bioethanol. Under EMTA, 450,000 tonnes of bioethanol for use in the chemical industry will be allowed to enter duty free, and an additional 200,000 tonnes will have duty cut to 1/3 of current levels.

Poultry: Under EMTA, 180 000 tonnes of poultry will be allowed to enter duty free. Poultry production has led to severe [human rights violations](#) in Brazil.

Missing sectors

The finance sector is not covered by the EUDR, despite being a key big driver of deforestation.

A significant portion of EMTA is dedicated to liberalising services, including financial services. The Agreement seeks to make it easier for EU service companies to operate and facilitate investment in Mercosur countries, and vice-versa. The role of EU banks and investors in financing deforestation is well-documented, and making it easier for these actors to operate in Mercosur countries could increase the threat to forests and communities' land.

*Photo: Indigenous Peoples are the best protectors of the forest and will be most affected by the trade agreement, it is therefore essential that they are included in both the negotiation and implementation stages.
By Felipe Beltrame / Brigada Amazônia, Mídia NINJA / Flickr*



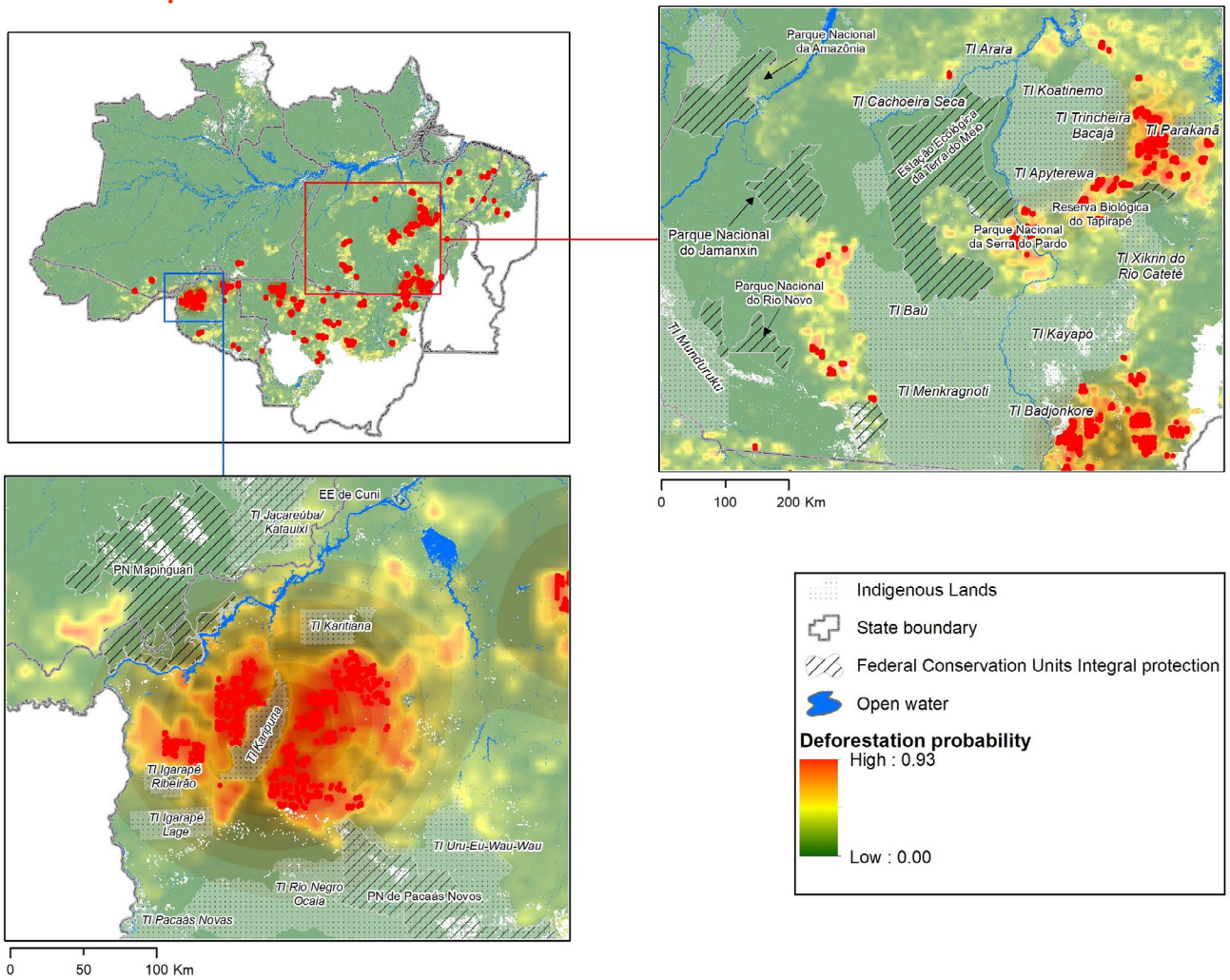
Missing stringent land rights protections

A Brazilian [study](#) found that many of the areas at greatest risk of deforestation from increased agricultural activity border Indigenous territories that already face regular invasions. This increased pressure will only make it harder for Brazil's Indigenous Peoples to defend their land and forests.

The EUDR fails to include strong provisions to protect the land rights of Indigenous Peoples and local communities, who time and time again have proven to be the best [guardians of the forests](#). Companies will [only](#) have to verify compliance with such rights if they are enshrined in the relevant legislation of the country of production. Failing to require them to ensure that goods are produced in accordance with international human rights laws and respect for Indigenous Peoples' rights means relying on national governments to do so.

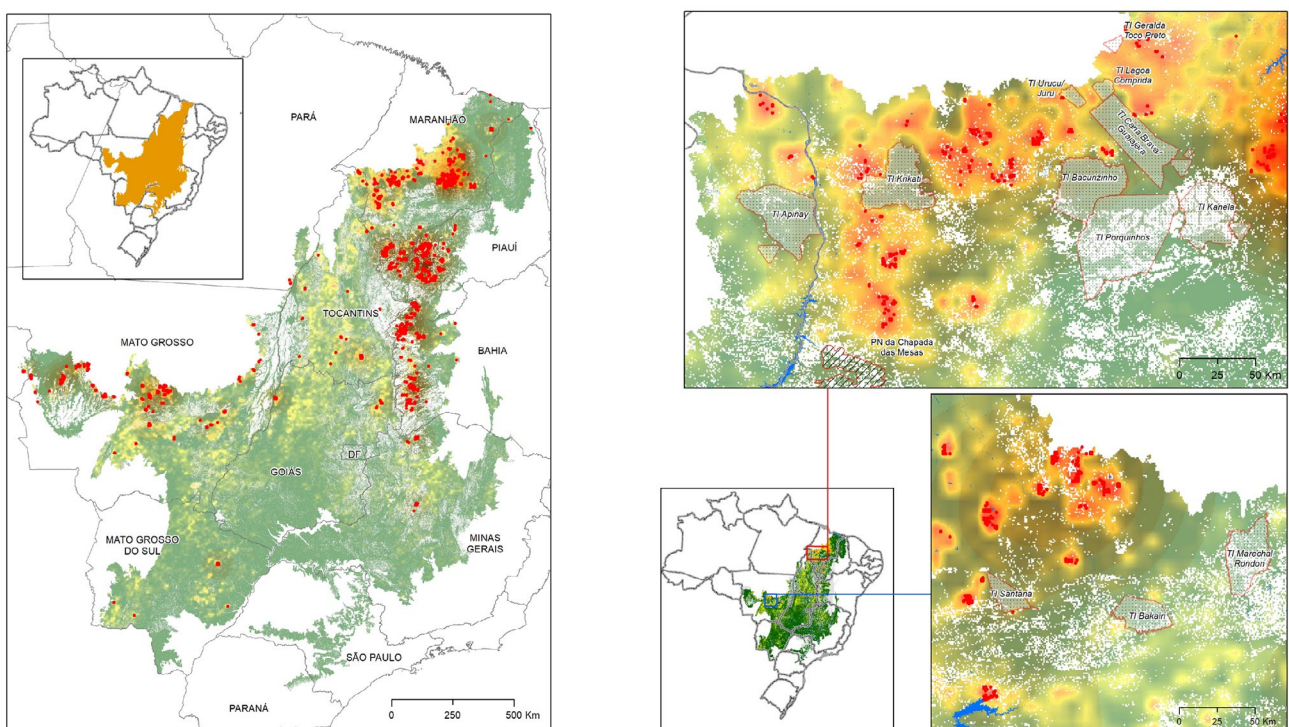
In Brazil, we have also seen the deadly consequences of this: Bolsonaro's administration relentlessly attacked Indigenous Peoples' rights, as deforestation accelerated in the Amazon.

Deforestation pressure in the Amazon



Maps taken from Arima, E. & Barreto, P. (2020)

Protected areas and Indigenous lands under pressure in the Cerrado



The EU-Mercosur Trade Agreement will make it harder to implement the EUDR

EMTA will increase the implementation burden on the EUDR

The EMTA will increase the production and export of Forest Risk Commodities through increased quotas and reduced tariffs that fall under the scope of the EUDR.

For example, the Agreement is lowering tariffs and increasing quotas for beef. On top of the 200,000 tonnes of beef that enter the EU from the area every year, another 99,000 tonnes could be imported with zero or minimal customs duties.

These increased trade flows will increase the burden on competent authorities to conduct due diligence which could impede effectively implementing the EUDR.

EMTA negotiations risk jeopardising the EUDR's risk rating process

As the European Commission and Mercosur governments are currently actively negotiating the additional instrument, there is a risk that the Commission proposes a low risk rating under the EUDR in exchange for finalising the EMTA. A low risk rating then results in lower due diligence obligations for companies importing products from EMTA countries, just as the risks to forests are actually increasing as per the figures cited above, and the need for due diligence is higher. Such political instrumentalisation would severely weaken the ability of the EUDR to act as a safeguard against the potential harms of the EMTA.

Photo: Cattle in an illegally deforested part of the Amazon Rainforest in Pará - Brazil. Forests are destroyed both for cattle ranching and for soy production for animal feed.



Recommendations

To improve the EU-Mercosur Trade Agreement, the Parties must reopen negotiations and revise the Agreement itself, in order to place peoples and forests at its heart. In particular, the Agreement should be revised to:

- **Introduce a hierarchy principle** stipulating that nothing in the trade Agreement may prejudice effective implementation of international environmental, labour, and human rights agreements, including the European Green Deal, the Paris Agreement, the Convention on Biological Diversity, the UN Declaration on the Rights of Indigenous Peoples and the UN Sustainable Development Goals.
- Promote strong strategic partnerships between the EU and Producer Countries containing incentives and benefits to reward positive change for protecting forests and respecting human rights, as necessary to transition towards a green and just economy.
- **Make market access conditional on criteria to ensure products are free from deforestation and human rights violations. That means:**
 - » Quota allocations and lower tariff rates should be tied to compliance with social and environmental criteria agreed by the Parties bilaterally, in meaningful consultation with civil society organisations. These should be reciprocal and respect international environmental, labour and human rights agreements.
 - » Commitments to improve social and environmental standards should be backed up by a roadmap with milestones for each trading partner describing how to achieve them, especially through improving traceability systems. Any roadmap should be developed with all stakeholders, including local civil society organisations and smallholders, before the deal is ratified. It should define and outline policy reforms, law enforcement actions and traceability norms needed from both trading partners.
- » Including in the trade agreement a legal obligation for companies to carry out due diligence to ensure that all products and the finance underpinning them are free from deforestation and violations of human rights.
- » Including a sanction mechanism whereby trade preferences (such as tariffs reduction and quota allocations) would be suspended if social and environmental criteria are not respected.
- **Strengthen civil society participation in the negotiation and monitoring of the trade agreement. This means:**
 - » Civil society in Mercosur countries and the EU should have the right to participate in the trade negotiations, and debate with members of their national parliaments about the potential impacts.
 - » Civil society mechanisms to monitor the trade deal should be clarified, strengthened and properly resourced.
 - » All information should be made accessible to those participating, in the correct format and language, and there should be enough time to participate. Stakeholder groups should be able to appoint their own representatives.
 - » The Commission should establish clear reporting and monitoring tools to track progress and ensure accountability, potentially via indicators or scorecards. This could help provide the information needed to properly enforce the above-mentioned commitments.

