



THE RELEVANCE OF THE BRAZILIAN AMAZON FOR THE RELATIONSHIP BETWEEN BRAZIL AND THE EUROPEAN UNION

Johanne Døhlie Saltnes¹,
Ana Flávia Barros-Platiau²,
Niels Søndergaard³

ABSTRACT

There is plentiful scientific literature about the importance of the Amazon Forest to climate regulation and biological diversity drawing from analytical frameworks such as the Anthropocene, “planetary boundaries” and “Earth System Governance”. In the Brazilian case, the forest is part of the Legal Amazon region, which comprises other biomes also threatened by the recent and predatory expansion of the agricultural frontiers, as well as other illegal activities. They violate the rights of more than thirty-eight million local inhabitants, especially indigenous communities (Fellows *et al*, 2023). In this context, we raise the question: how is the Legal Amazon important for the relationship between Brasilia and Brussels? We contend Brazilians keep the national approach on the Legal Amazon, while the Europeans have a more global view, but focusing on the forest. From an international political economy perspective, the two tipping points chosen were the signature of the trade agreement between the European Union (EU) and Brazil in 2019, and the European Regulation on Deforestation-free products of 2022. In this context of valorization of the standing forest and the ecosystem services it provides, this article aims to analyse the relevance of the Legal Amazon to the relationship between the EU and Brazil, based on the concept of “*deforestation-free value chains*”, which is the basis of the most recent European regulations within the Green Deal. The method consists of the analysis of official documents and data from the EU and Brazil, as well as recent scientific literature in international law and international relations. Our main premise is that the EU has been playing the role of exporter of rules (*norm-maker*) to promote the bloc’s trade and environmental interests. Also, the EU acts to influence decision-making processes within multilateral negotiations

¹ Johanne Døhlie Saltnes is associate researcher at the University of Brasilia, Institute for international relation (IREL). Saltnes is a former postdoc (2019-2020), researcher (2017-2019) and and PhD (2013-2017) at ARENA where she contributed to the projects «GLOBUS - Reconsidering European Contributions to Global Justice» and «LEGOF - The legitimacy of EU foreign and security policy in the age of global contestation». She defended her dissertation in May 2019. Saltnes is currently affiliated with ARENA’s EU3D and NORMS projects.

² Associate professor at the International Relations Institute, University of Brasilia, Brazil. Researcher at the Superior Defence College, Brasilia, Brazil. Director of the Brasilia Research Centre from the Earth System Governance network (Utrecht University, Holland). Researcher at the Centro de Estudos Globais at the International Relations Institute, University of Brasilia. Research topics: complexity thinking, global governance, United Nations, ocean and polar governance, Anthropocene and planetary politics. She also works on Brazilian environmental laws and policies. With Professor Carina Oliveira, she organized the book *Conservation of Living Resources in Areas Beyond National Jurisdiction: BBNJ and Antarctica* in 2020. PhD degree in International Relations from the Université de Paris I (Panthéon-Sorbonne), 2000.

³ International Relations Professor at the University of Brasilia (IREL). A former researcher at Inesper Agro Global. <https://orcid.org/0000-0002-8727-7912> Ph.D. and Post-doctoral studies at the International Relations Institute at the University of Brasilia (IREL). Master in Global Studies - Lund University (2014). Bachelor in Global Studies - Roskilde Universitet (2011).

(*norm-shaper*). Concerning the forest, two telling examples are the climate change and biodiversity regimes. However, the promotion of European interests engenders profound divergences from Brazilian interests. Therefore, the political stands of both sides explain the very long negotiations that led to the 2019 trade agreement. Likewise, divergences have marked the unfolding of the climate change regime after the Paris Agreement, and the Post-2020 Biodiversity Framework, adopted in 2022. In the same vein, the 2022 deforestation ban will bring new challenges to the relationship between Brazil and the EU. The main findings are that the forest is of the utmost importance because there is a clear connection between the European acknowledgment of its role as a consumer of *commodities* that sustain deforestation around the world and the Brazilian failure to effectively fight deforestation, notably in the last four years, under President Bolsonaro. Finally, we conclude that Brussels has taken extremely ambitious but necessary steps to fight deforestation trends. In this sense, the relationship between Brazil and the EU is strongly marked by the trade-environmental agenda, having the Amazon Forest at its core. The EU has been imposing new patterns of traceability and sustainability on third countries. While the EU plays the role of *norm-maker and exporter*, Brazil is challenged by the condition of ending deforestation to maintain access to the European market. Although both actors have some colliding views and preferences, there are opportunities to build a better strategic partnership, based on global sustainability priorities now.

KEYWORDS: *Deforestation-free value chains. Legal Amazon. EU. Brazil.*

A RELEVÂNCIA DA AMAZÔNIA LEGAL PARA A RELAÇÃO ENTRE O BRASIL E A UNIÃO EUROPEIA

RESUMO

Há vasta literatura científica sobre a importância da Floresta Amazônica para a regulação climática e a diversidade biológica no âmbito de quadros analíticos como o Antropoceno, as “fronteiras planetárias” e “governança do sistema Terra”. No caso do Brasil, a floresta está incluída na área da Amazônia Legal, que se estende por outros biomas, também ameaçados pela expansão predatória da fronteira agrícola e por atividades ilegais que violam os direitos das mais de trinta e oito milhões de pessoas que lá habitam, principalmente das comunidades indígenas (Fellows *et al.*, 2023). Neste contexto, a questão é saber: Como a Amazônia Legal é importante na relação entre Brasília e Bruxelas? Nosso argumento é que os Brasileiros têm uma abordagem nacional, baseada na Amazônia Legal, enquanto os Europeus têm uma visão global, mas com foco na floresta. A partir de uma perspectiva de economia política internacional, os dois pontos de inflexão selecionados foram a assinatura do acordo comercial de 2019 entre o Mercosul e a UE e a Regulação europeia sobre as cadeias de valor livres de desmatamento florestal, de 2022. Neste contexto de valorização da floresta em pé e dos serviços ecossistêmicos que ela presta, o presente artigo objetiva analisar a relevância da Amazônia Legal para a relação entre o Brasil e a União Europeia (UE) à luz do conceito de “cadeias de valor sem desmatamento” que constitui o cerne da política regulatória mais recente da EU, no âmbito do seu Pacto Verde. O método usado consiste em análise de fontes primárias concernentes às políticas do Brasil e da UE e a revisão de literatura especializada recente, tanto em relações internacionais como em direito. Partimos da premissa de que para proteger seus interesses comerciais e ambientais, a UE tem tido um papel de protagonista (*norm-maker*) na criação unilateral de normas ambientais, bem como na promoção delas em regimes multilaterais, como no clima e na biodiversidade (*norm-shaper*). Porém, não sem engendrar profundas divergências com os interesses brasileiros. Logo, a posição de ambos os atores está diretamente relacionada com a longa negociação para a assinatura do acordo comercial de 2019. As divergências entre Brasil e a EU marcaram os desdobramentos do Acordo de Paris de 2015 sobre o clima, e a CoP 15 sobre diversidade biológica, realizada em 2022, que levou ao Quadro Global de Biodiversidade Pós-2020. Neste sentido, a regulação europeia de 2022, traz novos desafios para a relação deles.

O principal resultado é que a altíssima relevância da floresta está diretamente ligada à conexão entre o reconhecimento europeu do seu papel de grande consumidor de *commodities* que sustentam o desmatamento no mundo, e o fracasso brasileiro no combate efetivo ao desmatamento em escala nacional, notadamente nos últimos anos, durante o Governo Bolsonaro. Em conclusão, destacamos que Bruxelas tomou uma decisão extremamente ambiciosa, porém necessária, atuando como uma verdadeira produtora e exportadora de normas, ao impor ao Brasil novos padrões de rastreabilidade e sustentabilidade baseados no fim do desmatamento como condição para acesso ao mercado europeu. Embora ambos os atores tenham algumas visões e preferências divergentes, há oportunidade para a construção de uma parceira estratégica melhor agora, baseada nas prioridades de sustentabilidade global.

PALAVRAS-CHAVE: *cadeias de valor livres de desmatamento. Amazônia Legal. UE. Brasil.*

INTRODUCTION

The relationship between Brazil and the European Union is marked by shared values, such as a firm commitment to multilateralism and multidimensional interests, such as funding for international development, science, trade, climate change, and environmental rules. Sometimes they are convergent, but it is not rare to find colliding interests and diplomatic stands (Domingos, 2014; Vargas, 2019; Barros-Platiau *et al*, 2019).

This article has two aims. The first is to put the Amazon in the centre of this country-Union relationship since Brazil is already an official candidate to host CoP30 in Belem do Pará city⁴. The second is to describe this relationship country-bloc and contend that it has to be assessed from a broader perspective of the Amazon Forest as a part of the planetary boundaries framework and as the Earth system's Achilles heels (Steffen *et al*, 2004). Therefore, the main argument of this article is that the largest part of the forest is under Brazilian sovereignty, but Brazil does not have the right to burn it down, as if the country was the only one to suffer from the harm caused. As Rémond-Gouilloud (1989) argued, the "right to destroy" must be replaced by the "obligation to protect". That is precisely the basis of their relationship concerning the Amazon Forest and the nexus between trade and environmental rules.

The Legal Amazon is important for Brazil (Artaxo, 2022; Rajão *et al*, 2022) and for the Brazilian relationship with the European Union. We, therefore, raise the question: how is the Legal Amazon important for this relationship? To answer this question, we chose to start with two environmental regimes, climate and biodiversity, because there is no multilateral forest regime, but only a quasi-regime (Carvalho, 2012). In part 1 we argue that Brazil and the EU acknowledge the centrality of the Amazon conservation agenda related to international obligations and trade rules. We then analyze two trade-related rules that have a direct impact on the Legal Amazon, the 2019 Mercosur-EU agreement and the 2022 EU regulation on deforestation-free supply chains⁵. By doing

⁴ Ministério das Relações Exteriores. Nota à Imprensa 11 on 12/01/2023. https://www.gov.br/mre/pt-br/canais_atendimento/imprensa/notas-a-imprensa/candidatura-brasileira-para-sediar-a-cop-30. Accessed on 11 Jan. 2023.

⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7444 . Accessed on 11 Jan. 2023.

so, we show that there is a long multilateral rule-making process that is complemented by the EU rules.

The Amazon and Planetary Boundaries

The Amazon is the largest tropical forest in the world, and it is of paramount importance to the planet. Not only it is home to a yet unknown variety of forms of life, but also it provides environmental services such as the fabrication of rain (also called flying rivers)⁶, the stabilization of temperature, and it also serves as a carbon sink. In sum, the Amazon provides humanity with health and wealth. On top of that, the Amazon and the Cerrado biomes are home to an estimated 114 isolated indigenous communities (FUNAI 2020 apud. Fellows *et al*, 2023).

During the last decades, tropical forests have become central to the fight against climate change and environmental degradation. Lovejoy and Nobre (2019) alerted that the forest was evolving towards a “tipping point”, in the sense that damages would become irreversible. For Brazil, deforestation may lead to a 20% change in the rain patterns, and the country would be dryer in the Northern, Northeastern and Central regions (Artaxo, 2022). Therefore, preserving the Amazon is not only central to Brazil reaching its climate and biodiversity goals, but it has also become a central point of concern for global politics. Consequently, reducing deforestation in Brazil is no longer a matter of domestic politics nor national interest, but a central feature of global politics in order not to overstep the nine “planetary boundaries” described by Rockström *et al* (2009), listed in Box 1 below.

Box 1- Nine planetary boundaries

1. climate change
2. loss of biosphere integrity
3. land-system change
4. altered biogeochemical cycles (phosphorus and nitrogen)
5. stratospheric ozone depletion
6. ocean acidification
7. freshwater use
8. atmospheric aerosol loading (microscopic particles in the atmosphere that affect climate and living organisms)
9. and the introduction of novel entities (e.g. organic pollutants, radioactive materials, nanomaterials, and micro-plastics).

Source: Rockström *et al* (2009).

⁶ Ferrante *et al*, 2022. Effects of Amazonian flying rivers on frog biodiversity and populations in the Atlantic Rainforest. Conservation Biology. <https://doi.org/10.1111/cobi.14033>.

In order to better underline the importance of the Amazon rainforest, Box 1 above can be complemented by the “geological and historical timeline of the Anthropocene” proposed by Koster (2022: 4). He argues that extinctions, the use of fire, agriculture, global trade, and colonialism, as well as other human activities, have historical roots. The Industrial Revolution and the atomic bomb are also part of the pathway leading to the Anthropocene alert of rupture and catastrophic changes. Combined with Box 1, his timeline confirms the trend of unsustainable development, as well as the “development paradox”, according to which humanity lives longer and is globally wealthier, but insecurity has also grown on a planetary scale (UNDP, 2022).

In the same line of argument, Steffen *et al* (2015) state that climate change, biodiversity loss, shifts in nutrient cycles (nitrogen and phosphorus), and land use were major concerns because of the abrupt environmental changes and irreversible damages they could entail since the climate and biosphere integrity are “core boundaries” for the other planetary boundaries. They could reduce humanity’s “safe operating space” and jeopardize achievements related to the fight against hunger and poverty. Building on that same framework, Persson *et al* (2022) contented that “novel entities”, such as chemical and plastic pollution should be considered in the planetary boundaries framework because their increasing production could threaten Earth System processes. Consequently, this has increased Brazil’s relevance in the international fight against climate change and biodiversity loss, notably because of the recent Brazilian expansion of deforestation for agriculture (Søndergaard *et al*, 2023).

The Amazon has thus become of increasing importance to the relationship between the EU and Brazil. In a nutshell, it is not only a matter of the forest itself, sustainable development, or trade-related interests. It is a matter of how unsustainable land-use expansion and industrial activities are connected on a global scale, notably considering the use of chemicals and pesticides as “novel entities” Persson *et al* (2022). This issue is worrisome in Brazil because the country is one of the biggest users of chemicals that contaminate the soil and water courses. Nonetheless, this issue is not new. Carson (1962) had already alerted the international community that the use of chemicals for agriculture and industrial purposes contaminated people and nature, bringing future predictable damages to life on Earth.

The Legal Amazon

The Legal Amazon was established in 1953 and it is much larger than the rainforest. It represents two political moves. One to establish Brazilian borders in relation to other eight Amazonian countries, and the other to demonstrate how big and important the Legal Amazon was for national development (Neves *et al*, 2021). Not only does it encompass nine Brazilian states (Acre, Amapá, Amazonas, Maranhão, Mato Grosso, Pará, Rondônia, Roraima, and Tocantins), but it is also a transition area to the

Cerrado, Pantanal, and Mata Atlântica biomes. It is 5 million km² large, corresponding to 59% of the Brazilian national territory (IPEA, 2008). As such, the Legal Amazon should be viewed as a juridical construction, as it is wider than the Amazon biome, which is established based on ecological characteristics and encompasses only areas of tropical forest. Although the boundaries of the Legal Amazon have changed over time, its relevance remains uncontroversial for Brazil and for policy planning. It encompasses 772 municipalities and corresponds to the area of the Amazonian Development Administration's (SUDAM) mandate established by Complementary bill n. 124, of January 3, 2007 (IBGE, 2023)⁷. It is estimated that around 13% of the Brazilian population lives in the region, amounting to 38 million people⁸.

In Brazil, the Amazon biome is central to economic exploitation driven by a complex structure of national and international actors, including the agribusiness sector, politicians, bureaucrats, criminal networks, and international actors and capital (Viola and Franchini, 2018; Neves *et al*, 2021).

1. THE RELATIONSHIP BETWEEN THE EU AND BRAZIL

The European Union has agreements with 27 of the 33 Latin American and Caribbean countries, being the biggest investor in the region⁹. The EU also has 10 strategic partners, but this concept was not precise (Egmont Institute, 2015). Moreover, Brazil is a strategic partner of the EU since 2007, although there are no recent relevant achievements. The relationship between the EU and Brazil is marked by common interests and shared values but differentiated views on their responsibilities. It contributes to understanding why the Amazon Forest is at the centre of their trade and environmental talks, as well as scientific and technical cooperation agendas. Both actors have common interests and share largely similar values on international politics; a firm commitment to multilateralism, sustainable development, democracy, and human rights. For instance, both of them signed "The Glasgow Leaders' Declaration on Forests and Land Use" during the climate CoP 26 in Scotland¹⁰.

This explicit support for these values makes Rodt and Whitman (2012) describe Brazil as a 'natural partner for the EU'. These values and principles are core to the European relationship with Brazil and were also highlighted by the President of the European Commission, Ursula von der Leyen when she announced the launch of the Global Gateway Initiative in 2021 (Teevan *et al*, 2022)¹¹. Yet, despite these shared values, the EU-Brazil relationship has never become a true partnership in international affairs. The EU's approach to Brazil has alternated between a regional (through Mercosur) and a bilateral approach. When the negotiations with Mercosur stagnated in 2004 the EU shifted towards a bilateral strategy (Meissner, 2018).

Concerning the EU and Brazil strategic partnership in 2007, it has failed to strengthen the ties between them and has rather been characterized as a

⁷ Brazilian Institute for Geography and Statistics (IBGE). <https://www.ibge.gov.br/geociencias/cartas-e-mapas/mapas-regionais/15819-amazonia-legal.html?=&t=o-que-e>. Accessed on 11 Jan. 2023.

⁸ Data from 2021, available at: Amazônia 2030, <https://amazonia2030.org.br/>. Accessed on 11 Jan. 2023.

⁹ https://www.eeas.europa.eu/eeas/latin-america-and-caribbean_en. Accessed on 11 Jan. 2023.

¹⁰ <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>. Accessed on 11 Jan. 2023.

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6433. Accessed on 11 Jan. 2023.

partnership in ‘suspended animation’ since both the EU and Brazil have been dealing with multiple crises in their own continents (Ferreira-Perreira 2021; Blanco and Luciano 2018). Domingos (2014) stated that they were strategic partners deprived of a clear strategy. In 2010, the negotiations between Mercosur and the EU were re-launched bringing back the inter-regional component of EU-Brazil relations. After all, Mercosur was a cornerstone of Brazilian foreign policy (Malamud 2011).

1.1 INTERNATIONAL COOPERATION IN THE AMAZON

The history of international cooperation and investments based on the Amazon management agenda is long. Dating back to the 1920s, the Ford project can be considered a start of trade interests directly affecting the forest. The idea of colonization for industrial purposes, that is, rubber for carmakers, failed not due to international pressure to save the forest, but the local challenges related to logistics and diseases, as well as the unfolding of the 1929 crash in New York. After that, myriad mining, dam building, and agricultural activities were heavily funded by international capital, mainly from North American, Canadian, European, and Australian sources. More recently, China has become a key stakeholder, mainly in the energy sector (Urrejola, 2018).

From an international cooperation perspective, the Pilot Program for the Protection of Brazilian Tropical Forests (PPG7) can be considered a cornerstone (Abdala, 2007). The group of major economies in the 1990s (G7) crafted an agreement with Brasilia that they would fund public policies for the Amazon. It was the biggest and most ambitious agreement of its kind. After its end, other agreements have been launched (Banco Mundial, 2012; Antunes, 2019), such as the Amazon Fund, based on the accumulated experience.

Since the Earth Summit in Rio, in 1992, we can identify strong traits of divergence between Brazil and some EU member states, that were rooted in the 1972 United Nations Conference on Human Environment, in Stockholm. First, Brazil did not accept that the rainforest is treated as the “lungs of the Earth”, while the other biomes were not adequately considered, such as the Taiga and Tundra. Second, Brazil refused to soften the principles of sovereignty and the right to development. Third, Brazil disagreed that environmental and social agendas should be separated. Although there were profound changes in the Brazilian position related to the Amazon agenda since 1992, it can be argued that most political changes are related to the failure of fighting deforestation. In other terms, Brazil adopted stronger international commitments when the deforestation data showed good results. Likewise, when deforestation was out of control, Brazil adopted a narrative of confrontation (Viola and Franchini, 2018).

On the one hand, the two terms of President Lula da Silva, then President Dilma Rousseff, and Michel Temer can be considered a long period of political stability, with ups and downs from 2003 to 2018 (Viola and Gonçalves, 2019). While Marina Silva was the Minister of the Environment from 2003-2008 (and she was assigned Minister of the Environment and Climate Change in January in 2023), ambitious policies to fight deforestation were implemented. Subsequent ministers also made considerable efforts

toward Amazon management, to keep international funding and prevent Brazil from receiving international criticism (Drummond *et al*, 2022).

On the other hand, Bolsonaro's term (2019-2022) can be considered a tipping point. The relationship with the EU was jeopardized by the Bolsonaro administration's complete disregard for environmental protection and international norms, raising fears that the spiking deforestation rates during his tenure would lead to irreversible damage in the Amazon. During his period in office, Bolsonaro reacted strongly to all types of international critique of his policies of the dismantling of environmental regulations and agencies, responding with allegations of neo-colonialist behavior and highlighting Brazilian sovereignty, which led to a rupture. In his speech to the United Nations General Assembly on September 24, 2019, Bolsonaro stated 'It is a fallacy to say that the Amazon is the heritage of humanity and a misconception, as scientists say, to say our forest is the lungs of the world. Availing themselves of such fallacies, one or another country, instead of assisting, fell with the press' lies and behaved disrespectfully, with a colonialist spirit. They questioned that which is most sacred to us: our sovereignty!'¹² He was referring to the international critique of his government in the Legal Amazon, resulting in increased deforestation rates.

Against this backdrop, a central feature of international engagement with the Amazon is the Amazon Fund, a Brazilian Fund created in 2008 that attracts mostly foreign funding and is used to finance projects aimed at combating deforestation and safeguarding the rights and livelihood of the people living in the Amazon. Based on the REDD+ mechanism, the Fund is results-based, something that only allows for the entry of finances to the fund when deforestation is decreasing. The Fund is a novel construct in international environmental governance, which to a large extent prevents foreign intervention and, at first sight, safeguards Brazil's sovereignty. It was created by the Brazilian government and is managed by the Brazilian National Development Bank (BNDES). With its slogan "Brazil protects it. The world supports it. Everybody wins", the Amazon Fund is at first sight in the hands of Brazilians. Foreign countries are allowed to provide finances for the Fund¹³, which can be used when a reduction in deforestation occurs. Yet, the financing countries' possibility to intervene became visible when Norway and Germany froze contributions to the Fund in 2019 due to the changes President Bolsonaro made to the Fund's governance board (i.e. weakening civil society's role in the board). Norway and Germany did not find common grounds with the Bolsonaro government and decided to freeze the finances they had provided, showcasing the power to intervene by the financiers. Changes in the board's structure happened alongside widespread fires in the Amazon in the summer of 2019, some of them were criminal activities.

The data concerning deforestation remained unpublished for some time, while the pressure for action mounted. The Instituto Nacional das Pesquisas Espaciais (INPE) publishes yearly open-access data on deforestation in the legal Amazon. Their data shows that deforestation increased substantially during Bolsonaro's presidential term.

¹² <https://www.gov.br/mre/en/content-centers/speeches-articles-and-interviews/president-of-the-federative-republic-of-brazil/speeches/speech-by-brazil-s-president-jair-bolsonaro-at-the-opening-of-the-74th-united-nations-general-assembly-new-york-september-24-2019-photo-alan-santos-pr>. Accessed on 11 Jan. 2023.

¹³ Until 2022 there has been 3 donors to the Amazon Fund; Norway (94%), Germany (5%) and Petrobras (1%).

From 2016-2018, deforestation amounted to 7,000 km², and it increased to 10,900 km² in 2019, and 12,400 km² in 2021, the highest level since 2008¹⁴. However, it was only after ministers Salles (Environment) and Araújo (Foreign Affairs) were replaced, that the talks took another direction towards starting the dialogue with European partners again.

During the 2022 Brazilian elections, Amazon's importance spiked again. Lula pledged to reach a zero-deforestation policy before 2030 and foreign leaders eyed possibilities for a renewed partnership with Brazil. President-elect Lula was invited to the CoP 27 in Sharm el-Sheikh in November 2022 and was hailed as a rockstar among foreign leaders and CoP negotiators. After his inauguration on 1st January 2023, one of Lula's first actions was to publish a presidential decree which reinstated the governance structure of the Amazon Fund (Presidential Decree 11.368 of January 1st, 2023). Shortly after, Norway and Germany stated that the decree allowed for an immediate re-activation of the Fund. Germany, in addition, pledged new finances, some 35 million Euros, to the Fund.¹⁵ The United Kingdom and the European Union have never been donors to the Amazon Fund, but both actors are now considering providing finances to the Fund, after the election of Lula in 2022¹⁶. Moreover, Minister of Environment, Marina Silva, informed that she asked the United States to consider becoming a donor too. From the environmental and agribusiness perspective, the third Lula administration will face big challenges related to the Legal Amazon and agribusiness, which has strong voices in the National Congress. Although big Brazilian producers claim the agribusiness sector has the potential to increase its international market share, they admit they must invest in new technologies and comply with sustainability rules (Alvarenga Neto, 2022: 09). Currently, there are three bill propositions (projetos de lei) to start with. One concerning the license of pesticides (PL 1.459/22); one related to environmental licensing (PL 2.159/21) and another on landholding regularization (PL nº 2.633/20).

2. A TRADE-RELATED EUROPEAN FRAMEWORK TO COMPLEMENT MULTILATERAL ENVIRONMENTAL AGREEMENTS

There are myriad multilateral environmental agreements (MEAs) that compose the legal framework under the United Nations aegis. On the multilateral level, we selected two key agreements that represent a turning point in two international regimes that are negotiated separately but should not be, because there are forests to manage on top of both agendas. One is the 2015 Paris Agreement concerning climate change and the other one is the post-2020 Global Biodiversity Framework. According

¹⁴ http://terrabrasilis.dpi.inpe.br/app/dashboard/deforestation/biomes/legal_amazon/increments . Accessed on 11 Jan. 2023.

¹⁵ https://twitter.com/AmbBrasilia/status/1609987195124727814?s=20&t=-dRkobNqPPVT-Xc3t_esWg
https://twitter.com/EspenBarthEide/status/1609901301579530246?s=20&t=d4yNPYkpoqNDOz_WMWC2IA.
Accessed on 11 Jan. 2023.

¹⁶ Interview with EU Delegation in Brasilia, 15 December 2022. <https://www.reuters.com/business/environment/britain-could-join-amazon-fund-help-brazil-control-deforestation-uk-minister-2023-01-03/>

to Elizabeth Mrema, “Climate change is a primary driver of biodiversity loss. And climate change depends on biodiversity as part of the solution”.¹⁷

In common these two regimes also have the fact that the European Union is a “norm entrepreneur” so to speak like Zaki Laïdi (2007) because Brussels employs its market and legal resources to force trade partners to comply with rules that do not exist elsewhere (also known as the Brussels effect). But the UE also makes huge efforts to exert influence on the outcomes of the multilateral negotiations, sometimes successfully, being an effective game-changer or “norm shaper”. This has happened notably in environmental-related multilateral talks. Examples related to deforestation, cattle raising, genetically modified organisms (GMOs), and greenhouse gas emissions (GHG) abound.

There are also rules created unilaterally by the European Union organs and individual members that became relevant to other trade partners around the world, and multinational companies operating in European markets. Recent initiatives concerning sustainability in agriculture include the Farm to Fork Strategy, the Green Deal, as well as the future Due Diligence Legislation and the Energy Charter Treaty (ECT). The latter was postponed to 2023 because France, Poland, Germany, Spain, the Netherlands, Slovenia and Luxembourg estimated the ECT did not effectively discourage investments in fossil fuels, therefore disregarding the Paris Agreement commitments (Van Bael, Bellis, 2022). Concerning the mitigation of GHG emissions, the EU has made ambitious decisions related to civil aviation (Gonçalves and Anselmi, 2018), which is somehow comparable to the EU deforestation ban. In fact, the EU Emissions Trading System (ETS) is based on the logic of ambitious cost-effective rules to cut emissions, and it is the biggest carbon market in place¹⁸. While it is beneficial for the climate change regime, it assures a comfortable position to European companies and punishes newcomers, and that is one of the reasons the ETS had limited effect globally. Finally, to address carbon leakage associated with carbon-intensive products imported into the European market, the European Commission proposed the Carbon Border Adjustment Mechanism Regulation (CBAM) in July 2021.

2.1 INTERNATIONAL REGIMES FOR CLIMATE CHANGE AND BIODIVERSITY

The Paris Agreement to combat climate change was adopted during the CoP 21 in 2015. Before that, climate talks were strongly marked by colliding interests from developed and developing countries, with emerging economies in the middle. While EU members are in the first group since the entry into force of the 1997 Kyoto Protocol, Brazil was an emerging economy. This cleavage was significant during the CoP 15 in Copenhagen when an agreement under the United Nations rules as the EU members promoted, could not be reached. On the contrary, there was a political accord based on Washington-Beijing's common interests and the support of Brazil and India. In this

¹⁷ Executive Secretary to the United Nations Convention on Biological Diversity. May 2022. Retrieved from: https://www.un.org/en/climatechange/science/climate-issues/biodiversity?gclid=CjwKCAiAkrWdBhBkEi-wAZ9cdcFUVqLzuQsZRMp4dBfLjZ5TVCWbu3d1owz_rdpOJvOJ6I6iEME5jkBoCTn4QAvD_BwE. Accessed on 11 Jan. 2023.

¹⁸ https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets_en.28/Dec/2022. Accessed on 11 Jan. 2023.

sense, the climate regime reflects numerous points of disagreement between Brazil and the EU. Among them are deforestation, land use, funding, as well as indigenous communities' rights. The REDD (Reducing emissions from deforestation and forest degradation) was undoubtedly one of the largest steps agreed upon by both sides, including reporting and verification mechanisms. In 2013, the Warsaw Framework for REDD+ was adopted during Cop 19. It aimed to reduce "emissions from deforestation and forest degradation, as well as the sustainable management of forests and the conservation and enhancement of forest carbon stocks in developing countries".¹⁹

During CoP 26, the Glasgow Climate Pact was adopted as another big step that is crucial for the relationship between Brazil and the EU, although market-based mechanisms were not defined. Finally, CoP 27 allowed us to be optimistic about converging interests from Brazil and the EU again. The key issue was the creation of a new fund for damages and losses related to climate change. In this context, President Lula assigned Marina da Silva to be the minister of Environment and Climate Change again. She has the duty to create the new Environmental Council (CONAMA), which was shut down by Bolsonaro. Lula signed a presidential decree establishing the restoration of IBAMA. He also ordered the reform of the Amazon Fund rules so that funding partners feel safe and satisfied with Brazilian commitments, aiming at unblocking the 3.3 billion Reais that were not used yet. Lula also stood against a proposed bill to the National Congress (Projeto de Lei 191/2020) that authorizes mining in indigenous communities' lands. Furthermore, most of the decisions made by Bolsonaro's team referred to as "dismantlement" (Milhorange, 2022) of the legal and institutional framework for the regulation of activities concerning the environment shall be abrogated (Alckmin, 2022).

2.2 THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK

The 2022 United Nations Biodiversity Conference (CoP 15, CP/MoP 10, NP/MoP 4) entitled "Ecological Civilization - Building a Shared Future for All Life on Earth" took place in Kunming (China) and ended in Montreal (Canada) in December 2022. Finally, the post-2020 Global Biodiversity Framework was adopted, aiming at succeeding and reinforcing the Aichi Biodiversity Targets adopted in 2010. In this vein, the CoP 15 took a milestone decision that directly affects the forests worldwide, but mainly those considered hotspots.

The main goal was named "30x30". Protected areas shall increase from the current 15% to around 30% by 2030, 30% of degraded land is to be restored and the use of areas of high biodiversity importance is to be stopped, including "ecosystems of high ecological integrity". It had a direct impact on the Brazil-EU relationship because the EU wanted to exclude indigenous lands from the text, while Brazil has historically dubious positions about the rights of indigenous communities. The goal includes inland waters, coastal areas, and oceans for the ecosystem services they provide.

¹⁹ <https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd>. Accessed on 11 Jan. 2023.

Also concerning agriculture and cattle raising, the Framework established the goal to reduce by half the overall risks stemming from the use of pesticides and highly hazardous chemicals, as well as excess nutrients. This was promoted by France and is in line with the European Strategy to cut pesticides by half by 2030. Brazil and Argentine fiercely opposed this goal, but they obtained that specific pesticides would not be mentioned.

Additionally, there will be a Biodiversity Fund functioning independently from the GEF, and more tied to the Biodiversity CoPs. Another key issue is the responsibility of transnational companies and financing institutions regarding their operations, portfolios, supply, and value chains, to monitor, assess and disclose risks, dependencies, and impacts on biodiversity. This will most likely reduce the appetite of predatory entrepreneurs acting in the Legal Amazon region, and force other stakeholders to act. However, it will also have impacts on small farmers and producers, because they are unable to comply with these rules in the short term.

2.3 THE EU-MERCOSUR AGREEMENT

The EU is a proponent of free trade and relies on free trade agreements as an important tool in its foreign policy toolbox. According to Brandi *et al* (2020), after analysing 680 preferential trade agreements between 1984 and 2016 and focusing on developing countries:

“Environmental provisions can be used as targeted policy tools to promote the green transformation and to leverage synergies between the economic and environmental effects of including environmental provisions in trade agreements”.

In June 2019, the EU and Mercosur signed a free trade agreement, known as the EU-Mercosur agreement²⁰. The agreement was reached after close to 20 years of on-and-off negotiations, including a complete standstill between 2004-2010 (Barros-Platiau *et al*, 2019). The conclusion of the agreement was hailed as a landmark moment as South American countries have been skeptical of trade liberalization and generally relied on import substitution and protection of local markets. The Brazilian market is one of the most closed markets in the world with high tariffs on external products, resulting in it being one of the few countries in the world where European mega-companies such as H&M and IKEA have not managed to establish themselves. Although the EU-Mercosur agreement only goes some way in reducing tariffs, the agreement would facilitate the exchange of goods and services between the two regional giants.

The trade relationship between the EU and Mercosur is asymmetrical. Mercosur countries export mainly agricultural goods to the EU, such as soy, cocoa, and coffee while EU exports to Mercosur are products with medium and high technological contents such as airplanes and cars, or components to construct them. Yet, just after the political agreement between the EU and Mercosur was announced, relations soured due to an upsurge in fires in the Legal Amazon during the months of August and September 2019. Since then, EU member states have been vocal in signaling that ratification of the agreement was off the table if the deforestation levels remained high

²⁰ https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3396. Accessed on 11 Jan. 2023.

in Brazil. For instance, France and the Netherlands called for stronger sustainability chapters in all trade agreements in a non-paper published in May 2020²¹. Also, the EU voiced the need to introduce further safeguards against deforestation before moving ahead with ratification of the agreement. On October 7, 2020, the European Parliament passed a resolution stating that 'the EU-Mercosur agreement cannot be ratified as it stands'²². Bilaterally, France, the Netherlands, Ireland, Belgium, Luxembourg, and Germany voiced their intention to block ratification until the situation changed.

After a period of contemplation, the EU started working on a draft of an additional instrument that they would like to be added to the EU-Mercosur agreement. The additional instrument is still not publicly available, but it will contain reciprocal references to the parties' National Determined Contributions as set out by the Paris climate agreement and refer to mutually accepted international standards²³.

With the third term of President Lula, the EU again eyed hope to move ahead on the agreement with Mercosur. During the election campaign, Lula signaled that he would bring deforestation in the Amazon to zero. He also enjoys strong political ties with EU diplomats and European heads of state. Meanwhile, the European Commission has been keen to speed up the ratification of the agreement. One option they are considering is to isolate trade aspects in a separate agreement, something that would bypass member state parliaments and would only have to pass by the European Parliament and the Council of the EU by a qualified majority. Yet, this option risks criticism from environmental experts and green-oriented politicians in the EU and in Brazil, as the commitment to sustainability would be left lingering.

For the EU, the wider political context is also of the essence. Russia's war on Ukraine has created a stronger political will among EU member states to seek alliances with like-minded partners around the world. In this vein, the Mercosur countries appear as increasingly relevant partners and allies of the EU. And as we shall see below, the EU is eyeing opportunities to promote the fight against deforestation through new and autonomous EU instruments.

2.4 THE EUROPEAN GREEN DEAL AND AIM OF ENSURING THAT ONLY DEFORESTATION-FREE PRODUCTS ENTER THE EUROPEAN MARKET

The standstill in the ratification of the EU-Mercosur agreement has not stopped the EU from pursuing policy initiatives to combat the deforestation of tropical forests worldwide. As part of its green deal policy, the EU has recently launched a number of autonomous instruments that seek to combat deforestation. The European Green Deal was launched by the European Commission in 2019 and consists of a package of policy initiatives aiming to reduce global warming and reach EU climate neutrality by 2050. As part of its green deal, the EU has recently agreed on a package of initiatives that seek to ensure that products consumed in the EU market are deforestation-free, first

²¹<https://www.permanentrepresentations.nl/documents/publications/2020/05/08/non-paper-from-nl-and-fr-on-trade-social-economic-effects-and-sustainable-development>. Accessed on 11 Jan. 2023.

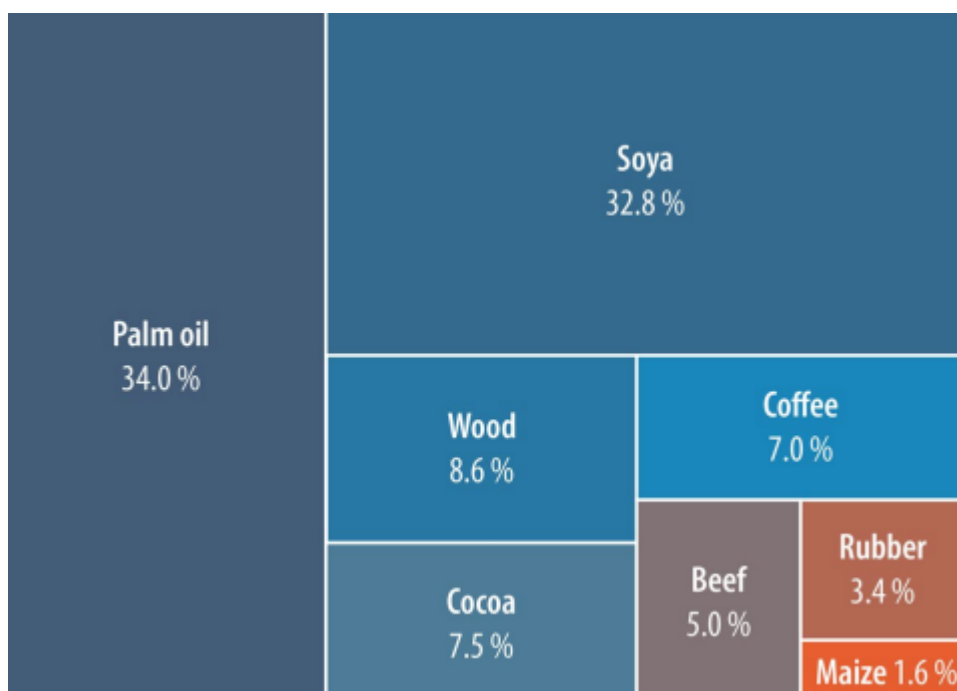
²² https://www.europarl.europa.eu/doceo/document/TA-9-2020-0252_EN.html. Accessed on 11 Jan. 2023.

²³ Interview with EEAS official, EU-delegation, Brasília, 16.11.22.

outlined in the 2019 Commission Communication on Stepping up EU Action to protect and Restore the World’s forests²⁴. The key instrument in the EU’s approach to securing deforestation-free value chains is the [regulation of deforestation-free products](#)²⁵, which sets due diligence rules for producers that place commodities associated with deforestation on the EU market, notably, soy, beef, palm oil, cocoa, coffee, and wood. The European Parliament and the Council reached an agreement on 6 December 2022 on this regulation.

Once the regulation has been formally adopted, operators will have a transition period of 18 months to implement the new rules, except for micro and small enterprises which will be granted a longer adaptation period. The new initiative seeks to minimize the EU’s contribution to deforestation worldwide, as shown in figure 1 below, by ensuring that imported products come from deforestation-free supply chains. It will demand strict traceability of deforestation-associated products so that it is possible to check that these products have not contributed to deforestation at any moment of their supply chain. These initiatives follow an increasing concern and demand among European consumers to know more about the products they buy and to what extent these products contribute to environmental degradation.

Figure 1 - “Individual share of EU-embodied deforestation due to selected commodities between 2008 and 2017”



²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0352> . Accessed on 11 Jan. 2023.

²⁵ https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en . Accessed on 11 Jan. 2023.

Source: European Parliament. Briefing. EU Legislation in Progress. 2022, page 5. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI\(2022\)698925_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI(2022)698925_EN.pdf). Based on European Parliamentary Research Service, Commission IA, p. 32. Graphic by Samy Chahri.

Mercosur countries are rather critical of the EU's new instruments. They hold that the EU reinstates trade barriers to realize its green deal. Unsurprisingly, Brazil criticized the EU in the WTO in June 2022 before the autonomous instruments were adopted.²⁶ The trade gains that Mercosur achieved in the EU-Mercosur negotiations might give them less value for money when the EU adopts its autonomous tools because the European market will then prevent goods that cannot prove deforestation-free value chains to enter the European market. Compared to other Mercosur countries such as Uruguay, this is an especially pertinent situation for Brazil, which has a long way to go before establishing systems that trace their exports' value chains.

The "new rules"²⁷ correspond to an unequivocal sign from the EU to food producers worldwide. But critics have pointed to ambiguities in the EU's new instruments. One key challenge to the effectiveness of these rules is that the text does not mention a specific continent or country, but it directly affects developing megadiverse countries such as Brazil and Indonesia. It does not recognize the difference between legal and illegal deforestation, which certainly is a hot topic in the relationship between the European Union and Brazil.

Moreover, the rights of indigenous people are not sufficiently secured in the regulation according to representatives of these groups. The Global Alliance of Territorial Communities states in a press release that: 'we are disappointed in the European Union for failing to protect our rights, including our land rights, in a new regulation that aims to prevent EU companies from importing agricultural commodities produced on illegally deforested lands. We feel betrayed by the rollback of our rights in the current legislation (GATS 2022). GATS explains how representatives of indigenous peoples have tried to work with the EU to get references inserted in the regulation on the need for products to be produced in line with international human rights conventions and respecting indigenous peoples' human rights, including land rights. Strong language on the protection of indigenous peoples' rights and respect for their land rights were part of earlier drafts of the regulation, but they were excluded in the final negotiations between the Council and the Parliament.

It is too early to predict how European initiatives, the Green Deal and the deforestation ban, will function. Considering that trade, economics, energy, and food security are intertwined, the near future scenarios are not so favorable for the EU. The EU Commission estimated that 2022 would end with a recession, mounting inflation of

²⁶ <https://valorinternacional.globo.com/economy/news/2022/06/29/brazil-criticizes-eu-plan-to-ban-commodities-linked-to-deforestation.ghtml> . Accessed on 11 Jan. 2023.

²⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7444 . Accessed on 11 Jan. 2023.

9,3% and that economic growth for 2023 would be around 0,3% instead of 1,4%²⁸. Moreover, the 2022 World Energy Outlook does not allow for optimism in the region,²⁹ and the Russian war aggravated the situation. Finally, the EU must answer the traditional political pressure from European producers and from environmental activists (Damro, 2012). So, the question to be raised is: if not from Brazil, who will the EU buy soy, meat, coffee, and cocoa from?

From the Brazilian standpoint, the economic and political situation for 2023 is also very challenging. Brazil is highly dependent on the export of commodities to China and the public debt skyrocketed. Moreover, President Lula and his team affirmed the new foreign policy priorities will include the Legal Amazon, climate change, and international cooperation. Finally, the third Lula government has declared that the Amazonian Cooperation Treaty Organization must be revitalized, as Vargas (2023) had suggested. In a nutshell, soy and meat are the Brazilian products that could be more affected. However, the biggest impact on the export of soy is not the EU regulation, but the non-compliance with Brazilian laws. Although the traceability and monitoring mechanisms imply new costs for Brazil, they are viable. The EU imports little beef from Brazil, and far from deforestation areas. Therefore, the EU may contribute to fighting deforestation, but this is not enough without the Brazilian fight against deforestation. Brazil needs transformative changes to look for other options for deforestation such as the restoration of degraded land through bioeconomy (Vargas, 2023). Finally, there is a huge political space for negotiation between European and Brazilian authorities. Based on international obligations both sides already adopted in the international regimes aforementioned and the trade agreement EU-Mercosur, prospective scenarios may bring win-win results for sustainability governance.

KEY FINDINGS AND CONCLUSION

The Legal Amazon is home to peoples and megabiodiversity, which are imprescindible for a just and safer Planet. Both Brazil and the European Union agree on the importance of the region and the forest. However, the political preferences of both sides may also differ, as shown in the text. Part 1 described the need to consider the Legal Amazon not only as a forest under threat and under Brazilian sovereignty but as a life-supporting system that is a driver of the biosphere integrity on a global scale as Persson *et al* (2022) put it. In other terms, climate change and biodiversity loss are aggravated by deforestation and the increasing use of novel entities like chemicals and pesticides, synthesized with the concept of the Anthropocene. Consequently, due to its role in the planetary boundaries framework and its necessary management, the Legal Amazon is at the centre of EU “cooperation and confrontation” with Brazil over the decades. In this context, the EU-Brazil relationship is complex and sometimes full of colliding understandings and interests, even though Brazil is one of the ten strategic partners of the European Union. We suggest that the strategic partnership could be

²⁸ European Commission, Autumn 2022 Economic Forecast. Press release. Autumn 2022 Economic Forecast: The EU economy at a turning point. Brussels, 11/11/2022. Accessed on 11 Jan. 2023.

https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6782.

²⁹ IEA, 2022: World Energy Outlook 2022, IEA, Paris. <https://www.iea.org/reports/world-energy-outlook-2022>. Accessed on 11 Jan. 2023.

employed toward de Amazon Agenda, inspired by other initiatives as the PPG7 and the existing international obligations concerning climate and biodiversity.

Part 2 defended that trade-related agreements are used by the EU to complement multilateral environmental agreements, as was the case for climate and biodiversity obligations under the United Nations aegis. For the climate and biodiversity international regimes, the EU was rather a norm-shaper. But in the cases of the more recent Green Deal and the 2022 deforestation ban, the EU intends to be a norm-maker, as it uses its market size and its legal capacity to impose rules on trade partners unilaterally. However, implementing strict rules when the economic, energy, and food security scenarios are not favorable demands successful trade talks in the very short term. While the third Lula mandate allows for some optimism, the road ahead is not simple.

Based on the above analysis we draw some conclusions. First, we find that the EU and Brazil have colliding views of the role of the Legal Amazon in international politics. For Brazil, the Legal Amazon has first and foremost been an internal issue that has served as a central component of Brazil's development policy and contributed to reaching their commitments to international environmental treaties, such as the Paris Agreement. Apart from President Bolsonaro's term, reducing deforestation in the legal Amazon has been central to the government's environmental agenda since 2008. Despite differences in Brazilian governments' willingness to protect its tropical forests, Brazil's central view is that the Legal Amazon is a sovereignty issue, with little room for involvement by other international actors, except for providing finances³⁰. This can be interpreted in line with a traditional understanding of sovereignty, in which a country's sovereignty 'hinges on autonomy and its power of political decision-making within its national territory' (Søndergaard and Campos 2020).

For the EU and its member states, on the other hand, combating deforestation in tropical forests has become a central feature of their foreign policy. The Legal Amazon is not only a sovereign issue for Brazil, in the EU's understanding, because deforestation has consequences for climate change worldwide. Over the years, the EU has sought to promote sustainable forest policies via bilateral, regional, and multilateral avenues. Both the EU-Brazil strategic partnership and the EU-Mercosur agreement include the goals of protecting the environment, while the latter also contains sustainability safeguards. Yet, the Amazon fires in 2019 and the resulting increase in deforestation spurred a change in the EU's position. The EU-Mercosur agreement lost support in many of the EU's member states. Partly due to consumer-based demands, the EU started working on new autonomous instruments to ensure that products entering the EU market came from deforestation-free value chains. By doing so, the EU, acting as a norm-shaper in international politics, defines the fight against deforestation also as a European issue, although tropical forests are not in its territory. This can be interpreted in line with a reformist understanding of sovereignty according

³⁰ See for example Jair Bolsonaro's speech at the UN general assembly 24 September 2019: <https://www.gov.br/mrc/en/content-centers/speeches-articles-and-interviews/president-of-the-federative-republic-of-brazil/speeches/speech-by-brazil-s-president-jair-bolsonaro-at-the-opening-of-the-74th-united-nations-general-assembly-new-york-september-24-2019-photo-alan-santos-pr> . Accessed on 11 Jan. 2023.

to which sovereignty hinges on a country's ability to comply with basic human and environmental rights (Søndergaard and Campos 2020). Thus, the EU views it as necessary to strengthen its own autonomous policy instruments to combat deforestation.

Second, the Legal Amazon is entrenched in European and Brazil's differing interests and challenges. Brazilian authorities' willingness and ability to combat deforestation in the Legal Amazon depends on their political power, willingness, and ability to impose the rule of law in the region. For Brazil, the Legal Amazon is about much more than the fight against deforestation, it is about regulating, governing, and balancing the exploitation of natural resources for economic development, human rights, and sustainability interests. In sum, the rule of law in the region is the starting point for effective policies and governance. For the EU, it has proven important to develop a system of trade rules that applies to all third-country partners and multinational companies, including stronger sustainable development chapters.

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