

The EU Forest-Risk Commodities Legislation (Regulation 2023/1115)

EUIndoPac Jean Monnet Teaching Module

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What are Forests?



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What are Forests?

Forest Definitions

- “Complex ecological system in which trees are the dominant life-form. A forest is nature’s most efficient ecosystem, with a high rate of photosynthesis affecting both plant and animal systems in a series of complex organic relationships. Forests can develop under various conditions, and the kind of soil, plant, and animal life differs according to the extremes of environmental influences” – Encyclopedia Britannica
- “Communauté vivante, constituée par un certain nombre de population végétales et animales liées par des relations intra–et interspécifiques. Cet ensemble structuré et fonctionnel constitue un écosystème.” – Encyclopedia Universalis, *Dictionnaire de l’écologie*, Paris, Albin-Michel, p. 604
- “Land spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use” – Food and Agriculture Organization of the United Nations, 2005



The Importance and Destruction of Forests

Importance:

- Forests cover 30% of the Earth's land area (43% in the EU) and host 80% of its biodiversity
- They hold cultural, social and spiritual values for many populations, in particular indigenous peoples
- They provide subsistence and income to about 25% of the world's population

Destruction:

- Between 1990 and 2016, 1.3 million km² of forest area has been lost
- Forest degradation accounts for roughly 12% of greenhouse gases (GhG) emissions
- An important factor for the pressure on forests is the *“increasing demands from a growing global population for food, feed, bioenergy, timber and other commodities”*

Several Types of Forests

(European Environment Agency's glossary)

Tropical forest: The natural and semi-natural tropical or subtropical forest ecosystems, whether primary or secondary, whether closed or open forests, in both dry and humid areas. The areas concerned are those found within the tropics and subtropics delimited by the 30th northern and southern parallels.

Temperate forest: Mixed forest of conifers and broad-leaf deciduous trees, or mixed conifer and broad-leaf evergreen trees, or entirely broad-leaf deciduous, or entirely broad-leaf evergreen trees, found in temperate regions across the world; characterized by high rainfall, warm summers, cold winters occasionally subzero, seasonality; typically with dense canopies, understory saplings and tall shrubs, large animals, carnivores dominant, very rich in bird species.

Boreal forest: The northern hemisphere, circumpolar, tundra forest type consisting primarily of black spruce and white spruce with balsam fir, birch and aspen.

Mangrove forest: A community of salt-tolerant trees and shrubs, with many other associated organisms, that grows on some tropical and sub-tropical coasts in a zone roughly coinciding with the intertidal zone.



Figure 1 - Forest goods and services supporting the UN Sustainable Development Goals



- 1 Income from forest products
- 2 Nourishment from wild fruit and game
- 3 Medicinal plants
- 6 Freshwater for drinking and irrigation
- 8 Sustainable and inclusive economic growth and decent work for all
- 10 Reduced income inequality
- 12 Sustainable consumption and production patterns
- 13 Carbon capture and storage
- 15 Biodiversity

Figure 2 - Impacts of deforestation on Sustainable Development Goals



- 1 Increased vulnerability to extreme weather
- 2 Loss of rainfall and crop pollinators
- 3 Respiratory illness due to forest fires
- 6 Unsustainable management of water resources
- 8 Unsustainable economic growth and lack of decent work
- 10 Income inequality
- 12 Unsustainable consumption and production patterns
- 13 CO₂ emissions
- 15 Biodiversity loss

The (Lack of) International Law Framework for Forest Protection

No International Convention of General Scope

- Negotiations during the 1992 UN Conference on Environment and Development (Earth Summit, Rio de Janeiro, 3-14 June 1992)
 - ✓ UN Framework Convention on Climate Change (UNFCCC), done in New York on 9 May 1992, *UNTS*, 1994, vol. 1771;
 - ✓ Convention on Biological Diversity (CBD), done in Rio de Janeiro on 5 June 1992, *UNTS*, 1993, vol. 1760;
 - ✓ UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD), done in Paris on 14 October 1994, *UNTS*, 1996, vol. 1954;
 - ✗ Convention on Forest Protection
 - Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Rio Forest Principles), 14 June 1992, A/CONF.151/26 (vol. III), 14 August 1992.



International Laws, but with Specific/Restricted Scope

- 1972 UNESCO Convention concerning the Protection of World Cultural and Natural Heritage
- **1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**
- 1971 Ramsar Convention on Wetlands of International Importance
- **International Tropical Timber Agreement (ITTA) 1983/1994/2006**
 - framework for cooperation between tropical timber producers
- 1992 Convention on Biological Diversity
- 1994 UN Convention to Combat Desertification



International Soft Law (1/2)

- 1992 Rio Forest Principles
- 1992 UN Convention on Biological Diversity
 - Global Forest Plan for Biodiversity 2011-2020: Aichi Targets
 - Target 5: Habitat loss halved or reduced
 - Target 7: Sustainable agriculture, aquaculture and forestry
 - Kunming-Montreal Global Biodiversity Framework 2022-2030
- UN Strategic Plan for Forests 2017-2030

International Soft Law (2/2)

- UN Sustainable Development Goals
 - ***SDG 12 – Responsible Consumption and Production***
 - **Target 12.2:** achieve the sustainable management and efficient use of natural resources
 - **Target 12.6:** encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle
 - ***SDG 15 – Life on Land***
 - **Target 15.2:** promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally

A Lot of (More or Less Institutional) International Actors

- United Nations Forum on Forests (UNFF; since 2000)
 - Intergovernmental Panel on Forests (IPF; 1995-1997)
 - Intergovernmental Forum on Forests (IFF; 1997-2000)
- Collaborative Partnership on Forests (CPF)
 - Successor to Interagency Task Force on Forests (ITFF)
 - Objective to support the UNFF and its member countries and to enhance cooperation and coordination on forest issues.
 - Comprises 16 International Organisations:



The FLEGT Action Plan & Legislations

The FLEGT Action Plan

(COM (2003) 251 final)

- “Start of a process which places particular emphasis on **governance reforms** and **capacity building**, supported by actions aimed at developing **multilateral cooperation** and **complementary demand-side measures** designed to reduce the consumption of illegally harvested timber in the EU (and ultimately major consumer markets elsewhere in the world).”
 - Voluntary Scheme (at first at least)
 - Aim: That only legally harvested timber is imported into the EU



The FLEGT Regulation

(Council Regulation (EC) 2017/3/2005)

- Establishment of **Voluntary Partnership Agreements (VPAs)**
 - FLEGT Licenses
 - Timber Products
 - Partner Countries
 - Republic of Ghana (OJ 2010 L 70/3)
 - Republic of Congo (OJ 2011 L 92/127)
 - Republic of Cameroon (OJ 2011 L 92/4)
 - Republic of Liberia (OJ 2012 L 191/3)
 - Central African Republic (OJ 2012 L 191/103)
 - Republic of Indonesia (OJ 2014 L 150/272) → Only Effective License Scheme
 - Socialist Republic of Viet Nam (OJ 2019 L 147/3)
 - Republic of Honduras (OJ 2021 L 217/3)
 - Co-operative Republic of Guyana (OJ 2023 L 121/3)

The EU Timber Regulation (EUTR)

(Regulation (EU) 995/2010)

- Response to the “institutional and governance deficiencies that are present in the forest sector in a number of timber-producing countries”
- Imposes **due diligence** obligations on operators and traders
 - Unilateral / Demand side mechanism
 - // Risk management:
 - Access to information
 - Risk assessment
 - Risk mitigation
 - Control by (and in turn of) the importers
- Products with FLEGT or CITES licenses are deemed compliant

EU regulatory schemes	FLEGT	EUTR
Legal nature	Voluntary; the VPA creates binding obligations once it is ratified	Compulsory
Type of measures	Supply-side	Demand-side
Scope of the license scheme	Countries entering in a partnership with the EU	Regulates trade in timber and timber products with all other third countries

The EU Forest-Risk Commodities Regulation

A Regulation and not a Directive

- **Art. 288 TFEU:** “A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.”
 - Ensures that the obligations are implemented at the same time and in the same way in all 27 Member States.
 - Reduces uncertainties over timelines during the transposition process typically associated with a Directive.

Legal Bases

- **Environmental = Article 191(1) TFEU:** “preserving, protecting, and improving the *quality of the environment*, protecting human health, *prudent and rational utilisation of natural resources*, promoting measures to deal with regional or worldwide environmental problems, and in particular combatting climate change”
- **Procedural = Article 192 TFEU:** Ordinary legislative procedure (Articles 289 and 294 TFEU)
- **Article 5 TEU + Article 4(e) TFEU =** Application of the *principle of subsidiarity*



Regulation 2023/1115 – Ambit and Objective

Article 1(1) – Subject matter and scope

*“This Regulation lays down rules regarding the **placing and making available on the Union market** as well as the **export** from the Union of **relevant products** (and) **relevant commodities** (...) with a view to:*

- (a) Minimising the Union’s contribution to deforestation and forest degradation worldwide, and thereby contributing to a **reduction in global deforestation**;*
- (b) Reducing the Union’s contribution to **greenhouse gas emissions and global biodiversity loss**.”*



Regulation 2023/1115 – Material Scope

Article 2 – Definitions

- (1) **‘Relevant commodities’** means cattle, cocoa, coffee, oil palm, rubber, soya and wood;
- (2) **‘Relevant products’** means products listed in Annex I that contain, have been fed with or have been made using relevant commodities.
→ E.g., beef, pulp and paper (except if bamboo-based or recycled).”



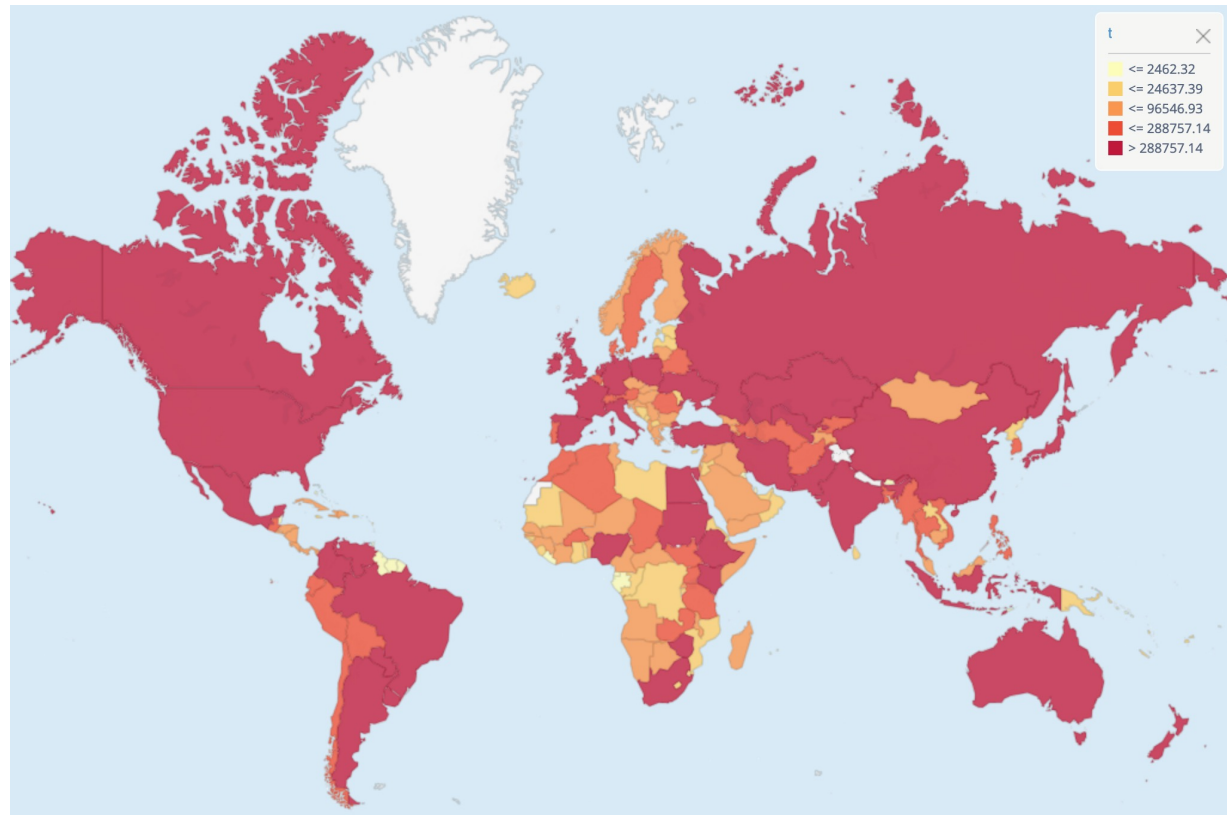
Regions and Countries of Production : Cattle Meat

Regions

Africa: 8.6%
Americas: 46.7%
Asia: 21.9%
Europe: 18.3%
Oceania: 4.4. %

Main Countries

1. United States
2. Brazil
3. China
4. Argentina
5. India



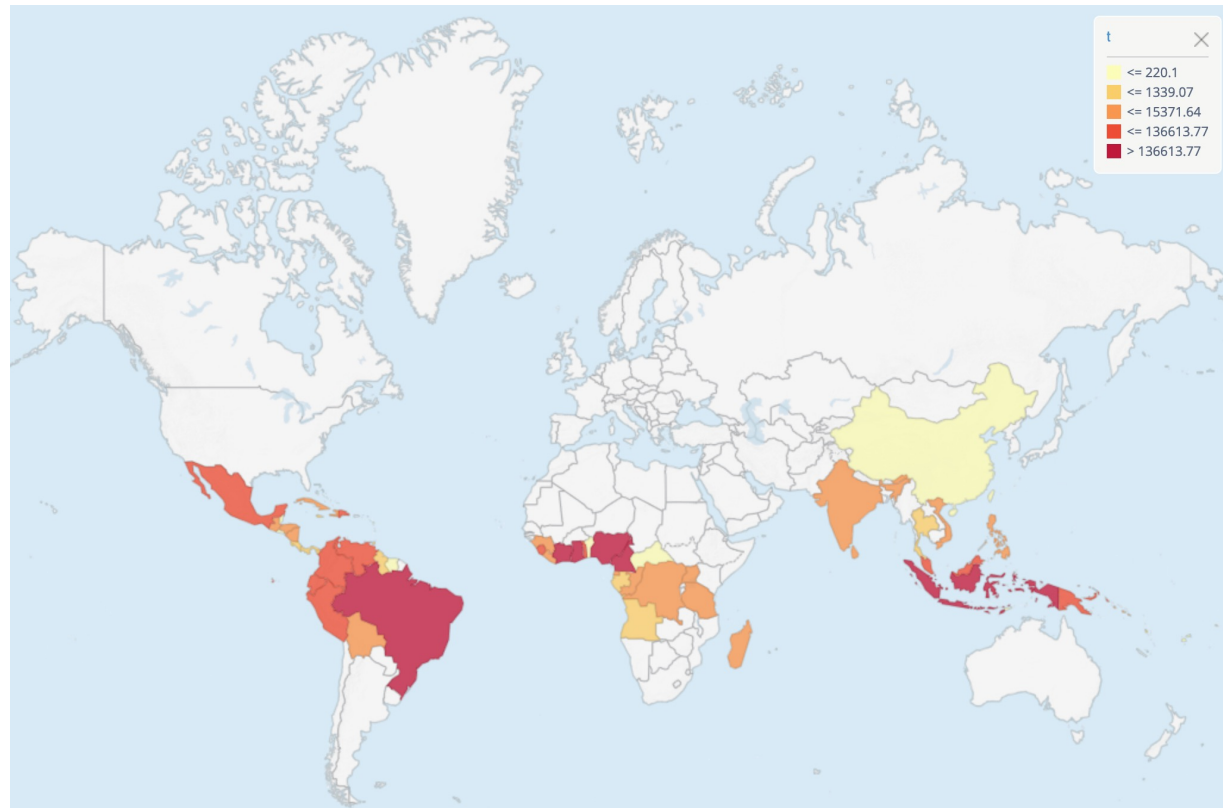
Countries and Regions of Production : Cocoa Beans

Regions

Africa: 67.1%
Americas: 15.3%
Asia: 16.5%
Europe: 0%
Oceania: 1.1%

Main Countries

1. Ivory Coast
2. Ghana
3. Indonesia
4. Nigeria
5. Brazil



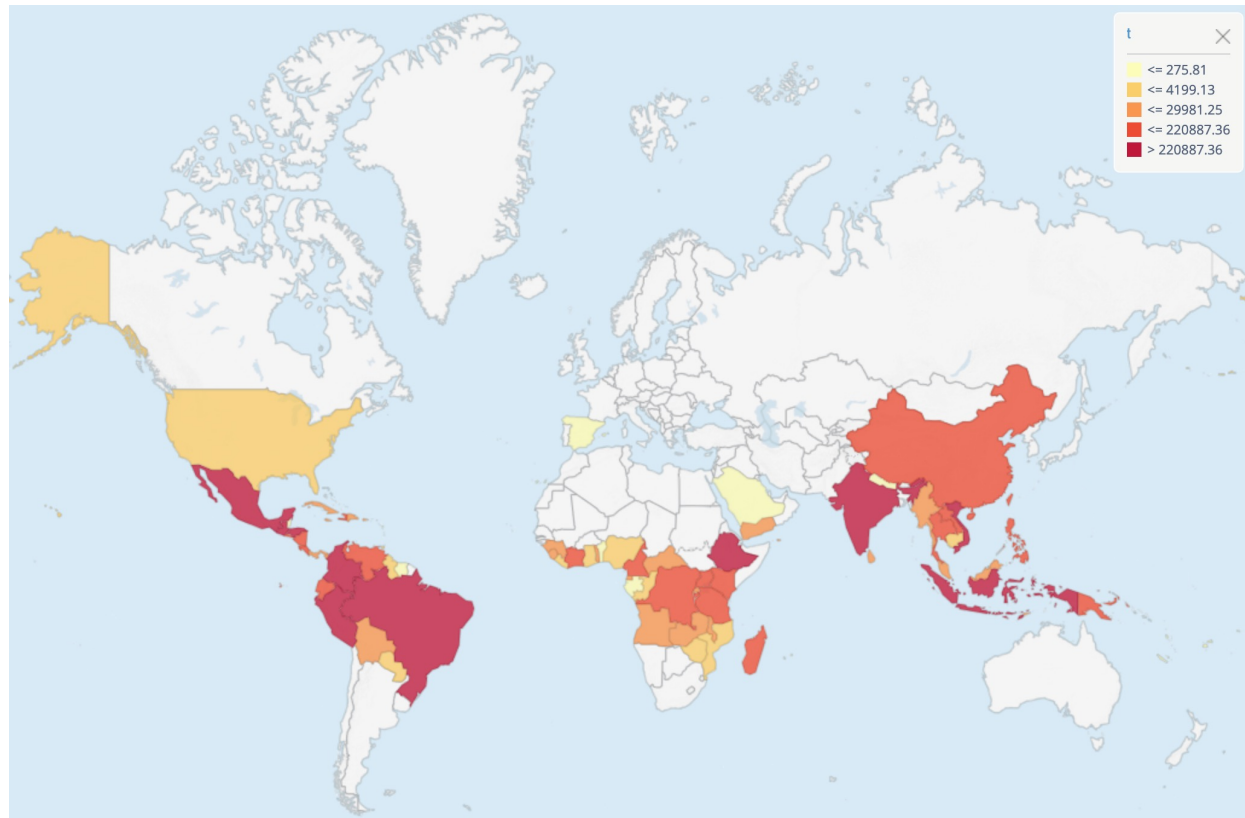
Countries and Regions of Production : Coffee

Regions

Africa: 14%
Americas: 57.1%
Asia: 28.1%
Europe: 0%
Oceania: 0.7%

Main Countries

1. Brazil
2. Viet Nam
3. Colombia
4. Indonesia
5. Ethiopia



Countries and Regions of Production : Oil Palm Fruit

Regions

Africa: 7.6%

Americas: 5.4%

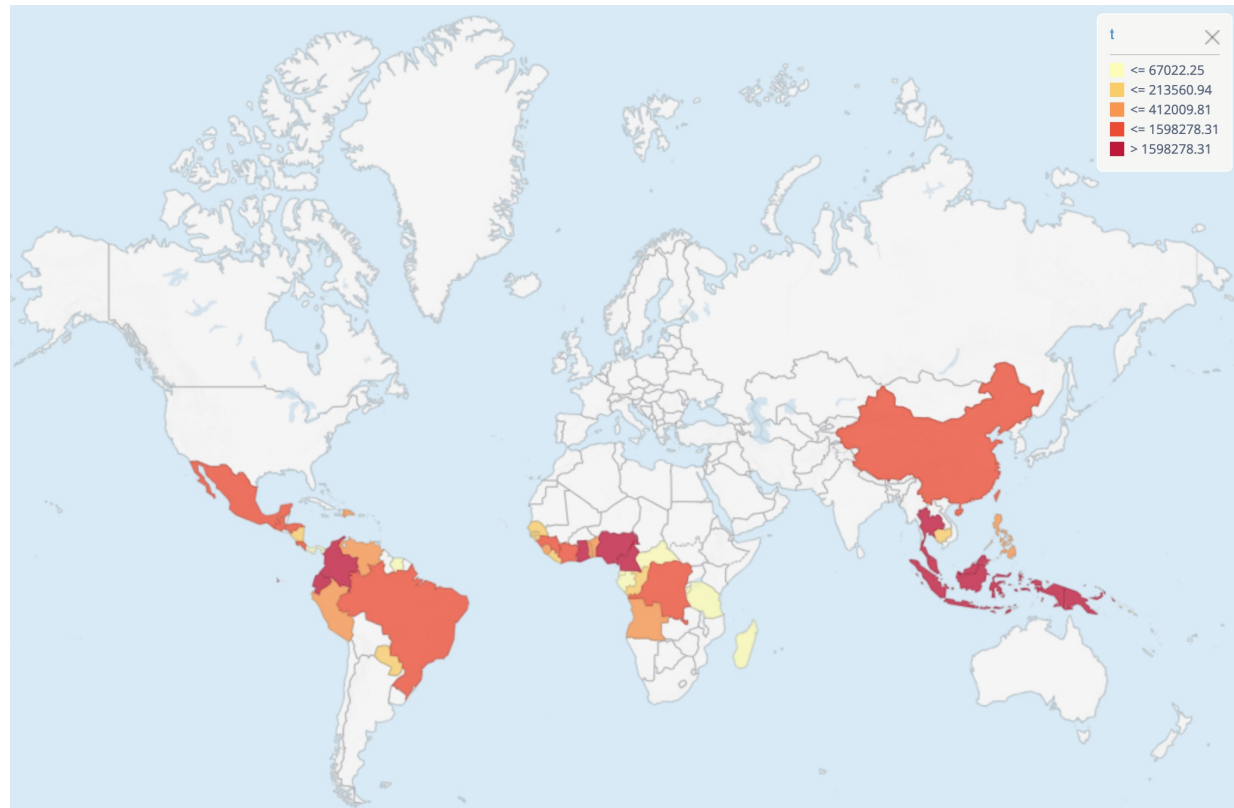
Asia: 86.1%

Europe: 0%

Oceania: 0.8%

Main Countries

1. Indonesia
2. Malaysia
3. Nigeria
4. Thailand
5. Colombia



Countries and Regions of Production : Natural Rubber

Regions

Africa: 5.9%

Americas: 3.6%

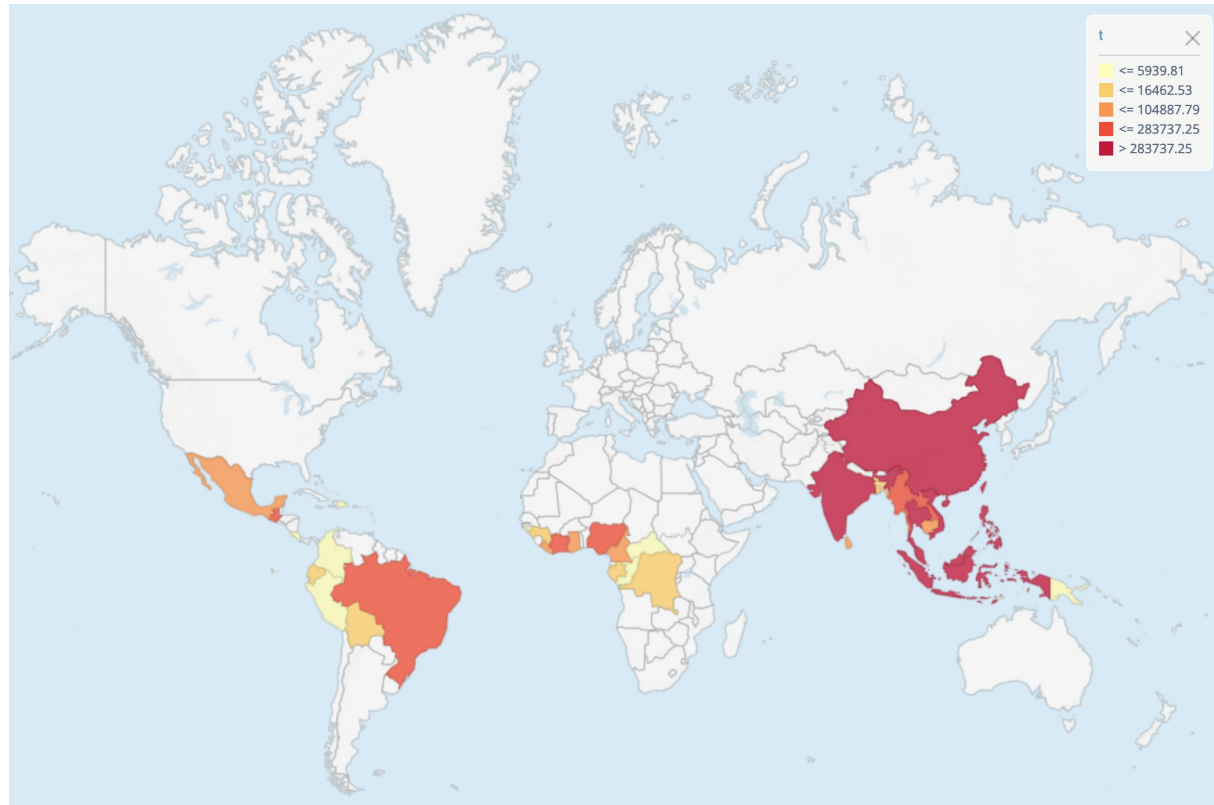
Asia: 90.5%

Europe: 0%

Oceania: 0.1%

Main Countries

1. Thailand
2. Indonesia
3. Malaysia
4. India
5. Viet Nam



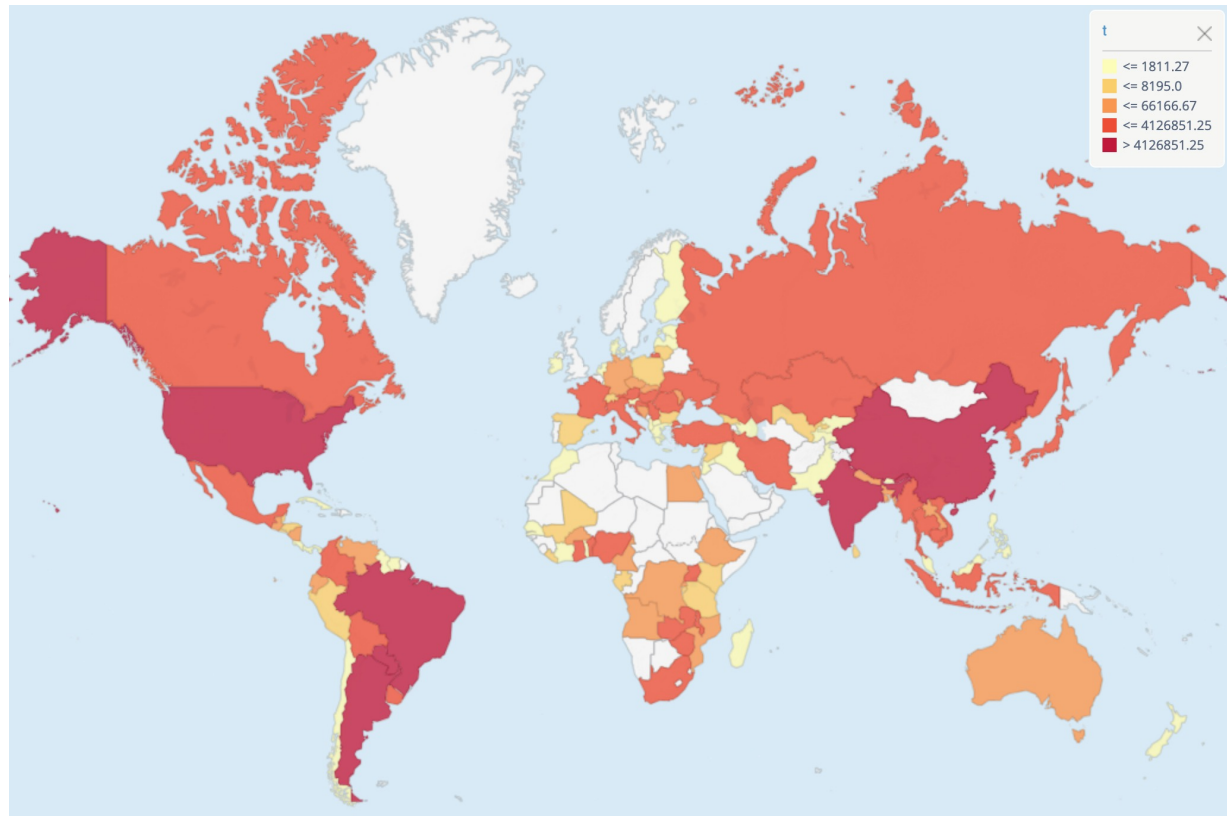
Countries and Regions of Production : Soya beans

Regions

Africa: 0.8%
Americas: 85.8%
Asia: 11.3%
Europe: 2.2%
Oceania: 0%

Main Countries

1. United States
2. Brazil
3. Argentina
4. China
5. India



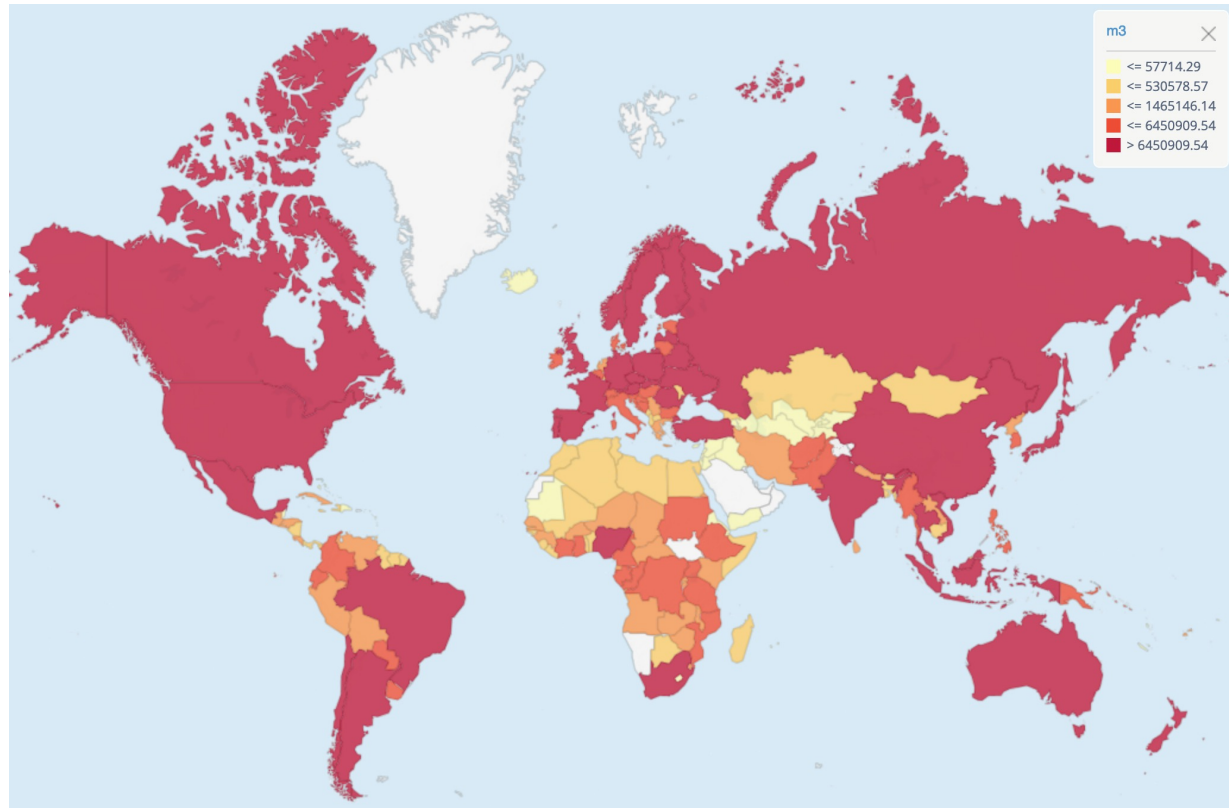
Countries and Regions of Production : Industrial Roundwood

Regions

Africa: 4.2%
Americas: 42.6%
Asia: 19.8%
Europe: 30.3%
Oceania: 3.2%

Main Countries

1. United States
2. Canada
3. Russian Federation
4. China
5. Brazil



Imposition of EU Rules through the *Brussels Effect*

- Besides for cattle and wood, the EU plays a negligible role in the production of the commodities targeted by the Forest-Risk Commodities Regulation, whereas Asia always account for at least 10% and up to 90%
- The **Brussels Effect** is “*the Europeanization of many aspects of global commerce due to the EU’s ability to promulgate regulations that become entrenched in the legal frameworks of developed and developing markets*”.
- One of the objective the Regulation is to induce a reduction in global deforestation and forest degradation.



Regulation 2023/1115 – Personal Scope

Article 2 – Definitions

(15) **‘operator’** means any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them;

(16) **‘placing on the market’** means the first making available of a relevant commodity or relevant product on the Union market;

(17) **‘trader’** means any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market;

(18) **‘making available on the market’** means any supply of a relevant product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.

	Operators (art. 2(15))	Traders (art. 2(17))
Function	‘Person who first puts a commodity/product on the EU market or for export	Other person in the supply chain making commodities/products available to consumers or further traders
Obligations	Exercise due diligence prior to placing relevant products on the market (art. 4)	Same obligations with regard to the commodities and products they make available, save for ‘SME traders’ (art. 5)
Examples	Exporter/Importer	Wholesaler

Regulation 2023/1115 – Legality and Durability Criteria (1/4)

Article 3 – Prohibition

Relevant commodities and relevant products shall not be placed or made available on the market or exported, unless the following conditions are fulfilled:

- (a) They are **deforestation-free**;
- (b) They have been produced in accordance with the **relevant legislation of the country of production**; and
- (c) They are covered by a **due diligence statement**.



Regulation 2023/1115 – Legality and Durability Criteria (2/4)

The **Legality criterion** is a transfer from Regulation 995/2010 (EU Timber Regulation) which *“la[id] down obligations of operators who place timber and timber products on the internal market (...)”*.

- Art. 4(1) EUTR: *“The placing on the market of illegally harvested timber and timber products derived from such timber shall be prohibited.”*
- Art. 2(f) EUTR: *“‘Legally harvested’ means harvested in accordance with the applicable legislation in the country of harvest.”*
- Art. 2(g) EUTR: *“‘Illegally harvested’ means harvested in contravention (...)”*



Regulation 2023/1115 – Legality and Durability Criteria (3/4)

Article 2 – Definitions

(40) '**Relevant legislation of the country of production**' means the laws applicable in (said) country (...) concerning the legal status of the area of production in terms of:

- (a) Land use rights;
- (b) Environmental protection;
- (c) Forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting,
- (d) Third parties' rights;
- (e) *Labour rights*;
- (f) *Human rights protected under international law*;
- (g) *The principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples*;
- (h) Tax, *anti-corruption*, trade and customs regulations.

Regulation 2023/1115 – Legality and Durability Criteria (4/4)

The **Durability criterion** means that for a product to be accepted on the EU market, it must be "deforestation-free".

Article 2(13) 'deforestation-free' means:

- (a) That the that the relevant products contain, have been fed with or have been made using, relevant commodities that were produced on land that has not been subject to deforestation after 31 December 2020; and
- (b) in the case of relevant products that contain or have been made using wood, that the wood has been harvested from the forest without inducing forest degradation after 31 December 2020.

The Due Diligence Statement (1/4)

Article 8:

- Must be submitted *prior* to the placing on the market of the relevant products
- Shall include Risk Management (// EUTR):
 - The collection of information, data and documents referred to in Article 9;
 - Risk assessment measures as referred to in Article 10;
 - Risk mitigation measures as referred to in Article 11.



The Due Diligence Statement (2/4)

Article 9 – Information requirements:

The collection, organisation and preservation for five years of detailed information about:

- The commodities and/or products placed on the EU market and their quantity;
- Their sources and suppliers, by identifying the country and area of production, including geo-location coordinates of relevant plots of land where production took place, and time of production;
- Adequately conclusive evidence that commodities and products are deforestation-free;
- Adequately conclusive evidence that commodities and products are produced in line with relevant legislation of the country of production.

The Due Diligence Statement (3/4)

Article 10 – Risk assessment:

The verification and analysis of the collected information, and the determination of the risk of non-compliance. It shall take into account:

- Country classification into three risk categories (high, low, standard) as provided in Article 29;
- The presence of forests and of indigenous peoples, and the latter's consultation and possible duly reasoned claims;
- Prevalence of deforestation or forest degradation;
- Complexity of supply chain;
- Possible corruption, data falsification, lack of law enforcement, human rights violations, etc. in country of production.

The Due Diligence Statement (4/4)

Article 11 – Risk mitigation:

Except for non-existent or negligible risk, the operator must adopt adequate mitigating procedures and measures, e.g.:

- Requiring more information;
- Conducting additional surveys/audits;
- Capacity building and investments;
- Etc.



Obligations of EU Member States

Article 16 – Obligation to carry out checks:

- Within their territory
- Establish whether operators and traders comply with the regulation
- Shall communicate their plans of checks, as well as updates thereto, to other competent authorities and the Commission → exchange of information and cooperation
- Risk-based approach: Countries are to be distinguished in a three-tier classification by the Commission (Article 29)



Countries Benchmarking System

Article 29 – Assessment of Countries:

- Producing countries are distinguished between high, low and standard risk
- According to a range of criteria
 - Three mandatory ones (§3)
 - Rate of deforestation and forest degradation
 - Rate of expansion of agricultural land
 - Production trends of relevant commodities and products
 - A non-exhaustive lists of criteria that *may* be accounted for (§4)
 - Information submitted by stakeholders
 - Legislative framework in producing countries
 - Existence of VPA or CITES agreements
 - Etc.

Thank you!

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