



THE IMPERATIVE FOR COHERENCE: DEFORESTATION AND TRADE POLICIES IN PERU, THE U.S. AND EU

Agricultural commodity exports are driving deforestation around the world, spurred by consumer demand and directed by enormous agribusiness and finance interests. Existing trade rules are intended to facilitate the free flow of goods and services across borders. They are not devised to balance the needs of local communities, the climate or biodiversity, so, unsurprisingly, they have overwhelmingly benefitted the corporate interests they were designed to favor. Provisions added to trade rules to address environmental harm are largely unenforceable and have not modified the underlying trade rules, perpetuating a vicious cycle of harm. The trade rules themselves must also change if there is any hope for a just transition for the climate and food systems.

Over the last few years, several new trade-related initiatives designed to slow deforestation associated with the trade of agricultural commodities have come into focus. These initiatives include the European Union's Deforestation Regulation (EUDR), as well as pending initiatives on deforestation and trade in the United States and other countries. These policies occur in a specific context created by past and current agriculture, trade and foreign assistance policies. While they represent a fresh approach to a vexing intersection of problems, they can work at cross purposes with other policies. These new rules are most likely to achieve positive outcomes if there is coordinated effort to bring trade policies, supply chain initiatives, and the necessary financial and technical resources into alignment.

The new supply chain proposals learn from the successes and failures of other initiatives. For example, the voluntary Sustainable Roundtable on Palm Oil, which was established in 2004, brings together groups representing producers, processors, traders and environmental groups who have agreed on specific criteria. Since their inception, [violations of standards](#) (something that was also recognized in a [report adopted by the EU Parliament](#)) have plagued this and similar voluntary initiatives on other commodities. Brazil's Soy Moratorium legally restricts deforestation and human rights violations, but research by [Greenpeace's Unearthed](#) found that while the program reduced the number of forest acres converted to soy, companies were evading the restrictions, in many cases simply by shifting to other crops that still added to deforestation. These initiatives continue to this day but are widely seen as having limited use.¹ New approaches are needed.

The mandatory [EUDR](#) requires due diligence by importing companies to ensure that covered goods brought into Europe are not products of deforestation and that they are legally produced according to domestic laws in the countries where they are grown. It covers imports of wood, soy, palm oil, coffee, cocoa, beef and rubber, as well as products derived from them, such as chocolate. The European Commission approved the regulation in June 2023. Large and medium-scale companies must comply as of Dec. 30, 2024. Smaller companies have an additional six months to comply. Future mandatory reviews will



consider possible expansion to other products, as well as the impacts on small-scale farmers.

Once implementation of the EUDR begins in 2025, companies will be required to conduct due diligence to demonstrate that, as of Dec. 31, 2020, goods in these supply chains have not been produced on land that has been deforested for agricultural use or on forested land that is structurally degraded (i.e., natural forests converted to timber farms). The implementation process is underway and summarized in [a policy brief](#) by the European NGO FERN. It involves three steps: gathering information about the product, location and deforestation; conducting a risk assessment (including the interests of Indigenous peoples in the region of production and whether there are existing land claims); and mitigating risks (potentially including supporting smallholders through capacity building and investment). EU Member State authorities will inspect those claims and their adherence to EU regulations. The EUDR includes foreign assistance to set up systems to gather and analyze satellite data to enable compliance. Companies are gathering information during this initial stage, before compliance requirements begin in December 2024. After two years, the EU will assess whether to extend the scope of commodities and products included in the initiative and whether it should cover additional ecosystems, such as grasslands and wetlands.²

A similar initiative is pending in the U.S. Congress. The U.S. [Fostering Overseas Rule of Law and Environmentally Sound Trade](#) (FOREST Act) would ban imports of goods linked to illegal deforestation, building on the Lacey Act, which prohibits illegal timber and wildlife from entering the country. It would also establish funding to aid countries in their transition from goods produced with illegal deforestation. That legislation is backed by a coalition of more than 40 U.S. environmental and other civil society groups.

In Latin America, the region home to most of the Amazon rainforest, actions by and with Brazil have been a central focus, especially as the Lula administration has pledged to protect the Amazon. But the EUDR and related programs also affect other countries struggling with the contradictions between pressures to increase exports and attract corporate investment and the need to safeguard forests for local people and the climate. Those pressures are conditioned both by initiatives like the EUDR and by the incentives created

by existing trade rules. In this paper, we'll look at how the EUDR and trade agreements intersect with Peru's efforts to prevent deforestation and what lessons might be learned as countries move to align trade, environmental, climate and agriculture policies.

Peru's forests and pressure from agricultural exports

Peru has the second-largest expanse of lands in Amazon rainforests, after Brazil. While Peru's leading agricultural exports are fresh fruits and vegetables, most of that production takes place in coastal areas. Most coffee, cocoa, palm oil and wood production happens in the interior, including in many areas subject to deforestation. Exports of those goods produced in the Amazon region will be subject to regulation under the EUDR (as are soy, meat and rubber exports, which are less relevant in Peru). In 2023, [Peru exported \\$579 million](#) in coffee, tea, cocoa and spices to the EU. It also exported \$261.8 million in coffee beans and \$8.1 million in cocoa beans [to the U.S.](#) In its [annual report on coffee](#), the U.S. Department of Agriculture reports that "The United States continued to be the top market for Peruvian coffee in MY 2023/2024, accounting for 28 percent of total exports. Other important destinations include Germany, which accounted for 18 percent, and Belgium with 9 percent." The report also notes that 223,000 Peruvian families, mostly small-scale farmers, depend on coffee as their main source of income.

The lead up to this process in Peru has been rocky. In anticipation of the EUDR (and potentially the FOREST Act) requirements, the Peruvian Congress rushed through a new "Law to amend the Forestry and Wildlife Law, and to approve complementary provisions aimed at promoting forestry zoning." The new law eliminates "agricultural exclusion zones" — forest areas where agricultural production had been prohibited, opening the land to new production without environmental safeguards. It effectively releases new land into production. By lowering environmental standards and legalizing what had been illegal intrusions into protected lands, it technically fulfills the EUDR requirement that production not result from illegal deforestation (or land legally deforested after December 2020). Law 31973, dubbed the "anti-forest law," generated massive opposition by civil society groups in Peru and their allies overseas. José Luis Capella, director

of the Forest Program and Ecosystem Services at the Sociedad Peruana de Ley Ambiental stated plainly that “[Deforestation has not alleviated poverty](#). This amendment will not benefit small farmers and will put the lives of indigenous people at risk.”

In an [article on the limits of good intentions](#), Beatriz Salazar from the Peruvian Center for Social Studies (Centro Peruano de Estudios Sociales, [CEPES](#)) comments, “This law runs a real risk of aggravating deforestation, violating the rights of indigenous peoples and other vulnerable groups, encouraging conflict and criminal activities, and to top it off, threatening Peruvian exports of products such as coffee and cocoa.” She explains that the Peruvian law

...will facilitate the granting of property titles on lands that may overlap with territories of native communities and riparian communities in the process of recognition or titling. This is the case of the Nueva Austria del Sira, Unipacuyacu and Nueva Alianza communities in Huanuco, whose ancestral territories have been reduced by more than 60% due to the illegal occupation of 24,000 hectares by third parties, to whom the mayor’s offices, courts and the regional government of Huanuco have granted hundreds of certificates of possession and individual titles. Furthermore, Law 31973 has not been submitted to prior, free and informed consultation with the Indigenous peoples directly or indirectly affected, which also violates their collective rights.

In January 2024, 70 civil society groups (including CEPES, as well as 24 Peruvian farmers’ organizations and allies in the EU and U.S.) sent [letters to EU and U.S. officials](#) protesting the Peru law. They insisted that the EU and U.S. issue public statements “against the approval of this law, which is an attack against the forests, the people who live in them, the international trade and environmental commitments made by the U.S. [or EU] and Peru, as well as against humanity.”

Environmental promises and pressures in trade agreements

There is no straight line between environmental commitments in trade policy and environmental justice. Free trade agreements (FTAs) can [create new pressures to deregulate](#) economic activity and expand foreign investments and exports no matter what the consequences are for local peoples and their

environments. It is an [open question whether free trade agreements can be tempered](#) to actually facilitate sustainable development.

When the U.S.-Peru Trade Promotion Agreement (TPA) was approved in 2009, it was the first U.S. trade agreement to include labor and environment chapters in the core of the agreement rather than in unenforceable side agreements. It requires that countries not lower environmental standards to encourage trade or foreign investments. It established a [Secretariat for Submissions on Environmental Enforcement Matters \(SEEM\)](#) for interested groups to bring complaints on environmental enforcement, as well as an annex on [Forest Sector Governance](#) to address illegal logging, which included its own public consultation mechanism. This set of provisions became the model for subsequent U.S. trade agreements.

Peruvian and U.S. groups have utilized the environmental mechanisms established under the U.S.-Peru TPA. They raised a series of complaints over illegal logging to the Forest Sector Governance committee dating back nearly to the agreement’s inception. Most recently, the new forestry law was discussed at the February 2024 meeting of the Secretariat for Environmental Matters, and in July [Peruvian groups filed formal complaints](#) over the law on the grounds that it violates the terms of the U.S.-Peru TPA by lowering environmental standards to attract trade.

While these discussions have not resulted in any resolution to the problem of illegal logging or other environmental challenges, they have served to raise public attention and perhaps increase political pressure on an issue that would likely not have been the subject of bilateral talks otherwise. Mobilizations around illegal logging and land grabs facilitated by trade agreements have provided a new tool for collaboration among Peruvian organizations and their allies overseas. Even when they do not result in trade sanctions, the use of environmental provisions in trade agreements can be useful as forums to increase pressure and, ideally, to develop new kinds of solutions.

The EU has made similar commitments in the Chapters on Trade and Sustainable Development in recent trade agreements. [Those accords](#) (including the [EU-Colombia- Ecuador-Peru Comprehensive Trade Agreement](#), which has been provisionally applied with Peru and Colombia since 2013, with Ecuador joining in 2017) incorporate a more comprehensive array of

commitments than the environmental provisions in the U.S. agreement. The EU accord promotes agreements on biodiversity, access and benefit sharing established under the Convention on Biological Diversity and upholds the Paris climate accords, but provisions in the Trade and Sustainable Development chapter are not subject to binding dispute settlement procedures outside of expert panel consultations. Under the terms of the agreement, the Committee on Trade and Sustainable Development must meet on a yearly basis. Peruvian civil society organizations have presented [complaints under that accord](#) on environmental issues.

More recently, the 2020 EU-New Zealand Free Trade agreement includes [binding and enforceable commitments on the Paris Agreement](#) and International Labor Organization labor rights conventions. While these provisions do not apply to the trade agreement with Peru or other previously negotiated accords, they do represent an important step forward.

At the same time, other provisions in Peru's trade agreements with the U.S. and EU have increased pressure on the environment and on rural communities. The elimination of tariffs has encouraged growth in fruit and vegetable exports, coinciding with diminished public support for sustainable production directed to feeding local communities. The Peruvian family farm federation [CONVEAGRO](#), writing in 2020 on the impacts of the trade agreement with the EU, explained that,

Agricultural and trade policy in Peru treats farmers differently according to their scale and market orientation. The policy has been characterized by prioritizing exports by large companies on the coast, with limited attention to small-scale family farming oriented to the domestic market and exports. This asymmetry in agricultural policy has been persistent and has deepened over time with the signing of free trade agreements and the generalized commercial opening of the Peruvian economy.

The federation explains that requirements in the agreement with the EU to abolish price bands (which allow for tariff adjustments on imports when international prices fall below certain limits) on milk, corn, sorghum, rice and sugar, as well as the elimination of tariffs on those and other goods, have undermined local production. Imports of processed potatoes, cheese and other dairy products from Europe, where

producers receive much more public support, have in many cases displaced Peruvian production. While this report does not examine imports under the U.S.-Peru PTA, it notes that the U.S. is now the top source of agricultural imports into Peru, having displaced Argentina.³

In addition, trade agreements create new conditions to attract foreign investment that pose their own challenges. Peru has confronted a series of cases under Investor-State Dispute Settlement (ISDS), a provision in trade agreements that empowers foreign investors to sue governments over measures that reduce their expected profits. This mechanism is hugely controversial, and both the U.S. and EU governments are taking steps to eliminate it or at least diminish its power in various trade agreements. In May 2024, the Council of the European Union adopted a decision to [exit the Energy Charter Treaty](#), in large part because of public campaigns against ISDS in the treaty. The EU-Peru-Colombia agreement does not include ISDS, but Peru is still bound by several Bilateral Investment Treaties with ISDS, including separate treaties with France, Italy, Spain and the Netherlands.

The 2020 U.S.-Mexico-Canada Agreement (USMCA) was the first trade agreement involving the U.S. to eliminate ISDS between the U.S. and Canada. It greatly restricted possible cases between Mexico and the U.S. (although certain "legacy cases" among the three countries, including one on land rights, are still pending). Even with the changes in USMCA, Mexico and Canada are still vulnerable to ISDS challenges under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, to which Peru is also a Party). ISDS has not been removed from the U.S.-Peru PTA, so still applies in that case, as well as in the China-Peru FTA.⁴

[Peru has confronted 24 separate challenges](#) from U.S. and EU companies (and three from Canadian firms) under ISDS. Many of these involve disputes around mining rights. *Lupaka vs. Peru*, filed in 2020 by a Canadian firm under the terms of the Canada-Peru, demands US\$100 million in compensation related to "an alleged illegal blockade and invasion of the claimant's Invicta Gold Development Project." The Spanish firm Enagas has demanded US\$250 million in compensation over the government's cancelation of a natural gas pipeline. The U.S. firm Renco has brought two ISDS cases over the Peruvian government's

environmental regulations governing its mining operations in La Oroya.

The Peru Network for Globalization with Equity (Red Peruana de Globalización con Equidad, REDGE) and the Trans National Institute (TNI) published [a review of ISDS cases against Peru](#) as of 2021. Five cases were filed against Peru during 2020, several involving emergency responses to the COVID-19 pandemic. REDGE and TNI documented that the government spent US\$19 million in compensation over two recent cases, plus another \$12 million in related legal fees. This is money that could have been available for social or environmental programs. Many more cases are still pending.

While none of the cases so far involve deforestation, they have absorbed public money and attention and have facilitated mining concessions that increase pressures on local communities and their environments. Moreover, it's not hard to imagine potential challenges involving controversial palm oil plantations now emerging in the Amazon and adjacent areas. For example, Peruvian Indigenous organizations including AIDSESP (the Interethnic Association for the Development of the Peruvian Rainforest), ORAU (the Ucayali Regional Organization of AIDSESP) and FECONAU (the Federation of Native Communities of the Ucayali and Affluents), along with international allies such as Oxfam and the Environmental Investigation Agency, are [challenging the Ocho Sur palm oil plantation](#) in the Ucayali region within primary Amazon rainforests.

The Bureau of Investigative Journalism (TBIJ), Mongabay and Peruvian outlet Ojo Público found that palm oil produced in that region is used in snack food produced by [subsidiaries of PepsiCo](#). Investigators found that “Palm oil production in Peru has more than doubled in the past decade and Ucayali, a hotspot for cultivation on the border with Brazil, now has the country's second-highest rate of forest loss. It's estimated that about 30% of the country's palm plantations are on illegally deforested land. Half of the oil is sent to international markets.”

Peruvian Palm Holdings, based in Bermuda, and Anholt Services and AMERRA Capital Management LLC (both based in the U.S.) are [major investors in Ocho Sur](#). Even if investors do not challenge potential regulations or enforcement actions related to this or other palm oil plantations, the threat of these challenges undoubtedly creates pressure on the Peruvian government not to establish stronger environmental

standards or to bolster enforcement of existing laws⁵. [Proponents](#) of the new Forestry Law have urged the government to weaken the existing forest protections precisely in order to comply with the coming EUDR regulations.

The U.S. and EU have removed or limited ISDS in some agreements such as USMCA and the Energy Charter Treaty. The U.S., EU, Peru and other governments should also take action to remove it from existing agreements. This is not an easy task. Peru has 27 current trade and investment agreements that include ISDS. However, even some first steps in that direction could help to ease regulatory pressures within Peru that undermine efforts to protect their forest.

[New approaches to trade and environmental rights](#)

The EUDR and similar initiatives, such as the FOREST Act, build on the lessons of the past to put the burden on importing companies to show that their products are not the result of deforestation. Importing country governments will oversee compliance with these due diligence requirements. It is imperative that they also provide the financial and technological resources needed to ensure that reliable data is available in the producing countries and rules to ensure that companies don't simply shift the compliance costs on to farmers.

At the same time, there is a real need for new approaches to the trade rules that govern the broader array of economic interactions between countries, such as Peru and its trading partners. The 2009 accords in the U.S.-Peru trade agreement created an important breakthrough that firmly established the relationship between trade and the environment (as well as labor rights). Many U.S. fair trade experts and activists still point to that [“May 10th agreement”](#) as a watershed moment. That accord established that labor and environmental commitments must be included as enforceable commitments within the text of the Peru-U.S. TPA (rather than as much weaker side agreements). But that was a long time ago.

The issue is not only protecting the environment. It is also about ensuring that trade commitments and the privileges they grant to agribusinesses, mining companies and other foreign investors do not override fundamental human rights or other crucial international commitments. [Article 18.13](#) of the U.S.-Peru trade agreement includes recognition of the importance

of countries meeting their commitments under other international environmental agreements. Subsequent trade deals include a defined list of Multilateral Environmental Agreements, specifying that governments may take actions to meet those commitments even when they conflict with other trade commitments as long as they are not primarily designed as disguised restrictions on trade. The trade agreements negotiated by the U.S. fail to include several key agreements on that list, notably the Paris Agreement (which the U.S. has signed) and the Convention on Biological Diversity and its associated protocols (which the U.S. has not ratified).

New language in the USMCA provides another potentially useful approach that could be extended to other agreements. Article 32.5 allows member governments to adopt or maintain measures “necessary to fulfill its legal obligations to Indigenous peoples,” provided the measures are not unjustified discrimination or disguised restrictions on trade. It builds on similar, but vaguer, language in other recent trade agreements, such as the CPTPP. The language in the USMCA general exception is bolstered by language in the Environment chapter, which elaborates on the links between Indigenous rights and biodiversity protection and conservation. These provisions were the direct result of pressure by First Nations communities on the Canadian government, which at the time [hailed the inclusion of the Indigenous rights exception](#) as historic. The inclusion of such a mechanism in agreements with Peru, for example, could strengthen social movements’ advocacy to protect Indigenous people’s lands from incursions by palm oil or other commodity investors, taking away the argument that deregulation is required under trade accords. It could also serve to affirm countries’ commitments to the broad range of social, cultural and environmental goals needed for a just transition.

Trade agreements are not written in stone. They are choices made to respond to specific conditions and political pressures at a specific point in history. Other choices are possible, starting with initiatives to redefine what are reasonable commitments to meet the full range of economic, social and environmental goals in the 21st century.

The talks for an [Americas Partnership for Economic Prosperity \(APEP\)](#) could provide one venue to discuss fixes to existing trade agreements and to think proactively about new approaches that complement

deforestation and other climate initiatives. The U.S. and Peru, along with Barbados, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Mexico, Panama and Uruguay, have initiated talks to consider collaborative approaches to inequality and economic competitiveness. The talks are organized in three tracks, covering foreign affairs, finance and trade. At their first in-person [meeting held in August in Ecuador](#), trade ministers from the member governments (except Mexico, which declined to participate in that meeting) set focus areas that included supply chains, labor, the environment, digitalization, trade facilitation and good regulatory practices.

It is hard to know if the APEP talks will result in any concrete changes, but its promoters say it is a forum for new ideas. Civil society groups have used the occasion of the APEP talks to demand that the U.S. government [remove ISDS from existing trade agreements](#) with countries in the region. The APEP committee on trade and the environment could be a useful venue to develop new approaches to trade, deforestation and climate policy. These approaches could include stronger public commitments to support local agro-ecological production to enhance rural livelihoods and resiliency and trade tools to minimize disruptions from sudden inflows of cheap imports (such as Peru’s previous price band system). There should also be discussion of ways to ensure consistency among deforestation free supply chain initiatives in the APEP countries and the EU. Discussions in the foreign affairs and finance tracks (led by the State Department and Treasury in the U.S.) should develop complementary commitments to provide necessary financial resources and shared supply chain tracking technologies. These approaches should extend to other trade initiatives as well, especially those involving the U.S. and EU.

Broader collaboration will continue to be necessary throughout the rollout of the EUDR. While the FOREST Act is gaining broad-based support in the U.S. Congress, Congress has not passed it yet, and agribusiness interests are pushing back against the EUDR. In fact, U.S. Trade Representative (USTR) Katherine Tai, Commerce Secretary Gina Raimondo and Agriculture Secretary Tom Vilsack recently pressed the EU to delay implementation of the EUDR, insisting that more time is needed to ensure U.S. companies can comply and complaining about the interim decision to “classify all countries as standard risk regardless of forestry practices.” Analyst [Etelles Higonnet](#)

counters, “The U.S. has such limited deforestation exposure on soy and cattle it exports to the EU that most U.S. soy and cattle exports to Europe will likely benefit from the EUDR. The exact opposite of what Vilsack, Raimundo, and Tai’s letter argues.”

CONCLUSIONS

For the most part, trade agreements cannot compel unwilling governments to protect the environment. There is a long and important debate about the unfairness — or even effectiveness — of Northern countries pushing higher standards on the Global South. Trade deals could be revised to take away the pressures that incentive trade and investment flows over all other considerations. They could be reformed to be consistent with emerging international agreements and norms, as well as new policies like the EUDR. If only the EU enforces deforestation-free supply chain standards, agribusinesses operating in Peru (or other countries covered by that initiative) might find ways to shift more of their exports to countries, such as the U.S., without such standards.⁶

In any case, the U.S. executive branch should learn from the unfolding implementation of the EUDR to ensure that its rules are pointing in the same direction. It is also critical to ensure that substantial financial resources back any new standards, both to support technical assistance to enable better data collection and monitoring, and, separately, to support agroecological approaches to ensure that farmers can feed their communities sustainably.

APEP could be one forum for the U.S. to explore better ways to enhance environmental rights in trade, but it is not the only possibility. Under the Biden administration, USTR has shifted its policies to better protect labor rights. It could dedicate more energy to finding binding solutions for the environment, in cooperation with trading partners and civil society organizations in each country. Such solutions could include support for revising existing trade agreements to eliminate ISDS, adding binding language to ensure that countries can meet their climate and biodiversity commitments, and expanding protections like the Indigenous Rights clause in USMCA to address biodiversity in other agreements. Even beyond revising those texts, USTR and EU Director General for Trade (DG Trade) could take actions with other agencies and actors to shift policy and funding incentives away from export-led commodity agriculture to a stronger focus on local

food systems supported by agroecology. Trade rules can’t legislate against deforestation on their own, but they can get in the way. They are one part of a set of policies on agriculture and food, environmental and human rights protections that need to change to be to shift the path to a just climate transition.

Endnotes

1. For example, a recent survey of a broad range of Brazilian stakeholders organized by the Making Agricultural Trade Sustainable research project found that private certification strategies “observed certain ‘exhaustion.’ Soy industry and farmers have preferred less stringent certifications due to lack of demand, and it is difficult to observe regional-scale impact, even in regions with strong penetration of more demanding certifications like the RTRS.” Policy Brief: MATS CS14 Results_eng (sustainable-agri-trade.eu). https://sustainable-agri-trade.eu/wp-content/uploads/2024/04/Policy-Brief-MATS-CS14-Results_eng.pdf
2. Stakeholders in the Brazilian MATOPIBA region interviewed in the MATS study cited above expressed broad support for extending the EUDR requirements to the Cerrado region, citing political feasibility and potential effectiveness in Brazil.
3. Curiously, according to the U.S. Foreign Agriculture Service, as of 2023, the top U.S. agricultural export to Peru is ethanol, followed by dairy products. <https://fas.usda.gov/regions/peru>
4. Calvert, J., & Tienhaara, K. (2022). Beyond ‘Once BITten, Twice Shy’: defending the legitimacy of investorstate dispute settlement in Peru and Australia. *Review of International Political Economy*, 30(5), 1799–1823. <https://doi.org/10.1080/09692290.2022.2134172>, p. 1804.
5. See The Billion Dollar Ultimatum, by Chris Hamby, part of a series on ISDS published in BuzzFeed for which he was a finalist for the 2017 Pulitzer Prize on international reporting. <https://www.buzzfeednews.com/article/chrishamby/the-billion-dollar-ultimatum>
6. Recent actions at the state level, such as the new deforestation-free supply chain initiative in New York state, could mitigate against such shifts. <https://foe.org/news/100-groups-hochul-ny-trees-act>