
Forest Code changes

And its impacts on the market's efforts towards Zero Deforestation

Introduction

On May, 24th, the Brazilian House of Deputies approved a new project of law that could have extensive impacts on the country's commitment to reduce its greenhouse gas emissions through a 80% cut in deforestation by 2020. The project approved increases the area available for "legal" deforestation across the country and gives general amnesty to all historical illegal deforestation.

The consequences of the project can already be felt, with rampant deforestation in the last few months and increased violence in land disputes in the Amazon region, with the assassinations of 6 community leaders in the Amazon states of Pará and Rondônia, in May and June.

This project also impacts on the commitments adopted and implemented by soy and cattle companies, over the last years, to exclude deforestation from their supply chain. By legally increasing the supply of products connected to deforestation in the market, such a law, if approved, will necessitate the adoption of stricter controls, to ensure a segregated "deforestation free" supply.

It is still possible to avert disaster as the project must be approved in the Senate, and president Dilma Rousseff can step in also. Since the presidential elections last year, Dilma has been stating she will veto such a law, in the case it is approved by the Congress. It is important that companies that have engaged in excluding deforestation from their supply chain show some degree of support to the President at the correct time, as such a law could increase costs and risks of supplying deforestation free products from Brazil. It is also important to warn business partners in Brazil of the possible impacts of the proposed changes in your commercial relationship.

This paper aims to clarify details of the proposed changes in the forest code and their impacts.

WITH THE NEW FOREST CODE...

- . **An additional 47 million hectares** could be deforested¹ (an equivalent area of Sweden);
- . There would be about **50% increase in deforestation** until 2020²;
- . **29 million hectares** that were illegally deforested would be forgiven³;
- . **10 billion Reais (around 4 billion Euros)** of fines would be forgiven⁴;

¹ Institute for Applied Economic Research, (IPEA, Secretariat of Strategic Affairs, Brazilian Presidency) Communication number 96 – Forest Code implications of the project of law 1876/99 in areas of Legal Reserve)

² (University of Brasilia - Land Use Policies and Sustainable Development in Developing Countries (LUPIS) project

³ Institute for Applied Economic Research, (IPEA, Secretariat of Strategic Affairs, Brazilian Presidency) Communication number 96 – Forest Code implications of the project of law 1876/99 in areas of Legal Reserve)

⁴ Ministry of Environment, 2010

The current code

Originally created in 1934 and improved in 1965, the Forest Code (Law 4.771/1965) is the fundamental piece of legislation behind all forest protection in Brazil. It is crucial for the maintenance of the Brazilian Amazon (and all other Brazilian biomes), and has been, over the last 77 years, the basis upon which environmental and land policies were drawn.

In the Amazon biome (which constitutes two-thirds of the remaining native vegetation in Brazil) each rural property has to keep 80% of its area covered by native forests as Legal Reserve. In the Cerrado (savannah) inside the Legal Amazonⁱ, 35%, and in the rest of Brazil, 20%. More than halfⁱⁱ of the Brazilian territory (around 460 million hectares, out of a total of 850 millions of hectares) is under the Forest Code's jurisdiction.

Despite the importance of the law, the rural sector in Brazil has been lobbying for the legislation to be substantially weakened. They are calling for lower limits of forest protection on private properties and a broad amnesty for past deforestation, among other demands.

Impact of these changes on firms sourcing high risk commodities

The soya and cattle commitments **are beyond legal compliance** so they should not be affected by changes in the Forest Code. Nevertheless, with the changes proposed for the Code, the federal legal mechanisms of control are likely to weaken, forcing companies to create more rigorous measures to guarantee products free of deforestation.

The main proposed changes that impact agreements like the Soy Moratorium and the Cattle Agreement are:

- 1. Increased deforestation:** In the last four years, there was a significant reduction in Amazon deforestation and federal control and governance improved. However, nowadays, another scenario is emerging. Due to the debate around the Forest Code, deforestation has increased 30% compared to last year. Scientific studies estimate that deforestation will be 47% higher in 2020, if this new law is approved.
- 2. Weakened governance:** The new forest code removes control from federal government. It is an attempt of the rural block to diminish the federal control over properties. The mechanisms that have traditionally worked poorly at a Federal level, will be further diluted by delegating to state control, with larger deadlines for implementation. This substantially reduces the control over the farms, making it more difficult to know ownership details, farm boundaries and land use within the property.
- 3. Crime amnesty:** The proposed amnesty for environmental crimes is a bad example that shows farmers that in the future they are likely to be forgiven for deforesting today. This initiative will encourage the farmers to continue destroying the forest as they will expect another amnesty in the future. If the law passes in its current form, the legislation would forgive farmers who illegally cleared around 30 million hectares of forest until 2008 according to data from a recent study by government research agency, Instituto de Pesquisa Economica Aplicada (IPEA).
- 4. Increased slavery, land grabbing and conflict:** The impact of the forest code in the frontiers of deforestation may be devastating. It is well known that the deforestation is usually accompanied

by land dispute conflicts and these have already started to increase due to the Congress's discussions around the proposed changes to the forest code.

Corporate action required

With these changes to the Forest Code, it will be much more difficult to prove to your customers that your products are free of deforestation. However, this does not remove the burden of responsibility of the market to ensure they are not part of the problem. The following action is essential to minimize the problems identified above and to credibly confirm that your product is deforestation free.

1. Communicate to your suppliers that your commitment to zero deforestation goes beyond legal compliance and you wish to have verifiable reassurance that your suppliers continue to adhere to the soya moratorium and/or cattle agreement even if changes in the legislation legalizes greater deforestation.
2. Ensure measures such as monitoring, audits and other means of ensuring the supply chain remains clean are conducted in a transparent and timely manner.
3. Ensure all supplier farmers are registered. This is the only way to guarantee that who is responsible for new deforestation will be identified and omitted from the market. Besides it diminishes the chance of land conflicts and grabbing and increases the governance in rural properties if ownership and land boundaries are registered.
4. Communicate to the Brazilian President Dilma that your business with Brazil will be compromised by changes to the Forest Code. Urge her to maintain the same level of forest protection and not allow amnesty for past crimes, as your customers demand deforestation free products and you are committed to delivering them. Let her know that increased compliance costs to ensure such products in the marketplace if the law is changed, will impact on your bottom lines.

Proposed changes in the Forest Code in detail and their impacts over the forest protection and the Amazon governance.

CURRENT BRAZILIAN FOREST CODE	PROPOSED CHANGE	IMPACTS OF THE PROPOSED CHANGES
1. Every land owner who illegally deforested has to pay a fine and recover the area.	Fines will be suspended, and recovering areas that were deforested up to 22 July, 2008 can be dismissed. Each State can grant land owners a final amnesty.	<i>The proposed amnesty for environmental crimes will promote more illegal deforestation as farmers will see that illegality, in time, will be pardoned, not punished.</i>
2. Every property, regardless its size, has to keep Legal Reserve.	Small properties (up to 400 hectares, in the Amazon) that have deforested areas do not have to recover their Legal Reserve. On the other hand, those that kept the forest cannot deforest.	<i>Those that have deforested in the past are 'off the hook', those who have abided by the law see no benefit. This may drive those previously law abiding to start deforesting, expecting a future pardon. Large scale landowners might break up their properties</i>

		<i>in order to transform them into “small properties”, and avoid having to recover any legal reserve.</i>
<p>3. Each private property in the Amazon must keep 80 percent of forest conserved as ‘Legal Reserve’. If the State decides, adequate zoning may bring this limit down to 50 percent for recovery purposes. This means that properties that deforested more than the permitted limit would only have to recover around 50 percent of its total area. No more deforestation is allowed. The zoning clearly depends on authorisation of the Federal Council for the Environment – CONAMA.</p>	<p>80 percent of forest should still be conserved as ‘Legal Reserve’. However, it could be reduced to 50 percent, even in forested areas, through a State law. The reduction would be accepted for ‘regularisation’ purposes. It does not forbid more deforestation. There is no need for authorisation by CONAMA and it is not clear who in the Federal Government is responsible for approving the zoning changes.</p>	<p><i>Each individual Brazilian State could approve a local zoning that promotes more legal deforestation, since the reduction from 80 percent to 50 percent could be made even in forested areas. CONAMA loses power, and it is not clear who in the Federal Government must approve the local zoning. There will be loss of centralized control over land use making monitoring, legal compliance and governance very difficult, if not impossible.</i></p>
<p>4. The limits of preservation and the exceptions accepted in the Forest Code are defined by Federal legislation.</p>	<p>Each individual State could define new areas that could be deforested or consolidated as agriculture or cattle ranching, with no need for recovering.</p>	<p><i>Besides the reduction of protection and the amnesty in this specific proposal, giving power to States to define this kind of land use will create confusion and allow changes in forest protection to become bargaining chips in local political negotiations, .</i></p>

References

ⁱ The “Legal Amazon” is the region within the borders of all seven states of the North Region (Acre, Amapá, Amazonas, Pará, Rondônia, Roraima and Tocantins), as well as Mato Grosso state in the Center-West Region and most of Maranhão state in the Northeast Region.

ⁱⁱ SPAROVEK, Gerd (University of São Paulo- Brazil); BARRETTO, Alberto (University of São Paulo- Brazil); KLUG, Israel (consultant); BERNDES, Göran (University of Chalmers - Sweden). Their study was not published yet, but they made available some of the results at http://www.greenpeace.org/brasil/Global/brasil/report/2010/5/HandOut_SOS_030510_gs.pdf