10 Lessons Learned from a Dry-Run of EUDR-Compliant Soy from Brazil

OCTOBER 2024

olab Food & Forests Strategy Consulting

Government of the Netherlands

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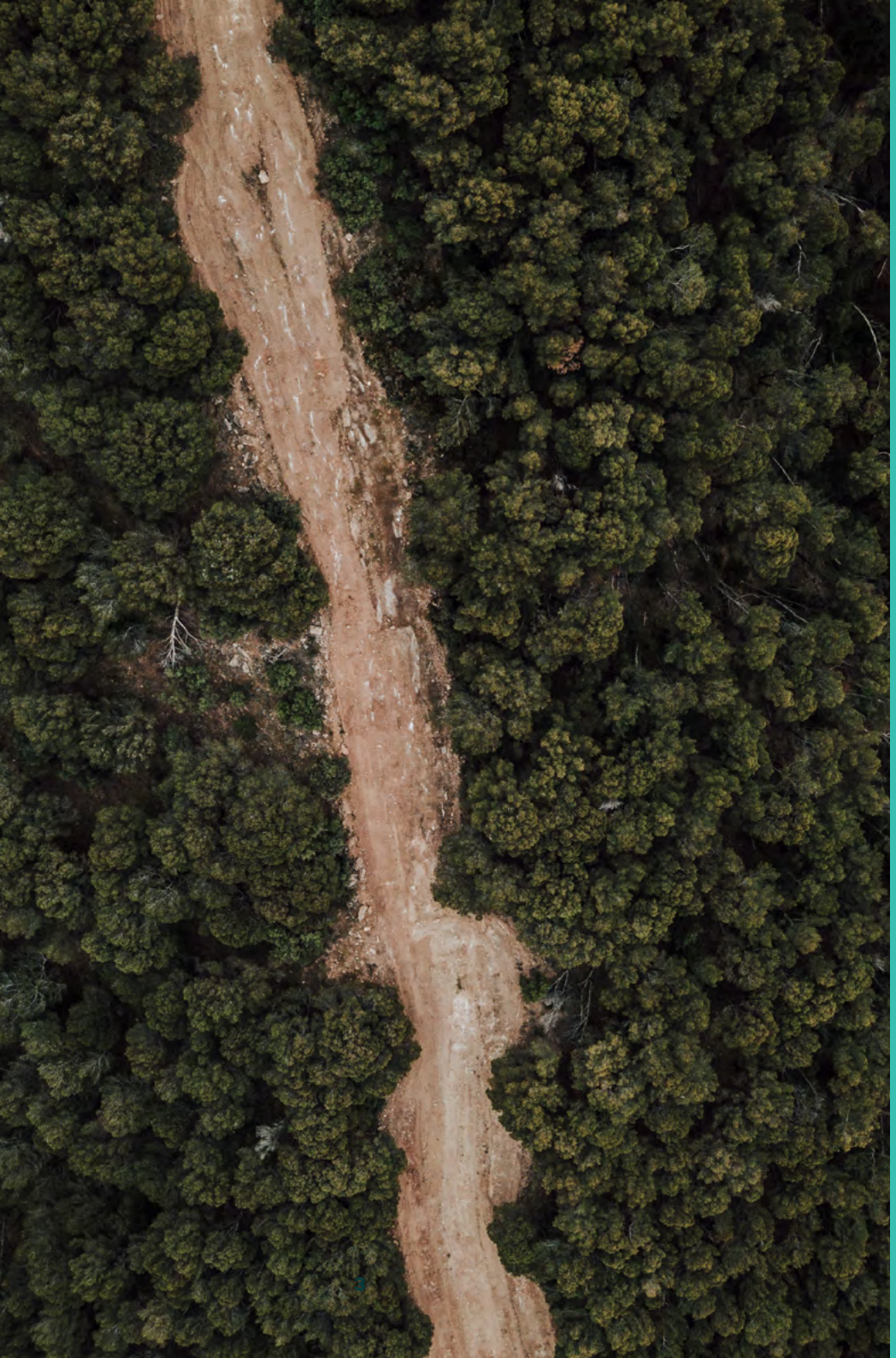
Olab is a Brazilian strategy consultancy, founded in 2011, that is specialized in food systems, forests and land use. We facilitate collective action processes and deliver research that nurtures regenerative landscapes in Latin America.



Executive Summary
10 Lessons Learned from a Dry-Run of EUDR-compliant Soy from Brazil

A shipment of soy, that replicates the conditions of an EUDR-compliant batch, was exported from Brazil to Europe in July 2024 by an international Trader. The purpose of this 'Dry-Run', that involved a Trader, a consultancy and the relevant Competent Authority from the Netherlands, was to test the feasibility of implementation of the new legislation, and identify the challenges in compliance that still needed to be addressed. The 10 lessons that were learned from this process serve to support soy supply chain partners in their preparation for achieving full compliance with EUDR within the stipulated time-frame.

At the time of the shipment, the Trader submitted the necessary documentation to demonstrate compliance with the new Regulation. The documentation was reviewed by an external third party (Olab), and the results were presented, on two separate occasions, to the national Competent Authority responsible for receiving the shipment. While the vast majority of requisites under the EUDR were met by the Trader, there remained some outstanding issues, from which these Lessons Learned are drawn.

LESSON 1:

Geolocation data to all plots of land from which the relevant product was sourced must be provided, including when intermediaries are involved

Finding	Challenge	Lessons	Ways Forward
The soy in the Dry-Run was sourced from an EUDR-compliant aggregator with a segregated supply chain. Initially, it was not clear if documentation from all farms that supplied the shipment needed to be provided. The Competent Authority subsequently made it clear that **it would be necessary to include data from all plots of land of origin.**	An **immense amount of work** is required in **providing data** from all plots of land and in subsequently **assessing that information**.	**Geolocation data to** all **plots of land from which the relevant product was sourced** must **be provided**, including when intermediaries are involved. Operators may choose to provide data from a wider universe of suppliers to a particular aggregation point (known as '**Declaration in Excess**').	For the time being, relevant information should be provided for **all plots of land** from which the commodity is sourced. This **can include the universe of suppliers to any particular aggregation point**.

LESSON 2:

Geolocation plots from supplier farms that fill 200% of the silo capacity must be provided on a rolling basis throughout the year

Finding	Challenge	Lessons	Ways Forward
Silos serve as aggregation points, where soy is stored throughout the year, before being sold to traders and third parties. According to the Competent Authority, the operators that source from these silos **need to declare, on a rolling basis, the geolocations of plots of land that fill 200% of the silo capacity**.	To require the provision of geolocations for plots throughout the year may be **inefficient** and **may not reflect the way the supply chain operates**, with some periods of high stock, and others much lower. It means collecting data on a universe of suppliers that may be much larger than the amounts shipped to the EU.	The Competent Authority's position was unequivocal: **geolocation plots from supplier farms that fill 200% of the silo capacity must be provided on a rolling basis throughout the year.**	In the **short-term**, operators will need to provide the required data that covers **200% silo capacity**. However, there are concerns that such a solution may not be practicable: i) if such data is provided at the start of the harvest, **would the Operator be required to provide polygons from the previous season?** ii) **does this rule apply to every node in the chain**, or just the beginning?

LESSON 3:

The timing of a deforestation incident needs to be taken into account to determine whether a shipment is compliant; its validity can be verified using complementary tools

Finding	Challenge	Lessons	Ways Forward
Official data that confirms a change in land-use may only become publicly **available more than 12 months after a deforestation incident.** In addition, the status of a plot of land **may change from compliant to non-compliant after the soy has entered the supply chain**, but before the volumes in question reach the EU.	What happens **when a deforestation event occurs after soy has entered the supply chain** but before it has reached its destination in the EU?	In a case where the status of the plot of land changes before the volumes in question arrive in the EU, this shipment should still be considered to be compliant, since it takes up to two years to convert forest to soy production. However, **the following year, the plot of land in question would need to be eliminated from a compliant supply chain.**	Companies will need to have **strong risk management processes**, whereby if a negligible risk comes to light, they can cross-check its validity: records of date of purchase can, for example, address the time-lag risk. **Complementing official data** on land-use from INPE with other sources that have shorter lag-times can help to minimize this risk.

LESSON 4:

Where there is found to be suspected deforestation on a plot that is less than 6.25 hectares, further investigation should be carried out

Finding	Challenge	Lessons	Ways Forward
Under EUDR, the minimum area of land be considered for an incident of deforestation is **0.5 hectares**, a plot of approximately 70m x 70m. This is a **much smaller sample area than those used by existing schemes in Brazil**, including **the** Amazon Soy Moratorium (25 hectares), and PRODES (6.25).	The small scale of areas involved in measuring deforestation may give rise to a number of **false positives or data 'bumps'** upon assessment: areas that are labelled as cleared by land-use tools, but upon review or inspection, are found to be intact. Given the large numbers of false alerts in official data, **when is an Operator expected to provide high quality field verification?**	Where there is found to be suspected deforestation on a plot that is less than 6.25 hectares (the minimum unit area of PRODES), **operators and their supply chain partners are expected to carry out further investigations** up to a unit size of 0.5 hectares, in order to rule out any suspicion of deforestation.	Operators and traders will need to demonstrate the use of **complementary tools** to verify the validity of a deforestation alert, such as GFW's GLAD system, which has a resolution of approximately 30m x 30m. However, the circumstances under which a small deforestation alert would be expected to be field verified are not clear.

LESSON 5:

Traders should implement measures to minimize the risk of laundering

Finding	Challenge	Lessons	Ways Forward
Existing evidence suggests that the majority of soy producers in Brazil are committed to carrying out best businesses practices. There is a risk that **a small number of growers may act in bad faith** and seek to sell produce from deforested areas through properties that are fully compliant.	**How to minimize the risks of 'soy laundering' within the supply chain?** This is a question that traders have been putting to themselves ever since the launch of the Amazon Soy Moratorium in 2006.	A residual level of 'laundering' **may be unavoidable** in such a large supply chain, but **traders should implement measures to minimize such risks.**	Traders **already have a number of mechanisms in place to minimize the risk of laundering**, including volume reconciliation, and checking family ties between farms. Companies will need **to ensure constant progress** on measures to mitigate such risk. The Competent Authority proposed to include **checks during harvest and transportation, though costs may be prohibitive.**

LESSON 6:

Evidence of compliance with tax and anti-corruption requirements must be provided, even though some databases only include cases of non-compliance

Finding	Challenge	Lessons	Ways Forward
Under Article 9, EUDR expects operators to **provide verifiable information** that the commodities have been produced in accordance with the relevant **legislation** of the country of production on **tax, anti-corruption, trade and customs regulations.**	Showing evidence of EUDR compliance on tax and anti-corruption is **not a straightforward task**. This is due, in part, to the composition of some databases in Brazil, which list only those individuals or institutions that have been registered as non-compliant; as well as to issues around data protection. For tax compliance issues, there is no such blacklist.	**Evidence of compliance with tax and anti-corruption requirements must be provided.**	**It is unclear how operators can do more than show evidence that their suppliers have not been blacklisted** for tax or anti-corruption infringements. At a minimum, it may be advisable to provide a file with Certificates of Debts Related to Federal Tax Credits and the Union's Outstanding Debt (CND). **Maranhão State's SIFMA system could serve as a model** for other states to check for tax evasion.

LESSON 7:

The EU must provide more clarity on the definition of indigenous lands, including those lands that are not yet formally recognized under local laws

Finding	Challenge	Lessons	Ways Forward
In the Dry-Run, the Trader provided documentation to show that none of the soy had been sourced from ratified indigenous lands, but **what about lands that have requested ratification but not yet been awarded it?**	Of the nearly 800 indigenous lands in Brazil, around a third have not yet been ratified. **Should trading companies include, in their reviews, those lands that are still in the process of requesting recognition?**	The Competent Authority's view was that **all indigenous lands that were in the process of requesting recognition should be considered** under Article 2, 40h of the Regulation, irrespective of whether that recognition had been ratified.	Since the UN Declaration on the Rights of Indigenous Peoples, ratified by Brazil, does not make a distinction between those lands that are ratified or not, it is **recommended to include all indigenous lands**, irrespective of where they are at in the process of requesting or ratifying their lands, **when it comes to risk assessments, and requesting free, prior and informed consent.**

LESSON 8:

Traders should not concern themselves with a definition of 'negligible risk', rather with ensuring they have systems in place to manage risk

Finding	Challenge	Lessons	Ways Forward
EUDR states that there is negligible risk when commodities or products show no cause for concern as being not in compliance. **Traders asked if a quantifiable definition of negligible risk might be possible.**	Negligible risk is not defined explicitly under EUDR; traders are concerned that the lack of any quantifiable definition **could lead to different interpretations or even a misinterpretation of the term**.	Traders should not concern themselves with a definition of 'negligible risk', rather with **ensuring they have robust systems in place to manage risk**. A robust system is one that is capable of: (1) giving insight on the chain of custody; (2) providing deforestation-free evidence; (3) identifying potential errors.	Traders should focus efforts on **establishing robust internal risk management systems**: where a negligible risk comes to light, **is a reasonable system in place in order to deliver a response?**

LESSON 9:

Operators and traders should be proactive in establishing mechanisms for receiving Duly Reasonable Claims

Finding	Challenge	Lessons	Ways Forward
Although traders are expected to have procedures in place for consultation and cooperation with indigenous peoples, **no standardized process for establishing grievance procedures has been proposed under the legislation.**	The lack of more detailed guidance on what is required for establishing grievance mechanisms has led to a degree of **uncertainty about the scale and scope expected of such mechanisms.**	Operators and traders **should be proactive in establishing robust mechanisms for receiving Duly Reasonable Claims.**	The Trader has requested that the EU provide benchmarks on establishing and implementing mechanisms for receiving Duly Reasonable Claims. Given that this may not be forthcoming before 2025, the **Competent Authority suggested consulting IFC or certification bodies as a reference.**

LESSON 10:

The establishment of a Management System may not be enough to demonstrate compliance, as the EUDR requires a continuous delivery of documents, or 'Declaration in Excess'

Finding	Challenge	Lessons	Ways Forward
EUDR requires operators to have in place a framework or procedures and measures to ensure compliance, but places an emphasis on the provision of all documentation that must accompany each shipment, rather than on management systems. The **existence of a robust system is not, in and of itself, a sufficient demonstration of compliance.**	The main challenge with assessing on a case-by-case basis, rather than assessing the overall management system is the **workload**: a large amount and variety of documents must be provided, uploaded and assessed with every shipment, no matter how small.	**EUDR requires a continuous delivery of documents**. However where an operator declares a larger number of suppliers than the actual amount that account for a particular shipment, they **may subsequently be able to use the same data for later shipments from the same aggregator within that single harvest period.**	EUDR requirements must be followed assiduously, with documentation provided from all supplier farms. Providing data from a wider universe of suppliers is possible ('**Declaration in Excess**'), and may reduce the workload over time. In the **medium-term**, traders believe that a more effective approach would be to **automatize processes** and registering suppliers through an ERP.

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Preface

With the EUDR the European Union has taken a next step in ensuring that consumption in Europe does not contribute to deforestation, wherever in the world the production takes place. This is an important step towards sustainable supply chains and a global economy that flourishes within the ecological limits of our planet.

The regulation creates additional due diligence requirements for traders in commodities and through them for the whole supply chain. Brazil has a lot of experience in traceability and transparency and is well positioned to comply to the new rules. But even for Brazil, implementation of the new due diligence procedures is a demanding task.

The Netherlands has a long history of supporting traceability initiatives for global trade commodities like the Initiative on Sustainable Trade (IDH), the Round Table on Sustainable Soy (RTRS) and the Amsterdam Declaration Partnership (ADP). With our role as a major importer of commodities we have a special obligation to promote sustainable supply chains but also ensure the operational feasibility of the procedures.

In this dry run on soy, we have brought together the expertise in Brazil and in the Netherlands from public and private parties to look at the practical aspects of implementation of the EUDR. What are the key challenges for operators and what are solutions that could smooth the process towards December 2024 when the regulation comes into force? By reviewing the challenges, the Netherlands hopes to ensure the smooth continuation of trade of sustainably produced commodities from Brazil.

We are grateful for the partners involved in this dry run and look forward to the discussions of the findings.

ANDRÉ MAX ADRIAAN DRIESSEN
Ambassador of the Kingdom
of the Netherlands to Brazil

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Chapter 1: Introduction to the Dry-Run

1.1 About the Dry-Run

The EU's Deforestation Regulation (EUDR) is the most important piece of legislation to impact on land use in Brazil since the 2012 revision of the Forest Code.

Although the EUDR itself has been a long time in the making, its introduction in June 2023 has led to a scramble by traders, operators, growers and other partners first to understand it, then to ensure that they will be ready to put it into practice effectively as of 30th December 2024, from which date the key articles will apply.

In early 2024, the Olab team was invited by the Netherlands Embassy in Brazil to support the delivery of a Dry-Run shipment of EUDR-compliant Brazilian soy, from which lessons could be drawn about compliance that would be relevant to all stakeholders involved in commodity exports and efforts to address deforestation.

In partnership with an international trading company[1] (referred throughout this report as the Trader) and the Netherlands Food and Consumer Product Safety Authority, NVWA (referred to as the Competent Authority), a shipment of soy was exported to the port of Amsterdam, arriving in July 2024, under the conditions of EUDR compliance, and the requisite paperwork was delivered to Olab for analysis.

The results of this analysis were then presented to the Competent Authority in two separate meetings, with a view to identifying best practices, gaps and learning points with regard to implementation of the legislation. Where outstanding issues remained, specific 'solution pathways' were proposed for identifying where and how answers could be found.

Brazil is the EU's largest import origin, representing some 9% (€13.4 billion) of all agricultural imports[2] to the block, and at the same time, Brazil accounts for around half of all global soy exports. With its more than 236,000 production facilities[3], there is also a level of complexity and sophistication in the supply chain that make it a particularly interesting and relevant case study.

It is hoped and expected, then, that the successful implementation of EUDR for Brazilian soy can serve as a reference for other countries and commodities that are grappling with implementation of the legislation.

1.2 The Soy Chain of Custody

The chain of custody for soy exported in this Dry-Run has a complex structure, involving a diverse number of stakeholders and documents before reaching the port. A summarized version of the chain of custody in Brazil is presented below. This part of the chain – known as upstream – is overseen by the trading companies, who then sell to operators in Europe. In many cases, the trader and the operator are part of the same global company.

▶ **FARMS** - The chain of custody starts at the farms, which are all registered under the CAR[4].

▶ **AGGREGATORS** - The farms send the soy to an aggregator for storage. Aggregators include silo owners, brokers, cooperatives and cereal factories. In the case of the Dry-Run, the aggregator had a segregated warehouse dedicated to EUDR-compliant soy. The soy from the farms arrived at the facility on a truck that carries an invoice, containing the CAR number of the farm. The number was checked on the system, and if the CAR meets EUDR requisites, an ordinance record is issued stating that the soybeans are suitable for export. After that, a contract between the aggregator and the farmer is signed.

▶ **TRADER** – under EUDR, the trader is defined as 'any natural or legal person in the supply chain other than the operator who, in the course of a commercial activity, makes available on the Union market relevant commodities and products'. In the Dry-Run itself, the Trader was responsible for purchasing the soy from the Aggregator and providing the accompanying paperwork to demonstrate compliance. This was possible in this case because the Trader and the Operator form part of the same company.

▶ **TRANSPORTATION COMPANIES** - The soy then travels from the aggregator by means of a transportation company. The grains leave the facility with a delivery invoice for batch formation and a transportation invoice, needed for the truck to transit to the company. The invoice is carried and delivered to the port.

▶ **PORT** - At the port, the Trader is already responsible for the volumes of soy where it can segregate storage between volumes that are fully EUDR-compliant and those that are not. To regularize the export, the port issues a DU-E, a document that contains all export information, referencing the origin invoices that made up the export batch.

▶ **OPERATOR** – in the context of EUDR, an operator is deemed to be 'any entity which, in the course of a commercial activity, places relevant commodities and products on the EU market or exports them from the EU market. It is the operator that holds the final legal responsibility for compliance under EUDR.

1.3 About the EU's Deforestation Regulation

The EUDR came into force in June 2023 and is set to be put into practice from January 2025. It is part of a broader group of environmental regulations in the EU that include the European Green Deal and the EU Biodiversity Strategy[5]. The fundamental goal of the regulation is to prohibit the circulation of a specific set of commodities in the European Union Market, in case they violate the following criteria, as presented in Article 3 of the Regulation:

- To be deforestation-free (defined as commodities not being produced on land that has not been subject to deforestation after December 31, 2020).
- To have been produced in accordance with the relevant legislation of the producing country.
- To be covered by a due diligence statement.

In this Dry-Run, the analysis of the regulation highlighted three key articles, that clarify the EUDR's key requirements in terms of the materials that operators should provide to the competent authorities. These articles are:

- **ARTICLE 9: INFORMATION REQUIREMENTS**, which lists all data and documents that operators should present, including: (a) technical information about the products that are being sent and the properties that produced them; (b) evidence that the products are deforestation-free; (c) evidence that the commodities were produced in accordance with the national legislation.
- **ARTICLE 10: RISK ASSESSMENT**, requiring from the Operator an evaluation of the risk that the commodities sent to the EU market are non-compliant. The risk assessment covers both a broader scale (analysis of the country of production) and a more specific scale (analysis of the region of production).
- **ARTICLE 11: RISK MITIGATION**. In case the risk assessment results in non-negligible concerns of non-compliance, the Operator has to present risk mitigation procedures and measures to achieve at least a negligible risk.

The commodities addressed in the EUDR's scope are palm oil, soy, wood, cocoa, coffee, cattle and rubber, as well as products that are derived from the commodities, including leather, furniture and chocolate. It is estimated that, together, these products contribute to more than 98% of EU-driven deforestation.

Enforcement of EUDR will be implemented according to the level of risk of each country and company. When the country of origin is classified with a high risk of deforestation, the competent authorities will analyze 9% of the due diligence statements and documents connected to the imported products. Those percentages fall to 3% in terms of standard risk countries, and to 1% for low-risk countries, although some partners are still waiting for clarification from the Commission on these parameters.

Even though the EUDR's potential impacts on deforestation are still uncertain, given it is a regional scheme[6], the effects on the relevant commodities' markets are significant. The EUDR introduces new procedures to export such products, with demands that will require there being in place new documentation and specific governance procedures. Therefore, readiness to comply with the new regulation is set to be a potential competitive advantage in those markets.

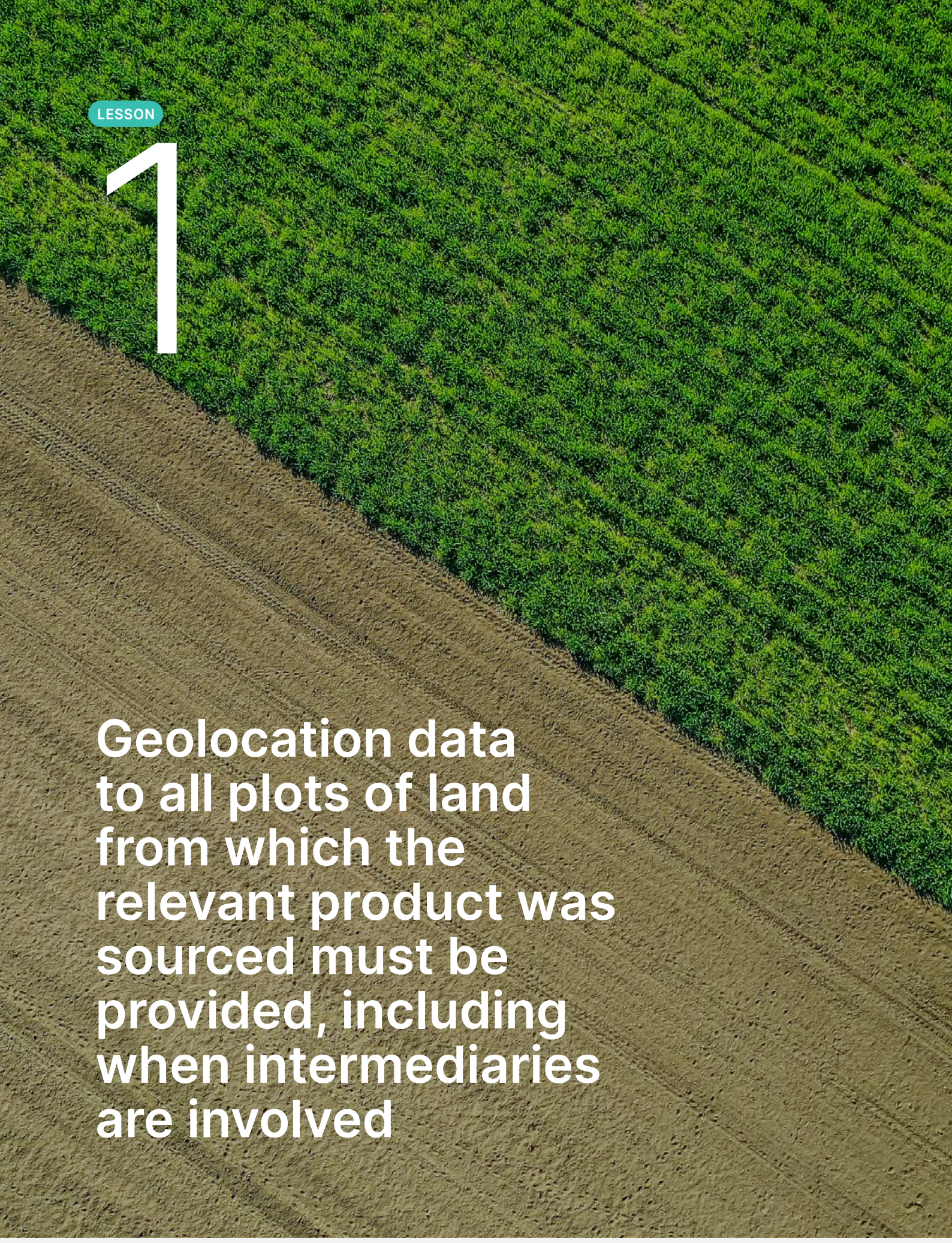
In such a scenario, Brazil is uniquely positioned to become a global reference for EUDR compliance and, consequently, for the responsible, transparent, and ethical production of agricultural commodities. The country has robust national public data sets and documents, that are already well positioned to provide the information required under the EUDR[7]; and the agricultural sector is well organized, for the most part modern, and has, for some time, begun the process of ensuring is preparedness for compliance.

Chapter 2: Key Findings

The EUDR Dry-Run included several important exchanges between the Competent Authority and the Trader, particularly where different understandings and interpretations existed.

This chapter sets out the ten most important lessons learned from these exchanges and focusses particularly on those issues where there was greatest uncertainty. In some cases, it has been possible to resolve the uncertainties; in others, further investigation may be required, or the EU may need to provide additional guidance.

The results presented here are intended to support other stakeholders towards achieving compliance.



LESSON

1

Geolocation data to all plots of land from which the relevant product was sourced must be provided, including when intermediaries are involved

Given the sheer scale of soy production in Brazil, and the range of farm sizes, the exported product is usually sourced from a variety of growers and is aggregated at various stages in the supply chain. The Trader was able to provide geolocation data to all supplier plots of land, but the sheer quantity and complexity of documentation that needed to be provided was notable, just for one single shipment.

It could be argued that a more practical approach would be for the Trader to source from aggregation points – including cooperatives, brokers and silo owners – who in turn ensure the compliance of their suppliers, by checking their names against existing blacklists for issues including human and labour rights violations. This practice is currently in place in Brazil and is recommended within the Abiove guidelines[8].

However, the details of the EU's regulation do require that evidence of compliance across a series of social and environmental prerequisites must be provided to plot of land as per the below.

CHALLENGE:

The soy in the shipment was purchased from an aggregator, which brings together in storage the production from a large number or farms. The aggregator itself has systems in place to ensure compliance with EUDR (analysis of supplier documentation, farmer declarations, etc).

For this reason, the Trader did not initially provide documentation from all farms that supplied the shipment, however the Competent Authority, upon review, explained that it would be necessary to include data from all plots of land of origin.

EUDR REQUIREMENTS:

ART. 9 (1D). Geolocation of all plots of land where the relevant commodities have been produced and evidence that the products are deforestation-free.

ART. 9 (1H). Adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production.

ART. 10 (2C). Presence of indigenous peoples.

ART. 10 (2D). Consultation and cooperation in good faith with indigenous peoples.

IMPORTANT DEFINITIONS

ART. 2 (40). 'Relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production in terms of: (a) land use rights; (b) environmental protection; (c) forest-related rules; (d) third parties' rights; (e) labor rights; (f) human rights; (g) FPIC; (h) tax and anti-corruption.

The main challenge here is the immense amount of work that is required in providing data from all plots of land and in subsequently assessing that information.

LESSON & WAY FORWARD:

To show evidence of compliance, the operators should provide information with the lowest level of aggregation possible, which in this case means all farms that produced the exported commodities. The legislation requires the provision of polygon geolocation in a specific GeoJSON format.

Additionally, a key recommendation for operators is to include CAR codes for each plot of land, as an indirect way to provide checks for the geolocation of the plots and to verify compliance with national legislation on issues including human rights.

The EU has made clear that, if they choose to do so, operators may provide geolocation data from a larger universe of suppliers to a specific aggregation point. This practice, which was addressed in the EU's FAQ document published in December 2023[9], is known as 'Declaration in Excess', to wit: An operator can, in specific circumstances, provide geolocation coordinates for a number of plots of land higher than those where the commodities were produced.

The advantage of a 'Declaration in Excess' approach is that if an Operator sources from the same aggregation point later on during the same harvest, the same data can be presented to demonstrate compliance. It also avoids the challenge of knowing exactly which farm supplied each shipment, provided that all farms that supply a particular aggregation point are shown to be EUDR-compliant, and segregated supply chains are in operation.

There are two particular downsides to such an approach: the first is the initial time and cost involved in gathering data from a larger number of farms than those that supplied a particular shipment; in theory this cost is reduced when time is saved for subsequent shipments. Secondly, the failure to comply of just one supplier within a much larger universe of suppliers means that this larger group of suppliers is then deemed non-compliant. In other words, the larger the universe of suppliers, the greater the risk of contamination, and its consequences, as the FAQ further elaborates:

If one plot of land 'geolocalised' in the due diligence statement is not compliant, the entire set of plots of land 'geolocalised' is non-compliant. In these cases the operator declaring plots of land in excess has also to carry out full due diligence in compliance with articles 9, 10 and 11, for ALL plots of land declared.

Finally, it is assumed that it will be considered satisfactory to update the wider list of suppliers on an annual basis, before each new harvest. Changes to a supplier base for soy are relatively small from one year to the next; however this is not the case for other commodities, such as cocoa, where suppliers can change significantly from one harvest to the next.

LESSON

2

Geolocation plots from supplier farms that fill 200% of the silo capacity must be provided on a rolling basis throughout the year

In Brazil, silo owners, brokers, cooperatives and cereal factories will receive soy during a three- to four-month period after harvest, which they will store in silos. They will then sell and distribute the soy throughout the year, as they meet global demand. This means that soy that is sold in month 12 of the annual cycle could have been produced in month 1. After month 12, producers follow the practice of emptying their silos, a practice known as 'cut-off'[10], in order to avoid mixing soybeans from different harvests.

Silos tend to be at full capacity during the two or three months that immediately follow the harvest; they then progressively empty their stock through subsequent months.

Since soy in the storage units can be mixed from multiple sources, the Competent Authority reported that the Operator would need to declare, on a rolling basis, the geolocations of plots of land that fill 200% of the silo capacity.

CHALLENGE:

Under the EUDR, the Trader proposed an approach known as "flow-based". This proposal is based on the premise that all of the soy that enters the EUDR-destined silo has been shown to be compliant. Therefore, it would not be necessary to separate the soy in lots or provide documentation of farms that would fill 200% of the silo capacity.

The flow-based approach is a way of connecting polygons to vessel through continuous flow supply

EUDR REQUIREMENTS:

Under the EUDR, the operators that source from storage silos need to declare, on a rolling basis, the geolocations of plots of land that fill 200% of the silo capacity. This requirement was included in the second FAQ document published by the EU in October 2024.

chains, which do not separate the soy into batches or lots. This process would also consider the "cut-off" mechanism, so that all soy harvested in a referred year would need to be shipped from the silo by the end of it.

The Trader positioned itself in favor of the alternative "flow-based approach", noting that:

- The 200% approach does not solve the issue of 'mixing' between compliant and non-compliant soy. A flow-based approach ensures segregation of the supply chain, one of the main requirements under EUDR, and ensures that all suppliers to a given aggregation point are compliant during that particular harvest;

- To require the provision throughout the year of geolocations for double the number of plots than the capacity of the storage unit implies an even larger declaration in excess, and thereby reduces usefulness to the EU;

- The 200% approach does not reflect the reality of the chain of custody of soy, particularly since there can sometimes be several silos involved in any single supply chain: the consequence, again is an even larger declaration in excess, generating additional information than what is really required.

Additionally, two main questions remained regarding the feasibility of the 200% approach:

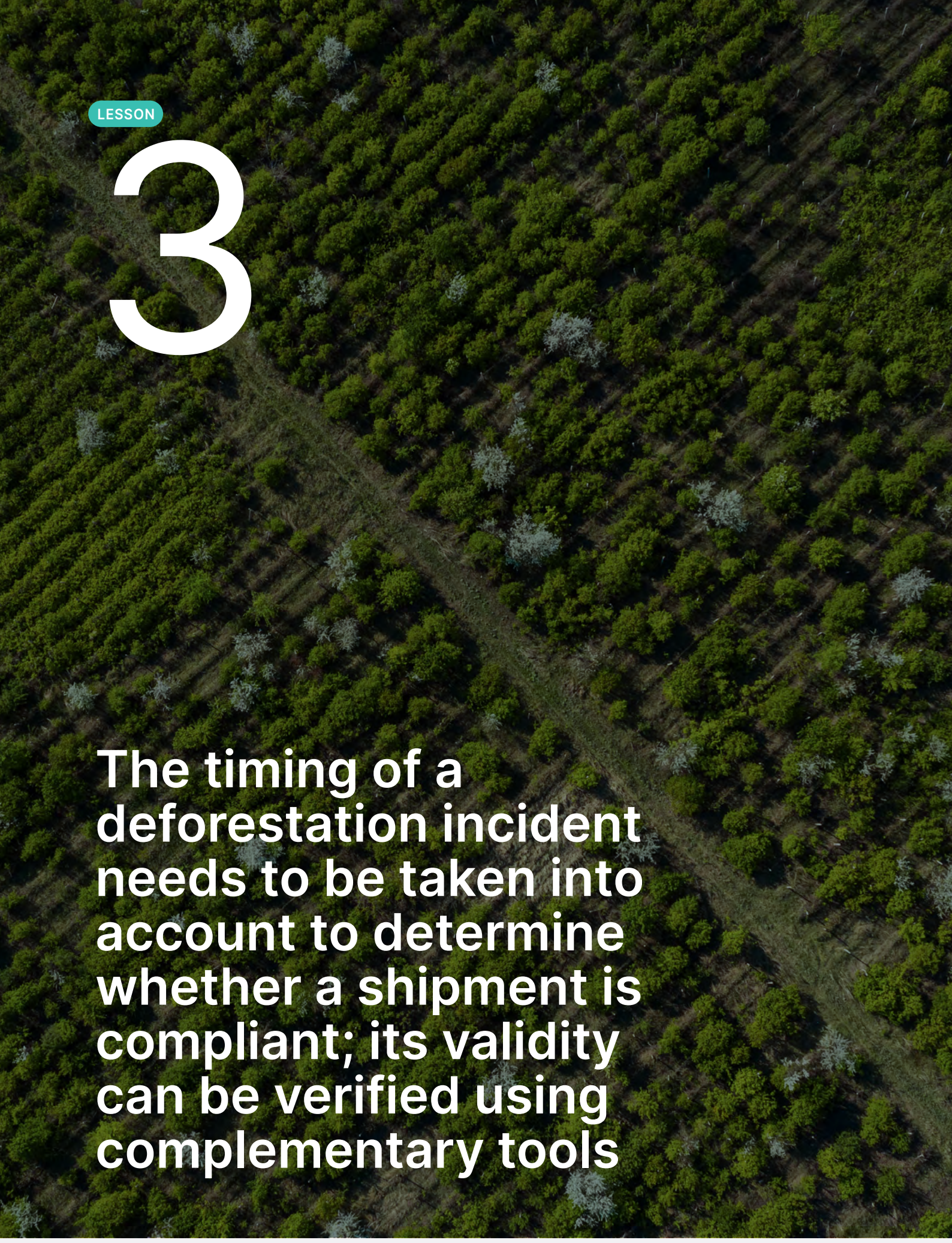
- If the data is provided at the start of the harvest, would the Operator be required to provide polygons from the previous season?

- Does the 200% rule apply to every node in the chain, or just the beginning?

LESSON & WAY FORWARD:

The FAQ document published by the EU in October 2024 made clear that where goods are mixed in a silo, then the operator should declare all production places of the goods that entered the silo since it was last empty.

If, however, the silos are not regularly emptied (for example, in cases where producers adopt a yearly cut-off practice), the operator should declare the production places of all goods that entered the silo during a time period that ensures that commodities from unknown origins are not mixed (once again, if a yearly cut-off practice is adopted, that period would be one year). According to the EUDR, this could be safely done by declaring the geolocation of production places of up to a minimum of 200% of the silo capacity, provided that the silo works in first-in-first-out system. There remains some uncertainty about the effectiveness of such a system to avoid mixing.



LESSON

3

The timing of a deforestation incident needs to be taken into account to determine whether a shipment is compliant; its validity can be verified using complementary tools

Official data on land-use and deforestation in Brazil is provided by the National Institute for Space Research (INPE) through the PRODES program. The data covers the period 1st August to 31st July and is made public some months after the end of the annual cycle in July.

Based on the requirements set out in Article 9 of the EUDR, in order to be compliant, operators must provide evidence that all plots of land that produced the exported commodities have not been subject to deforestation after the reference date of 31 December 2020.

The first 'time-lag challenge', then, relates to a deforestation event that may have occurred in the past, but is only reported some 12 or more months after the incident.

The second such timing challenge relates to a scenario in which the status of a plot of land changes from compliant to non-compliant after the soy has entered the supply chain, but before the volumes in question reach the EU. This is most likely to occur when the soy is kept in storage.

CHALLENGE:

In Brazil, the PRODES[11] database is most commonly used to provide evidence of land-use changes, however there can be a lag of up to one year between the time when the deforestation occurred, and the moment when the data is released to the public. Concerns were raised that, during this interim period before the data is released, a deforestation event may occur beyond the Operator's knowledge, given the lack of publicly available information.

If an audit or a third party were to present a substantiated claim that deforestation has been identified in a company's supply chain, but was not recognized by the

EUDR REQUIREMENTS:

ART. 9 (1G). Adequately conclusive and verifiable information that the relevant products are deforestation-free.

IMPORTANT DEFINITIONS:

ART. 2 (13). 'Deforestation-free' means:

(A) 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.

company, the company will need to ensure that has the mechanisms in place to investigate and provide evidence against such a claim.

Secondly, what happens when a deforestation event occurs after soy has entered the supply chain but before it has reached its destination in the EU?

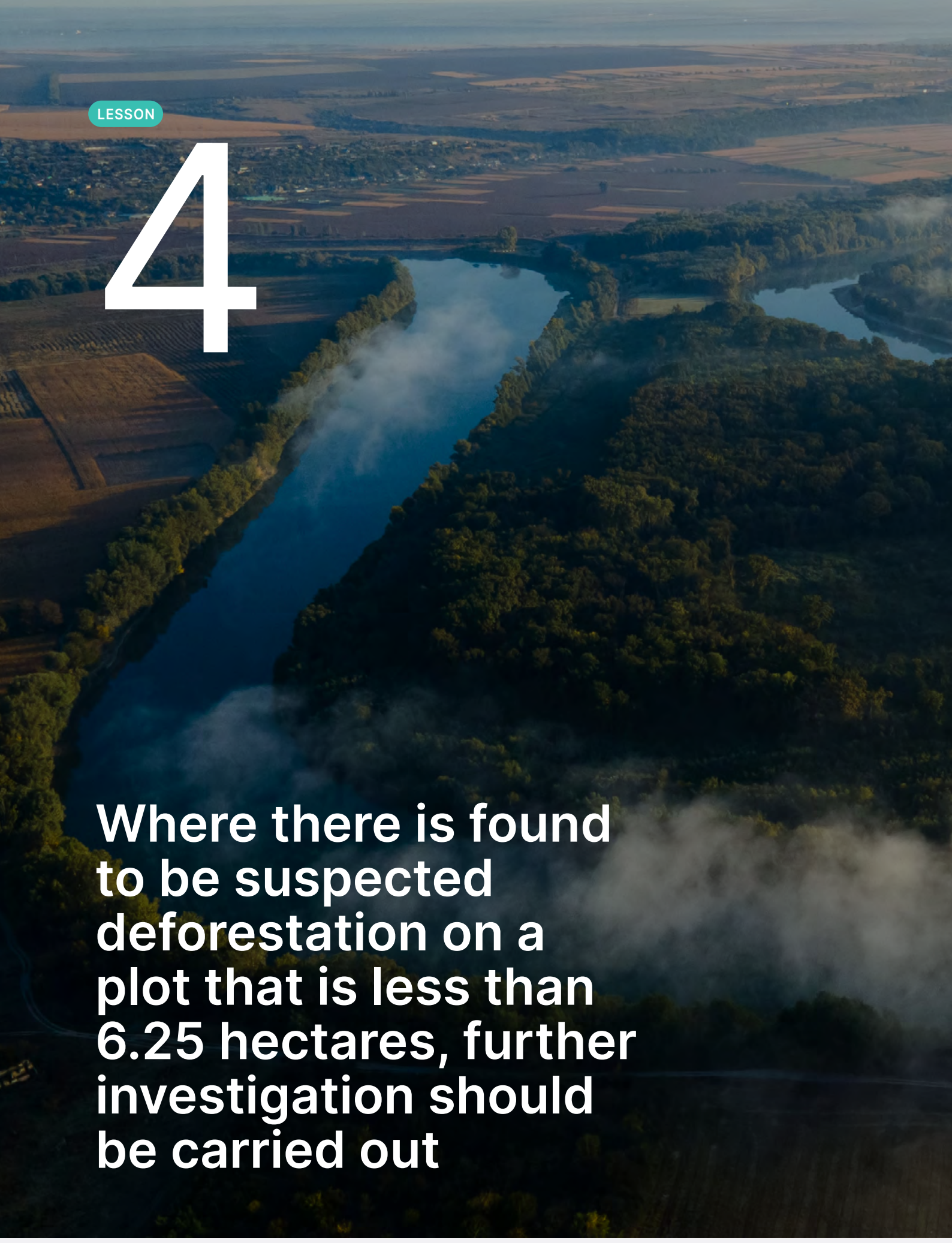
LESSON & WAY FORWARD:

The EUDR is not explicit about the risk that publicly-available data may not be timely, however the Competent Authority confirmed that they were not concerned that the time-lag would present a material risk to compliance. Their reasoning is that if the land was covered in forest one year ago, it would simply not be possible to harvest soy from the same land within a year: the time required to clear forested land, plant and then harvest soy is more than one year[12].

In a case where the status of the plot of land changes before the volumes in question arrive in the EU, this shipment should still be considered to be compliant, since it takes up to two years to convert forest to soy production. However, the following year, the plot of land in question would need to be eliminated from a compliant supply chain.

If a third party were to make a substantiated claim against a company for a deforestation incident that was not identified in the company's declaration – either because of a time-lag or for any other reason – the company would need to have mechanisms in place to investigate: records for date of purchase, for example, could be used to demonstrate that the soy was purchased before the deforestation incident occurred.

For the operators, it is important that the relevant National Authorities are fully aware of this time-lag risk: they want to avoid a situation in which a shipment would be considered non-compliant, even though the deforestation event occurred after the soy entered the supply chain. Complementing official data on land-use from INPE with other sources, such GFW's Glad System, which has a much shorter lag-time and can help to minimize this risk.



LESSON

4

Where there is found to be suspected deforestation on a plot that is less than 6.25 hectares, further investigation should be carried out

Under EUDR, the minimum area of land be considered for an incident of deforestation is 0.5 hectares, a plot of approximately 70m x 70m. This is a much smaller sample area than those used by existing schemes in Brazil, including the Amazon Soy Moratorium, under which the threshold – at 25 hectares – is 50 times larger.

It is also smaller than the sample unit used by INPE to present official government data via PRODES, at 6.25 hectares.

There are alternative sources available. GFW's Tree Cover Loss[13] tool, for example, works with a resolution of approximately 30m x 30m.

CHALLENGE:

In Brazil, under the Soy Moratorium[14], a model already exists for assessing whether deforestation has occurred and establishes a cumulative threshold of 25 hectares for any kind of deforestation in the area (not only that caused by agriculture). The official PRODES data uses a unit sample of 6.25 hectares.

During the Dry-Run, concerns were expressed by the Trader that analysis at the level of detail of 0.5 hectares (approximately 70m x 70m), as required under the EUDR's definition of a forest, could lead to a significant number of 'false positive' results of deforestation, which are commonly found in reporting, alongside data 'bumps'.

Given that a model is already used in Brazil, at the scale of 6.25 hectares, there is a risk that the requirement to assess at a greater level of granularity, could have two undesirable outcomes: the first is the increased costs involved in carrying out assessments using other mechanisms.

EUDR REQUIREMENTS:

ART. 9 (1G). Adequately conclusive and verifiable information that the relevant products are deforestation-free.

IMPORTANT DEFINITIONS:

ART. 2 (3). 'Deforestation' means the conversion of forest to agricultural use, whether human-induced or not.

ART. 2 (4). 'Forest' means 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.

The second is that Brazil already possesses a robust, well-recognized, national system for identifying forest loss, namely PRODES; a push to use mechanisms that are not officially recognized by the government may undermine the existing system and move such data out of the public sector.

LESSON & WAY FORWARD:

The Competent Authority's view was that areas with less than 6.25 hectares of accumulated pixel forest loss would require further analysis in order to demonstrate compliance. A company is expected to have in place complementary tools, such as MapBiomas or GFW, to carry out further investigation, in cases where an alert has been made.

Those areas in which there was initial evidence of deforestation at less than 6.25 hectares would not need to be automatically classified as non-compliant, but further investigations would need to be carried out to demonstrate that deforestation had not occurred on the plot of land.

It remains to be seen when a company would be expected to carry out field verification of a deforestation event, if the data from such an incident is considered to represent a false positive.

LESSON

5

Traders should implement measures to minimize the risk of laundering

Evidence suggests that the majority of soy producers in Brazil are committed to carrying out best businesses practices and providing the relevant documentation requested by their clients. There is a risk that a small number of growers may act in bad faith and seek to sell produce from deforested areas through properties that are fully compliant.

CHALLENGE:

Under EUDR, a product must be shown to be deforestation-free by providing land tenure codes for all plots of land (under the Brazilian CAR system); and comparing crop and forest areas at the time of production with the same areas on 1st January 2020.

However, there is a risk that a small number of growers may act in bad faith and seek to sell produce from deforested areas in properties that are fully compliant. This practice of 'laundering' is known in Brazil as 'triangulation' (ie sale through a third party) and may be used as a way to hide deforestation, effectively bypassing monitoring systems of intermediaries and traders[15].

LESSON & WAY FORWARD:

Given the scale and complexity of soy transactions at the local level, it may be impossible to completely eradicate such practices, however many traders already have practices in place to minimize such risks. In the case of this particular Dry-Run, the practices carried out by the Trader to address the risk included:

EUDR REQUIREMENTS:

ART. 9 (1G). Adequately conclusive and verifiable information that the relevant products are deforestation-free.

ART. 10 (2J). The risk of circumvention of this regulation or of mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring.

- Gathering and analyzing data on size of plot and estimated production capacity to ensure farms are not selling more than they are capable of producing (also known as volume reconciliation).

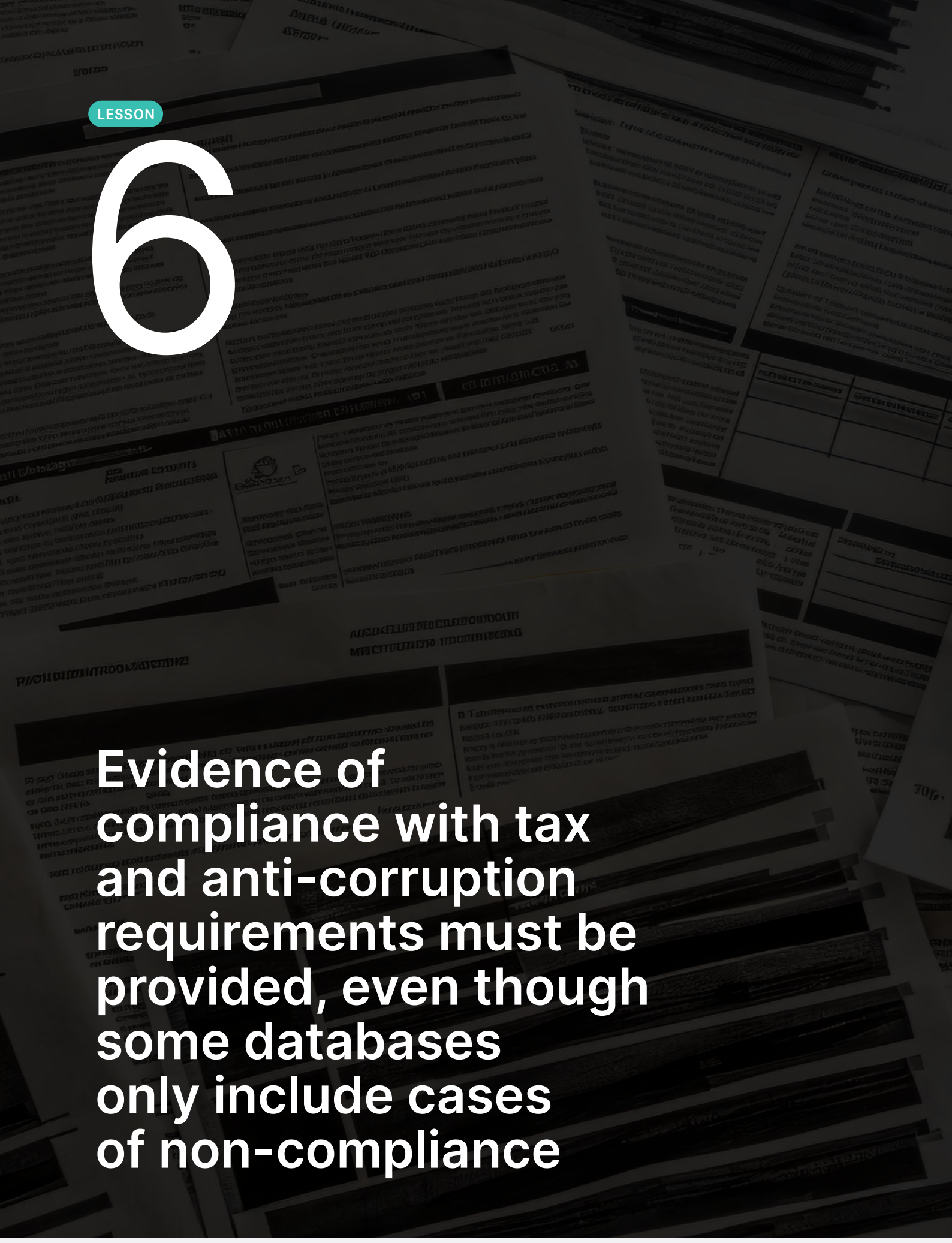
- Selecting grains from areas where more than 90% of the CAR polygons are EUDR compliant.

- Checking invoices and requiring farmers to sign a declaration that the soybeans that they have sold do originate from the area identified by the CAR number that was specified in the contract.

- Establishing a list of suppliers from the same family and placing restrictions on sourcing from farms that belong to family members that are linked to the aggregator.

- Carrying out in-person checks on soy farms in cases where there is evidence of malpractices.

These practices may not solve completely the risk of 'laundering' but, if implemented correctly, they can move practices towards a negligible risk of mixing compliant and non-compliant soy. Companies will need to ensure constant progress on measures to mitigate such risk, and to check relationships between farms and farmers; and between tenants and land-owners. The Competent Authority proposed to include checks during harvest and transportation, though costs may be prohibitive.



LESSON

6

Evidence of compliance with tax and anti-corruption requirements must be provided, even though some databases only include cases of non-compliance

Under Article 9, EUDR expects operators to provide verifiable information that the commodities have been produced in accordance with the relevant legislation of the country of production on tax, anti-corruption, trade and customs regulations.

CHALLENGE:

Showing evidence of EUDR compliance on tax and anti-corruption is not a straightforward task: in the context of Brazil, it is not clear how this can be done effectively. This is due, in part, to the composition of some databases in Brazil (e.g. human rights violations, labor rights etc.), which list only those individuals, companies or institutions that have been registered as non-compliant[16].

LESSON & WAY FORWARD:

Most traders in Brazil already have a process in place to check their suppliers against those that are blacklisted on the most important social and environmental databases. It may be unrealistic to expect the Trader to deliver the full database on every occasion that it provides paperwork for a single supplier. Additionally, it is not possible to provide the tax return statement for all growers, since this document is protected by Brazil's data protection laws.

Indeed, under Brazilian data protection laws, it is not clear how operators can do more than show evidence that their suppliers have not been blacklisted for tax or anti-corruption infringements. At a minimum, it may be advisable to provide a file with Certificates of Debts Related to Federal Tax Credits and the Union's Outstanding Debt (CND).

At present, the only state in Brazil in which this is possible is Maranhão, which has a new system known as SIFMA[17]. The system is used ostensibly as a tool to address tax evasion and laundering, whereby data about the plot from which the harvest came (talhão de colheita) is cross-referenced with invoices (notas fiscais).

EUDR REQUIREMENTS:

ART. 9 (1H). Adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production.

IMPORTANT DEFINITIONS

ART. 2 (40). 'Relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production in terms of: (a) land use rights; (b) environmental protection; (c) forest-related rules; (d) third parties' rights; (e) labor rights; (f) human rights; (g) FPIC; (h) tax and anti-corruption.

LESSON

7

The EU must provide more clarity on the definition of indigenous lands, including those lands that are not yet formally recognized under local laws

The non-violation of indigenous lands is a key requirement under the EU`s legislation, which places an emphasis on the UN Declaration on the Rights of Indigenous Peoples[18] and considers existing agreements that address the protection of forests and human rights.

At the same time, the Brazilian Constitution contains important legislation recognizing the rights of indigenous peoples over their traditional lands. The legal occupants of these lands can produce and commercialize soy and other commodities if they wish to, and traders can source from them, provided they have free, prior and informed consent (FPIC).

Nonetheless, most large traders have internal policies that bar them from sourcing from these territories. In the Dry-Run, the Trader provided documentation to show that none of the soy had been sourced from ratified indigenous lands, but what about lands that have requested ratification but not yet been awarded it?

CHALLENGE:

As part of the Dry-Run, the participating company provided evidence that none of the soy in the shipment was sourced from lands within a radius of 200km[19] from formally registered indigenous lands[20]. The Trader's own policy is to not source from indigenous lands, so any geolocation that was found to be contiguous or overlapping with indigenous lands, was excluded from the supply chain; and geolocations that were found to be within 200km of such lands underwent a further risk assessment to ensure it had not been sourced from indigenous territories.

EUDR REQUIREMENTS:

ART. 9 (1H). Verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production.

ART. 10 (2). The risk assessment shall take into account criteria that include: (...) (c) the presence of indigenous peoples in the country of production or parts thereof; (d) the consultation and cooperation in good faith with indigenous peoples in the country of production or parts thereof; (e) the existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity.

IMPORTANT DEFINITIONS

ART. 2 (40). 'Relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production in terms of: (a) land use rights; (b) environmental protection; (c) forest-related rules; (d) third parties' rights; (e) labor rights; (f) human rights; (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 and anti-corruption.

The Competent Authority indicated that the analysis should also include those lands that are in the process of requesting recognition, even if they have not yet reached the phase of registration.

Under the Brazilian constitution[21], the exclusive and original rights of indigenous peoples over the lands that they traditionally occupy is recognized[22]. It is the responsibility of the government's executive branch to demarcate such territories, the process for which passes through a number of phases, involving the indigenous peoples that have made the claim:

- Study Phase, culminating in a final technical report for approval and publication in the government's Official Gazette[23]
- Delimitation Phase consisting of a declaration of the territorial borders of the indigenous lands, determining its demarcation[24]
- Declaration Phase, involving the physical demarcation of the land, which is carried out by FUNAI[25]
- Ratification Phase, whereby Brazil's President signs a decree that ratifies the indigenous land[26]
- Registration Phase by which, within 30 days of the ratification, the indigenous land is formally registered at the local property registry office, and at the National Heritage Secretariat (SPU)

Currently, there are 796 indigenous lands in Brazil, which are at different phases of the demarcation process. 154 (19%) are in the Study Phase; 47 (6%) have had their study reports approved by FUNAI and have therefore been identified; 62 (8%) have been declared by the Ministry of Justice; and 533 (67%) have been registered or ratified by the President, acquired by the Union or donated by third parties[27].

As part of the compliance process, the company's analysis initially considered only those lands that had reached phase 5 of the demarcation process. It was the view of the Competent Authority that such analyses should also consider those lands that are at any one of the other four phases of the process.

LESSON & WAY FORWARD:

The Competent Authority's view was that all indigenous lands that were in the process of requesting recognition should be considered under Article 2, 40h of the Regulation, irrespective of whether that recognition had been ratified ('homologação' in the Portuguese).

It is noteworthy that this is a different position to that presented by the various agricultural associations (among them Abiove and ABIEC). In their Brazilian multisectoral guidance[28], they suggest that it is those lands that have been ratified ('homologated') or registered ('regularized') that should be considered as indigenous lands for the purposes of EUDR.

The UN Declaration on the Rights of Indigenous Peoples, which has been ratified by Brazil, states that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. As it does not make a distinction between those lands that are ratified or not, it is recommended to consider all indigenous lands, irrespective of where they are at in the process of requesting or ratifying their lands, and therefore including them when it comes to risk assessments, and requesting free, prior and informed consent.

LESSON

8

Traders should not concern themselves with a definition of ‘negligible risk’, rather with ensuring they have systems in place to manage risk

EUDR states that there is negligible risk when commodities or products show no cause for concern as being not in compliance. Traders asked if a quantifiable definition of negligible risk might be possible.

CHALLENGE:

Negligible risk is a key concept in the EUDR's assessment of countries and companies. Under Article 10 of the EUDR, the Operator is required to measure and mitigate risk, unless that risk is found to be negligible. However, in the regulation, there are no specific guidelines as to how a company might demonstrate a risk to be negligible. During the Dry-Run, the Trader requested further details regarding the definition of negligible risk.

LESSON & WAY FORWARD:

For the Competent Authority involved in the Dry-Run, negligible risk is not about a specific number (e.g. the percentage of land that is not identifiable as compliant or not), but rather about having systems in place to ensure there are is no cause for concern.

Therefore, risk can be classified as negligible if the due diligence systems and documents are robust and capable of (1) giving insight on the chain of custody; (2) providing deforestation-free evidence; (3) identifying potential errors.

If a negligible risk comes to light, the operator is expected to demonstrate that it has in place a system in order to deliver a reasonable response to the risk.

EUDR REQUIREMENTS:

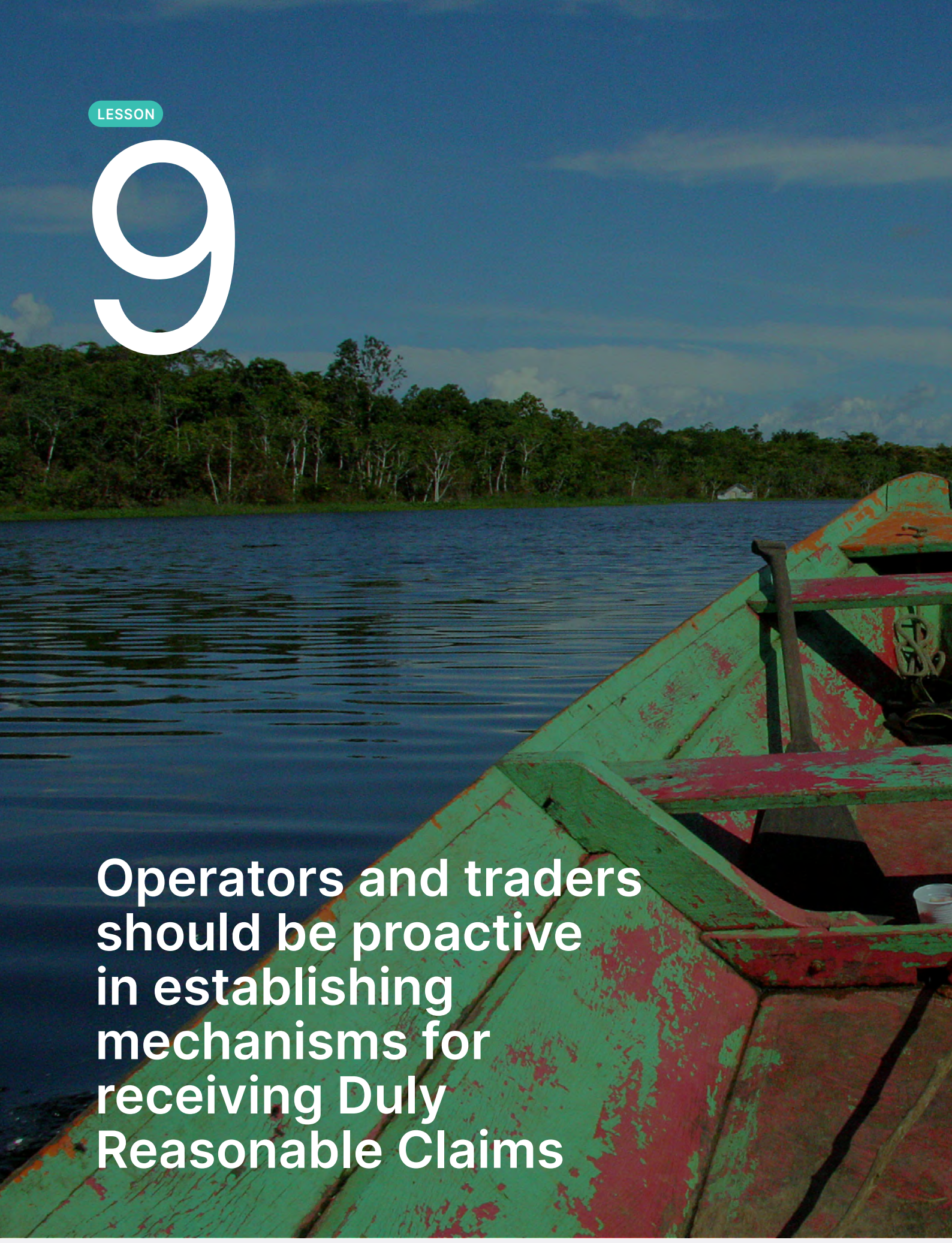
ART. 10 (1). Except where a risk assessment carried out in accordance with Article 10 reveals that there is no or only a negligible risk that the relevant products are non-compliant, the operator shall, prior to placing the relevant products on the market or exporting them, adopt risk mitigation procedures and measures that are adequate to achieve no or only a negligible risk.

IMPORTANT DEFINITIONS

ART. 2 (26). 'Negligible' risk means the level of risk that applies to relevant commodities and relevant products, where, on the basis of a full assessment of product-specific and general information, and, where necessary, of the application of the appropriate mitigation measures, those commodities or products show no cause for concern as being not in compliance.

LESSON

9



Operators and traders should be proactive in establishing mechanisms for receiving Duly Reasonable Claims

Although traders are expected to have procedures in place for consultation and cooperation with indigenous peoples, no standardized process for establishing grievance producers has been proposed under the legislation.

CHALLENGE:

Included in the United Nations Declaration on The Rights of Indigenous Peoples, FPIC is a specific right for Indigenous Peoples, allowing them to provide or withdraw consent on projects that may impact their territories[29]. The EUDR requires such a process to be followed, in addition to requiring evidence of the existence of Duly Reasoned Claims by Indigenous Peoples in the area. Once again, it is key that such checks are provided at the farm-level.

The issue here is how those claims should be gathered and assessed by the Operators, since the EUDR has not given details of any specific procedure to do so. The lack of more detailed guidance on what is required for establishing grievance mechanisms has led to a degree of uncertainty about the scale and scope expected of such mechanisms. In the Dry-Run, the Trader requested further information from the Competent Authority regarding how best to fulfill the requirements, with potential solutions set out below.

LESSON & WAY FORWARD:

The Competent Authority advised the trader to ensure it had established processes for engaging local communities and Indigenous Peoples around sourcing areas, and establishing robust and transparent grievance procedures, in order to be able to demonstrate

EUDR REQUIREMENTS:

ART. 9 (1H). Verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production.

ART. 10 (2D). Consultation and cooperation in good faith with indigenous peoples.

ART. 10 (2E). Existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity.

IMPORTANT DEFINITIONS

ART. 2 (40). 'Relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production in terms of: (a) land use rights; (b) environmental protection; (c) forest-related rules; (d) third parties' rights; (e) labor rights; (f) human rights; (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 and anti-corruption.

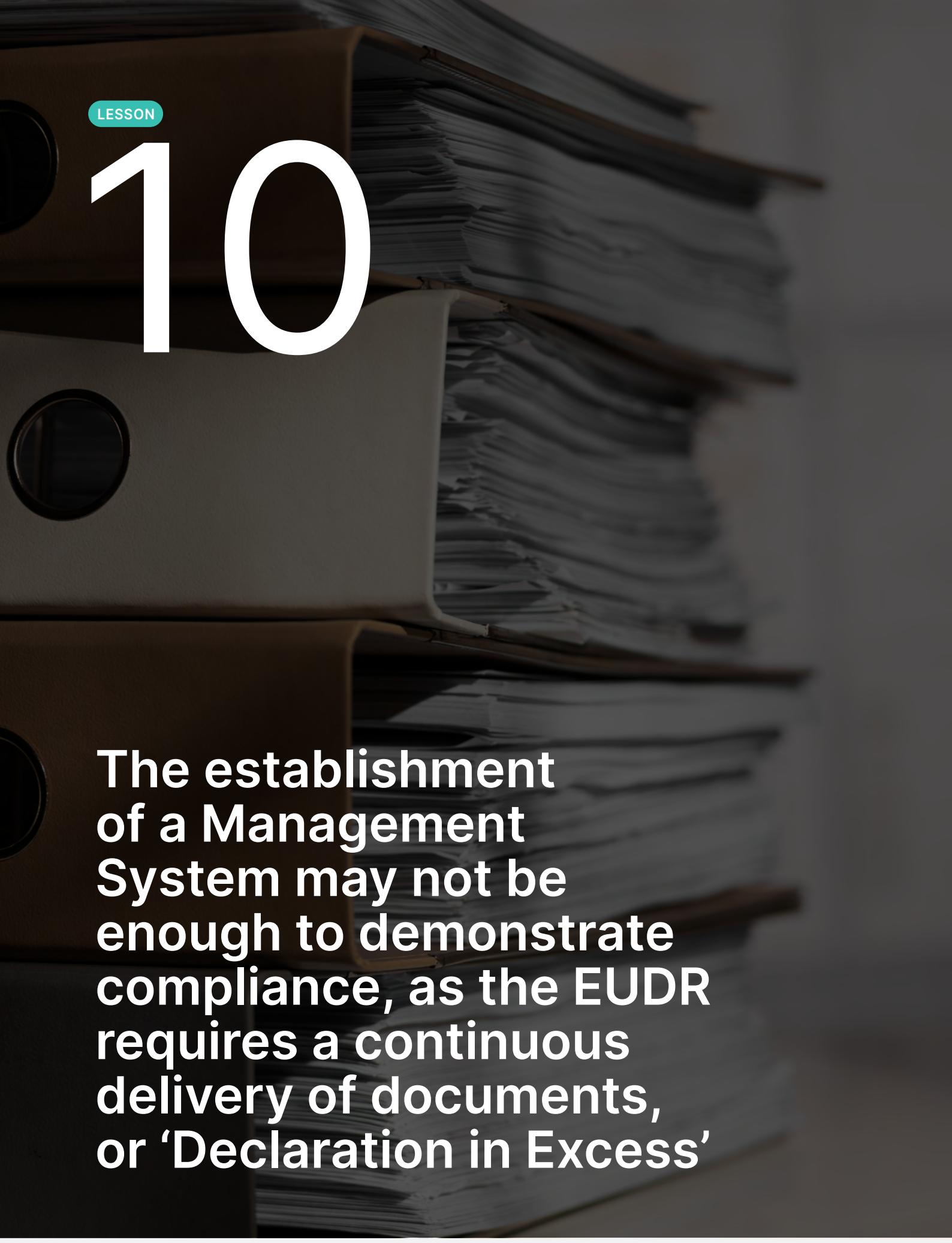
that there is no evidence of duly reasonable claims in the area. The processes themselves should ensure the anonymity of the interlocutors and protect any information that is sensitive to any party involved.

In addition, it was recommended that the EU provide benchmarks on establishing and implementing mechanisms for receiving Duly Reasonable Claims. Given that this may not be forthcoming before 2025, the Competent Authority suggested consulting the International Finance Corporation (IFC) or certification bodies as a reference.

The IFC's grievance procedures and community engagement are considered by many to be an example of best practice, and are a requirement for all its clients, that include companies from a broad range of sectors, in areas that may impact local communities. The IFC methodology proposes five key steps for implementing such procedures: (1) publicizing grievance management procedures; (2) receiving and keeping track of grievances; (3) reviewing and investigating grievances; (4) developing resolution options and preparing a response; (5) monitoring, reporting and evaluating a grievance mechanism[30].

A key practice is to have an Ethical Open Line for claims, rigorously investigating all claims received and providing adequate responses. The Ethical Line channels should be communicated across all facilities in the supply chain, and in places that reach people who live in the vicinity of production areas, through channels including local newspapers, TV and radio, and the internet.

A similar example of that has been implemented by Carrefour, a corporate group in the food retail sector. In order to guarantee compliance with a set of social and environmental criteria, the Carrefour Brazil Group implements a protocol to identify the origin of all beef that it purchases. Its suppliers have to provide geospatial analysis for each farm, providing CAR codes for a double-check. Additionally, the group monitors farm compliance in terms of deforestation, human and labor rights, environmental embargoes, invasions of indigenous lands among others. Finally, there is a grievance channel (called "Conexão Ética") to collect information about potential violations to the policies[31].



LESSON

10

The establishment of a Management System may not be enough to demonstrate compliance, as the EUDR requires a continuous delivery of documents, or ‘Declaration in Excess’

EUDR requires operators to have in place a framework or procedures and measures to ensure compliance; however, compliance is demonstrated not through the existence of such a management system, but rather through the provision of all documentation that must accompany each shipment, on a case-by-case basis. In other words, the existence of a robust system is not, in and of itself, a sufficient demonstration of compliance.

CHALLENGE:

Given the number and array of documents required by the EUDR for each shipment of commodities, and the work required in both compiling and assessing such documents, a move towards standardizing due diligence systems would seem sensible.

Concerns were expressed by a number of interlocutors involved in the Dry-Run that the high volume of documents required with each shipment will lead to an increase in costs and may not be sustainable for the Competent Authorities to manage in the long-term. Could this be addressed by ensuring that robust management systems are put in place to provide evidence of EUDR compliance?

LESSON & WAY FORWARD:

There is some sympathy with concerns about workload and feasibility of overseeing a system that requires very large amount of paperwork for every shipment. However, the Competent Authority's view is that the gains of having a single management system are not compensated by the risks of not being able to demonstrate compliance to plot of land for each shipment.

EUDR REQUIREMENTS:

ART. 12 (1). In order to exercise due diligence in accordance with Article 8, operators shall establish and keep up to date a framework of procedures and measures to ensure that the relevant products they place on the market or export comply with Article 3 ('due diligence system').

IMPORTANT DEFINITIONS:

ART. 12 (2). Operators shall review the due diligence system at least once a year. Where operators become aware of new developments which could influence the due diligence system, they shall update the due diligence system to take account of those developments. Operators shall keep a record of such updates in their due diligence systems for five years.

One approach to reduce the workload, identified earlier in this report, is the 'Declaration in Excess', whereby the company provides geolocation data from a wider universe of farms than those that supplied a particular shipment. In this way, they should be able to provide the same data for subsequent shipments, provided this is done so within the same harvest. The risk with such a process is that, in such cases, a single non-compliant farm would 'contaminate' a larger supplier base.

Above all, the EU is interested in knowing if a risk-mitigation process is in place, such as demonstrating more robust procedures including spot checks in sourcing regions that are active deforestation frontiers. However, the costs involved in such spot checks need to be taken into consideration.

The standard recommended practice, then, is to collect and send all documents required to demonstrate compliance. The Competent Authorities are aware of the number of documents that will be generated by this practice but believe that EUDR compliance must be demonstrated in full.

Additional Lessons

In addition to the 10 primary lessons that emerged from the Dry-Run, additional findings are relevant to discussions about how best to ensure compliance.

Deforestation in agricultural plantations does not represent grounds for non-compliance

Under the terms of the EUDR, where a forest has been planted for the purpose of producing fruit, pulp or any commodity other than wood, the area can be deforested after the cut-off date and remain compliant.

Evidence may still be required to show the status of land-use as of January 2021, ie to show that the agricultural plantation was not grown over native vegetation that was deforested previously.

Once this has been demonstrated, a grower may, for example, choose to plant soy over an area that was previously a eucalyptus plantation, however such cases remain relatively rare in Brazil.

Where traders share a single shipment that is found to be non-compliant, all such companies are liable

It is common for traders to share a shipment of soy, however where such a shipment is found to be non-compliant, the Traders will be found to be mutually liable, irrespective of the source of the non-compliance.

Chapter 5 of the EU's FAQ statement, published in December 2023, states 'If identification and separation cannot be done, for instance because the non-compliant products have been mixed with the rest, then the whole relevant product is non-compliant'.

This question was raised during the Dry-Run and the response from the Competent Authority was that in such cases both traders will be held responsible, given that it is not possible to differentiate the non-compliant products from the compliant ones.

Ultimately, the legal responsibility – and sanctions - fall upon the Operator, which is the agent on the European market that bought the commodities.

Chapter 3: Conclusions, Consequences, Recommendations

3.1 Conclusions

The Dry-Run of EUDR-compliant Brazilian Soy was set up in order to pinpoint the outstanding challenges that need to be overcome in order for value-chain partners to be able to comply confidently with the new legislation. It also demonstrated, indirectly, that the soy sector in Brazil is indeed well prepared to meet the demands of such compliance.

The main findings from the Dry-Run are as follows: outstanding issues remain about the nature and validity of certain pieces of data that must be provided under EUDR and indeed what is to be done when there is found to be uncertainty relating to such data; and operators and traders are required to demonstrate that they have robust risk management procedures and systems so they can respond to risks as they arise.

There does not yet appear to be consensus across the value chain regarding the fulfilment of certain requirements under EUDR: 'declaration in excess' vs. exact polygons for all farms that supply a specific shipment; a requirement to provide on a rolling basis geolocation plots from supplier farms that fill 200%; the inclusion of indigenous lands that are not yet ratified; and the challenge in demonstrating compliance with tax or anti-corruption requirements. It is hoped that the findings in this report will, in part, serve to move the sector towards finding conclusive solutions to these issues.

3.2 Consequences

As is inevitable with such an all-encompassing piece of new legislation, there are a number of consequences, both foreseen and unforeseen in its design, that are becoming increasingly evident. These can perhaps best be classified as intended and unintended consequences, as well as those that are unexpected: not unintended, but nonetheless surprising and requiring more careful consideration.

3.2.1 Intended Consequences of the EUDR

The experience of Brazilian soy suggests that the legislation may fall short of halting all deforestation linked to imports to the European Union, but it will go a long way towards significantly reducing deforestation linked to such imports. It remains to be seen whether it will achieve the broader aim of reducing overall deforestation rates, since the demand for deforestation-free supply may only be met by compliant supply corridors where the risk of deforestation was already minimal.

That said, the significance of requiring commodity producing countries and international traders to establish robust monitoring, reporting and verification systems to ensure deforestation-free supply cannot be understated: should other countries wish to adopt their own measures on imports linked to deforestation, the systems are now in place.

The main material outcome of the EUDR is the establishment of segregated supply chains, a consequence that is anathema to the core foundations of global commodity trade, whereby the fact that an item can be directly substituted by the same item from a different production region means competition is rife and prices are continually pushed downwards.

It is inevitable, then, and seemingly foreseen in the design of the legislation, that EUDR will come at a cost. These costs can be largely understood as follows:

- **THE OPERATIONAL COSTS OF SEGREGATION,** including infrastructure investment

- **THE MARKET COSTS OF SEGREGATION**: the bifurcation of the market into compliant and non-compliant suppliers means less competition, ergo higher prices

- **CONTROL PROCEDURES**: traders and operators must establish systems to ensure no rogue soy enters their supply chains. More significant costs – including spot checks and field verification – are likely to have even more significant impacts

- **ADMINISTRATIVE COSTS**: many Brazilian traders have hired new teams to organize and present the large amounts of paperwork required under EUDR. For those choosing to follow an approach of 'declaration in excess', the higher costs should be more upfront

There is anecdotal evidence that growers are, perhaps unsurprisingly, anticipating a premium for supplying EUDR-compliant soy from January 2025.

3.2.2 Unexpected Consequences

There are three consequences that may come as a surprise to those who participated in the design of the legislation:

- **SUPPLIERS ARE LIKELY TO CONSOLIDATE** – again, anecdotal evidence in the cocoa value chain suggests a move towards the consolidation of supply to the EU along the following lines: by capacity to segregate; by size, given the economies of scale that can be achieved in compliance; and by region, with an inevitable consolidation in production landscapes that themselves are compliant. To a greater or lesser degree, this trend seems likely to affect other commodity supply chains, including soy. One probable outcome in soy is that the medium-sized traders who do not own the assets for segregation (eg dedicated terminals at the port or dedicated silos) will have to sell EUDR compliant soy to larger traders who do own such assets; or they may choose not to trade such soy, unless there is a price premium for doing so.

▸ **TRADERS MAY BE LESS ABLE TO CARRY OUT SPOT TRADING AT PORTS** – historically, the practice of spot trading allows traders to complete shipments quickly, thereby avoiding the high cost of storing soy at port or in a shipment, before the cargo sails. The establishment of segregated supply chains, and the need for accompanying documentation, will make this practice much harder.

▸ **THE GREATER ONUS FOR VERIFICATION IS LIKELY TO BE WITH THOSE COMPETENT AUTHORITIES LOCATED FURTHER WEST IN EUROPE** – many shipments stop at one or more ports before reaching their final destination. Given that compliance verification must be carried out by the competent authority at which the shipment first docked, it seems likely that ports further west within Europe (Portugal, Spain, France, Ireland) are likely to face a greater workload than those further east (Germany, Poland and, to a lesser, extent the Netherlands).

3.2.3 Unintended Consequences

The unintended consequences of EUDR remain to be seen, particularly when it comes to a potential reconfiguration of global trade patterns. Nonetheless, three important consequences were identified as part of the Dry-Run:

▸ The market between operators in Europe will be constrained – at present, in addition to the spot trading that takes place before a ship sets sail, it is common for soy and other commodities to be sold between operators upon reaching their port of destination. Given the greater need for operators to protect their segregated supply base, this practice looks likely to fade, further reducing competitivity in the sector.

▸ **EXCLUSION OF SMALLHOLDERS** – although there are relatively few smallholder growers in the Brazilian soy sector, for many other commodities, the costs involved in compliance and the challenges entailed in a more verticalized structure of production will serve both as a barrier to entry for smallholders and may lead others to drop out of the market.

▸ **INCREASED EMISSIONS?** – it is yet to be seen how the new map of supply and demand for agricultural commodities will be reshaped from 2025 as a result of EUDR. However, one potential outcome in Brazil is that the south of the country, where historically deforestation happened largely in the 19760s and 1970s, well before the EU's designated cut-off date, may turn to supplying Europe with 'deforestation-free' supply. The Port of Rio Grande in Southern Brazil is some 4,000km further from the Port of Rotterdam, than is the Port of Itaqui, in Maranhão state, an increment that has both cost and emissions implications.

3.3 Recommendations

Treat Year 1 as a transition period to bed-in the new legislation

The Commission has now proposed to postpone the EUDR's application by one year, pushing the effective date to 30 December 2025 for most operators and traders, while for micro and small undertakings, the new effective date will be 30 June 2026.

The revised timeline still requires approval by the European Parliament and the Council, so uncertainties remain. However, irrespective of the starting point, the first year of implementation (now, likely to be 2026) is going to throw up a number of teething problems, some of which have been identified in this report, and which may be even more acute for other commodities and producer countries.

Some elements of the legislation, when applied to a particular context or commodity, may simply not be practicable. Two such examples are raised in this report, including the current lack of national-level data to demonstrate compliance with tax and anti-corruption requirements; and the 0.5-hectare scale of analysis for deforestation when applied to the context of soy and the Amazon, which is likely to present many false positives.

In year 1, the competent authorities should prioritize the deforestation aspects of the legislation over other aspects such as tax and anti-corruption requirements. They should recognize that the need to comply with national legislation in production countries means that there will likely be a wide diversity of interpretations of the legislation as applied to each particular context. And they should also recognize that, in the case of Brazilian soy at least, companies are acting in good faith when trying to comply with the legislation. Indeed, in the context of Brazil and the broader furore around EUDR, companies are the legislation's biggest ally.

It remains to be seen whether the competent authorities might declare a moratorium on fines for the first year of roll-out, in order to allow procedures to fully bed-in, but a degree of flexibility and a willingness for mutual learning and adaptation must be a priority.

Underscore – don´t undermine – official government data sources

Brazil has a long-standing, robust and legitimate programme for monitoring deforestation, PRODES, and is currently developing a national traceability system, known as AgroBrasil+Sustentável, which is expected, in the medium-term at least, to provide data on agricultural production that is traceable to farm.

If the EU's requirement to identify deforestation at 0.5 hectares were to mean that the PRODES system could not be used in Brazil, this would significantly undermine national efforts to deliver more equitable and effective land-use policies.

The AgroBrasil+Sustentável tool is still in its infancy and is yet to be launched officially, but with the right technical and financial support, it could be an important means of meeting the traceability requirements under EUDR. Furthermore, it could be developed further by drawing on the experience of Maranhão's SIFMA tool to cross-reference data on land use with information on taxation and legal compliance, thereby fulfilling compliance procedures under Article 9(h).

Facilitate more structured dialogue between all relevant parties

EUDR states that the Commission and Member States 'shall engage in a coordinate approach with consumer countries and [...] shall develop a comprehensive Union strategic framework for such engagement and [...] such partnerships and cooperation mechanisms may include structured dialogues [...] as well as joint roadmaps that enable the transition to an agricultural production that facilitates the compliance with this Regulation.'[32]

It is the apparent lack of care and dedication to this 'Partnership Approach' that has led to so many producer countries questioning the top-down and uni-directional nature of the new legislation. This could undermine the legislation itself, as there is still a widely-shared narrative amongst producers in Brazil that sees EUDR as primordially a protectionist measure aimed at shielding the domestic agriculture market.

There are four main areas where better organized dialogue could help to assuage these concerns:

- **SECTORAL DIALOGUE** – the Brazilian soy sector is well organized and largely aligned: it is, for example, currently working on developing a sector-wide approach to soy laundering that would pass responsibility for control measures from individual companies to the sectoral association, Abiove. But not all sectors are so well prepared; others, such as leather or cocoa, may need financial and technical support to ensure better alignment.

- **UPSTREAM DIALOGUE IN PRODUCTION COUNTRIES** – in Brazil, the sectoral associations for soy, beef, cocoa, coffee, leather, paper and planted forests have organized dialogue and action to 'align

best practices towards a consistent and clear demonstration of compliance with the EUDR'. Further dialogue and decision-making between these actors and the government would benefit all involved.

- **DOWNSTREAM DIALOGUE IN THE EU** – an obvious area for greater alignment is between the national competent authorities. To this end, some efforts have been made by the Amsterdam Declaration Partnership, but the readiness and availability of the competent authorities appears to be quite varied.

- **NORTH-SOUTH DIALOGUE ON IMPLEMENTATION** – this report has highlighted a number of issues – such as the 200% silo capacity – for which there does not yet appear to be consensus or even a broader understanding of what the legislation expects. Technical dialogues about specific issues, as well as inter-governmental political dialogues are important steps towards building trust and confidence in the process.

And finally, a note of optimism: Brazil is well positioned to deliver EUDR

This report has set out to highlight the challenges and sticking points that must still be overcome if the EUDR is to be implemented effectively. As such, it may seem to present many rocks in the road, before any castle can be built.

However, there are two main reasons for optimism: the first, alluded to above, is that, for the first time, a buyer of a commodity on the other side of the world (or indeed in the very same country) will, as of 2025 be able to identify with confidence exactly where that item was sourced from and whether there has been a forest clearance on the plot of land that produced the commodity. This is a giant leap forward, the likes of which no voluntary agreements have ever been able to achieve.

And finally, Brazil, the number 1 exporter of soy, a major bread basket to the world, and home to the largest virgin forests and the most biodiverse country on the planet, is well positioned to deliver EUDR in January 2025. In this, it can serve as a reference to other countries seeking to ensure compliance, and at the same time, fulfil its own potential as an agricultural and environmental super power.

Glossary

ABIOVE: The Brazilian Association for Vegetable Oil Industries (Abiove) is the main representative of companies in the industrial value chain of soy (grains, oil and soybean meal) and biodiesel. Founded in 1981, Abiove's goal ios to represent such industries and supporting the value aggregation through the promotion of products and industrial processes[33].

AMAZON SOY MORATORIUM: The Amazon Soy Moratorium is an agreement between soy trading companies in Brazil. It established that no soy should be acquired from farms that had any kind of deforestation in the Amazon biome after 22 July 2008[34].

ANEC: The National Association of Cereal Exporters (ANEC) is one of the key representatives of the soy and corn sector in Brazil, mostly focusing on exporting companies. Founded in 1965, ANEC aims to promote the development of activities related to the production of grains and cereals, as well as fostering the best scenarios for importing and exporting soy and corn[35].

CAR: The Rural Environmental Registration (CAR) is a document regulated since 2014, which provides the environmental characteristics of Brazilian rural properties. Although mandatory, it is a self-declaratory document, which needs validation through Brazil's competent authorities[36].

CERRADO: The Cerrado is the second-largest of Brazil's five main biomes, behind only the Amazon. Its vegetation is mainly characterized by a mix of savannas, dense forests and bushes. Located mostly in Brazil's central region, it ranks second behind the Atlantic Forest, for the biome that is most affected by human occupation in Brazil. In recent years, it has been a hotspot for deforestation due to the expansion of agriculture and cattle production[37].

CND: The Debt Clearance Certificate (CND) is a document that proves that a certain person or company is in tax compliance with the National Treasury[38].

CNEP: The National Register of Punished Companies (CNEP) is a database that contains all companies that were punished for violating the Anti-Corruption Law (Law 12.846/2003)[39].

CONAB: The National Supply Company (CONAB) is a public enterprise linked to the Ministry of Agriculture, Livestock and Food Supply (MAPA). Its goal is to guarantee the fulfillment of society's basic needs and it does that mostly through the Program of Food Acquisition (PAA). The program buys agricultural production from small farmers at market prices and provides food for people in situations of food insecurity[40].

ERP: Enterprise Resource Planning (ERP) is an integrated management system that can be used as a centralized way to manage suppliers, aggregating key information that may be useful to check compliance of each producer.

FUNAI: The National Foundation of Indigenous Peoples (FUNAI) is the governmental institution responsible for protecting and promoting the rights of indigenous peoples in Brazil. It is a part of the Ministry of Indigenous Peoples and is responsible for policies and activities such as: the demarcation process of indigenous lands; protecting isolated and recently contacted peoples; and promoting the sustainable development of indigenous populations[41].

GFW-GLAD: The Global Forest Watch (GFW) provides three systems of deforestation alerts. Two of them were developed by the Global Land Analysis and Discovery (GLAD), from the University of Maryland (UMD): GLAD-L (the first alert system used by GFW) and GLAD-S2, a high-resolution system launched in 2021, which uses images from the Sentinel-2 satellites, of the European Space Agency. GLAD-S2 is specifically targeted at the Amazon basin[42]. Each GLAD alert indicates a 30 by 30-meter area (around the size of two basketball courts) that has experienced a disturbance in the forest canopy[43].

IBGE: The Brazilian Institute of Geography and Statistics (IBGE) is the largest provider of data and statistics in the country[44].

PRODES: The Program for Monitoring Deforestation of the Brazilian Amazon Rainforest by Satellite (PRODES) has since 1988 been the main system responsible for producing data on deforestation in the Amazon. It uses LANDSAT satellite images (20-30 meters of spatial resolution, and a review rate of 16 days) to provide data that cover the year-long deforestation in the Amazon. The release of deforestation data to the public in each year is done: (1) in December of each year, when a preliminary presentation is launched (around 50% of all images) and; (2) in the first semester of the following year, when all data is presented. The estimated level of precision for PRODES is of around 95%[45].

SIFMA: The System of Surveillance and Monitoring of Agribusiness (SIFMA) was developed in 2021 by the State of Maranhão, through a partnership with the IDB. Initially, the system was focused on tax compliance, tracking agricultural production at its origin and connecting data from invoices with databases of productivity and production to check if the properties were omitting values to pay less taxes. Later in 2023, SIFMA evolved, incorporating features to analyze environmental and social criteria from all rural properties in the state using CAR codes. This emerged through a partnership with Selo Verde and GIZ, and allowed SIFMA to incorporate traceability using criteria such as deforestation, modern-day slavery, and violations of indigenous lands[46].

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Endnotes

1 The name of the Trader remains confidential throughout as data that may be considered to be commercially sensitive was shared during the Dry-Run

2 See Eurostat, 2022

3 IBGE. Produção de Soja. Available at: https://www.ibge.gov.br/explica/producao-agropecuaria/soja/br.

4 CAR: the Rural Environmental Registration (in Portuguese, Cadastro Ambiental Rural) is a document regulated since 2014, which provides environmental characteristics of Brazilian rural properties. It is a self-declaratory document, which needs validation through Brazil's competent authorities.

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9 European Commission. Frequently Asked Questions - Deforestation Regulation. December 2023. Available at: https://environment.ec.europa.eu/publications/frequently-asked-questions-deforestation-regulation_en.

10 The cut-off practice (also called cut-off cycle) is widely implemented by soy producers, and consists of emptying inventories between crop years, in order to not mix soy from different harvests. That practice is considered positive from the point of view of EUDR compliance, since it reduces the probability of mixing compliant and non-compliant soy.

11 The Program for Monitoring Deforestation of the Brazilian Amazon Rainforest by Satellite (PRODES) is the system responsible for producing data on deforestation in the Amazon since 1988. It uses LANDSAT satellite images (20-30 meters of spatial resolution, and a review rate of 16 days) to provide data that cover the year-long deforestation in the Amazon. The release of deforestation data to the public in each year is done in two moments: (1) in December of each year, when a preliminary presentation is launched (around 50% of all images) and; (2) in the first semester of the following year, when all data is presented. The estimated level of precision for PRODES is of around 95%. See more at: http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes.

12 In South America, soy is often planted between three to five years after clearance of tree cover. In the interim period, land is used mainly for pasture in cattle production. An immediate conversion of forest to soy plantations is defined as the one that occurred three years before soy establishment. Reference: Schneider, M., Goldman, L., Weisse, M., Amaral, L. and Calado, L. The Commodity Report: Soy Production's Impact on Forests in South America. Global Forest Watch. 2021. Available at: https://www.globalforestwatch.org/blog/forest-insights/soy-production-forests-south-america/.

13 Tree Cover Loss is a dataset produced in collaboration between the Global Land Analysis & Discovery (GLAD) of the University of Maryland, Google, USGS and NASA. It measures areas of tree cover loss around the globe, with an approximate 30 x 30 meter resolution. See more at: https://data.globalforestwatch.org/documents/gfw::tree-cover-loss/about.

14 ABIOVE, GTS, INPE, AgroSatélite. Monitoring of the Soy Moratorium through satellite images: Supplementary Material. 2022. Available at: https://moratoriadasoja.com.br/assets/files/en/supplementary_methodological_material_2022.pdf.

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18 Food and Agriculture Organization. Free, Prior and Informed Consent. Indigenous Peoples. Available at: https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/.

19 If the lands are overlapping, then the Trader establishes immediate blockage of sourcing from indigenous lands. If the distance is smaller than 200km, then the Trader identifies that there is a risk, and further analysis should be done.

20 Although soy can be sourced from indigenous lands under EUDR, most companies in Brazil have chosen to avoid all sourcing from such lands

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22 At present approximately 13% of Brazilian territory is made up of indigenous lands, which contain 19% of the total native vegetation in the country and registered only 1% of all losses of native vegetation in the last three decades. Reference: MapBiomas. Perda de Vegetação Nativa no Brasil Acelerou na Última Década. 2023. Available at: https://brasil.mapbiomas.org/2023/08/31/perda-de-vegetacao-nativa-no-brasil-acelerou-na-ultima-decada/.

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24 CIMI (Conselho Indigenista Missionário). Como é feita a demarcação de terras indígenas. Available at: https://cimi.org.br/terras-indigenas/demarcacao/.

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26 Soares, M. Por que a demarcação de terras indígenas não avança? Entenda. Instituto Socioambiental (ISA). 2024. Available at: https://www.socioambiental.org/noticias-socioambientais/por-que-demarcacao-de-terras-indigenas-nao-avanca-entenda.

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31 See more at: https://www.grupocarrefourbrasil.com.br/transparency-platform-beef/.

32 EUDR Art. 30 (1)

33 See more at: https://abiove.org.br/abiove/.

34 See more at: https://moratoriadasoja.com.br/home.

35 See more at: https://anec.com.br/.

36 See more at: https://www.car.gov.br/#/sobre.

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Lessons Learned from a Dry-Run of EUDR-Compliant Soy from Brazil

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