

THE ROLE OF FDI AND THE PRIVATE SECTOR IN
CHANGING BOLSONARO’S ENVIRONMENTAL
POLICIES

MORGAN LUCEY*

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I. INTRODUCTION

Since taking office, Brazilian President Jair Bolsonaro has enacted policies that favor agriculture and industry over the protection of Brazil’s forests. This policy is rooted in the main constituency of Bolsonaro’s political base: the *ruralistas*, comprised mostly of large landowners; the “petty bourgeoisie,” including those in the commercial and retail sector; and the financial and large corporate sector who have pledged their support of Bolsonaro to promote their own interests in land-grabbing, industry, and agriculture.¹ This has resulted in large amounts of deforestation, which represents a major threat to the Amazon rainforest and the indigenous people that reside within it. Brazil’s Atlantic forest and *cerrado* biomes have now been almost completely overtaken by agriculture and industry, with only 8–11% and 19–20% of those regions remaining,

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1. It is worth noting that the financial and corporate sector only supported Bolsonaro at the end of his campaign, as these actors initially supported Paulo Guedes and Geraldo Ackmin. However, these actors likely played a significant role in Bolsonaro’s ultimate victory, and they will prove to be important in any future elections. Ana Garcia, *Brazil Under Bolsonaro: Social Base, Agenda and Perspectives*, 6 J. GLOB. FAULTLINES 62 (2019).

respectively.² Because of this, the *ruralistas* and Bolsonaro have turned to the Amazon rainforest to continue growing the agriculture business. Bolsonaro has faced criticism for the threat he poses to the Amazon, leading foreign leaders to withdraw their support from the implementation of a trade deal between the European Union and Mercosur, a trade bloc including Argentina, Brazil, Paraguay, and Uruguay. However, to truly catalyze changes in Bolsonaro's policies regarding Brazil's rainforest, the international private sector must also pressure Bolsonaro and threaten the *ruralista* and commercial sector's economic interests to change the nature of their support of Bolsonaro.

This annotation first describes Bolsonaro's policies regarding deforestation and what is at stake if they are allowed to continue unfettered. It will then discuss the European Union-Mercosur trade deal and how foreign leaders' withdrawal of support for that deal is not enough to change Bolsonaro's policies. Finally, it will argue that the most successful way to fight deforestation is to target foreign direct investment in Brazil from the international private sector, thus pressuring the commercial sector that formed the base that elected Bolsonaro in the first place.

II. THE ENVIRONMENTAL EFFECT OF BOLSONARO'S POLICIES

It is first necessary to understand how Bolsonaro's actions have exacerbated deforestation by promoting agriculture and business. Though Bolsonaro did not go so far as to make good on his campaign promise to abolish the Environment Ministry outright, he did move control over deforestation into the Agriculture Ministry, which is led by a *ruralista* with the same interests in agriculture and business as the rest of Bolsonaro's base.³ Bolsonaro also appointed Ricardo Salles to the position of environment minister, despite Salles's role in dismantling the local environmental agency of São Paulo. Bolsonaro has also stated that no portion of rainforest land should be reserved for indigenous peoples, instead asserting that it

2. Lucas Ferrante & Philip M. Fearnside, *Brazil's New President and 'Ruralists' Threaten Amazonia's Environment, Traditional Peoples and the Global Climate*, 46 ENV'T CONSERVATION 261, 261 (2019).

3. *Id.*

should all be opened to agriculture and mining.⁴ *Ruralista* members of the legislature have promoted the “death agenda,” which includes “suspending official listing of threatened species, rescinding restrictions on hunting wild animals, ‘flexibilizing’ environmental licensing, weakening environmental and regulatory agencies, promoting large infrastructure projects such as highways and dams in Amazonia and allowing the use of pesticides that are banned in many countries.”⁵

III. THE E.U.-MERCOSUR DEAL

Internationally, Bolsonaro’s stances on environmental issues have jeopardized a trade deal with the European Union and any attempt to join the Organization for Economic Cooperation and Development.⁶ The trade deal between the European Union and the Mercosur states (Argentina, Brazil, Paraguay, and Uruguay) was reached on June 28, 2019 after more than twenty years of negotiation, but it has not yet been implemented.⁷ The European Union is both Mercosur’s largest and most important trade partner and its largest foreign investor,⁸ and any obstacle to the implementation of this deal could therefore have a major impact on Brazilian

4. *Id.*

5. *Id.* at 261–62.

6. Ernesto Londono & Leticia Casado, *Under Pressure, Brazil’s Bolsonaro Forced to Fight Deforestation*, N.Y. TIMES (Aug. 1, 2020), <https://www.nytimes.com/2020/08/01/world/americas/Brazil-amazon-deforestation-bolsonaro.html>.

7. See *EU-Mercosur Trade Agreement*, EUR. COMM’N (last updated May 11, 2020), <https://ec.europa.eu/trade/policy/in-focus/eu-mercossur-association-agreement/> (outlining the goals of increasing bilateral trade and investment; lowering tariff and non-tariff trade barriers; creating more predictable and stable rules for trade and investment, for example in the areas of competition, food safety standards, intellectual property rights, and regulatory practices; and promoting joint values such as combating climate change, encouraging sustainable development, increasing environmental protection, and incentivizing companies to act responsibly); Fern, THE EU-MERCOSUR TRADE AGREEMENT: WHAT IS IT, AND WHAT WOULD IT MEAN FOR FORESTS AND HUMAN RIGHTS? 6 (June 20, 2020), https://www.fern.org/fileadmin/uploads/fern/Documents/2020/The_EU-Mercosur_Trade_Agreement_explainer.pdf (noting that over 340 civil society organizations have opposed the agreement and that some member states have expressed concern, and explaining the path to implementation).

8. *EU-Mercosur Trade Agreement*, *supra* note 7.

industry. Soon after negotiations ended, President Macron of France withdrew his support for the deal because of Bolsonaro's failure to respond to fires started by farmers and ranchers in the Amazon to expand the area available for soybean plantation and livestock.⁹ Ireland, Luxembourg, and Austria have all voiced similar concerns and withdrawn their support.¹⁰ In contrast, Bolsonaro's vice president, Hamilton Mourão, has admitted that the government has not focused enough of its resources on reducing deforestation and promised to use Brazilian troops to stop illegal land seizure and burning.¹¹ For many, Mourão represents "the public face of Brazil, working with ambassadors in Brasília and foreign governments to assuage concerns about the Amazon," but there is no indication yet that domestic support for Bolsonaro has decreased as a result. As such, Mourão's advocacy has not produced any significant policy changes.¹²

The threat to the trade deal prompted Bolsonaro to ban forest fires for four months out of the year and set up a military operation against deforestation.¹³ These actions are a massive departure from Bolsonaro's campaign commitments, which promised a much harder stance on supporting the *ruralistas'* agenda, but many are skeptical that these actions will have an impact on Brazil's environmental issues.¹⁴ Accordingly, since even threats to international trade deals did not lead to lasting change, Bolsonaro's deforestation-friendly policies seem unfortunately entrenched. This is particularly true given that other world leaders, including Donald Trump, have voiced support for Bolsonaro, leading to a strange

9. LUCIANA GHIOTTO & JAVIER ECHAIDE, ANALYSIS OF THE AGREEMENT BETWEEN THE EUROPEAN UNION AND MERCOSUR 8 (2019), <https://www.annacavazzini.eu/wp-content/uploads/2020/01/Study-on-the-EU-Mercosur-agreement-09.01.2020-1.pdf>.

10. *Id.*

11. Luciana Magalhaes & Paulo Trevisani, *Brazil's Vice President Admits Mistakes in Fighting Amazon Deforestation*, WALL ST. J. (Sept. 4, 2020), <https://www.wsj.com/articles/brazils-vice-president-admits-mistakes-in-fighting-amazon-deforestation-11599211803>.

12. *Id.*

13. Ernesto Londono & Leticia Casado, *Under Pressure, Brazil's Bolsonaro Forced to Fight Deforestation*, N.Y. TIMES (Aug. 1, 2020), <https://www.nytimes.com/2020/08/01/world/americas/Brazil-amazon-deforestation-bolsonaro.html>.

14. *Id.*

conflict of interests between the biggest foreign investors in Brazil that may serve to counteract lasting change.¹⁵ In the absence of unified public consensus against these policies, it may take pressure from within the private sector, including the corporations that would actually be participating in trade, to provide a solution.

IV. FOREIGN DIRECT INVESTMENT IN BRAZIL

The potential for the private sector to effect change is particularly promising given Brazil's reliance on foreign industry. The recent transformation of the Brazilian economy from a highly regulated and closed system to a more pro-market and open economy has resulted in a significant increase in foreign investment. The downsizing of the public sector and the privatization of state enterprises have offered highly profitable investment venues to foreign actors. Additionally, the opening of the Brazilian economy and its position in Mercosur have allowed further access to the Latin markets within Mercosur. Finally, opening Brazil's equity markets to foreigners has resulted in a "substantial inflow of equity capital."¹⁶ In 2018, Brazil was the world's sixth-largest destination for Foreign Direct Investment (FDI), amassing inflows of \$61.2 billion.¹⁷ The European Union is the largest foreign investor in Mercosur as a whole, with accumulated investments that have increased from €130 billion in 2000 to €365 billion in 2017.¹⁸

Bolsonaro has encouraged the opening of the economy, as it was a principal tenet of his campaign. Ironically, one of Bolsonaro's own campaign promises has thus created an opportunity for the international private sector to pressure him to change his deforestation policies. Furthermore, it is

15. Dom Philips, *Corporations Pile Pressure on Brazil over Amazon Fires*, GUARDIAN (Aug. 30, 2019), <https://www.theguardian.com/world/2019/aug/30/corporations-pile-pressure-on-brazil-over-amazon-fires-crisis>.

16. Nader Nazmi, *The Impact of Foreign Capital on the Brazilian Economy*, 38 Q. REV. ECON. & FIN. 483, 483 (1998).

17. U.S. DEP'T STATE, 2020 INVESTMENT CLIMATE STATEMENTS: BRAZIL (2020), <https://www.state.gov/reports/2020-investment-climate-statements/brazil/>.

18. *Countries and Regions: Mercosur*, EUR. COMM'N (last updated May 11, 2020), <https://ec.europa.eu/trade/policy/countries-and-regions/regions/mercosur/>.

clear that Brazil is attempting to grow FDI in areas outside the more industrialized southeastern states. The Brazilian Government has extended “tax benefits for investments in less developed parts of the country, including the Northeast and the Amazon regions, with equal application to foreign and domestic investors.”¹⁹ Even though most industry remains concentrated in the southeast, foreign divestment from the industries Bolsonaro targeted in his deforestation policies might have a major impact on Brazil’s goals for economic development, which are also grounded in the *ruralistas’* interests.

Between 2004 and 2012, there was a significant decline in Brazil’s deforestation rates, attributed largely to agreements including the “Terms of Adjustment of Conduct” for meatpacking companies, the Soy Moratorium, and federal legislation prohibiting the commercialization of timber from newly cleared areas.²⁰ However, these policy changes were not the only cause of the decline. Seventy percent of the decline in deforestation occurred from 2004 to 2007, when the exchange rate of the U.S. Dollar against the Brazilian Real fell by more than half, making exports related to deforestation far less profitable.²¹ Thus, the most significant decline in deforestation was directly caused by harm to the industries on which Bolsonaro’s base rely. Thus, to fight deforestation today, the private sector must mobilize to withdraw their support for these industries.

V. HOW CAN THE PRIVATE SECTOR EFFECT CHANGE?

Some corporations have already taken a stance against Bolsonaro. For example, The U.S. clothing company VF Corporation, which owns brands including Timberland, Kipling bags, and The North Face, and the Swedish group behind the global clothing powerhouse H&M have suspended leather purchases from Brazilian cattle-ranchers who played a role in at least some of the fires in the Amazon. Similarly, the

19. U.S. DEP’T STATE, *supra* note 17.

20. William D. Carvalho et al., *Deforestation Control in the Brazilian Amazon: A Conservation Struggle Being Lost as Agreements and Regulations are Subverted and Bypassed*, 17 PERSP. ECOLOGY & CONSERVATION 122, 122 (2019).

21. *Id.*

emerging market debt team at Scandinavia's Nordea Asset Management has pledged to sell, but not buy, Brazilian government bonds in order to gradually withdraw their investments from Brazil.²² In October 2017, twenty-three major international companies signed a letter supporting the "Cerrado Manifesto," which calls for companies that buy meat and soy from the Cerrado region of Brazil to commit to "eliminate conversion of native vegetation, dissociate their production chains from recently cleared areas, and develop incentives and financial instruments to compensate producers who preserve of areas of native vegetation."²³ This letter of support does not mean much, though, unless continued pressure from these international companies incentivizes their purchasers to maintain these practices. The issue is not whether or not these private corporations support deforestation, but whether they are actually willing to apply market pressure to their partners in Brazil and, by extension, to Bolsonaro to implement meaningful policy changes.

But how might the international community incentivize the international private sector to withdraw industry from Brazil in order to create this pressure? The idea of "Pollution Havens" vs. "Pollution Halos" provides some insight into the role that the private sector can play in improving environmental policies in countries like Brazil.²⁴ In a Pollution Haven, governments "undervalue their environment through lax or non-enforced regulation . . . As a result companies will shift operations to these countries to take advantage of lower production costs . . ." ²⁵ In a Pollution Halo, "foreign companies using better management practices will pull environmental, and other standards upwards," which might encourage shareholder and consumer pressure from home countries, harmonize quality standards in global production chains, and reframe environmental performance as a competitive advantage in some companies.²⁶ To achieve

22. Philips, *supra* note 15.

23. Carvalho et al., *supra* note 20, at 126.

24. NICK MABEY & RICHARD MCNALLY, WORLD WILDLIFE FUND, FOREIGN DIRECT INVESTMENT AND THE ENVIRONMENT: FROM POLLUTION HAVENS TO SUSTAINABLE DEVELOPMENT (1999), <https://www.oecd.org/investment/mne/2089912.pdf>.

25. *Id.* at 32.

26. *Id.*

the policy objectives outlined in this annotation, the Pollution Halo model should be the goal. This model depends on foreign investors' home countries subjecting companies engaging in FDI to more stringent regulations. This is particularly true for multinational companies, as they attract greater scrutiny from NGOs, governments, and consumers.²⁷ The model may even be beneficial for the energy sector, as innovation in clean energy actually leads to significant economic savings.²⁸

Thus, pressure on corporations to fight Bolsonaro's deforestation policies must come from above, in the form of the leaders of their respective home countries, and below, in the form of consumers. The Pollution Halo model only works if there is greater scrutiny and more stringent regulation from the sources hypothesized to play a role in the creation of the model itself. The same world leaders who have withdrawn support for the European Union-Mercosur trade deal can mobilize their domestic private sectors to withdraw business from Brazil in order to realize the changes they are hoping to effect with their withdrawal. They can also impose more stringent regulations in their own countries, within the realm of feasibility, to encourage the application of these regulations to multinational business. The main investing countries in Brazil are the Netherlands, the United States, Germany, Spain, the Bahamas, and Luxembourg.²⁹ Some of these countries have withdrawn their support from the European Union-Mercosur trade deal, and leaders may be willing to provide incentives to private corporations to withdraw FDI from Brazil to pressure Bolsonaro. To effect change from the bottom-up, it is also crucial that consumers understand the supply chain of the products they buy so they can make informed decisions about the environmental impact of their purchases. In turn, consumers will likely pressure corporations to maintain best environmental practices through their choice of products. In many cases, this might mean looking to markets outside Brazil

27. *Id.* at 46.

28. *Id.*

29. *Brazil: Foreign Investment*, SANTANDER TRADE MKTS. (last updated Feb. 2021), https://santandertrade.com/en/portal/establish-overseas/brazil/foreign-investment?url_de_la_page=%2Fen%2Fportal%2Festablish-overseas%2Fbrazil%2Fforeign-investment&&actualiser_id_banque=oui&id_banque=0&memoriser_choix=memoriser.

to satisfy demand until Bolsonaro takes serious and necessary steps to halt deforestation.

VI. CONCLUSION

If Bolsonaro's policies regarding deforestation do not change, the implications for the Brazilian rainforest and the entire global climate are serious. The rainforest may suffer from increased use of dangerous pesticides, construction of detrimental infrastructure, and threats to numerous protected species. International criticism of these policies is evident in many participants' withdrawal of support of the European Union-Mercosur trade deal, but this is not enough to shake *ruralista* backing of Bolsonaro's environmental policies. Therefore, the most effective way to change the trajectory of deforestation is through private international law. Specifically, if corporations engaged in FDI in Brazil are incentivized to withdraw from the country, the commercial sector would be directly affected by the loss of business. Further research should be done into how these international corporations could be incentivized, but possible solutions might include government subsidies from the same leaders who withdrew their support for the European Union-Mercosur trade deal or encouraging consumers and government leaders to impose reputational harm on corporations who fail to withdraw their FDI from Brazil. Such actions might change the opinions of Bolsonaro's base about what environmental policies would be the most beneficial for their enterprises.