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The legitimacy and effectiveness of the European Union Deforestation Regulation

Insights from the (Colombian) coffee sector

Dr. Janina Grabs, Associate Professor of Sustainability Research, University of Basel
janina.grabs@unibas.ch
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Why coffee? Why Colombia?

Why the coffee sector?

- Simultaneously high level of previous sustainability governance but low experience in deforestation governance
- Low levels of traceability in mainstream sector
- Lobbied to stay out of scope – little engagement with text of law
- High proportion of smallholder producers (66% of global production; 12.5 million families)

Why Colombia?

- Third-largest coffee producer in the world after Brazil and Vietnam
- Longstanding and well-resourced coffee institution (Federación Nacional de Cafeteros)
- Sector dominated by small farmers (average 2ha), many organized in cooperatives
- Institutional preconditions to succeed despite challenges characteristic of the sector

Longitudinal case study approach

- Interviews w 58 global experts (from industry, civil society, and governments) in 55 interviews (45-90 min, April-September 2023)

- + 13 interviews in Colombia (45-60 min, March 2024)

- + planned follow-up interviews (Summer 2024)

- return visit to Colombia once law is implemented …





What is legitimacy?

– "Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."

– Can be studied in normative ways (decide what attributes makes a political system, regime, or institution acceptable) or **descriptive ways** (study whether and why the subjects of a particular governance regime accept it as justified)



Suchman 1995; Hogl et al., Ch. 1

(One) typology of legitimacy

- **Input legitimacy**: “governance *by/of* the people”
  - governing processes are generally responsive to the manifest preferences of the governed
  - democratic principles of participation, representativeness and inclusion; participatory quality of the process leading to laws and rules
  - Core question: who are “the people”?

- **Throughput legitimacy**: “governance *with* the people”
  - Proceduralist perspective: quality of governance processes based on principles of efficacy, accountability, transparency, inclusiveness and openness to interest intermediation

- **Output legitimacy**: “governance *for* the people”
  - policies adopted will generally represent effective solutions to common problems of the governed
  - focused on the problem-solving capacity of a political or governance system, and if they promote the common welfare of the constituencies in question
  - Core question: what is “the common welfare”, and how can it be attained?

(Scharpf, 1999; Schmidt, 2013)

Dilemma of input legitimacy: EUDR highly popular with citizens, seen very critical by sectors

Press Release > NATURE & FOOD

87% of Europeans support new laws to combat global deforestation, new poll

Greenpeace European Unit
21/05/2019



- “But at the legislation level, they don't care, that's not their job to care about these things, those who write this document, because their job is to write the legislation and kind of win the election for the next round for themselves, and who they are representing. They're representing, ultimately, the consumer countries and not the producer countries, and there's no linkages being made to the long term consequences on consumer choice.”

- “It's a regulation that is currently in its current text, very well meant with a lot of good intention that I fully support as a citizen, I would vote again and again, for the people who have tried to pass this. But as a sustainability professional, I can just bang my head against the wall thinking, how can someone issue a document that is so sloppy, and so vague, and so full of loopholes?”

Lack of inclusivity in policy development (both re: industry and producing countries)

- “So there isn't a clear understanding when the regulation has been drafted, about value chains, how the supply chain functions, and they haven't really engaged, not with us, not with cocoa, not with all those sectors affected.”

- “There's no point in wasting time talking about how badly this legislation was prepared and how the EU Commission should have done this, should have done that. For us as an industry – Why haven't they consulted us? There's a lot of this level of conversation still going on I think.”

- “There is such a deep disconnect between the desired outcome and the comprehension of how the industry works. It's quite shocking.”

- “And what didn't happen over the last three years is that the private sector was heard in this whole process. And most importantly, the EU regulation is impacting the livelihoods of so many, and in our case here coffee farmers 12 to 16 million smallholder coffee farmers, and no producing countries have been asked in the process.”

- “There's such a gap between what would be like kind of sustainability to consider in from the producing countries, whereas what happened here, with that kind of regulation […] there was not even really discussions with the producing countries…”

- Colombian reactions: “fear”, “terror”, “one more problem”, “a strong hit”, “assaulted by the law”

Lack of clarity on acceptable tools and procedures, making compliance more difficult

- Expectation of additional guidance documents (only partially met) delayed action and ambition

- “I think everybody is very, very busy running around like headless chicken, trying to understand what the commission means by negligible risk, what the commission means by due diligence statement, or what the source of truth will be for deforestation.

- We are basically asked to play a sport and being told to prepare for a game that will start in December 2024. But where the rules of the game will only be issued at some point before that point. And so this is the main frustration I believe in the sector.”

- “It's kind of like you're flying an airplane and nobody ever checks the tank if there's enough fuel to get there and all of a sudden, the guy opens it and says, Oh, by the way, we're empty. Okay good. You have told us.”

- “I think that the biggest question is actually, what are going to be the specific methods of verification by Europe? Which we don't know. If you could, as soon as you find out, please call me.”

- “God knows what they're gonna ask. I don't think I personally don't think they even know what they're gonna ask.”

Lack of feasibility in complying globally within the time frame – likely limits of (short-term) effectiveness/output legitimacy

- "Because when we specially talk about the deforestation regulation, though, the requirements that are being set, at some point, we do see them even unrealistic in practice. Especially in that timeframe."

- "There's also a bit of a sense that people are going around with their heads in the sand. Because when the size of the task becomes too impossible, actually, you almost just give up and say, well, something's going to have to give at some point and let's see what it is that's going to give, because how much time and effort can we invest in trying to meet impossible targets?"

- "Will the sector be compliant? Do we really have a choice? You know, is it going to be 100% waterproof? No. But somehow, when something needs to happen, I think the sector or we as humans in general, we have the capacity to get there. But, how exactly is going to be arranged? And how much will be hidden behind other things? I don't know…"

- "The timeframes that are that are envisaged to achieve these things are not realistic. I mean, I think there are technological and simple human limitations and what we can do in terms of say, mapping … there's a lot less passion to work on regulations that are mandated, as opposed to working on solutions that could be beneficial to the community as a whole."

Hidden, impossible requirement: full legal compliance at origin

- “And as we find things, the way I think about it, I say, if it's a national wide problem, we probably aren't solving it. If it's a coffee specific industry problem or agriculture problem, then we should be working across our coffee peers, and maybe even our agricultural peers that set up systems to try to work on fixing that. And if it’s a [COMPANY] specific supply chain, that's 100% on us, we have that. So that's, I try to think about it in those three buckets. But because we're all still operating so much in silos, and I haven't seen the big institutions, that where we all collaborate with each other really tackling these things going on. I fear that there's still a bit of the carpet getting lifted and stuff getting put under it.”

- Concern over oversimplified (?) understanding of legal compliance, given that a large share of the rural economy is informal and laws on the book were ‘made for urban contexts’

- National legal compliance as large question mark (which laws? Compliance to what level?) – and something that economic actors shouldn’t be responsible for enforcing

- “Informality is not illegality … coffee is a legal crop, so how could it be illegally produced?”

- “Solving the problems of the country is outside of our reach.”

Output legitimacy limited by supply chain splitting, risk avoidance + competition on the ground

- “The big companies, they'll try to pull away, but it doesn't resolve the issue at all. In fact, sometimes it has a negative impact on what you could do and how you could regulate it, and how you could intervene. So rather than coffee and cocoa being something that you can help reduce deforestation and stabilize forest margins, it will become the opposite. So for me, what my challenge will be to this legislation is well, instead of risk, what about the opportunities that you're cutting away with some of these policies as well.”

- “As much as I think we all agree with the objective of it. I think it is completely opposite. Like it essentially puts all of the incentives on us to go out of any risk areas. It puts all of the incentives on us to work with larger producers like essentially, it's so much easier for compliance for Brazil than in other origins. […] Then when you look into the whole deforestation aspect, there's obviously certain origins where it's also trickier to do that. And then I mean, again, it's often kind of like where you would actually assume the producers would need like kind of most support where that it actually gets risky for us to engage.”

- “I personally do not think that it does very much to actually tackle deforestation because it does not put the incentives to work with people to stop deforestation, but it sets the incentives to essentially go out of the areas and I mean, possibly people will then just be [pursuing] things where they're making less money, and they need even more land. Right. So well, in that regard, it doesn't really help much.”

Summary: Companies are preparing for compliance with little motivation, a risk mitigation mindset, and increasing resentment – what does that mean for effectiveness?

- Relationship between legitimacy and effectiveness mediated by mutual goodwill/perception of regulated that regulator understands and appreciates efforts taken to date and complexities, which motivates additional company efforts?

- Strong perceptions that punitive/risk avoidance framing discourages on-the-ground investments for improvements – how can this be further incentivized?

- Possibility of instilling ex-post throughput legitimacy by more cooperative implementation governance; joint definition of appropriate compliance pathways and continuous improvement? How to square that with avoidance of lobbying by strongest actors?

- Other themes to discuss: Impacts on industry and sectoral consolidation; impact on power dynamics in value chain; competitive versus cooperative modes of implementation



Questions? Concerns?

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Thank you
for your attention.