



SAINT-LOUIS BRUXELLES

**The EU's Protection of Forests through
Trade: Varying Forest Conditions
Leading to an Uneven Regulation**

Gauthier Martens – 1st December 2023

Contents



On Forests



COM(2019) 352 final & COM(2021) 572 final



Regulation 2023/1115



The *EU first* agenda and the Brussels Effect

On Forests

The Importance of Forests

- Forests cover 30% of the Earth's land area (43% in the EU) and host 80% of its biodiversity
- They hold cultural, social and spiritual values for many populations, in particular indigenous peoples
- They provide subsistence and income to about 25% of the world's population



The Destruction of Forests

- Between 1990 and 2016, 1.3 million km² of forest area has been lost
- Forest degradation accounts for roughly 12% of greenhouse gases (GhG) emissions
- EU forest cover has increased since the 1990s, but the rate of deforestation in other parts of the World more than compensates this gain
- An important factor for the pressure on forests is the *“increasing demands from a growing global population for food, feed, bioenergy, timber and other commodities”*



International (Soft) Law

- 1992 Rio Forest Principles
- 1992 UN Convention on Biological Diversity
 - Global Forest Plan for Biodiversity 2011-2020: Aichi Targets
 - Target 5: Habitat loss halved or reduced
 - Target 7: Sustainable agriculture, aquaculture and forestry
 - Kunming-Montreal Global Biodiversity Framework 2022-2030
- UN Strategic Plan for Forests 2017-2030

Figure 1 - Forest goods and services supporting the UN Sustainable Development Goals



- 1 Income from forest products
- 2 Nourishment from wild fruit and game
- 3 Medicinal plants
- 6 Freshwater for drinking and irrigation
- 8 Sustainable and inclusive economic growth and decent work for all
- 10 Reduced income inequality
- 12 Sustainable consumption and production patterns
- 13 Carbon capture and storage
- 15 Biodiversity

Figure 2 - Impacts of deforestation on Sustainable Development Goals



- 1** Increased vulnerability to extreme weather
- 2** Loss of rainfall and crop pollinators
- 3** Respiratory illness due to forest fires
- 6** Unsustainable management of water resources
- 8** Unsustainable economic growth and lack of decent work
- 10** Income inequality
- 12** Unsustainable consumption and production patterns
- 13** CO₂ emissions
- 15** Biodiversity loss

Transforming the
EU's economy for a
sustainable future

Mobilising research
and fostering innovation

A zero pollution ambition
for a toxic-free environment

Preserving and restoring
ecosystems and biodiversity

From 'Farm to Fork': a fair,
healthy and environmentally
friendly food system

Accelerating the shift to
sustainable and smart mobility

Leave no one behind
(Just Transition)

Financing the transition

Increasing the EU's Climate
ambition for 2030 and 2050

Supplying clean, affordable
and secure energy

Mobilising industry
for a clean and circular economy

Building and renovating in an
energy and resource efficient way

The
European
Green
Deal

The EU as a
global leader

A European
Climate Pact

EC Communications on Forests beyond and within the EU

COM(2019) 352 final – Stepping up EU Action to Protect and Restore the World's Forests

- Reduce the EU consumption footprint on land and encourage the consumption of products from deforestation-free supply chains
- Work in partnership with producing countries to reduce pressures on forests and to 'deforest-proof' EU development cooperation
- Strengthen international cooperation to halt deforestation and forest degradation and encourage forest restoration
- Redirect finance to support more sustainable land-use practices
- Support the availability of, quality of, and access to information on forests and commodity supply chains. Support research and innovation



COM(2021) 572 final – New EU Forest Strategy for 2030

- Focuses on EU forests but reaffirms the Commission's full commitment to deliver on its 2019 communication
- 5 axes:
 - Stepping up the socio-economic functions of forests for thriving rural areas and boosting forest-based bio-economy within sustainable boundaries
 - Protecting, restoring and enlarging EU's forests to combat climate change, reverse biodiversity loss and ensure resilient and multifunctional forest ecosystems
 - Strategic forest monitoring, reporting and data collection
 - A strong research and innovation agenda to improve our knowledge on forests
 - Inclusive and coherent EU forest governance framework

The Forest-Risk Commodities Regulation

Regulation 2023/1115 – Ambit and Objective

Article 1(1) – Subject matter and scope

*“This Regulation lays down rules regarding the **placing and making available on the Union market** as well as the **export** from the Union of **relevant products** (and) **relevant commodities** (...) with a view to:*

- (a) Minimising the Union’s contribution to deforestation and forest degradation worldwide, and thereby contributing to a **reduction in global deforestation**;*
- (b) Reducing the Union’s contribution to **greenhouse gas emissions and global biodiversity loss**.”*

Regulation 2023/1115 – Legality and Durability Criteria (1/4)

Article 3 – Prohibition

Relevant commodities and relevant products shall not be placed or made available on the market or exported, unless the following conditions are fulfilled:

- (a) They are **deforestation-free**;
- (b) They have been produced in accordance with the **relevant legislation of the country of production**; and
- (c) They are covered by a **due diligence statement**.



Regulation 2023/1115 – Legality and Durability Criteria (2/4)

The **Legality criterion** is a transfer from Regulation 995/2010 (EU Timber Regulation) which *“la[id] down obligations of operators who place timber and timber products on the internal market (...)”*.

- Art. 4(1) EUTR: *“The placing on the market of illegally harvested timber and timber products derived from such timber shall be prohibited.”*
- Art. 2(f) EUTR: *“‘Legally harvested’ means harvested in accordance with the applicable legislation in the country of harvest.”*
- Art. 2(g) EUTR: *“‘Illegally harvested’ means harvested in contravention (...)”*

Regulation 2023/1115 – Legality and Durability Criteria (3/4)

Article 2 – Definitions

(40) ‘**Relevant legislation of the country of production**’ means the laws applicable in (said) country (...) concerning the legal status of the area of production in terms of:

- (a) Land use rights;
- (b) Environmental protection;
- (c) Forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting,
- (d) Third parties’ rights;
- (e) *Labour rights*;
- (f) *Human rights protected under international law*;
- (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, *anti-corruption*, trade and customs regulations.

Regulation 2023/1115 – Legality and Durability Criteria (4/4)

The **Durability criterion** means that for a product to be accepted on the EU market, it must be "deforestation-free".

Article 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.

An Example of the *EU First Agenda*

The European Green Deal as a Neo-Liberal “EU first” Agenda

- From the outset, it is presented as a “*structural response and new growth strategy that sets out ambitions to transform the EU into a modern, resource-efficient, and competitive economy*”.
- It deliberately produces effect beyond the EU, notably through “climate diplomacy” mechanisms aiming at redefining the relations of the EU with third States on the basis of a neo-liberal vision of ecological/green transition.
- The EU itself acknowledges that “*Union consumption is a considerable driver of deforestation and forest degradation on a global scale*”.



The Relevant Commodities and Products

Article 2 – Definitions

- (1) '**Relevant commodities**' means cattle, cocoa, coffee, oil palm, rubber, soya and wood;
 - (2) '**Relevant products**' means products listed in Annex 1 that contain, have been fed with or have been made using relevant commodities.
- Supposedly apply to products and commodities produced both inside and outside EU territory, but is it really the case?



Regions and Countries of Production : Cattle Meat

Regions

Africa: 8.6%

Americas: 46.7%

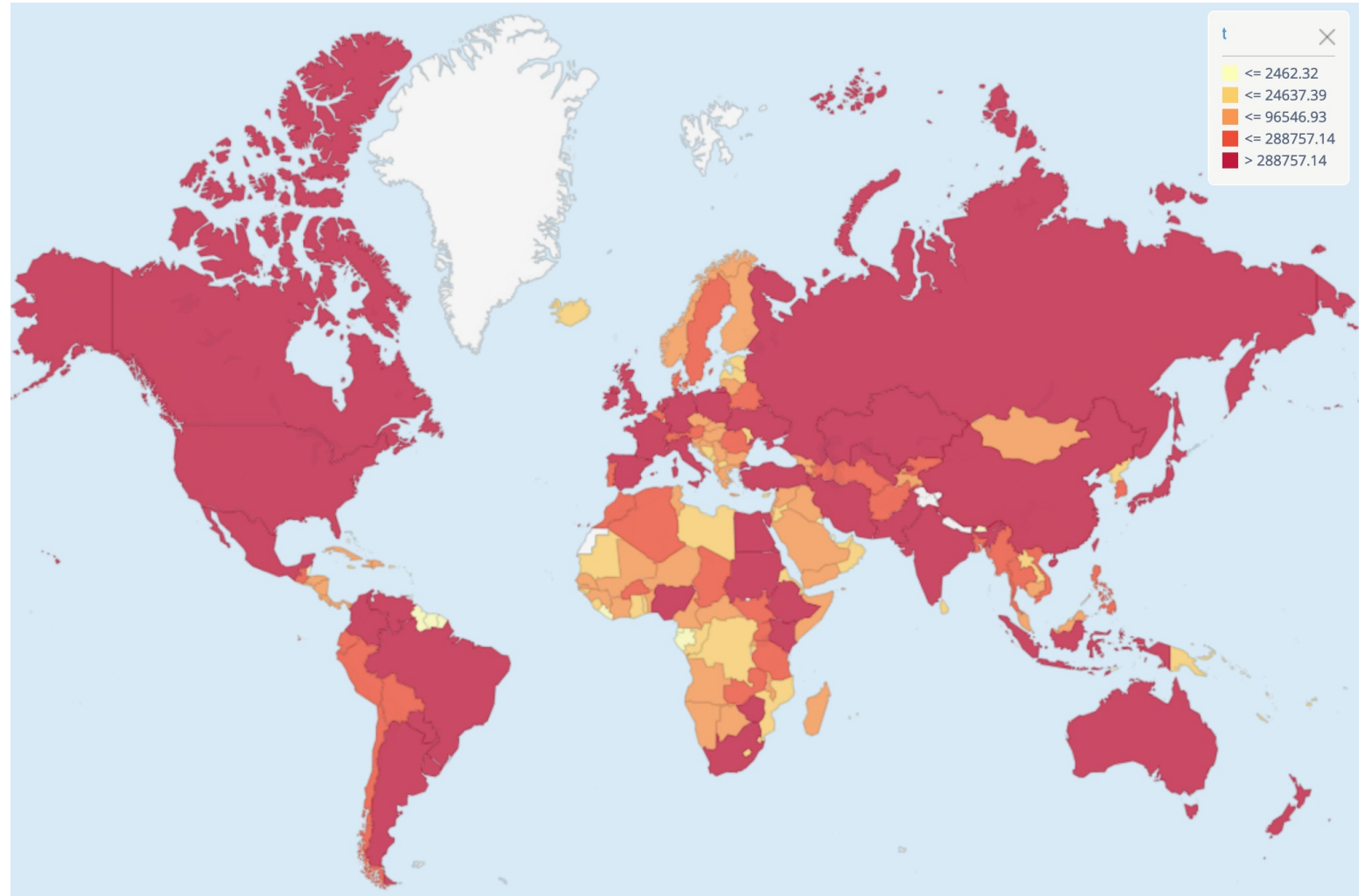
Asia: 21.9%

Europe: 18.3%

Oceania: 4.4. %

Main Countries

1. United States
2. Brazil
3. China
4. Argentina
5. India



Countries and Regions of Production : Cocoa Beans

Regions

Africa: 67.1%

Americas: 15.3%

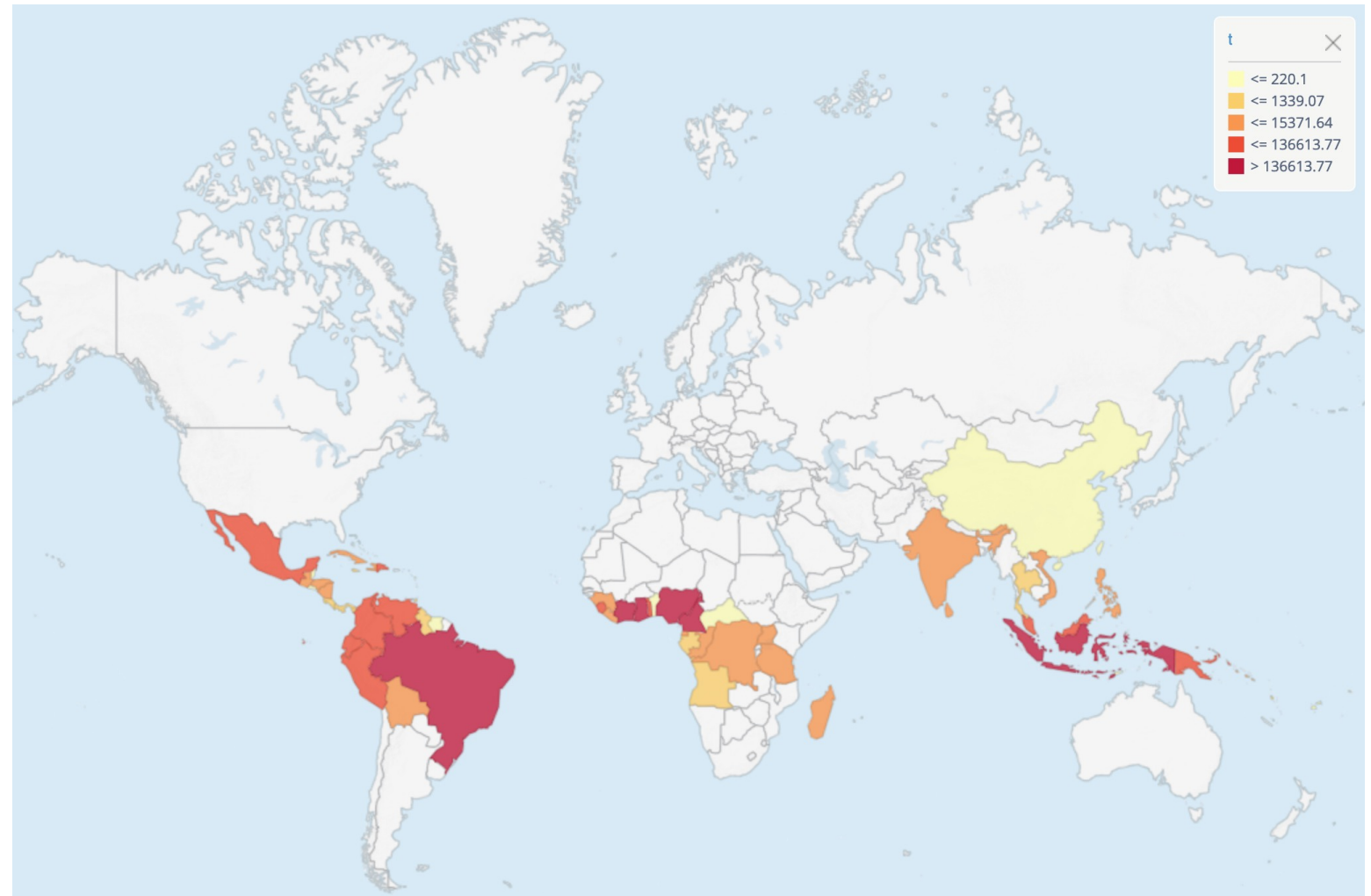
Asia: 16.5%

Europe: 0%

Oceania: 1.1%

Main Countries

1. Ivory Coast
2. Ghana
3. Indonesia
4. Nigeria
5. Brazil



Countries and Regions of Production : Coffee

Regions

Africa: 14%

Americas: 57.1%

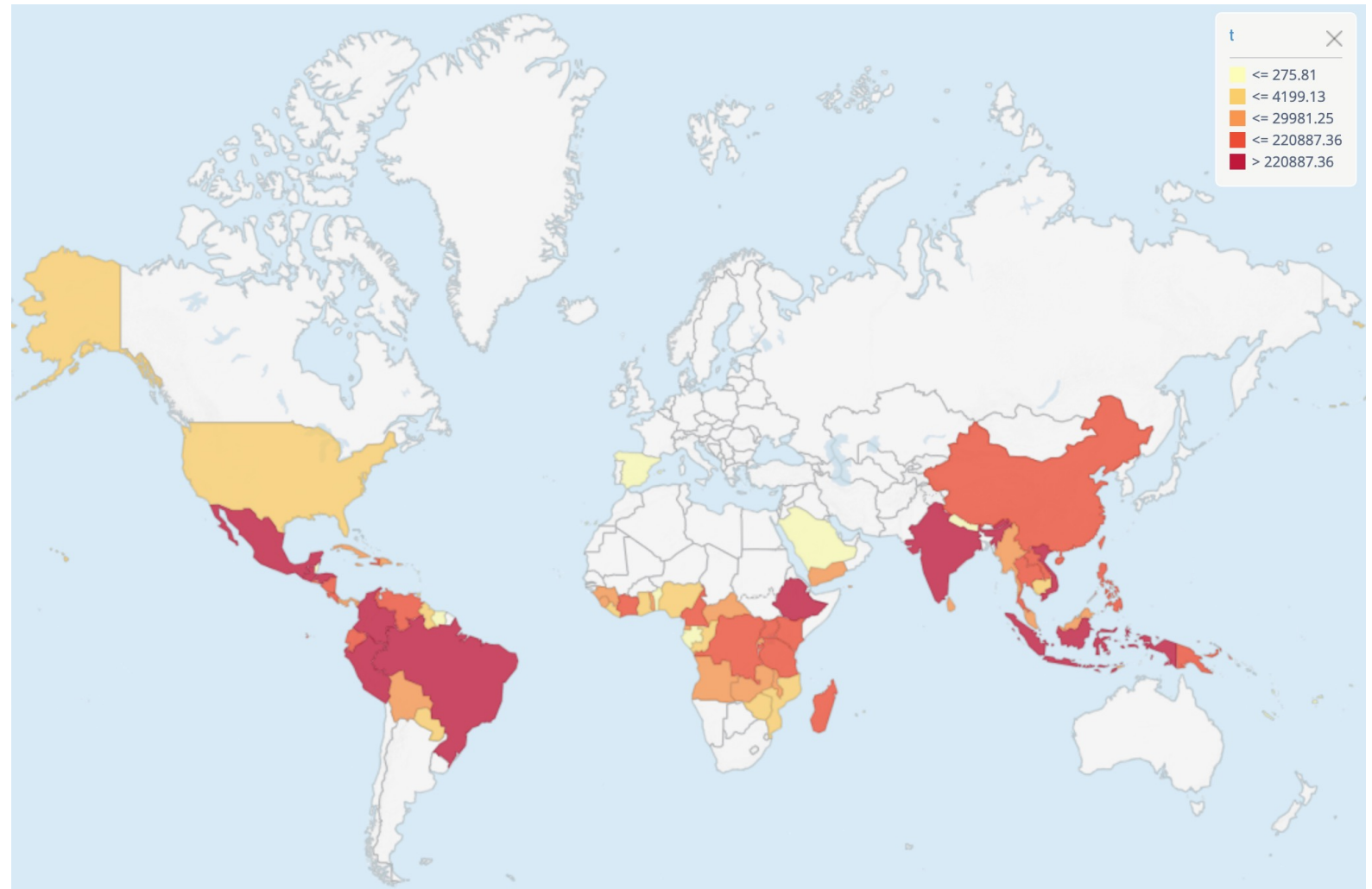
Asia: 28.1%

Europe: 0%

Oceania: 0.7%

Main Countries

1. Brazil
2. Viet Nam
3. Colombia
4. Indonesia
5. Ethiopia



Countries and Regions of Production : Oil Palm Fruit

Regions

Africa: 7.6%

Americas: 5.4%

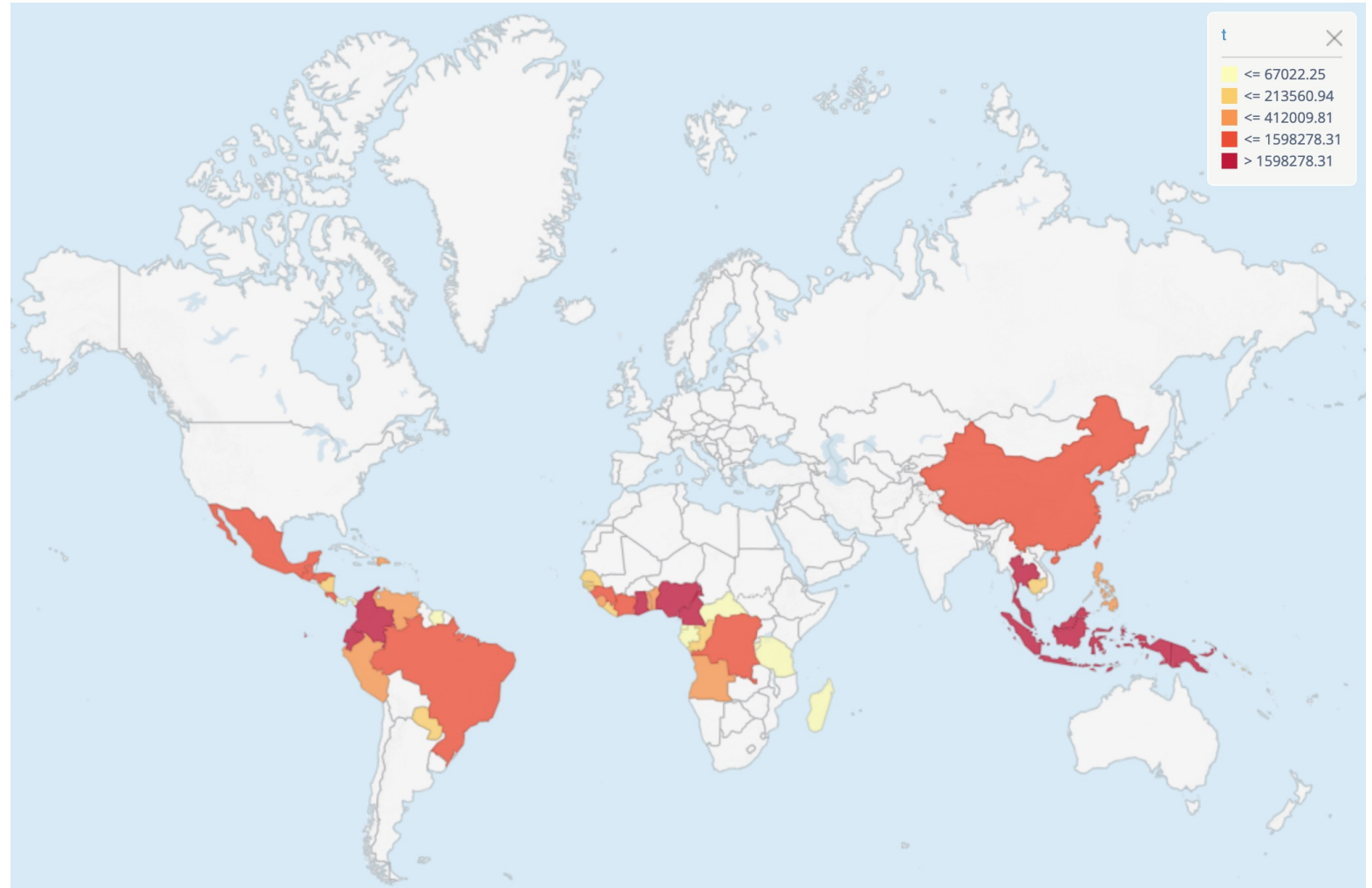
Asia: 86.1%

Europe: 0%

Oceania: 0.8%

Main Countries

1. Indonesia
2. Malaysia
3. Nigeria
4. Thailand
5. Colombia



Countries and Regions of Production : Natural Rubber

Regions

Africa: 5.9%

Americas: 3.6%

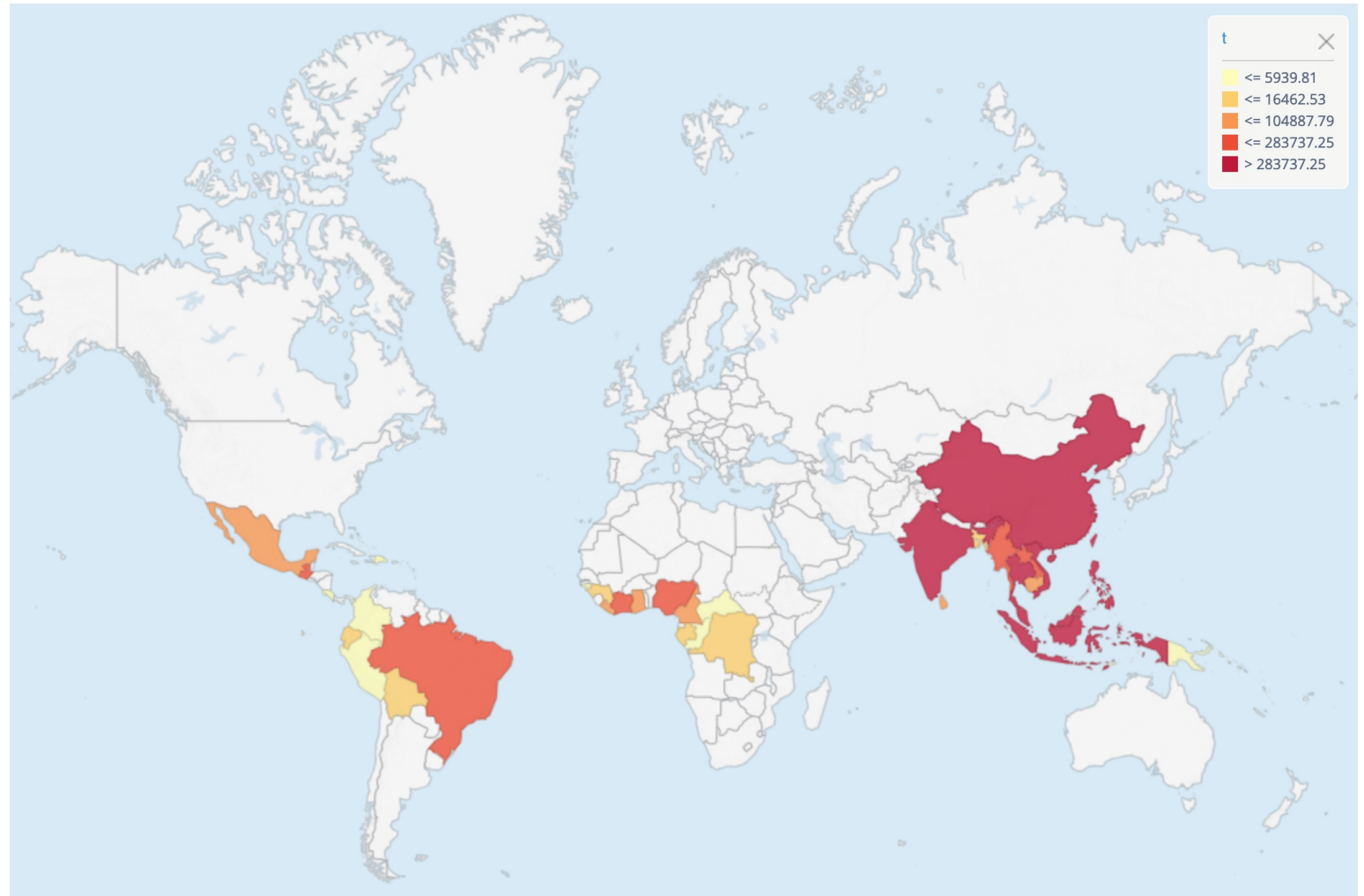
Asia: 90.5%

Europe: 0%

Oceania: 0.1%

Main Countries

1. Thailand
2. Indonesia
3. Malaysia
4. India
5. Viet Nam



Countries and Regions of Production : Soya beans

Regions

Africa: 0.8%

Americas: 85.8%

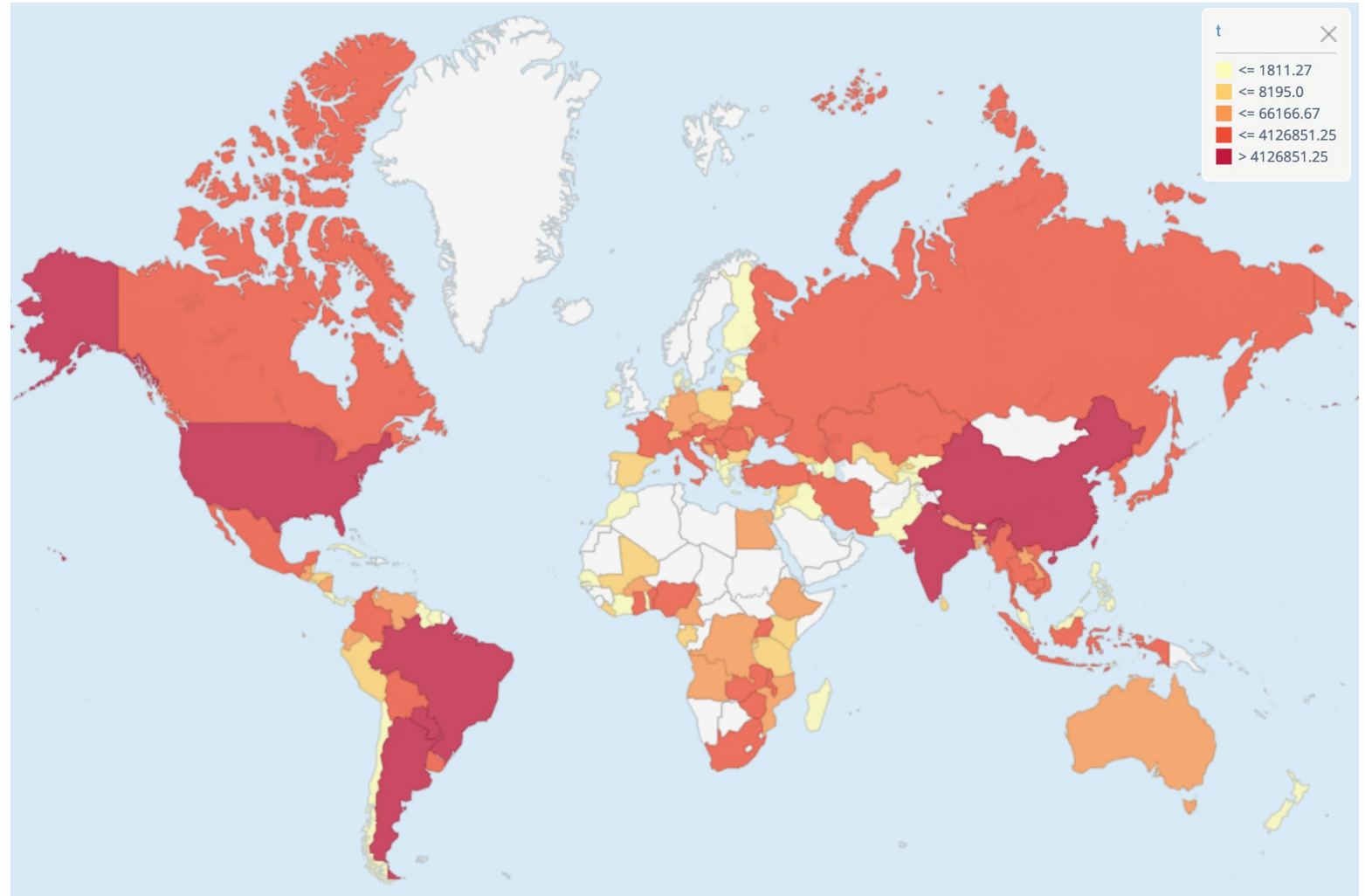
Asia: 11.3%

Europe: 2.2%

Oceania: 0%

Main Countries

1. United States
2. Brazil
3. Argentina
4. China
5. India



Countries and Regions of Production : Industrial Roundwood

Regions

Africa: 4.2%

Americas: 42.6%

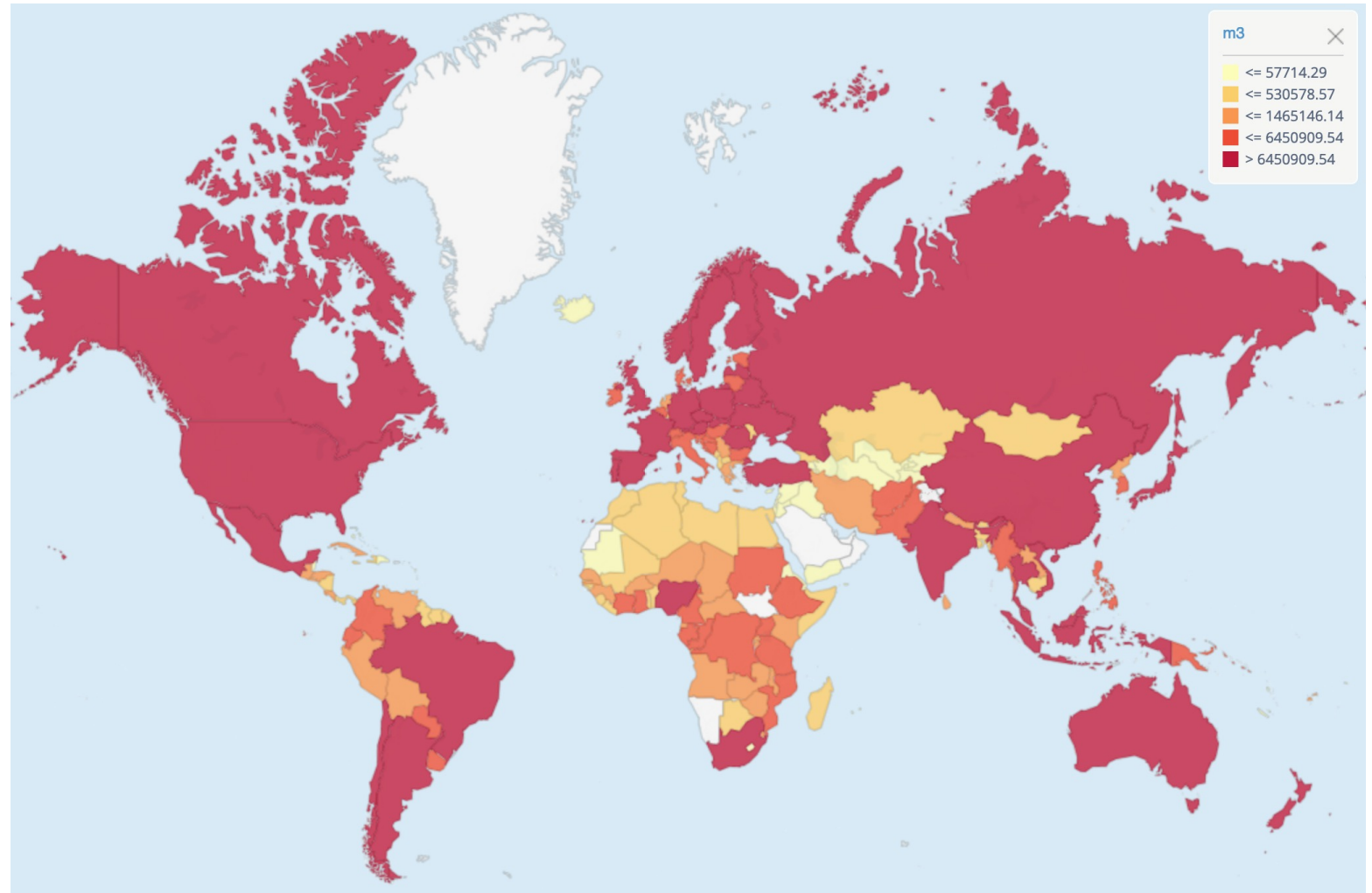
Asia: 19.8%

Europe: 30.3%

Oceania: 3.2%

Main Countries

1. United States
2. Canada
3. Russian Federation
4. China
5. Brazil



Imposition of EU Rules through the *Brussels Effect*

- Besides for cattle and wood, the EU plays a negligible role in the production of the commodities targeted by the Forest-Risk Commodities Regulation → It mainly targets third countries
- The **Brussels Effect** is “*the Europeanization of many aspects of global commerce due to the EU’s ability to promulgate regulations that become entrenched in the legal frameworks of developed and developing markets*”.
- One of the objective the Regulation is to induce a reduction in global deforestation and forest degradation.



Conclusions

- The addition of the “durability criterion” stems from the EU presenting itself as a “moral intervener”, if need be in opposition to the affected producing countries → Considered by many third States as “anti-collaborative” and depriving them from their regulatory prerogatives.
- The EU uses “*a range of narratives and strategies that employ regulatory power, depend on geopolitical sanctions and exercise the soft power of moral standing to frame urgency and direct response to address climate change*”.
- FRC Reg. uses “*the power wielded by transnational corporations to shape supply*”, but is part of a framework that refuses to genuinely address the power discrepancies allowing its mechanisms.

Thank you!

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