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BRAZIL'S COURT DECISION GOOD FOR FORESTS

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The Brazilian Forest Code is one of the most ambitious, controversial and complex conservation laws in the world. This complexity must be understood to interpret the recent Brazil Supreme Court decision to uphold the changes to the Law that were made in 2012. This Court decision will enhance forest conservation in Brazil, not diminish it. The core question is this: is it better to have a "perfect" law that is virtually impossible to implement, or an "effective" law? With the revisions of 2012, the Forest Code can now be a far more effective law. It is being implemented at scale and remains, by far, the most ambitious forest conservation law for private land in the world. To undo the 2012 Forest Code would open up a Pandora's box of conflict and polarization that would threaten the important progress that has been made in implementing the revised Code.

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The main problem with the 2012 revision is that it is unfair to those farmers who, against all odds, complied with the old Forest Code. When their neighbors were given amnesty for illegal deforestation that enhanced the market value of their farms (because cleared land is worth more than forest land), the law-abiding farmers lost out. This must be corrected, but not by undoing the new law. An emergency plan is needed to recognize and reward these law-abiding farmers. The New Forest Code maintains all of the incredibly high restrictions on deforestation that were part of the previous Forest Code—a minimum of 80% forest cover in the Amazon forest biome and 20% minimum cover in the Cerrado savanna woodland. Riparian zones, slopes and hilltops are still illegal to clear. What has changed is the requirement for forest restoration. The New Forest Code now has a provision for developing ecosystem service markets to drive this reforestation (Article 41). To understand our conclusions, which are based on our published analysis of the New Forest Code and extensive interviews with Brazilian farmers, let me give you some history of the Forest Code and its implementation in the Amazon region. For Amazon landholders, the minimum portion of your property that must be maintained under forest cover—the "Legal Reserve", as it is called—was raised from 50% to 80% in 1996 with the flash of President Fernando Henrique Cardoso's pen through a Provisional Measure (Medida Provisoria). This change was disputed bitterly for five years until it eventually became law in 2001. The change meant that compliance with the Forest Code plummeted overnight. Unfortunately, the mechanisms established to help landholders achieve compliance with the new Legal Reserve requirement were never really implemented. In the State of Mato Grosso alone, it imposed $3 billion in opportunity costs on the region's farmers because of less crop cultivation—an

average of $122,000 per farmer. Can you imagine a farm sector anywhere in the world that would tolerate regulatory volatility of this magnitude? Well, there is more. In 2000, the State of Mato Grosso, Brazil's largest agricultural producer in the southeastern Amazon, decided that the "transition forest"—roughly half of this giant state's forests—was not part of the Amazon forest biome. The message to the state's farmers was that farms in the transition forest needed to maintain only 50% of the property under forest. This State determination was deliberated for five years by the federal government, which overturned the decision in 2005. From 1996 to 2005, therefore, there was a great deal of uncertainty and instability in the Forest Code that made legal compliance virtually impossible to achieve. And in the process, the farm sector grew very angry and bewildered at the international outrage about a law that was a veritable roller coaster. They organized to change the law, and succeeded. Brazilian farmers need recognition and help to make sure the New Forest Code works. With Article 41 put into practice, they could finally receive the positive incentives they have been waiting for to conserve more private-land forest than anyone in the world.