Summary of the

Analysis of the agreement between the European Union and the Mercosur

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Foreword

With every passing month, the gravity of the climate crisis and the current inadequacy of our response to date become more obvious. In December, the European Commission and the Council finally declared that all EU policies must contribute to reaching carbon neutrality targets. Unfortunately when it comes to reconciling trade and climate, this work seems barely to have begun.

Trade agreements negotiated today shape economic exchanges in the long run. Industries and governments adapt to their rules, trade flows change, development models are constrained or enabled by their content. Their effects are felt throughout economies, from the top right down to ground level. Sustainable farms go bankrupt, trees get cut and burned to make space for more pesticide-drenched monoculture.

When trade is treated as an end in itself, trade agreements lock our societies into an unsustainable economic model. The deal with Mercosur is a case in point. The EU will import more meat and other agriculture products. With them, we will import emissions, deforestation, soil contamination and human rights abuses—while endangering local farmers' livelihoods. Already, the Amazon is in flames to feed this trade. In exchange, the Mercosur block will import more European cars, chemicals and machines, will risk the dislocation of its regional value chains and the disruption of its economy.

This type of trade and trade agreement was never acceptable. But as we watch the world burn, they become truly scandalous. There can be no continuation of business as usual, and trade policy must play its part.

Firstly, trade policy must stop doing harm. Each provision in current and future agreements must be assessed on the basis of its sustainability, and removed if need be. We also need strong due diligence rules, and to ensure that no product linked to deforestation and human rights abuses abroad enter the single market.

Secondly, trade agreements must contribute to strengthening clean supply chains, for example, by treating products differently according to their carbon footprint and production processes. Agreements must include binding and enforceable labour and environmental standards.

One thing is clear, the EU-Mercosur agreement is not up to the task.

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Introduction

"All relevant EU legislation and policies need to be consistent with, and contribute to, the fulfilment of the climate neutrality objective"

— European Council conclusions, 12 December, 2019

On 28 June 2019 the European Union and the Mercosur member countries (Argentina, Brazil, Paraguay and Uruguay) concluded talks on a free trade agreement between the two blocs, after 20 years of negotiations. Despite the fact that trade agreements being negotiated today are establishing the framework for international economic exchange for decades to come, the EU-Mercosur agreement barely acknowledges the importance of tackling the climate crisis. The Paris Agreement is mentioned in its non-enforceable Trade and Sustainable Development chapter, but the content and effect of the trade disciplines comprehensively covered in the rest of the text run absolutely contrary to climate objectives. If implemented, they would lock-in and deepen an unsustainable and imbalanced relationship between the two economic blocs.

The study[1] summarized here offers a comprehensive review of the disciplines and mechanisms covered in the hundreds of pages of text which make up the agreement, and of their potential effects. It covers all chapters published so far, addressing changes to trade flows in goods and services, rules, standard-making and non-tariff barriers to trade. The study is based on a textual analysis of the agreement itself, while also integrating secondary literature, impact assessments, and the perspectives and analyses of stakeholders on the agreement.

Climate, environment, economy

The effect of the agreement would be to deepen the primary specialisation of the Mercosur bloc, and the reliance of its economy on the export of agro-commodities. This specialisation, in a region that is home to large bio-diverse ecosystems that are vital for the world's climate, comes at a high price for people and the environment.

Increasing economic reliance on agro-commodities export from Mercosur

The economic and productive structures of the EU and the Mercosur countries differ significantly, as a result of their diverging positions in global value chains. The agreement will maintain and deepen these economic asymmetries. The sectors that will benefit in both blocs are the ones that are already globally competitive: the industrial sector in the EU, and agribusiness in Mercosur.

More agro-exports from Mercosur to the EU

Mercosur agreed to liberalise 93% of its tariff lines for agri-food imports from the EU. The EU in return will liberalise 82% of agricultural imports, while the rest of the imports will be subject to partial liberalisation commitments, including tariff quotas for the most sensitive products: beef, poultry, pork, sugar, ethanol, rice, honey and sweet corn.

Brazil, Argentina and Uruguay are already the top three countries from which the EU imports beef.
Photo: Beatrice Murch, Flickr, CC BY 2.0

Brazil, Argentina and Uruguay are already the top three countries from which the EU imports beef. If we add Paraguay (8th on the list), the Mercosur countries already account for almost 80% of all beef imports to the EU today, with a total amount of close to 270,000 tonnes of beef being exported to the EU in 2018.[2] For poultry, the EU has granted a quota of 180,000 tonnes of additional poultry meat to Mercosur countries, mainly Brazil. This quota doubles the last offer made at the end of 2017, and is equivalent to the entire German or French chicken meat production.[3] The climate implications of such an increase in poultry imports to the EU is likely to be a 6% rise of CO_2 emissions.[4]

In the pork sector, the EU granted 25,000 tonnes at a low tariff (83 Euros per tonne). While this might not appear to be that much, given that the EU is a net exporter of pig meat (more than 3.3 million tonnes a year), it nevertheless almost doubles the imports of pig meat to the EU at the moment, (currently about 33,500 tonnes per year).[5] This strange logic of importing food products that are already produced in and even exported by the EU (due to overproduction), is fuelling climate change and putting extra pressure on EU farmers.

The biggest impact of the new quota and tariffs for agricultural products under the EU Mercosur FTA will, however, be felt in the EU ethanol sector. The agreement grants a quota of 650,000 tonnes per year. Of this, 450,000 tonnes will be reserved for ethanol for chemical purposes, which will be duty free. The remaining 200,000 tonnes will have an in-quota duty of a third of the Most Favoured Nation rate and is open for all uses, particularly for fuel use. These quotas are very large when compared to current trade,[6] as they represent almost half of Mercosur's total exports of ethyl alcohol to the world at the current moment. An increase in the production of sugarcane and corn for ethanol in Brazil can be expected.

This is particularly worrying, since agricultural production in Brazil, Paraguay and Argentina is based on monocultures of GMO crops, which depend on vast amounts of pesticides and fertilisers. This model is one of the main drivers of deforestation in these countries—and thus climate change—and is also responsible for severe health problems in villages and towns surrounding these plantations due to the chemical fertilisers used. Yet, it is the agribusiness which fosters this destructive model of agricultural production that is set to win with this agreement.

On the European side, this situation has created anger among farmer's associations. The agreement has been described by COPA-COGECA, the union of the two big European agricultural umbrella organisations, as "de facto establishing double standards and unfair competition for some key European production sectors, putting their viability at stake."[7]

Pesticide use – a human rights and environmental issue

Brazil and the USA use the most substantial amounts of pesticides in the world. Brazil consumes about one million tonnes per year, and has become a "paradise for pesticides". In Brazil alone, over 500 pesticides are permitted, 150 of which are prohibited in the EU. Since Jair Bolsonaro took office in January 2019, 290 agrochemicals were approved in the period from January to July 2019, and more than 530 pesticides are still awaiting approval.[8] 70% of these pesticides are used for genetically modified soy, corn and sugar – products the EU will increase its imports if the agreement is ratified. The fertilisers and pesticides are manufactured by European bio-tech corporations such as BASF and Bayer-Monsanto, among others.[9] Since the acquisition of Monsanto by Bayer, over 50% of genetically modified seeds come from this company. According to a 2019 Human Rights Watch report, many rural residents in Brazil are exposed to pesticides sprayed near their homes, schools, and workplaces. They increasingly fear reprisals from large landowners if they denounce poisonings, especially because of the culture of impunity under Bolsonaro. Pesticides are also a key social and environmental issue in Argentina. A network of towns and villages affected by pesticides, and a network of doctors treating affected patients, has been active on this issue for more than a decade now, denouncing the devastating health effects of pesticides. In 2019 Paraguay was criticised by the UN Committee on Human Rights for not controlling the use of pesticides on its soy plantations, causing severe health problems and environmental damage.[10]

A specialisation linked to deforestation and human rights violations

There is an intimate relationship between the agricultural biotechnological model, deforestation, and climate change. Forests and soils trap and store large amounts of carbon dioxide and thus contribute significantly to mitigating global warming. When forests are destroyed, that carbon returns to the atmosphere, causing a twofold negative impact (with both the return of carbon and loss of future carbon storage). 25 – 30% of greenhouse gases released into the atmosphere every year occur due to deforestation.

The agreement will increase the import of products which are linked to deforestation, such as meat or ethanol made from sugar cane. In the Brazilian Amazon, 63% of deforested land is used for cattle grazing.[11] 55% of Brazil's CO2 emissions are due to the change in land use, while in Paraguay the figure is 70%.[12]

By prohibiting export duties, the agreement will also make the export of soy beans—a crop also linked to deforestation—cheaper and more competitive. Soybean imports from Mercosur countries are essential to support the agri-food model in Europe, demonstrating the inconsistency in the EU's discourse regarding deforestation. In fact, in 2019, Brazil was the main provider of soybeans to the European market, with 45% of market share. Brazil (46%), Argentina (43%) and Paraguay (4%) together account for 93% of all EU soya meal imports in 2019.[13]

Since Jair Bolsonaro took office as Brazilian president in January 2019, the level of deforestation has sky-rocketed. Environmental controls and legislation aimed at limiting the impact of agricultural production on deforestation have been dismantled. Moreover the free trade agreement with the EU reinforces and perpetuates the dependency of the Mercosur economies on the very economic activities that lead to deforestation.

Forests have to make way for monocultures of soya, sugar cane and corn. Photo: @markusspiske, Unsplash

Fisheries

Both the EU and Mercosur countries have problematic fishing practices, which the agreement will do nothing to solve, and might even exacerbate.

The agreement does not include a reference to high seas and the nationality of ships, which could lead to triangulation in fishing. Departing from current Mercosur marine legislation, the flag of a ship might confer origin, no matter where the resource is extracted. Therefore, a ship with a European flag could be able to fish for hake in Canadian waters, and then process and export the fish with zero tariffs to Mercosur countries.

Enabling such high seas fish triangulation may have a highly negative impact on the sustainability of the seas. A study by Science Journal warns that if the current exploitative model of fishing continues, within 40 years all fishery stocks will have collapsed.[14]

A weak trade and sustainable chapter unable to re-balance the agreement

The Trade and Sustainable Development Chapter (TSD) covers subjects such as climate change – stating that each Party of the agreement shall effectively implement the Paris Agreement – sustainable forest management and the fight against illegal logging, labour standards and the responsible management of supply chains.

This chapter is the only one in the hundreds of pages of text that refers to the precautionary principle. Yet, the State-to-State dispute settlement mechanism that applies to the other chapters of the agreement, and could lead to trade sanctions if the agreement is violated, is not applicable to provisions of the TSD chapter. Thus, its clauses are essentially soft law, and not enforceable.[15]

Increase in CO2 emissions from trade

The agreement will not only contribute to higher greenhouse gas emissions because of deforestation. The increased trade flows between the two blocs, due to the reduction of tariffs to zero for a large number of products, will also affect the climate. Instead of fostering more sustainable local and regional supply chains, this agreement deepens a trade system where food products which are already produced locally or in the region, are exported to other continents. By 2050, carbon dioxide emissions due to global maritime transport could represent 17% of total carbon dioxide emissions.[16] Moreover these emissions are not accounted for in the national emission reduction targets. International and domestic efforts to reduce shipping emissions are currently grossly inadequate to reach global climate targets.

Also, by negatively impacting on industrial development in the Mercosur region (whose industries cannot compete with the highly developed EU industry), the agreement will make these countries even more dependent on an agricultural model responsible for environmental destruction, deforestation and loss of food sovereignty. At the same time, it will also increase Mercosur's dependence on imports of manufactured products from the EU.

A threat to economic diversification

Economic diversification could be an important way to limit the primary specialisation of the Mercosur bloc, and its reliance on the export of agro commodities. However, the EU-Mercosur agreement threatens regional value chains which have been carefully established over the three decades of the regional grouping's existence. Today, 20% of all Argentine exports go to other Mercosur countries: Brazil, with 16%, is the main destination.[17] But into the future, a significant amount of the more than USD 9 billion that Brazil spends on Argentine industrial and consumer products will likely reduce, with the increasing purchase of European products.

The removal of tariffs in key industrial sectors appears to be one of the main benefits for European companies, which until now faced high costs to export cars (35% tariffs), car parts (14–18%), machinery (14–20%), chemicals (up to 18%) and medicines (up to 14%) to Mercosur.

For Mercosur however, the expected consequences of this liberalisation are negative, especially for employment. A study conducted in December 2017 by the Observatory of Employment, Production and Foreign Trade (ODEP) of the Metropolitan University (UMET) in Argentina estimated that in that country alone 186,000 jobs in the industrial sector are at risk as a result of the FTA.[18]

In general, the agreement will have a profound economic impact on the Mercosur countries, as it will push a restructuring of the model of production, with particular impacts on the manufacturing industry in important sectors such as cars, car parts, textiles, and footwear.

The agreement will increase car exports from the EU to Mercosur. Photo: Surapol Usanakul, shutterstock.com

Cars and car parts

While Mercosur primarily specialises in the export of agricultural products to the rest of the world, at an intra-bloc level, exports between Brazil and Argentina are primarily manufactured goods, for example car parts. Within Mercosur, the automotive industry has a special trade regime that has been excluded from free trade within the bloc. The exchange of vehicles and car parts is regulated by bilateral agreements that allow duty-free import as long as a specific proportional relationship is maintained between the trading partners. A high external tariff of 35% for imports of cars was agreed to encourage the installation of car factories in these countries.

Car parts and car companies in Mercosur that currently buy from local industry could start with the agreement importing those same products from the EU, without the need for them to be manufactured in the region. The most significant negative impact will be on the amount of employment that these industries generate in Mercosur countries.

The previously mentioned impact study by the Argentinian Observatory of Employment, Production and Foreign Trade estimates that 28% of the sector's employment is at risk due to the agreement.

Rules of origins and dangers for numerous sectors, notably textiles

In the Protocol on Rules of Origins (RO) released in July 2019, the European position has prevailed in determining what non-originating material is. For Mercosur countries, there are a significant number of sectors that are sensitive to triangulation by European companies. Labour-intensive products such as footwear, leather goods, furniture, textiles, and clothing would be affected, as well as the chemical sector, and the trade in machinery.

Looking at the example of textiles, the RO that would prevail under the agreement could lead to a considerable loss in employment. In Brazil, the textile sector is the second most important industry in terms of employment: 33,000 textile companies in the country employ 1.5 million people.[19] In Argentina, the textile industry employed 98,000 registered workers in 2018, representing about 10% of the total Argentine industry.[20]

The agreement does not require the mediation of a certification body at the government level to determine rules of origins. Self-certification by exporters will ensure that their product meets the RO of the agreement to obtain tariff preferences. This position was supported by the EU since 2016. Mercosur agreed to modify its own certification system, which was based on the existence of a government authority and certifying entities, to now allow self-certification by private actors.

Ban of export tariffs

Another consequence of the agreement will be the elimination of export duties on agricultural products from Mercosur. This will especially affect Argentina, which uses export duties to improve its fiscal situation. In 2019, Argentina collected USD 6.8 billion in export duties, of which the tariffs on soy alone contributed USD 3.2 billion. This represents 2.4% of the country's Gross Domestic Product (GDP).[21] The elimination of export duties, along with the adverse effects the agreement is expected to have on the industrial sector in Argentina, means that the country might find itself in the position where it is forced to expand agricultural production even further to compensate for fiscal losses due to this measure. Paraguay, which in 2017 passed a law establishing a duty of 10% for soy exports, will also be negatively affected by this change in policy, considering that in 2018 42% of its entire soya meal exports went to the EU.[22]

Intellectual property

The chapter on Intellectual Property Rights (IPR) includes patents on medicines, copyright, trademarks, industrial designs and plant varieties. Two versions of this chapter were released in the past months. When the trade pillar chapters were published on July 12th, 2019, a first version of the IPR chapter became public, which was very short and left out many critical topics. In September 2019, another version was published, which seems to be more complete, although there is no clarity as to whether this is the final version.

The latest public version of the IPR chapter does not include the extension of patent terms anymore, nor does it oblige the parties to sign the Patent Cooperation Treaty (PCT). This is important, since critics feared that signing the PCT would lead to an explosion of foreign patents in Mercosur.[23] Nonetheless, Mercosur pharmaceutical companies have taken a clear defensive position, as local pharmaceuticals usually need public procurement contracts and see the opening up to EU corporations as a threat on both fronts: intellectual property rights and public procurement.[24]

In terms of Geographical Indicators (GIs)—a protected name used for products that have a specific geographical origin and whose qualities, reputation and characteristics are essentially due to their place of origin—the EU protected 355 GIs, while Mercosur registered 220 GIs in the agreement.

Within Mercosur, the country which can be harmed most by an extensive list of GIs protected by the EU is Argentina, which has a long tradition in the manufacture of cheese and wine. Argentina has more than 700 industries that make some of the cheese included in the GI list. They employ 60,000 people directly and indirectly. The inclusion of these GIs would have negative impacts on the entire milk chain, forcing the reformulation of existing brands and commercial development.

Many European cheese names will be protected as Geographical Indicators in the EU-Mercosur agreement.
Photo: @k_ti, Unsplash

Public procurement

This agreement will open up the government procurement market for goods, construction services and infrastructure at the federal and sub federal level for European companies, and vice versa.[25]

The economic consequences for such an opening up in Mercosur is worrying, especially for small and medium-sized national companies, with associated long-term impact such as deindustrialisation, unemployment and reduced capacity to generate wealth.[26] The chapter does not include any provision that establishes an obligation to prioritise offers with high social and ecological standards.

Services

Following the approach in the most recent trade agreements signed by the EU (such as the Comprehensive Economic and Trade Agreement with Canada, CETA), the EU-Mercosur agreement also goes beyond the current WTO rules concerning services. The chapter covers provisions on the mobility of businesspeople, licenses and regulatory frameworks, financial services and capital movements. The negotiation for the services chapter was based on positive lists: meaning that only sectors included in the agreement were listed. The sub-chapter on capital movement establishes a temporary safeguard mechanism only for the EU with the explanation that it is a monetary union: the possibility of applying, for a maximum period of 6 months, a monetary safeguard measure against scenarios where capital transfer can cause a threat to economic stability. Yet, capital flight can put any economy at risk, not just a monetary union.

The provisions on E-commerce restrict the possibility of taxing international electronic transmissions. On the other hand, domestic taxes are allowed. This means that individual consumers can be taxed for using digital services or for buying online, but multinational companies cannot. Thus states end up taxing their own citizens for accessing electronic services, but they are proscribed from taxing the companies generating profits from such economic activities. With respect to Mercosur, researchers Vila Seoane and Saguier estimate that Argentina, Brazil, Paraguay and Uruguay already lose 186, 109, 260 and 6 million USD respectively, because of the lack of tax revenues from electronic transmissions.[27]

With this agreement, member states would also be limiting their bargaining power in multilateral fields, at a time when other states are demanding a rethink of the WTO moratorium on costums duties on electronic transmissions. The agreement would make it difficult for states that may be disadvantaged when it comes to the digital economy and trade in data to join a push for sovereign digital public policies.

Standards and rule making

The alignment of standards and regulations is one of the main objectives of modern free trade agreements, as it implies the reduction of trade-associated costs for operators and thus "facilitates trade". The agreement contains several chapters related to rule-making.

Food safety: the Sanitary and Phytosanitary chapter

Sanitary and Phytosanitary (SPS) Measures refer to measures taken to (1) protect human and animal life from risks arising from additives, contaminants, toxins or causative organisms of food ailments; (2) protect human life from diseases transmitted by animals and/or plants; (3) protect the life of animals and plants in relation to pests or ailments caused by microorganisms; and (4) prevent or limit damage to countries, from the entry, establishment and dissemination of pests.[28]

According to the agreement, the control of compliance with the standards of the other party concerning the enumerated points above, lies with the exporting party. The exporting party will prepare a list of "approved establishments" which are authorised to control the animal and plant products which will be exported. They are certified by a competent authority of the exporting party, which is supposed to guarantee that such establishments do not violate the sanitary requirements of the importing party. The importing party has the right to carry out verifications and audits on the official control system of the exporting party, but has to announce said controls 60 days in advance.

Mercosur's agro-export model is based on massive use of Genetically Modified Organisms (GMOs) and pesticides.
Photo: UNIDO, Flickr, CC BY 2.0

At the same time, the parties agree to simplify controls and verifications, as well as reduce the frequency of import checks carried out by the importing party. Taking into account the fact that the amount of meat products imported into the EU will increase, this is a worrying prospect for Europeans, especially in the light of recent corruption scandals concerning Brazilian beef and the use of growth hormones prohibited in the EU.[29]

Controls at the EU border are already grossly insufficient. In its last report, the European Food Safety Authority (EFSA) declared that it only checked 582 Brazilian samples for their level of pesticide residues in 2017. 7.6% of the samples exceeded the maximum level allowed in the EU.[30] However it is not only pesticides, but also other contaminants such as salmonella, that might enter the EU. Recently, in July 2019, the UK had to send 16 containers of poultry back to Brazil because of the presence of salmonella.[31]

Beyond this, it is notable that the concept of risk-based regulation as set out in the World Trade Organisation (WTO) prevails in the agreement over the precautionary principle of the EU, which does not apply to the SPS chapter.[32] The precautionary principle enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high.[33]

Throughout the negotiations, Mercosur countries opposed the incorporation of the precautionary principle, given that their agro-export model is based on massive use of Genetically Modified Organisms (GMOs) and pesticides. The four Mercosur countries were part of the lawsuit against the EU in the WTO on the region's moratorium for GMOs, which was based on the precautionary principle.

The agreement includes mechanisms to suspend imports from specific regions or farms that have been proven to disrespect SPS standards, while at the same time weakening broader controls.

Technical Barriers to Trade: Regulators not acting in isolation

The central objective of regulatory harmonisation is to reduce operating costs for the private sector. Most disciplines are included in the WTO agreement on Technical Barriers to Trade, but the EU-Mercosur agreement contains stronger disciplines especially on transparency and dialogue with stakeholders, and on the incorporation of "good regulatory practices."

The concept of transparency in this agreement aims to ensure that stakeholders from the other region, whether private or public, can participate in the regulatory process. So called "good regulatory practices" affect the entire decision-making process when new regulations are being developed: preparation, adoption, and application. In the "Agreement in Principle" document of July 1st 2019, the Commission is emphatic: "Companies will be duly consulted before adopting new standards. The regulations in force will be reviewed periodically to respond to the needs of companies and reduce bureaucratic burdens".[34]

The notion of "stakeholders" includes the private sector and the other party itself. This means that the European Commission or the governments of Mercosur would be allowed to intervene in the decision-making process of the other bloc, on issues of technical standards and trade facilitation.

The agreement establishes that the members of the blocs should consult the business sector on new legislative proposals or changes in current regulations that may affect that sector. They should guarantee "good practices" according to the needs of the stakeholders, which are primarily seen as the trade operators in both regions.

Dialogues

The agreement establishes four areas of dialogue for governments to keep working together on standard-setting in the long term. Of special importance is the dialogue on agricultural biotechnology that will be developed by the subcommittee established through this chapter of the trade agreement. It focuses on “specific topics in biotechnology that can affect mutual trade, including GMO testing cooperation” and “exchanging information on topics related to the asynchronous authorisation of genetically modified organisms in order to minimise possible impacts on trade”. The democratic scrutiny of these dialogues, and their protection from corporate influence, is not ensured. This is quite worrying, as EU standards on GMO residues in imported products have been lowered before. In 2011, the European Commission amended Directive 2001/110/EC by introducing “a special mention that clarifies that pollen is a natural component of honey” and therefore not an “ingredient” liable to contain GMOs.[35] Without such modification Argentine honey would not have complied with the European requirement to have less than 0.9% of approved GMOs among its ingredients in order to avoid having to notify information about the GMO content on the packaging. In this context, it is worth noting that the precautionary principle is also not part of the chapter on dialogues.

The increased influence of pro-GMO interests over approaches to standard-setting does not only present a risk for EU consumers, but also for the population of the Mercosur bloc. It is one more avenue to promote the consolidation of an “agricultural biotechnology model”[36] based on agricultural production with genetically modified seeds, which requires the use of vast amounts of agrochemicals and has detrimental impacts on the health of local populations and the environment.

Other elements

Other parts of the available text are also worth noting. They further demonstrate how sustainability is ignored and undermined in the EU-Mercosur agreement.

Labour standards

Paragraph 3 and 4 of the article on labour standards in the non-enforceable Trade and Sustainable Development Chapter makes it clear that the parties: "must respect, promote and effectively implement the main labour standards recognised in the Fundamental Conventions of the International Labour Organisation (ILO)", and "will make continuous and sustained efforts to ratify the fundamental ILO Conventions of which it is not a party". At present, Brazil has not ratified Convention 87 on Freedom of Association and protection of the Right to Organise, and the ILO has observed a lack of compliance by the country to Convention 98 on the Right to Collective Bargaining. The agreement relies on consultation and persuasion mechanisms for the enforceability of these provisions.

According to the ILO, Brazil is among those countries that violate international labour standards, undermine collective bargaining and hinder the work of labour unions. In fact, the International Trade Union Confederation has named Brazil in its 2019 report in its list of the ten worst countries for employees, due to violent repressions against strikes and threats against members of trade unions.[37]

Brazil has been heavily criticised for violating international labour standards. Photo: @jramos10, Unsplash

Dispute settlement

Disputes arising out of this agreement will be resolved by the State to State dispute settlement mechanism. Rulings leading to binding decisions will be enforceable through trade sanctions. Strikingly, the chapter on trade and sustainable development is excluded from this mechanism.

Investor-State Dispute Settlement (ISDS) is not included in the agreement. However, the regulation and protection of investments continues to be covered by already existing Bilateral Investment Treaties (BITs), signed by EU member countries bilaterally with Mercosur member countries. 49 BITs between countries of the two blocs are currently in force. In fact, 38 ISDS claims from EU member states have already been initiated against Mercosur countries, using these BITs, whereas there is just one known claim against an EU member state from Mercosur.[38]

Process: Transparency, publications, impact assessments

As of December 2019, the agreement is in the process of technical and legal revision, known as legal scrubbing. Although the political conclusion of negotiations was announced in June 2019, before the Argentinean election, many elements seem to still be up for discussion. Key chapters have not been published yet, such as the chapter on General Provisions of the Agreement, which provides crucial information about the functioning of the treaty. Also, in some chapters key points remain in square brackets, with the addition of "Notes to Negotiators", which indicates that the negotiation is not yet closed on these matters. The entire pillar on Political Dialogue and Cooperation of the association agreement has not yet been published, and it remains unclear if negotiations concerning this part have been terminated. Apart from the lack of complete published texts of the agreement, it is also important to note that the negotiations have not been guided by Sustainable Impact Assessments (SIA). In fact, the SIA carried out by the London School of Economics (LSE) for the European Commission was published three months after the closing of the negotiations, in October 2019. It is also still a preliminary analysis which does not even take into account the provisions of the chapters published in July 2019, remaining limited to information gathered until September 2017.[39] It also does not take into account the deregulation push in Brazil which has followed the election of Jair Bolsonaro, and assumes the existence and implementation of effective policies in Brazil aimed at mitigating the impact of expansion of agribusiness on deforestation.

The Mercosur governments did not conduct a single publicly available SIA in the last 15 years.

Conclusion

The EU-Mercosur agreement does not depart from the dominant trade policy paradigm defended by the European Union since 2009. And yet in the intervening years, the dominant objectives of the Union have evolved. While mentions of the Paris agreement and of sustainability objectives in the agreement are welcome, nevertheless ultimately and very problematically, the type of trade and economic specialisations which the agreement encourages and locks in for decades into the future are neither consistent with, nor contribute to, the fulfilment of the climate neutrality objective. On the contrary, the EU-Mercosur FTA as it stands may in fact fundamentally undermine global efforts to avert runaway climate change.

The EU-Mercosur FTA as it stands may fundamentally undermine global efforts to avert runaway climate change.
Photo: Pedarilhosbr, shutterstock.com

Endnotes

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