



# The Future of EU Free Trade Agreements: European dialogue in light of the EU-Mercosur Association Agreement

**Klaudija Cremers, Yann Laurans & Tancrède Voituriez (IDDRI)**

The trade policy of the European Union (EU), vis-à-vis the inclusion of environmental concerns, is in a form of deadlock. In response to a rising pressure for a better inclusion of sustainable development in the EU's Free Trade Agreements (FTAs), a "Trade and Sustainable Development" (TSD) chapter has been added, starting with the EU-South-Korea FTA in 2011 and initiating a series of "new generation" of FTAs.

Recent EU "new generation" FTAs (Transatlantic Trade and Investment Partnership, TTIP; Comprehensive Economic and Trade Agreement, CETA) have been heavily scrutinised by the public and encountered increasing difficulties in the process of adoption by national Parliaments. The association agreement between the EU and the Mercosur trade bloc (EU-Mercosur), finalised in June 2019, made no exception: its TSD chapter and its provisions mentioning the Paris Climate Agreement were not deemed sufficient for many European authorities. It might nevertheless initiate a new phase in the design of the European trade policy vis-à-vis sustainable development.

This *Study* provides an overview of recent developments at a European national level on EU FTAs, and in particular on the ongoing EU-Mercosur trade discussions, and aims to provide a first exploration of whether the changing political perspective in these countries on EU FTAs are a temporary trend or whether there is a window of opportunity to make EU FTAs more focused on sustainable development in the future.

## KEY MESSAGES

The recent changes in European political balances are key explanatory factors of European positions hostile to the EU-Mercosur agreement "as it stands". The "greener" colour resulting from different election outcomes explains the majorities or coalitions opposing the agreement under negotiation on environmental terms. It also resulted in new sustainable development commitments by the European Commission through the European Green Deal, making it difficult for the European Commission to sign a FTA which would not explicitly improve signatory countries' climate and environmental performance.

The agreement has brought together hitherto uncommon political interest groups, namely those 1) traditionally sensitive to agricultural problems, 2) those that are sensitive to environmental issues and 3) those that are concerned about the environmental consequences of FTAs.

This type of blockage could arise for a large part of future FTAs as long as third countries are not exemplary in environmental terms, and where the agreement provides for European imports of agricultural products.

In order to exercise a form of environmental diplomacy *via* access to the European market, the Union's main effective international power, the EU must offer its partners agreements that are sufficiently attractive for their signature to be sought in the future.

Several avenues for the development of future FTAs can be envisaged, including the introduction of environmental clauses in the agreements themselves rather than by reference to multi-lateral environmental agreements, designing of investment agreements to promote sustainable development, and adopting internal European regulations to exclude, without discrimination, agricultural products resulting from the degradation of land and remarkable ecosystems.



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## 1. INTRODUCTION

The trade policy of the European Union (EU), vis-à-vis the inclusion of environmental concerns, is in a form of deadlock. In response to a rising pressure for a better inclusion of sustainable development in the EU's Free Trade Agreements (FTAs), a "Trade and Sustainable Development" (TSD) chapter has been added, starting with the EU-South-Korea FTA<sup>1</sup> in 2011 and initiating a series of "new generation FTAs". These chapters typically organise channels of dialogue among signatories to address, based on expertise and working groups, the environmental concerns that may arise. In the ratification process, which may involve the European Council, the European Parliament and national Parliaments, this allowed reaching an agreement and a positive or unanimous vote. This was the case for a series of agreements that did not attract much attention of the general public, such as the EU-Japan trade agreement,<sup>2</sup> and whose negotiations happened as protection against globalisation was not as much a concern as it is today in European opinions.

However, recent EU "new generation" FTAs with the United States (Transatlantic Trade and Investment Partnership, TTIP) and Canada (Comprehensive Economic and Trade Agreement, CETA) have been heavily scrutinised<sup>3</sup> by the public and encountered increasing difficulties in the process of adoption by national parliaments. The association agreement between the EU and the Mercosur trade bloc (EU-Mercosur),<sup>4</sup> announced by the Juncker Commission just before the termination of its mandate, most probably initiates a new phase in the design of the European trade policy vis-à-vis sustainable development. Its TSD chapter and the provisions of the agreement mentioning the Paris Climate Agreement on climate change

were not deemed sufficient for many European authorities, who expressed, even before the first step of its adoption was complete, their reluctance to adopt it.

This expression of concern, even in traditionally trade-supporter countries such as the Netherlands, is the starting point of an interrogation, which this study intends to address: does the opposition to the EU-Mercosur FTA mean that a new phase in the EU trade policy has begun? Moreover, to address this question, we have to assess how deep, and on what grounds, this opposition stands. Does this reaction indicate a change that will last and force a modification of the European trade policy, or is it based on a conjunction of transient occurrences?

This study provides an overview of recent developments at a European national level on EU FTAs, and in particular on the ongoing EU-Mercosur trade discussions, and aims to provide a first exploration of whether the changing political perspectives in these countries on EU FTAs are a temporary trend or whether there is a window of opportunity to make EU FTAs more focused on sustainable development in the future. It draws conclusions regarding the perspectives opened by the current situation and the "EU-Mercosur agreement political sequence".

For this study, we have conducted interviews with researchers, civil society and business representatives as well as sustainable trade experts at a government and EU level in Austria, Belgium, France, Germany, Ireland, the Netherlands, Spain and Sweden. The key recommendations also follow from a seminar that IDDRI organised on November 27, 2020.

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ%3AL%3A2011%3A127%3ATOOC>

<sup>2</sup> <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1684>

<sup>3</sup> <https://www.euractiv.com/section/ceta/video/ceta-explained/>

<sup>4</sup> The four current members of the Common Market of the South (Mercosur) are Brazil, Argentina, Uruguay and Paraguay.

(Sweden Development Agency), Laurens Ankersmit (University of Amsterdam), Michel van Winden (Oxfam Novib), Alan Matthews (Trinity College Dublin), Mathilde Dupré (Veblen Institute) and Julia Grübler and Oliver Reiter (Vienna Institute for International Economic Studies).

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## 2. EXECUTIVE SUMMARY

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The European public is increasingly scrutinising European free trade agreements (FTAs) with respect to their impact on sustainable development. In response, and since the EU-South Korea FTA in 2011, FTAs have been complemented with a "Trade and Sustainable Development" (TSD) chapter, that intends to address these concerns by providing means for bilateral dialogue. However, such a dialogue platform rests on shared goodwill, since it does not possess enforcement power *per se*. Nonetheless, global economic competition is not slowing down, and, especially when FTAs involve agricultural products, bilateral trade is often and increasingly viewed more on its down side than on the bright side. Hence, with the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA), contestation over the possible agro-economical, environmental and sanitary impacts of new FTAs have risen considerably, and ratification by domestic parliaments has proven to be a difficult task.

The projected association agreement with the Mercosur common market (Brazil, Argentina, Paraguay and Uruguay), announced in June 2019, has started a new political sequence. Fuelled by the roaring fires in the Amazon and the rather aggressive position taken by the Brazilian head of State in response to the questioning of his pro-deforestation policy, European negative opinions have turned hostile and led to a series of negative positions expressed by European national Parliaments, heads of State and the European Parliament against the proposed FTA, even before the ratification question was officially raised in the Council. This now obliges the European Commission to think of what amendments to the Mercosur FTA could be designed so as to reassure the various European parties who have expressed their scepticism, while being considered acceptable, if not an improvement, by the Mercosurian countries.

This report probes into this new "European mindset" and surveys the political and economic reasons why such reactions appeared, in order to understand whether this situation might last, be applicable to future FTAs, and what could be the perspectives and the approaches to solving blockages. It starts from the point of view that European bilateral trade agreements can or could be powerful instruments to help align third countries with EU's advanced norms on sustainable development.

The survey of a series of European experts and representatives, focusing on the votes of national parliaments and the public positions of heads of State, delivers a relatively clear

conclusion. Two groups, or blocs, are traditionally opposed to trade liberalisation agreements, and this is no exception in the case of Mercosur: farmers exposed to agricultural imports, and the political representatives who support them, as well as anti-globalisation, or anti-growth, views for whom any instrument to increase or ease trade is counterproductive. In most countries, and in the European Parliament, it is the conjunction of these two groups of opinion, with the growing strength of the environmentalist vote, which explains the *a priori* rejection of the EU-Mercosur agreement "as it stands". In some countries (e.g. the Netherlands and Austria), opposition from some farmers is in itself relatively new. In most of the others, and in the European Parliament, it is the importance given to environmental issues by voters, not only those voting green but also those favouring centrist parties (as they increasingly take into account green issues in their programmes), which explains the majorities or coalitions opposing the agreement under negotiation with a region that includes a country whose government openly favours deforestation, and whose economic players do not yet offer guarantees of traceability and control that would make it possible to attest to the non-participation of Europeans in the deforestation or pollution of third countries.

This state of affairs is rather likely to last, as the environmental, sanitary, human rights and labour conditions concerns are unlikely to abate, either thanks to an earnest and universal care for the sake of the planet and humanity, or based on a need for protection for European activities submitted to stringent domestic regulations, or as excuses for protectionist positions. As a result, this type of blockage could arise for a large part of the FTAs, which will be negotiated in the coming years, as long as third countries are not perfectly exemplary in environmental terms, and where the agreement provides for European imports of agricultural products. Indeed, the Brazilian-dominated Mercosur partner seems to tick all the possible unfavourable boxes in the eyes of many European political, economic and opinion groups. Nevertheless, the general concerns with regards to international trade and globalisation are now so high on the political agenda that it is uncertain whether future agreements with Australia, South-East Asian, Central American and maybe African countries would pass the ratification process by European national parliaments, if not by the heads of State in the Council.

In order to exercise a form of environmental diplomacy *via* access to the European market, the Union's main effective international power, the EU must however offer its partners agreements that are sufficiently attractive for their signature to be sought in the future. Finally, the report proposes a number of avenues for the development of FTAs, which attempt to respond to this paradox. These include the introduction of environmental clauses in the agreements themselves rather than by reference to multilateral environmental agreements, designing investment agreements to promote sustainable development, and adopting internal European regulations to exclude, without discrimination, agricultural products resulting from the degradation of land and remarkable ecosystems.

### 3. BACKGROUND

After 20 years of negotiations, an “agreement in principle” was reached between the EU and the Mercosur countries on 28 June 2019.<sup>5</sup> The European Council is expected to vote on the acceptance or rejection of the trade agreement once the “legal scrubbing” process and the translation of the document in all EU languages has been finalised. The agreement is not only a trade agreement, but also an “association agreement”; it comprises a “political” part that describes the cooperation intentions between the two entities. Therefore, it requires a unanimous vote of the Council. When and if this is obtained, the European Parliament has in turn to vote on the agreement,<sup>6</sup> and subsequently national or sub-national parliaments, according to national provisions, have to ratify the deal. This means that one country or one region can block the agreement, as demonstrated by the Walloon postponement of the CETA agreement in 2017.<sup>7</sup>

There are four different and possibly cumulative types of reasons why European opinions, possibly reflected in parliamentary and governmental positions, may oppose the opening of the EU market and more specifically a given FTA, namely the perceived threat that EU FTAs will:

1. Open the opportunity for companies to litigate governments that have strengthened their sanitary or environmental regulations after the trade deal has been concluded (esp. the case for TTIP);

2. Weaken the EU farmer's economic situation and competitive advantage by increasing imports of goods typically produced by farmers, and especially those that are perceived as economically fragile, such as the small-scale livestock breeders in rural regions (e.g. Mercosur, and even CETA, although for the latter, the volumes at stake are actually negligible);

3. Reduce the degree of sanitary protection by allowing products deemed hazardous (for the environment and/or health), for instance with a high use of antibiotics, feed made of carcasses, pesticides and genetically-modified organisms (GMOs) (e.g. CETA, Mercosur);

4. Open the European economies to more competition and increase offshoring of factories and job centres (probably all FTAs except for those that are deemed very favourable to European industry and services with no exposure of European farmers).

The EU-Mercosur association agreement is sometimes presented as a “meat-for-cars” agreement. Indeed, the agreement provides for:

- A significant increase in import quotas for beef, pork and poultry meat, as well as sugar, ethanol and honey;<sup>8</sup>
- A virtual elimination of tariffs on industrial products, services and certain imported agricultural products, as well as access to federal public markets in the Mercosur region;
- Recognition of many of Europe's protected geographical indications;
- A form of recognition of the precautionary principle, albeit without a strong binding character, since not in the Sanitary and Phytosanitary chapter;
- A commitment to respect international environmental agreements, including the Paris Agreement, but without making this respect an “essential” clause (i.e. whose non-respect leads to sanctions that may lead to the cancellation of the entire trade agreement).

Since it does not comprise a significant investment agreement, the EU-Mercosur FTA does not bring issues of type 1. However, this agreement is seen as problematic for reasons of types 2 and 3, on much stronger grounds than for CETA: meat imports from outside the EU are sometimes seen as a threat to an economically fragile agricultural sector,<sup>9</sup> Brazil has a disputable reputation in terms of sanitary control<sup>10</sup> and farmers in the region use pesticides that are forbidden in the EU.<sup>11</sup>

One of the three goals of the EU-Mercosur trade agreement is to “promote joint values such as sustainable development, by strengthening worker's rights, fight climate change, increase environmental protection, encourage companies to act responsibly, and uphold high food safety standards”.<sup>12</sup> However, criticism on the CETA agreement has revealed a certain weakness in the so-called “new generation” trade agreements, in terms of their ability to enforce such clauses. These are entirely based on a TSD chapter, which mainly provides for a system of working groups and panels as a guarantee mechanism, with little force or capacity for sanctions. The guarantees included in the EU agreements can thus be seen as good instruments for organising dialogue and cooperation between entities that are willing to do so, but they are unable to produce guarantees when one or more entities are not (or no longer) of good will.

<sup>5</sup> <https://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-eu-mercrosur-association-agreement>

<sup>6</sup> The vote in the European Parliament is expected to take place in spring 2021.

<sup>7</sup> <http://www.egmontinstitute.be/content/uploads/2019/11/EPB57.pdf?type=pdf>

<sup>8</sup> Although, neither for the EU nor for Mercosur countries the quantities of beef and other livestock products that are going to be liberalised are very high (less than 1% of the beef market in the EU, although approx. 20% of the beef prime cut sales). They are certainly high for small countries like Austria or Ireland but not for the EU as a whole (7.32 million tonnes beef production) or for Mercosur (13.47 million tons beef production). See [https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien\\_2020/FIW\\_Research\\_Report\\_Implications\\_of\\_the\\_EU\\_Mercosur\\_Association\\_Agreement.pdf](https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien_2020/FIW_Research_Report_Implications_of_the_EU_Mercosur_Association_Agreement.pdf)

<sup>9</sup> <https://www.agriland.ie/farming-news/potential-64-increase-in-beef-imports-under-mercrosur-deal/>

<sup>10</sup> <https://www.nytimes.com/2017/03/17/world/americas/brazil-food-companies-bribe-scandal-salmonella.html>

<sup>11</sup> <https://news.mongabay.com/2020/03/brazil-sets-record-for-highly-hazardous-pesticide-consumption-report/>

<sup>12</sup> <https://ec.europa.eu/trade/policy/in-focus/eu-mercrosur-association-agreement/>

**TABLE 1. Ongoing and future EU trade negotiations\***

Country (Region)	New Agreement being negotiated	Status
Argentina, Brazil, Paraguay and Uruguay (Mercosur)	Mercosur Association Agreement	Negotiations concluded in June 2019
Australia	Australia Agreement	Negotiations launched in 2018
Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates (GCC)	Free Trade Agreement	Negotiations started in 1990, suspended since 2008
Benin, Burkina Faso, Cabo Verde, Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Senegal, Sierra Leone, Togo (West Africa)	Economic partnership Agreement	Signed, awaiting signature from all parties
Burundi, Tanzania and Uganda (EAC)	Economic partnership Agreement	Has not signed or ratified agreement
Central African Republic, Chad, Congo, Equatorial Guinea, Gabon, São Tomé & Príncipe (Central Africa)	Economic partnership Agreement	Negotiations started in 2003, paused until further notice in 2011
China	EU-China investment agreement	Negotiations launched in 2013
Djibouti, Ethiopia, Malawi, Somalia, Sudan, Zambia (ESA)	Economic partnership Agreement	Negotiations started in 2004, paused until further notice in 2011
Haiti (CARIFORUM)	Preferential trade agreement under adoption/ratification	Has not signed or ratified agreement
India	Free Trade Agreement	Negotiations started in 2007, last round in 2013
Indonesia	Free Trade Agreement	Negotiations launched in 2016
Kenya, Rwanda (EAC)	Economic partnership Agreement	Signed and ratified, provisional application when all EAC countries sign and ratify
Malaysia	Free Trade Agreement	Negotiations started in 2010, paused since 2012
Myanmar	Investment protection agreement	Negotiations launched in 2015
New Zealand	New Zealand Agreement	Negotiations launched in 2018
Nigeria (West Africa)	Economic partnership Agreement	Has not signed or ratified agreement
Philippines	Free Trade Agreement	Negotiations launched in 2015
Thailand	Free Trade Agreement	Negotiations started in 2013, no negotiations scheduled since 2014
United States	Transatlantic Trade and Investment Partnership	Negotiations started in 2013, paused until further notice in 2016

\* [https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#\\_under-adoption](https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_under-adoption)

The Covid-2019 pandemic also brought (1) a new spotlight on some challenges related to the EU's globalised economy (e.g. the fragility of global supply chains, the vulnerability of open market economies to global crises and the EU's dependence on China) which led to a call for re-localisation, and (2) a historical programme of economic recovery with a strong focus on directing money to environmental causes (e.g. the return of the carbon border tax subject).

In addition, the roaring fires in the Amazon in the summer of 2020 led to criticism of Brazil's forest policy by various Heads of State in Europe.<sup>13</sup> The same criticism was voiced in Brussels where a "green wave" in the European elections has led to: (1) a new balance of powers in the European Parliament with a stronger role for green parties as well as some substantial environmental commitments from several leftist and centrist political movements (e.g. Renew), and (2) a special focus of the

European Commission on environmental challenges (e.g. the Green Deal, Farm to Fork Strategy and the EU Biodiversity Strategy).<sup>14</sup> DG Trade has opened a public consultation on the future of the EU's trade policy<sup>15</sup> and, before the results could be exploited, the trade European Commissioner Phil Hogan resigned due to misconduct with the sanitary rules while in his home country, Ireland.

A series of trade deals are currently being negotiated and should come to the fore of the European arena in the months or years to come. **Table 1** provides for the list, officially displayed by DG Trade, of negotiation processes with their advancement status.

<sup>13</sup> E.g., French President Macron referred to the EU-Mercosur deal during a G7 meeting in Biarritz where he said that Brazilian President Bolsonaro had lied about his intentions to follow up on the Paris Agreement. This led to greater global attention to the fires with Norway and Germany freezing their support to the Amazon Fund.

<sup>14</sup> The EU's Biodiversity Strategy comprises a future legislative or regulatory instrument that aims to halt importing agricultural products that have contributed to deforestation.

<sup>15</sup> [http://trade.ec.europa.eu/consultations/?consul\\_id=144](http://trade.ec.europa.eu/consultations/?consul_id=144)



## 4. POSITIONS IN THE EUROPEAN UNION AND IN THE MERCOSUR

This section lists, in chronological order and then thematically, the reactions of the different European powers to the announcement of the trade agreement and the concomitant current deforestation rates in Brazil.

After the Juncker commission announced the EU-Mercosur deal in June 2019, a series of reactions were observed across Europe. This sub-section provides an extensive list of reactions from European actors, and positions observed.

### 4.1. France

For a long time, France has been pushing for more transparency and for sustainable development chapters in EU FTAs, although it also has the reputation of a rather protectionist country, having played, for instance, a leading role in the halting of the TTIP negotiations in 2015, before Donald Trump was elected.

In October 2017, France published a report,<sup>16</sup> produced by an independent commission, on the potential impacts of CETA, which led to adopting an action plan to promote better sustainability impact assessments and more measures for phytosanitary rules. France started to develop some efforts at the Council level to include the Paris Agreement in EU FTAs.

French President Emmanuel Macron suggested in 2018 that he would block the EU-Mercosur agreement if Brazil would pull out of the Paris climate agreement. Shortly after the agreement was finalised, Macron again threatened to reject it during a G7 summit in Biarritz. His main objection is Brazilian President Jair Bolsonaro's (lack of) environmental and climate policies that have led to the destruction of tropical rainforests in Brazil. Moreover, French farmers have voiced concerns that the agreement will lead to unfair competition between them and South American farmers.

At the end of June 2019, former Minister of Ecology, Nicolas Hulot, called for a rejection of CETA. In July 2019, Deputy of Maine-et-Loire, Matthieu Orphelin tabled a motion to adjourn (postpone) the vote of the French National Assembly on the ratification of CETA.<sup>17</sup> The vote of the National Assembly on CETA triggered farmers protests in rural areas, and even some violent action against deputy members of the presidential party, on the basis of their vote for CETA and alleged weakening of the farmers' economic situation. The Prime Minister Edouard Philippe then formed an independent commission, chaired by an economist, to whom it was asked to provide the government with views on the potential impacts of the EU-Mercosur

agreement on sustainable development.<sup>18</sup> On this occasion, the Prime Minister expressed a general support for pro-growth and trade policies, but a symmetrical general agnosticism vis-à-vis the Mercosur agreement, considering that its negotiation had been initiated 20 years ago. This suggested an updated assessment, and an early analysis of the main facts and figures, so as to avoid the political discussion to turn as unrealistic as it had become for the CETA agreement.<sup>19</sup>

Due to difficulties in obtaining data and the sanitary crisis, it took the commission more than a year to produce its report, which was finally delivered on 18 September 2020.<sup>20</sup> The French government's position after the publication of the report is that the agreement can be adopted under at least three conditions: (1) the association agreement would not increase imported deforestation in the EU, (2) the public policies of the Mercosur countries are fully in line with their commitments under the Paris Agreement and (3) imported agro-food products benefiting from preferential access to the EU market comply *de jure* and *de facto* with EU health and environmental standards.

### 4.2. The Netherlands

In the Netherlands, a small majority (76 out of 150 seats) of the Dutch parliament requested the government to withdraw its support for the EU-Mercosur agreement in a vote on 3 June 2020. The Dutch Party for the Animals led the opposition against the agreement. Christian Union, the political party of current Minister of Agriculture Carola Schouten, had the decisive vote and voted against the agreement while the other three political parties of the government<sup>21</sup> voted in favour.<sup>22</sup> The government can disregard the outcome of this vote, but this is unusual.<sup>23</sup> In a way, the vote is symbolic, since the agreement has not yet reached the ratification phase.

In February 2020, CETA was up for debate and was accepted with only a three vote majority. This situation alarmed the Dutch government. There is currently no majority in the Upper House to accept the CETA agreement and Trade Minister Sigrid Kaag said, during a debate on CETA, that it is unlikely there will

<sup>16</sup> [https://www.gouvernement.fr/sites/default/files/document/document/2017/09/rapport\\_de\\_la\\_commission\\_devaluation\\_du\\_ceta\\_-\\_08.09.2017.pdf](https://www.gouvernement.fr/sites/default/files/document/document/2017/09/rapport_de_la_commission_devaluation_du_ceta_-_08.09.2017.pdf)

<sup>17</sup> [https://www.francetvinfo.fr/economie/emploi/metiers/agriculture/ceta-il-ne-faut-pas-ratifier-demain-le-ceta-appelle-mathieu-orphelin-qui-demandedes-garanties-supplementaires\\_3538181.html](https://www.francetvinfo.fr/economie/emploi/metiers/agriculture/ceta-il-ne-faut-pas-ratifier-demain-le-ceta-appelle-mathieu-orphelin-qui-demandedes-garanties-supplementaires_3538181.html); <https://www.lopinion.fr/edition/politique/matthieu-orphelin-l-empêcheur-gouverner-en-rond-192813>

<sup>18</sup> <https://www.gouvernement.fr/partage/11111-installation-de-la-commission-d-evaluation-du-projet-d-accord-entre-l-union-europeenne-et-le>

<sup>19</sup> Personal communication, Prime Minister Edouard Philippe, during the installation meeting of the Ambec commission in July 2019.

<sup>20</sup> <https://www.gouvernement.fr/partage/11745-remise-du-rapport-de-la-commission-d-evaluation-du-projet-d-accord-ue-mercrosur>

<sup>21</sup> The current Dutch government is a coalition government of the political parties People's Party for Freedom and Democracy (VVD), Christian Democratic Appeal (CDA), Democrats 66 (D66) and Christian Union (CU) after the general election of 2017.

<sup>22</sup> The other three political parties that form the Dutch government voted in favour of the EU-Mercosur agreement.

<sup>23</sup> In 2016, Dutch voters rejected a Ukraine-EU association agreement on closer political and economic ties in a non-binding referendum. Minister President Mark Rutte said he would "take the outcome into account" and convinced the other EU countries to support an "explanatory declaration" that addressed some of the concerns of Dutch voters. <https://euobserver.com/foreign/138060>

be a majority in the current parliament that would accept the Mercosur agreement.

There will be new elections taking place in the Netherlands in March 2021,<sup>24</sup> which means the EU-Mercosur ratification process would fall under the responsibility of the next government. The political wind seems to be changing with the conservative-liberal party (People's Party for Freedom and Democracy; VVD), which traditionally supports private enterprises and economic liberalism, becoming more aware of public discontent on FTAs and being more vocal about the downsides of globalisation and the limits of the markets-based approach. The position of the Netherlands can be seen as an indicator of which direction EU trade policy is going with 1) Dutch politician and diplomat Frans Timmermans serving as the EU Commissioner responsible for the Commission's work on the European Green Deal and its first European Climate Law, 2) the Dutch government being under mounting pressure by an a non-profit foundation<sup>25</sup> that took the government to court over its failure to curtail carbon dioxide emissions and 3) a new domestic pressure created by Brexit to support the French trade perspective<sup>26</sup> rather than hiding behind the British laissez-faire shoulder.<sup>27</sup>

### 4.3. The Franco-Dutch trade alliance

In May 2020, Dutch Trade Minister Sigrid Kaag and her French counterpart Jean-Baptiste Lemoine submitted a joint proposal (non-paper) to the European Commission to place obligations on trade partners to honour green commitments and international labour protection rules.<sup>28</sup> The non-paper has two main underlying aims: 1) to push the discussion forward in terms of how trade policy and environmental concerns can be brought together and how conditionalities can be introduced into trade policy, and 2) to bring increasingly sceptical parliamentarians and citizens<sup>29</sup> at a domestic level on board on trade agreements. Indeed, the Netherlands and France intend to make the Paris climate agreement an "essential element" of future trade agreements and thereby ensure implementation of sustainable development requirements in trade deals. In particular, Dutch and French Trade ministers call on the EU to "improve its approach

in analysing the socio-economic aspects of trade effects, and to increase its ambition regarding the nexus between trade and sustainable development in all its dimensions, consistent with the implementation of the European Green New Deal".<sup>30</sup> According to the Financial Times, this move "made waves in Brussels because of the unlikelihood of an alliance between the Netherlands, one of the EU's most free-trading nations, and France, which has consistently demanded that opening up the EU market should come with strict conditions attached. Diplomats have seen the move as a signal of the EU shifting the focus of its trade policy in an era of acute public concern about accelerating environmental degradation and the risk that foreign competition could undermine the bloc's efforts to green its economy".<sup>31</sup> The European Commission is said to welcome, if not support, the proposals in the Franco-Dutch paper. However, it is looking into how to make the conditionalities not only *ex ante*, but also enforceable (e.g. will the market access clause be suspended if a country backslides on non-trade related issues?). Moreover, as was mentioned in the article cited above, France and the Netherlands were traditionally regarded as holding opposite positions on the trade spectrum. The fact that they manage to agree on this issue might suggest that many countries in Europe will see this proposal as an acceptable position.

### 4.4. Ireland

With its open economy (i.e. heavy reliance on foreign investment and mostly export-oriented, e.g. in the agricultural and information technology sector), Ireland has traditionally favoured FTAs and is part of the "North-Western alliance" which generally has a positive attitude towards trade. However, its defensive agricultural interests, which played a role in the TTIP negotiations, are also the cornerstone of its position on the EU-Mercosur agreement. Just like in Germany, France and the Netherlands, the Mercosur debate brought the green movement in the picture following the recent election results that led to a coalition government with the Greens.

Irish leader Leo Varadkar suggested he would try to vote down the agreement.<sup>32</sup> In July 2019, Ireland's Parliament symbolically voted (i.e. non-binding) to block the agreement, following protests by the beef industry that was worried about the potential increase of competition from South American farmers as a result of the agreement.<sup>33</sup> However, it is important to note that business segments and agricultural sectors had some difficulties in coming with a united point of view.

<sup>24</sup> Besides the Dutch role in the EU and migration issues, the future of trade is part of the election campaign narrative of various Dutch political parties.

<sup>25</sup> In the Urgenda Climate Case, which was brought by the non-profit foundation Urgenda on behalf of 886 Dutch citizens against the Dutch Government, the Supreme Court of the Netherlands ruled that the Netherlands needs to reduce its emissions by a minimum of 25% before 2020 compared to 1990 levels: <https://www.urgenda.nl/en/themas/climate-case/>

<sup>26</sup> Which means there is a realisation that trade agreements are more than harmonising or exporting certain regulatory standards (i.e. there are limits to the market-based approach) and should also include conditionalities.

<sup>27</sup> Brexit changes the Dutch position in the EU, because the Netherlands can no longer hide behind the British pro-market shoulder.

<sup>28</sup> <https://nl.ambafrance.org/Non-paper-from-the-Netherlands-and-France-on-trade-social-economic-effects-and>

<sup>29</sup> The Dutch and French public is increasingly demanding of its politicians that free trade does not happen at the expense of more normative issues like food safety and animal welfare.

<sup>30</sup> <https://nl.ambafrance.org/Non-paper-from-the-Netherlands-and-France-on-trade-social-economic-effects-and>

<sup>31</sup> <https://www.ft.com/content/68400c46-0bf5-4565-924a-4ce955bd5666>

<sup>32</sup> <https://www.euractiv.com/section/energy-environment/news/ireland-threatens-to-vote-against-eu-mercotur-deal/>

<sup>33</sup> <https://www.euronews.com/2019/07/12/irish-parliament-calls-on-government-to-thwart-eu-mercotur-deal>; <https://www.euractiv.com/section/economy-jobs/news/irish-parliament-calls-on-government-to-thwart-eu-mercotur-deal/>; <https://www.oireachtas.ie/en/debates/debate/dail/2019-07-10/34/>

The government decided that it wanted to address the criticism to the agreement and that it would commission an independent impact assessment to look at both the market as well as the sustainability and climate impacts of the agreement on Ireland.<sup>34</sup> The report has not yet been released, probably because the issue was a lesser priority under the German Presidency's agenda, and since Ireland is prioritising the Brexit negotiations. The Irish position played a key role in the negotiations until August 2020, when Irish EU Trade Commissioner Phil Hogan resigned, as mentioned above.<sup>35</sup>

#### 4.5. Belgium

On 5 February 2020, Belgium's southern Wallonia region unanimously voted a motion against the agreement.<sup>36</sup> In October 2016, Wallonia was the only entity to block the CETA between the EU and Canada, for similar reasons. That triggered several days of crisis before the region finally ratified after amending the law on the treaty.<sup>37</sup> The Walloon motion on Mercosur stresses the dangers of the pact to the climate, to consumer health and safety and to the existence of small-scale and sustainable agriculture. Just like in the rest of Europe, Walloon farmers have spoken out against the agreement and have issued a report on the impact of the agreement on the European agricultural model.<sup>38</sup>

#### 4.6. Luxembourg

On 6 September 2019, the government of Luxembourg decided that it will not sign the agreement if "Brazil does not prepare to comply now with the obligations it has undertaken under the Paris Agreement and in the framework of the negotiations with the European Union".<sup>39</sup>

#### 4.7. Austria

Austria is a net exporter of goods to Mercosur countries,<sup>40</sup> whereas the EU average is more balanced.<sup>41</sup> As well as for Germany, this is the main motivation of Austrian industry to push in favour of the EU-Mercosur agreement. Moreover, some government officials see the agreement as an additional forum where South Americans and Europeans can discuss issues that affect all of us, such as the Paris Agreement. Austria's opposition to the Mercosur agreement mainly comes from the farmer perspective,<sup>42</sup> just like in France and the Netherlands. However, the agreement is notably not supported by other parliamentary groups. This is probably a consequence of heated discussions on CETA. Many Austrians opposed this agreement and once this was eventually adopted, they became even more critical of the EU-Mercosur agreement. Austria's culture is said to be predominantly focused on domestic issues and a great part of the population seems to underestimate the value and role of the EU<sup>43</sup> and trade as part of their daily lives. In the Special Eurobarometer on EU trade policy published in November 2019, Austria was the "only country in the survey where respondents most often agreed with the statement that trade agreements limit the ability of the national government to pass new laws to protect workers, the environment, health and education".<sup>44</sup>

The Standing Sub-Committee on EU affairs in the Austrian Parliament (where all political parties are represented) voted on a binding resolution in September 2019 which decided that the "responsible members of the Federal Government are called upon to take all measures at European level to prevent the Mercosur Agreement from being concluded".<sup>45</sup> The Minister of Agriculture (New People Party) argues that the beef sector is already extremely exposed because of Brexit and the Covid crisis and that environmental, animal welfare, production and food standards are not sufficiently respected in the deal. The Vice Chancellor and Minister of Environment and Climate (Green Party) has indicated a clear "no" against the agreement based on concerns about the Amazon rainforest, the impact of

<sup>34</sup> DG Trade asked the London School of Economics to produce an impact assessment. The Ministry of Industry and Trade, who would probably be in favour of ratification of the agreement, commissioned the Irish impact assessment.

<sup>35</sup> <https://www.bbc.com/news/world-europe-53923052>

<sup>36</sup> <https://www.brusselstimes.com/news/eu-affairs/93770/wallonia-votes-against-eu-trade-pact-with-mercotur-countries-brazil-argentina-uruguay-paraguay-agriculture-environment/>

<sup>37</sup> <https://www.france24.com/en/20200120-belgium-region-totally-opposes-mercotur-trade-pact>

<sup>38</sup> <https://www.boerenbond.be/pers/persbericht/handelsakkoord-met-mercotur-bedeigt-europees-landbouwmodel>

<sup>39</sup> <https://www.wort.lu/fr/international/le-luxembourg-repousse-encore-le-mercotur-5d921e57da2cc1784e34c86d>

<sup>40</sup> "Except for the year 2004, Austria recorded a positive trade balance with the region since 1996 (...) Austrian imports from Argentina, Paraguay and Uruguay are almost exclusively agricultural products as well as hides, skins and leather for Argentina and wood and paper products from Uruguay". See: [https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien\\_2020/FIW\\_Research\\_Report\\_Implications\\_of\\_the\\_EU\\_Mercotur\\_Association\\_Agreement.pdf](https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien_2020/FIW_Research_Report_Implications_of_the_EU_Mercotur_Association_Agreement.pdf)

<sup>41</sup> "While Austria shows a positive trade balance in the trade of goods, it exhibits a deficit in trade in services. The opposite is true for the EU-27 aggregate: While the EU only recently experienced an almost balanced trade in goods after years of increasing trade deficits, it shows a relatively constant trade surplus in the services sector". Ibid.

<sup>42</sup> Mostly the beef and sugar sectors fear direct competition from the Mercosur deal.

<sup>43</sup> A significant part of the population is eurosceptic and would not mind leaving the EU.

<sup>44</sup> [https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien\\_2020/FIW\\_Research\\_Report\\_Implications\\_of\\_the\\_EU\\_Mercotur\\_Association\\_Agreement.pdf](https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien_2020/FIW_Research_Report_Implications_of_the_EU_Mercotur_Association_Agreement.pdf)

<sup>45</sup> [https://www.parlament.gv.at/PAKT/VHG/XXVI/SEU/SEU\\_00002/imfname\\_767020.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/SEU/SEU_00002/imfname_767020.pdf)

the agreement on consumers and climate considerations. The Minister of Digital and Economic Affairs (New People Party) argues that the agreement opens up significant opportunities for the export-oriented Austrian economy and that a final assessment would only be possible when the final text of the agreement is available, but that Austria has always taken the view that the agreement should not lower any existing standards. Since unanimity is required and there are two Ministers opposing the agreement, the current version of the agreement will be blocked. The Austrian Chamber of Commerce is the only player at a national level that is actively working towards finding coalition partners in the EU to find a solution to make the agreement acceptable to the Austrian public.

The Ministry of Digital and Economic Affairs commissioned two studies that discuss the EU-Mercosur agreement with one on "Implications of the EU-Mercosur Association Agreement for Austria - A Preliminary Analysis" and the other on "Greater than the sum of its parts? Does Austria profit from a widening network of EU free trade agreements?".<sup>46</sup> The first report concludes that whereas Mercosur countries can expect total exports to grow by 25-40%, the "increase in exports ranges from 1.4% (Ireland) to 4.1% (Spain) for the EU, with Austria being ranked 15th among the EU-27 with an estimated export increase of 2.2%". The authors explain this difference based on two differences: 1) the market sizes (with the GDP of the EU-27 being six times bigger than the GDP of Mercosur, thus creating a higher potential for exports for the Mercosur countries) and 2) economies' centralities, because the agreement increases centralities of the Mercosur countries more than those of the EU States.

## 4.8. Germany

Germany initially fully supported the EU-Mercosur deal and wanted to finalise this process during its Presidency of the Council of the EU (July 1-December 31,2020).<sup>47</sup> The German position however changed in the summer of 2020, as other European States showed growing reluctance to sign the agreement. After a conversation with President Macron and Greta Thunberg, German Chancellor Angela Merkel publicly shared her concerns about the current form of the agreement. According to her spokesperson, her position is that "there are significant doubts as to whether the agreement can be implemented in its intended spirit, considering the current developments and the terrible loss of forests taking place there".<sup>48</sup> German Minister of Agriculture, Julia Klöckner, also publicly expressed a position against the agreement during a meeting with EU Ministers in

Koblenz at the end of August 2020.<sup>49</sup> According to her, the main lesson we can draw from the Covid crisis is that Europe needs a stronger regional food security policy.

The opposition (the Greens, the left party (die Linke) and AFD (based on its anti-globalisation standpoint)) in Germany's parliament has opposed the agreement from the beginning. However, the opposition is for now relatively weak (there is no major party outside of the government at the moment) and it is more likely that Germany's federal government changed its mind based on the changing public opinion on climate change concerns as seen following the local elections where Green parties have won more votes than in previous elections. The German public has highly criticised the TTIP agreement in the past and NGOs like Greenpeace and WWF have a powerful voice in Germany. However, no important protests were observed to date against the deal in Germany.

In August 2019, Germany, along with Norway, withdrew support to the Brazilian government's Amazon Fund after a rapid increase in deforestation rates in the Amazon.<sup>50</sup> There are some indications that the German government has realised that the European approach with dialogue-based mechanisms cannot be relied upon in the case of Brazil, because the current situation shows the limitations of the European soft approach. There now seems to be an appetite in the German government for a stronger approach.

There seems to be no consensus now, in the German government, on how to move the file forward (i.e. difference of opinions in the various Ministries and behind-the-scenes efforts to come up with a new German position). Some suggest that the process should be frozen until after the German, French and Dutch elections. The German Development Minister defends the position that the entire TSD chapter has to be renegotiated, but the Economic Affairs Minister has already opposed this. The German Presidency initially intended to push this agreement through the Council and record a success, but is not yet ready to come up with a formula that would render the deal acceptable to EU Member States.

## 4.9. Spain and Portugal

Spain is one of the countries behind the restarting of the negotiations after it had been stalled during years before 2018, because of its longstanding historical ties with Latin America. The Spanish government is very interested in being proactive with the EU-Mercosur agreement, hoping it would then play a strategic role as a bridge with Latin America. Spanish industry perceives the EU-Mercosur agreement as an important tool to create a level-playing field with Chinese companies.<sup>51</sup> Since

<sup>46</sup> [https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien\\_2020/FIW\\_Research\\_Report\\_Implications\\_of\\_the\\_EU\\_Mercosur\\_Association\\_Agreement.pdf](https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien_2020/FIW_Research_Report_Implications_of_the_EU_Mercosur_Association_Agreement.pdf); [https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien\\_2020/FIW\\_Research\\_Report\\_Network\\_effects\\_Report.pdf](https://www.fiw.ac.at/fileadmin/Documents/Publikationen/Studien_2020/FIW_Research_Report_Network_effects_Report.pdf)

<sup>47</sup> <https://www.euractiv.com/section/economy-jobs/news/free-trade-and-mercocor-on-the-agenda-for-the-german-eu-presidency/>

<sup>48</sup> <https://www.thenews.com.pk/print/704395-merkel-raises-doubts-over-eu-mercocor-trade-pact>

<sup>49</sup> <https://www.melkvee.nl/artikel/363334-duitsland-nu-ook-tegen-agrarische-vrijhandel-met-mercocor-landen/>

<sup>50</sup> <https://www.theguardian.com/world/2019/aug/16/norway-halts-amazon-fund-donation-dispute-brazil-deforestation-jair-bolsonaro>

<sup>51</sup> The EU is Mercosur's second biggest trade in goods partner after China: <https://ec.europa.eu/trade/policy/countries-and-regions/regions/mercocor/>

domestic issues appear to dominate the political debates, there is today limited opposition against the agreement in the country. Civil society are working mostly on national issues and are not very actively involved in international relations topics, such as the EU-Mercosur agreement. The resistance comes from certain agricultural sectors that fear they could be more exposed to the competition of Mercosur companies, especially in the beef sector,<sup>52</sup> as well as the extreme right (who are using anti-globalisation/protectionist arguments). One element they usually highlight is that all parties have to respect common sanitary and phytosanitary measures. Only the socialist party and Podemos<sup>53</sup> are interested in including sustainability standards in EU trade policy. The other parties think that sustainable development policy and trade policy should be separated.

Portugal will take over the Council's Presidency from Germany in January 2021. The presidency will probably try to advance the EU-Mercosur agreement process, based on its commitment for multilateralism, as expressed during previous Portuguese presidencies,<sup>54</sup> in addition to its historical and cultural ties with Brazil. On November 26, 2020, the Confederation of Portuguese Business, the business confederations of Europe and Mercosur countries had a meeting within the context of Portugal's preparations for its upcoming Presidency. They adopted a position paper in which they called on all parties to ensure the rapid ratification and implementation of the EU-Mercosur agreement.<sup>55</sup>

#### 4.10. Sweden

The traditional perspective of the Swedish government has for a long time been that FTAs should not have many conditionalities that are linked to sanctions and that it is better to have dialogues with civil society. They argued that this approach would lead to more long-lasting and effective changes, because conditionalities in Sweden's opinion would only aggravate the partnership. Since 2016, when the Swedish government together with the OECD and the International Labour Organization (ILO) launched the Global Deal for Decent Work,<sup>56</sup> Sweden has been more keen to express the links between trade and sustainable development. The current government, that includes the Greens, has led to a less dogmatic way of thinking and is highly involved in discussions that link trade and climate change issues (as well as gender equality issues). Sweden still does not push for more conditionalities in FTAs as it remains pro-free trade and is mindful of anything that can put this at risk, but sustainable development issues are more on the foreground. Public support for FTAs and

globalisation is still relatively strong in Sweden, but there is a clear public consciousness that trade cannot happen in isolation of potential impacts on the environment.

#### 4.11. The European Commission

There are some signs from the European Commission that there is sufficient political will to align future EU FTAs with sustainable development considerations and to strengthen the enforcement of the TSD chapter:

1. The European Commission has opened a public consultation on a new trade strategy<sup>57</sup> that is expected to be published in February 2021. One of the questions of the consultation focused on how the TSD chapter can be improved.

2. DG Trade has appointed a chief enforcement officer and most recently, it launched a complaint mechanism for non-compliance with the TSD chapter.<sup>58</sup>

3. DG Trade is looking into incorporating carbon border tax adjustments into the green deal.

4. There is a public consultation running on legislative proposals on deforestation and the value chain that is part of the EU's new biodiversity strategy and aims to reduce the placement on the single market of products that were produced following deforestation.

5. The new Trade Commissioner Dombrovskis publicly expressed his intent to follow-up on discussions with the Mercosur countries to find a path towards an acceptable agreement, and has announced that conversations have resumed.<sup>59</sup>

6. There are ongoing efforts in the European Commission to renew the unilateral scheme for developing countries to increase and expand on environmental and social externalities and to encourage them to commit to more multilateral agreements.

#### 4.12. The European Parliament

In October 2020, the European Parliament passed a Resolution on the implementation of the common commercial policy. It emphasised that the EU-Mercosur agreement "contains a binding chapter on sustainable development that must be applied, implemented and fully assessed, as well as specific commitments on labour rights and environmental protection, including the implementation of the Paris climate agreement and the relevant implementing rules" and that it "cannot be ratified as it stands".<sup>60</sup>

On 26 November 2020, the European Parliament adopted a Resolution on the EU Trade Policy Review.<sup>61</sup> In this resolution, the European Parliament called on the European Commission to "implement, advance and ensure the effective implementation

<sup>52</sup> In 2019, mostly fruit producers were concerned about the agreement, but the current deal does not cover the fruit sector.

<sup>53</sup> A few years ago, Prodemos was against the EU-Mercosur agreement because of social issues. Now that they are part of the government, their main argument is climate change considerations.

<sup>54</sup> <https://euobserver.com/institutional/150203>

<sup>55</sup> <https://www.businesseurope.eu/publications/strengthening-economic-relations-between-eu-and-mercocur-countries-declaration-business>

<sup>56</sup> <https://www.oecd.org/social/launch-of-the-global-deal-initiative.htm>

<sup>57</sup> The EU trade policy review looks at issues like increasing the EU's economy resilience.

<sup>58</sup> This new tool is, however, not open to non-EU stakeholders.

<sup>59</sup> <https://www.politico.eu/article/dombrovskis-hopes-to-save-mercocur-deal/>

<sup>60</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0252\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0252_EN.html)

<sup>61</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0337\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0337_EN.html)

of existing FTAs including enforceable TSD chapters (...) that the enforceability of the TSD chapters could be significantly improved through various enforcement methods and that the Commission should explore a sanctions-based mechanism as a last resort". Moreover, it "asks the Commission to explore the ideas in the non-paper from the Netherlands and France and other ways to incorporate more granularity into the enforcement of these chapters; welcomes the Commission's commitment to make compliance with the Paris climate agreement an essential part of all future trade agreements".

The Spanish and Portuguese Members of the European Parliament (MEPs) tend to be in favour of the agreement and generally there is a consensus amongst the Greens, GUE, S&D and part of Renew that the deal has to be improved to address sustainability concerns. There are five types of positions visible in the European Parliament: 1) halt the deal, 2) renegotiate the deal, 3) receive a strong commitment from Brazil to halt the fires/deforestation in the Amazon, 4) ensure a declaration from the Brazilian government that it will address Europe's deforestation and climate change concerns and 5) the deal is fine as it is (e.g. some Renew MEPs that argue that Brazil is not just Bolsonaro). The Greens and GUE are asking for option 1 or 2.

#### 4.13. European Civil society

The European environmentalist civil society prioritises the incorporation of good governance principles and transparency considerations in trade negotiations. The EU-Mercosur deal was concluded in 2019 before the finalisation of an updated Sustainability Impact Assessment (SIA).<sup>62</sup> In response, five civil society organisations: ClientEarth, the Veblen Institute, the Nicolas Hulot Foundation, Fern and the International Federation for Human Rights, filed a formal complaint to the European Ombudsman in June 2020 calling for the agreement to be suspended, because "the European Commission has ignored its legal obligation to ensure that the trade agreement (...) will not lead to social, economic and environmental degradation and human rights violations".<sup>63</sup> The complainants also criticised the European Commission for not publishing the interim impact assessment when public consultations on the trade negotiations were ongoing and when the report was finally published (one year after the end of the negotiations), it did not contain all the required information. The EU's Ombudsman O'Reilly responded by opening an inquiry.<sup>64</sup> The European Commission has three months to respond how it intends to use the final SIA report and whether it has followed the standard procedure for SIAs. Trade Commissioner Dubrovskis rejected allegations that the

European Commission did not take due account of the impact on the environment.

DG Trade is currently reviewing its Civil Society Dialogue process to improve transparency and stakeholder involvement in Member States.<sup>65</sup>

#### 4.14. Mercosur governments

Argentinian wine producers have spoken out against the agreement, because the EU highly subsidises the EU wine sector that could undermine the Argentine sector.

So far, the Brazilian government has only rejected assessments of the agreement's negative consequences for deforestation, and has sarcastically questioned, through its public statements, the conjunction between the themes of Europe's environmental protest and its agricultural "defensive" interests.<sup>66</sup> It did not publicly express a willingness to resume the discussion, but this does not rule out the possibility that important economic actors will put pressure on the government they supported to seek ways to compromise and avoid a disproportionate loss of international reputation for Brazilian agricultural products.

#### 4.15. Mercosur civil society

Although it is not within the scope of this report to deliver an exhaustive account of the Mercosur civil society position with respect to the EU-Mercosur agreement, at least some Brazilian environmental and human rights NGOs have expressed a preference for an *improved* trade agreement, and preliminary conditions prior to ratification, over a pure rejection or a mere acceptance of the deal as it stands.<sup>67</sup> They expressed hope that resuming discussions regarding the guarantees offered by parties would provide an interesting leverage on the Brazilian government, and on the agri-business representatives, who may then see deforestation as an obstacle to their business development rather than an asset.

<sup>62</sup> In July 2020, the European Commission published a draft Sustainability Impact Assessment for the trade part of the agreement prepared by the consultancy of the London School of Economics: [https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc\\_158889.pdf](https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158889.pdf)

<sup>63</sup> <https://www.clientearth.org/we-take-action-against-the-eu-for-failing-to-consider-environmental-and-social-impacts-of-south-american-trade-deal/>

<sup>64</sup> <https://www.ombudsman.europa.eu/en/news-document/en/130053>

<sup>65</sup> <https://trade.ec.europa.eu/civilsoc/>

<sup>66</sup> <https://agenciabrasil.ebc.com.br/politica/noticia/2020-09/governo-contesta-relatorio-da-franca-sobre-acordo-entre-mercopol-e-ue>

<sup>67</sup> For instance during informal meetings held in December 2019 in the context of the French commission on Mercosur, and based on subsequent conversations and online meetings with WWF, IPAM, Human Rights Watch and other organisations.

## 5 ANALYSIS AND POSSIBLE FOLLOW-UPS

### 5.1. Four possible reasons for a shift in the European mindset *vis-à-vis* free trade agreements

Based on the interviews conducted, on our previous analyses and our participation to the French commission on Mercosur, we suggest that four trends may form the basis of a shift in the current European political climate towards a stronger willingness to address sustainable development issues. Although some seem specific of the Mercosur sustainable development and economic context, our experience, as well as the expertise gathered for this report through interviews suggests that other future FTAs might experience similar events, in the ratification process, in case the European Commission negotiates these agreements without any significant modification of its approach.

#### Specificity of the EU-Mercosur agreement

As an EU economic partner, the Mercosur trade bloc is, of course, specific in many respects.

Firstly, although Mercosur is demographically and economically dominated by Brazil (80% of the market), this is a case where the EU is negotiating with a customs union and not solely a country, which increases the economic scope of the envisaged association compared to bilateral FTAs (the other FTAs in progress are rather with countries).

Secondly, Mercosur is one of the most closed economic areas in the world, in terms of customs tariffs and economic regulation. As a result, the relative impact of a liberalisation generated by a trade agreement with Europe would probably be stronger in this area of the world compared to other regions or countries whose economies are already more open. Indeed, this is one of the two main *raison-d'être* for the Brazilian government to enter into this association agreement. The government hopes for modernisation, a gain in purchasing power, and a competitiveness shock for their economy, which, without these protections, would have generated significant rent and transaction costs (the second reason being the benefits for agro-food exports).

Thirdly, the Mercosur economies are particularly oriented towards agricultural foodstuffs, and are particularly "offensive" on agricultural commodities considered "sensitive" by Europeans, because of their economic fragility and political susceptibility: meat and sugar.

Fourthly and finally, as Brazil is a forested and 'megadiverse' country, and as the region is undergoing the most rapid changes in land use, the environmental stakes are higher than in the average EU trading partner. Moreover, the importance of the Amazon basin in the collective imagination is creating a kind of focus for European, if not global, opinion. This considerably increases civil society's vigilance with regard to Europe's relations with the governments in charge of preserving the Amazon.

#### New European Commission's commitments on sustainable development

The record number of seats that pro-environment and green parties managed to secure in the European Parliament elections of May 2019<sup>68</sup> and the emphasis placed by the new European Commission on the Green Deal<sup>69</sup> make it difficult for the European Commission to sign a FTA, which would not explicitly improve signatory countries' climate and environmental performance. The European Green Deal plays a central role in the European Commission's proposal of a "Next Generation EU" recovery fund to address the COVID-19 pandemic.<sup>70</sup> These new sustainable development commitments make it challenging to get the agreement accepted in society and current political spheres.

#### Uncommon political allies

There is a strong similarity in EU Member States regarding the position of interest groups in relation to the agreement. The agreement has brought together hitherto uncommon political allies: representatives traditionally sensitive to agricultural problems, whom are usually recruited mostly in the right of the political spectrum, and representatives sensitive to environmental issues, whom are more often seen on the seats of the left and centre (notably the new Renew group and its chair of the ENVI committee). This coalition of conservatives and progressives led to a majority interest group in the Dutch, French and Austrian Parliament that was willing to work together to reject the agreement. This trend is less visible in Member States that are less dependent on agricultural exports, such as Sweden, where any efforts from the government to green the agreement are more grounded in "general environmental awareness" rather than based on the demands of special interest groups.

#### Forest trade diplomacy as environmental tool

Let us consider that two opposed opinions are possible with regard to trade policy and sustainable development: (1) EU FTAs cannot and should not "import" environmental issues where they are not already considered in multilateral environmental agreements (MEAs), or (2) EU FTAs should be used as instruments for sustainable development. In such a framework, it is possible to interpret the events referred to in the previous section as an opinion shift from the former position to the latter. MEAs today are in want of implementation policies, and it is likely that supporters of more sustainable development policies, hoping that the EU would champion their cause, are or will be tempted to turn their eyes towards one of the main diplomatic powers of the EU, namely access to its market. Such "forest trade diplomacy" may then be seen as an important opportunity

<sup>68</sup> <https://www.tandfonline.com/doi/abs/10.1080/09644016.2019.1709252?scroll=top&needAccess=true&journalCode=fenp20>

<sup>69</sup> In particular, the EU Biodiversity Strategy for 2030 and the European climate law.

<sup>70</sup> <https://dr2consultants.eu/europes-green-recovery-from-the-covid-19-pandemic/>

to convey environmental messages and commitments and make businesses accountable for their contribution to deforestation and overall biodiversity loss.

## 5.2. Possible follow-ups

### A new equilibrium... probably destined to last

Two recent changes, in the European political balances, are key explanatory factors of European positions hostile to the EU-Mercosur agreement "as it stands": Brexit, and the rise of environmental concerns in European domestic votes.

- With the departure of its heaviest historical champion, the "pro-trade" liberal pole, within the Council, is today, if not weakened, at least modified due to Brexit. This has led to a form of recomposition of typical positions vis-à-vis trade and sustainable development. The Netherlands, which was looking for a dossier to ally itself with France (to offset its many economic oppositions), has thus found it appropriate to propose a shift in European trade policy in favour of trade sustainability, with its "non-paper".
- Environmental issues were key determinants in the recent European Parliament elections. Beyond the strict weight of the environmental parties, they gave the centrist parties, and in particular the *Renew* group, a much "greener" colour than before. The consequences of this on the orientation of the new Commission and its programme are well known, but it must be borne in mind that this factor also changes the likelihood, and strategies, of making a trade agreement acceptable to the European Parliament. Moreover, the "greening" observed at the last European elections corresponds to recent altered balances in national parliaments (and governments, in the case of most parliamentary regimes). These have also created new conditions, both for the expression of the parliaments' views on the Mercosur agreement and for the positions of the coalition governments.

In general, the political forces sceptical of trade agreements represent three types of opinion groups: 1) those who defend farmers, recruited mainly from among conservative representatives, 2) those who oppose free trade and globalisation in general, recruited to the extremes, and 3) those who are concerned about the environmental consequences of FTAs. The first two groups are traditionally opponents to such agreements and their position is neither new nor sufficient to produce a strong blockage of FTAs. The novelty introduced by the combination of Mercosur and recent political balances is that the latter is opposed by all three groups of opinion, making a majority impossible to find. The situation changes mostly due to the expansion of parties prioritising environmentalism in the political balances. Whether this situation will last therefore rests on whether the current political equilibrium will last. On this subject, while the relative forces of left and right have historically alternated, the same is not true of environmentalist votes, whose long-term trends remain upward, and which should not be reassured by the changes to be expected in the global environment over the next decade. Likewise, it is unlikely that pro-farmers groups will

weaken, nor that globalisation and free trade concerns will die down, in European eyes, during the decade to come.

As a result, it is likely that the current power balances, which explain both the positions of the EP and of national parliaments or governments, will persist. On examination of the tour of Europe proposed in the previous chapter, it seems that this is the basis for the structural change in trade policy that is to be expected in the coming years. Only trade agreements without an agricultural dimension (for imports) and concluded with countries or regions with exemplary policies are likely to be accepted in the future by European opinion (and thus escape media and political attention).

### The sound of silence

This "Tour d'Europe" of mindsets also makes apparent a strong asymmetry in the expression of interests. In addition to environmental concerns, strong European voices were heard about the negative aspects, in economic terms, of the agreement (the so-called "defensive" aspects). But the positive (i.e. "offensive") aspects do not receive symmetrical support from their spokespersons. This is particularly the case in the agricultural dossiers. The "offensive" European agricultural interests are not void in the EU-Mercosur agreement, through the recognition of protected geographical indications, and the lowering of customs duties benefiting dairy products, processed products, infant food, etc. However, the agricultural and agri-food industry representatives are hardly expressing any interest in public, leaving the field to their colleagues in the livestock sector.

Similarly, on another scale, Germany, notoriously favoured by a 'cars-for-meat' agreement, has not taken a clear public stance in favour of the agreement. Its behind-the-scenes support was simply no longer possible after the Brazilian environmental damage became too visible in the media, but it rarely spoke out. Similarly, the Spanish and Portuguese governments, which are known to be very supportive of an agreement with their linguistic and cultural spheres of influence, have hardly spoken out publicly in favour of the agreement. Likewise, anti-globalisation and anti-trade voices usually focus on the imports of Europe, on how trade can be harmful to tropical forests and on European farmers' balance sheets. But little is said about the importance of the current European position in global markets (especially considering strong competition from China in the Mercosur context), for its internal economy and its jobs. Not all Europeans are aware that Europe is an important exporting region, with high economic interests and a multitude of jobs depending on international trade.

At the same time, the possible detrimental effect of European exports for the sustainable transition of the third countries is never mentioned, except for the emblematic case of the pesticides that are banned for use in the EU, but produced and exported nevertheless. Other impacts due to European industrial products and their ability to weigh on the sustainable trajectories of third countries are hardly ever mentioned.

Finally, economic interest groups and representatives of industry and services, if they are in favour of such an agreement, do not express it publicly, or not with the force, grandstanding



and sleight of hand of the opponents. This is all the more true since each FTA, in isolation, only brings marginal changes in the European markets and growth. Usually (much) less than 1% of the trade turnover of a given industry is affected, positively or negatively, by FTAs, even with rather large ones such as with Mercosur. In contrast, environmental and social impacts are presented as major and catastrophic, even though they remain marginal as well; for instance, the maximum impact of the meat imports allowed by the Mercosur FTA, as calculated by the Ambec commission,<sup>71</sup> would amount to roughly 5% of the current deforestation rate, during six years. This is of course not negligible and any support to deforestation has to be questioned, but it certainly does not make Europe, and even less the Mercosur FTA, the main driver of deforestation.

In all cases, this asymmetry adds a difficulty in finding a pragmatic and efficient way out of the impasse, for the real sake of the planet and of the sustainable transitions in both continents. This will not help negotiating a useful and pragmatic way out of the current blockage.

### Possible follow-ups of the EU-Mercosur negotiation

As mentioned above, the Mercosur FTA concentrates all possible European concerns. This, combined with the European political balance described above, has forced the German presidency to abandon its initial intent to have the deal passed in the Council, during its presidency of the Union. It has put the EC, and singularly its DG TRADE, under pressure to find a way out, and the new trade commissioner has indeed announced a re-launch of discussions with Mercosur countries.

From the consultations we have conducted, and the webinars we organised, it is possible to see a trend emerging.

First, as we previously suggested in a blog post,<sup>72</sup> it seems that the path forward is not to "unravel" the entire trade agreement (the thousands of lines of tariffs and quotas negotiated over a twenty-year period), but rather to add a floor to the building. The whole question will therefore be to find out which floor to add. At a minimum, this floor should sufficiently reassure European public opinion to reduce the political cost of ratification by heads of State or parliamentarians, and be considered acceptable by the Mercosur governments, and in particular by Jair Bolsonaro's government.

It is possible to foresee a "ladder" of options to add to this floor, from the easiest to negotiate (but the least effective in terms of reassuring Europeans), to the most difficult (but which would allow Europeans to agree to ratify the agreement).

- The first option would be a political declaration, interpretative or including overarching principles, expressing commitments to pay attention to the environmental, health and

social issues raised and to cooperate in finding them. This would have the advantage of not requiring immediate efforts and amendments, and would allow for rapid progress. It would, however, have the disadvantage of adding very little to the content of the agreement in principle as it stands: it already contains commitments of this kind, and it is not possible to make them legally binding and enforceable with sanctions. With such a government as Bolsonaro's, the credibility of such a declaration would hardly convince anyone to vote in favour of the agreement.

- At another extreme, at the very top of the ladder, granting the requests of the most environmentally and human rights-sensitive representatives would mean asking, and waiting, for the Brazilian government to actually stop the deforestation of the Amazon. Making the halt to this deforestation policy a condition for the agreement to pass, would have the advantage of giving strong arguments to leaders and parliamentarians to sign the agreement and making use of EU's trade diplomacy as a leverage tool. However, this condition faces a major difficulty: the deforestation of the Amazon was explicitly on the agenda of candidate Bolsonaro, who has not shown a clear intention to change his policy since his election, even though some Brazilian agribusinesses, worried about the country's reputation in global markets, would suggest that this would be preferable.
- Between these two solutions, it is possible to imagine a certain number of guarantees that could be defined as "technical". The complete traceability of the beef industry, and a label in conformity with European standards for example, could enable European consumers to be cleared of deforestation concerns, while reassuring them as to the sanitary quality of the products. It would, however, have the disadvantage of not acting on the rest of the beef industry, which serves the Chinese and domestic markets, and which could, without great damage, continue its policy of expansion to the detriment of remarkable ecosystems.

In any case, it is likely that DG TRADE will have to walk a very fine crest line between the fears and demands of parliamentarians, civil society, and representatives of European industry and Mercosur governments. While an outright abandonment of the agreement would greatly simplify the situation, it would also make Europe lose any possibility of pressing for better environmental standards, and leave the field open for less demanding partners to further expand their trade with Latin America.

### Which way forward for EU trade agreements and sustainable development?

The future of Europe's trade agreements will have to resolve a tension between two competing principles: (1) the attractiveness of the EU as a trade partner and the European market, the persistence of which is necessary not only for Europe's economic influence, but also as a condition for it to be able to exert pressure to generalise the environmental standards it claims to apply; (2) trade policy as a diplomatic instrument at the service

<sup>71</sup> [https://www.gouvernement.fr/sites/default/files/document/document/2020/09/rapport\\_de\\_la\\_commission\\_devaluation\\_du\\_projet\\_daccord\\_ue\\_mercosur.pdf](https://www.gouvernement.fr/sites/default/files/document/document/2020/09/rapport_de_la_commission_devaluation_du_projet_daccord_ue_mercosur.pdf), in its "Biodiversity" chapter, page 117.

<sup>72</sup> <https://www.iddri.org/en/publications-and-events/blog-post/eu-mercrosur-trade-agreement-can-trade-treaty-be-greened>

of environmental policy, seeking to make its trade agreement negotiations a means of exerting pressure on climate and biodiversity protection policies. Wanting to implement the second principle presupposes both dependence on and opposition to the first: the attractiveness of the European market, and therefore the prospects for exports to Europe, are necessary for it to be interesting to conclude agreements with, but on the other hand these exports could be contested for their environmental and social impacts. Under these conditions, one might wonder whether European demands might not end up drying up the willingness of third countries to seek agreement and thereby undermine its hopes of a commercial diplomacy at the service of sustainable development.

It is striking, in this respect, to observe the number of negotiations currently "on pause", with or without prospects of reopening (see Table 1). The case of Malaysia is emblematic of this: one of the causes of disagreement is Malaysia's challenge at the World Trade Organization to the EU's treatment of its palm oil exports. These are accused, by the EU, of having an indirect land-use change (i.e. deforestation) effect; however, Malaysia has every reason to argue that European oils are not only not exempt from such an effect, on a continent whose wetlands and grasslands are constantly receding, but could even be deemed less effective than palm oil on this particular criterion, given the latter's higher productivity per hectare than its European competitors. This case is illustrative of potential dilemmas that the EU might face when trying to "export" certain trade standards in future EU FTAs.

### Towards third generation FTAs?

Will the EU association agreement with Mercosur, if it gives rise to innovative amendments making the deal both attractive to Latin American and European stakeholders, if it will be useful in terms of environmental guarantees, and controlled in terms of risks, be the first of another new generation of EU trade agreements? This is the challenge of the current discussion phase, and of the next six months under the Portuguese Presidency, which has put the file on its list of key priorities.<sup>73</sup>

Through the conversations and reflections generated by this project, it is possible to see the main lines of a trade agreement that is both acceptable in terms of sustainable development standards and manoeuvrable by DG TRADE and its counterparts in the ministries responsible for the economy.

— While environmentalist demands are very much focused on the principle of making the Paris Climate Accord an "essential clause" in trade agreements, it appears that multilateral environmental agreements are, and will remain, difficult to incorporate in future trade negotiations, let alone in future disputes. At least in the case of the Paris Agreement, the revision clauses are five-yearly, the commitments are not binding, and they do not relate to performance indicators but to decarbonisation trajectories. It would seem more

preferable to seek clauses, whether on climate or other issues, which are directly written into the agreements and can be acted upon by them.

- In this spirit, there seems to be little that can be expected from sanction mechanisms, triggered after a breach has been established and supposedly obliging correction. This type of mechanism does not gain the support of the most "pro-trade" parties, such as the Scandinavian countries, and could work counter-productive when aiming to establish a strong trade relationship. Negotiations could seek to replace them with clauses that would allow for a progressive implementation of agreements over time, after some performance and policy indicators have been verified and shown conformity with commitments.
- An updated reflection on investment agreements so that their use goes beyond being instruments for protecting the interests of multinationals, but also contributes to programmes for cooperation and accompanying transitions, thereby making it possible to conceive how Europe could contribute new resources, compensating and accompanying the efforts that it would demand from its partners for the overall sustainability of production.<sup>74</sup>
- For the debate on trade and sustainable development to be a constructive and productive discussion, and to avoid being an excuse for defending only agricultural vested interests, two directions should be taken:
  - (1) Allow for, and support, a critical discussion of the European positions with respect to the continent's exports and their role in the sustainable development transition of its partner countries. In addition to the now famous case of the pesticides banned in the EU, but still produced and exported to third countries, a reflection on the way in which European investments and trade could become more selective, and supportive of sustainable energy and agriculture transitions, would avoid the trade-and-sustainable development debate to become a hostage of bad faith economic unilateralism.
  - (2) Initiate a reflection on accompanying measures to support the production modes that are compatible for, or even needed for sustainable development. Supporting exposed agricultural producers as an accompanying measure of a FTA, both in the EU and in its trade partners' countries, could be thought of as a means to orientate agriculture towards the most resilient, sustainable and remunerating production modes, rather than protecting any kind of production system whatever its impact on society and the planet.
- One of the ways in which Europe could address the debate on the issue of "imported deforestation" through its purchases of agricultural commodities in tropical countries is the future directive, or equivalent regulatory instrument, that the European Commission is supposed to start

<sup>73</sup> <https://www.europarl.europa.eu/news/en/press-room/20210122IPR96228/portuguese-presidency-outlines-priorities-to-ep-committees>

<sup>74</sup> <https://www.iddri.org/en/publications-and-events/study/greening-trade-agreements-roadmap-narrow-expectations-gap>

discussing in 2021. This action is part of the new Commission's biodiversity strategy and should comprise a regulatory text prohibiting European production to the detriment of remarkable ecosystems. This would make it possible, based on the principle of reciprocity, to demand identical standards for imports and, without creating discrimination liable to be reprimanded by the WTO, to restrict market access to products guaranteed "free of deforestation".

- Last, one of the key intervention options will be to understand the vision, and the nature of the demands, of the European "swing parties" in the European Parliament (and their national equivalents within Member States). Understanding their red lines, their concerns, and studying the solutions likely to change their votes will be central in shaping the future of European trade agreements, and their use as a means of exerting pressure for sustainable development.

# The Future of EU Free Trade Agreements: European dialogue in light of the EU–Mercosur Association Agreement

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The Institute for Sustainable Development and International Relations (IDDRI) is an independent think tank that facilitates the transition towards sustainable development. It was founded in 2001. To achieve this, IDDRI identifies the conditions and proposes the tools for integrating sustainable development into policies. It takes action at different levels, from international cooperation to that of national and sub-national governments and private companies, with each level informing the other. As a research institute and a dialogue platform, IDDRI creates the conditions for a shared analysis and expertise between stakeholders. It connects them in a transparent, collaborative manner, based on leading interdisciplinary research. IDDRI then makes its analyses and proposals available to all. Four issues are central to the institute's activities: climate, biodiversity and ecosystems, oceans, and sustainable development governance.

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