

# Lula's election: A blessing for a green EU-Mercosur Association Agreement?

**Tancrède Voituriez (IDDRI-Sciences Po and Cirad), Klaudija Cremers (IDDRI), André Guimaraes (IPAM), Paulo Moutinho (IPAM), Olivia Zerbini Benin (IPAM)**

Infamous for having been negotiated for over more than 20 years, and eventually described as a "cows for cars" deal, the association agreement (AA) between Mercosur countries (Argentina, Brazil, Uruguay, Paraguay) and the EU does not provoke popular fervour, to put it mildly. The political conclusion of negotiations on the AA was publicly announced in June 2019, in the first months of Bolsonaro's presidency, and was unexpected by most observers. After the fires in the Amazon in the summer of 2019 and Bolsonaro's government stubborn undermining of environmental law and indigenous rights in Brazil ever since, France removed its support to the AA, followed by The Netherlands, Ireland, Belgium, Luxembourg, Austria and Germany.

To address the environmental concerns raised by EU Member States and civil society on both sides of the Atlantic, Mercosur and EU countries agreed *not* to re-open the negotiations of the AA and instead add a "flanking instrument" or "additional protocol" to the AA focusing on sustainability issues. Lula's election could change the game as he has indicated his interest to re-open the agreement.

As Lula prepares to take on the office of President of Brazil, we, as a team of researchers from Europe and from Brazil informed of constraints and objectives of governments, civil society and economy players on both sides of the agreements, respond in this *Policy Brief* to the question whether the EU-Mercosur Association Agreement, not finalized yet, can be greened and how, and if so, how much greener it can be, with a particular emphasis on what the European players should do now.

## KEY MESSAGES

The association agreement was not designed and negotiated with a climate objective. Yet its negative environmental effects could be constrained with additional buffers enclosed in an additional instrument or protocol, without re-opening the negotiation of the substantial part of the agreement. And our comparison with a no-deal scenario shows it is very likely to be better for climate and the environment than no deal.

Should the negotiations be re-opened, the EU Council should seize the opportunity to give a clear mandate to the EC for strengthening the environmental and climate provisions and raising the association agreement to the highest standards on this matter. In all likelihood, this would come at a commercial cost for some EU businesses of restricting and/or delaying further

the access to Mercosur market—in particular in the industry sector where an extended transition period for sensitive products could be a pressing demand from the new Brazilian president. A tit-for-tat option better than the "cars for cows" deal we are stuck in.

The publication of the negotiation mandate (flanking instrument included) and of the expected outcome the EC intends to reach with it, is critical to build trust and reverse the infamous records of opacity in AA negotiation processes and outcomes—at odds with the current practice of the EC in the negotiation of other association agreements. The association agreement can only be greener and accepted by the civil society if a quantum leap is made on this matter.

## 1. THE EU-MERCOSUR AA IN A NUTSHELL

---

The EU-Mercosur regional relationship started with the signing of an Interregional Framework Cooperation Agreement (IFCA) in December 1995 with the objective to create a free trade area. The IFCA was a reaction to the Free Trade Area of the Americas (FTAA), a U.S.-led initiative that threatened to make EU exports to Latin America less competitive than those of the US. Chief among Mercosur governments' motivations was to expand market access for agricultural products.

The European Commission was granted the mandate to negotiate an AA in June 1999. This mandate was never published, contrary to more recent free trade agreements (FTAs) such as EU-Chile (modernisation of the trade part) and EU-Australia. Negotiations took more than 20 years and were halted several times. The political conclusion of negotiations on the AA was publicly announced in June 2019 and was unexpected to most observers.

The AA between the EU and the Mercosur consists of two parts. A Trade and Trade-related Matters Part ('trade part') and a Political Dialogue and Cooperation Part ('political part'). The trade part was negotiated by the European Commission (DG TRADE) and was finalised in Brussels on June 28, 2019. The political part was negotiated by the European External Action Service (EEAS) and was agreed upon on June 18, 2020. Unlike the trade part, the political part remains unpublished but was eventually leaked.

Finalised during the first six months of the Bolsonaro era, the trade part of the AA owes its thwarted fate to the then Brazilian president. Bolsonaro made the deal much easier by downplaying concerns about infant industry protection and public procurement. However, between burning of the Amazon rainforest to domestic policies destructive of freedom, Bolsonaro caused the suspension of the ratification process in Europe by casting doubt on the ability of the text to limit the consequences of unsustainable behaviour such as that of his government. After the fires in the Amazon in summer of 2019, France removed its support to the AA, followed by The Netherlands, Ireland, Belgium, Luxembourg, Austria and Germany.

On October 7, 2020, the European Parliament passed a resolution, stating that the EU-Mercosur agreement could not be ratified as it stood due to insufficient guarantees over the enforcement of sustainable development provisions. The EC acknowledged that the EU should work with the Mercosur countries to see how the Agreement could help address and improve the deforestation situation in Mercosur. The Commission clarified that respective commitments could be formalised in an additional document, without prejudging of its legal form. A key criterion for this additional instrument, as agreed with Member States and Mercosur partners, is that it would not lead to a reopening of the negotiations.

## 2. THE CLIMATE IMPACT OF THE TRADE AGREEMENT IS NOT GOOD, THE CLIMATE IMPACT OF THE AA IS UNKNOWN

---

The academic literature tells us that the net impact of trade on the environment is the sum of three effects. The first effect is the growth of consumption, which all else being equal is bad for the environment. The second effect lies in changes in production patterns as countries specialise in particular sectors. This effect can be positive or negative depending on the pollution/emission intensity of the sectors towards which the countries shift after the agreement is signed. This pollution/emission intensity of sectors is policy sensitive. So is the third effect, which captures the changes in sectoral emission intensity over time, as new policies are enacted, and cleaner technologies made available. This third effect is loosely related to trade. It encompasses present and future non-trade regulations, funding and cooperation means. It is supposed to be positive, as trade is expected to raise the average income and willingness to pay for more stringent environmental regulation, spread the best available technologies, and offer a scene and lever for NGOs whose voice otherwise would have been much less heard. This latter argument was among the key ones put forward by environmental NGOs in Brazil to keep the AA alive.

The various reports and academic papers assessing the climate consequences of the trade part of the AA all convey the same message, with nuances: the trade agreement is not a pro-climate deal, because of the risk it entails of export-driven deforestation in Mercosur countries, especially in the Brazilian Amazon—and this even though it commits all the parties to effective implementation of the Paris Climate Agreement.

Sustainability impact assessments have focused on the trade part of the AA however. We have no assessment of the climate impact of the AA as a whole, which is all the more regrettable as the policy and cooperation leaked part entails specific provisions related to climate change and the Paris Agreement. At this stage, it is unclear whether the full AA would facilitate or not some level of decarbonisation over the long run that would indicate that, all in all, the GHG content of Brazilian and others' exports are significantly reduced over time.

## 3. AN ADDITIONAL INSTRUMENT TO MITIGATE THE RISK OF AA-LED DEFORESTATION

---

Before the presidential election in Brazil, the Commission and the Mercosur countries have declared that they would not reopen negotiations and would focus instead on pursuing pre-ratification requirements and/or additional TSD (Trade and Sustainable Development) commitments. The Commission has made clear that it needs meaningful results and engagement from Mercosur countries before it can propose the agreement to the Council and Parliament for signature and conclusion.

There are a limited number of ways out of the ratification conundrum (see table). We assume that their effectiveness depends on their legal force (we can disagree on this) and on their capacity to go beyond the current provisions of the AA's TSD chapter. We have indicated in the table, where possible, if precedents exist. The colours are simplified indications of a positive greening effect (green) or a warning (orange) that this effect is unlikely.

Three measures stand out, the first of them being the pre-signature/pre-ratification commitments. The strengthening of the budget and independence of IBAMA, the federal agency under the Brazilian Ministry of Environment in charge of exercising the environmental police role, environmental monitoring and control, is among such measures. The weakening of IBAMA is part of a long list of actions undertaken by Bolsonaro's government to roll back conservation achievements. For a successful AA, it is necessary to reduce deforestation in the Amazon by designating the so-called undesignated public forest—an area the size of Spain (56 million hectares of pristine forest). Otherwise, the risks for long-term unsustainable Brazilian agriculture will be very high. The designation of this area is demanded by law and could promote a quick reduction of deforestation rate.

The other two measures are the joint interpretation/declaration and the binding additional protocol. The former would clarify some commitments of the TSD chapter—for instance on deforestation and the Paris Agreement—but it would limit the option to go significantly beyond the commitments in the TSD chapter. An additional protocol could add TSD commitments to existing ones. A non-binding protocol or a unilateral declaration or statement are obviously of lower legal force.

How much could these measures mitigate the risk of AA-led deforestation? In the spirit of the TSD chapter, they focus on the means and not on the outcomes. They can hence reassert commitments to protect forests and/or specify the various verifiable measures materializing these commitments, but they cannot guarantee that no deforestation will occur after the AA is signed. Even best-in-(green) class EU FTAs follow the same logic. The climate provisions in the EU-New Zealand trade agreement do not address GHG emissions per se.

This does not mean that these flanking instruments are useless. Demonstrating good faith in various sustainable development commitments and inserting additional provisions ensuring that these commitments are long-lasting and verifiable would raise the AA to the average standard of EU FTAs signed so far. All we can say now is that the AA will not be good for climate, as it was not designed and negotiated for this, whatever is shoe-horned in the flanking instrument. Yet it could be not that bad depending on the alternative we compare it to.

#### 4. ESCAPING THE NEGOTIATION TRAP

How green is the AA? There are at least two possible comparison points. One is a pro-climate AA, designed for this—a hybrid agreement pursuing climate objectives through trade measures. A second one is no deal at all.

If we compare the AA and its still-secret flanking instrument to a hybrid climate and trade agreement, the AA is not good—at all. It should be trashed, and negotiations reopened. Reopening the trade part without a new mandate would not change the current climate impact, however. It could even worsen in case negotiators end up with higher beef quotas and more protection in energy-inefficient industrial sectors, for instance. A new mandate with explicit climate goals is imperative if the objective is to make the AA a pro-climate agreement. This hybrid, pro-climate agreement would be designed to facilitate some level of decarbonisation and to shift the GHG contribution of EU-Mercosur bilateral trade in the right direction. The European Parliament might be keen on pushing for this. The European Commission much less so, on the ground that it would take years to negotiate such a hybrid deal. The appetite for it across Member States as well as in Mercosur countries, beyond the focus on Brazil, is a question mark.

What would happen if the AA and its flanking instrument is not signed? The Mercosur would continue to export its beef beyond the current quotas to the EU. In all likelihood, it would shift additional production to China and other less demanding markets. The same could happen for other commodities, as the EU is progressively strengthening its legislation on forest-risk commodities (FRC). The EU would continue to produce and export its cars and chemicals to Mercosur countries, arguably less so than with the AA signed, and other emerging markets. It would be in a more difficult position to “sell” its upcoming regulation on FRC with this assumed stance of unilateralism and isolation. To Mercosur producers, it would come across as all stick and no carrot. In the most pragmatic case, even weak rules and regulatory coordination from an EU-Mercosur AA might serve as a building block for ratcheting up environmental commitments. The climate outcome might not be worse without an association agreement, but it is difficult to figure out why it would be better.

At the end of the day, there are two exits to the negotiation conundrum. A green exit, with a renegotiation on the basis of a new mandate. This is an ambitious and demanding one, which would end up reframing the objectives for all future association agreements. And a pragmatic exit, consisting of patching the current AA with a flanking instrument, beefing up cooperation means, and setting up new transparency rules which would make EU-Mercosur's opacity in negotiation process and outcomes history. The worst scenario would be to have nothing.

#### 5. CONCLUSION

Can the EU-Mercosur AA be “greened”? Our answer is yes, for the following reasons:

1. No deal is very unlikely to be better than a deal from a climate perspective, so the AA is worth greening. Climate buffers and environmental safeguard provisions added to the text will make it greener than the no-deal alternative. With binding requirements *inter alia* on deforestation trends in Mercosur, legislation and enforcement capacity, and binding interpretation of TSD chapter provisions related to climate action and forest

protection, the risk of export-led deforestation could be mitigated to a reasonable extent.

2. Cooperation funding can significantly beef up the policy and cooperation provisions of the AA, and the TSD chapter as well. Targeting the limited grants available in EU regional and thematic cooperation windows and leveraging the blending and guarantee facilities to greening EU-Mercosur trade could help in this regard.

3. A hybrid climate-and-trade agreement negotiated to reach climate goals with trade means would be the first-best option to green the AA. It requires a new mandate from all parties. Even though demanding, it is not completely unrealistic as the appetite, and initiatives, around hybrid agreement seems to grow. A clear move towards it would consist in seizing the opportunity of a re-opening of the negotiations at the request of Brazil to move

along a tit-for-tat deal. In exchange for extending the transition period for sensitive industrial products and the clauses pertaining to public procurement (a plausible ask from Brazil), the EU and Brazil would agree on strengthening climate provisions and cooperation. *Inter alia* with specific and detailed trade-related climate objectives, and an up-to-date sanction-based TSD chapter to avoid backsliding against future Bolsonaro—and in case similar scarecrows come up in the EU.

4. The publication of the negotiation mandate (flanking instrument included) and of the expected outcome the EC intends to reach with it, is critical to build trust and reverse the infamous records of opacity in AA negotiation process and outcome—at odds with the current practice of the EC in the negotiation of association agreements. The AA can be greener only if a quantum leap is made on this matter.

**TABLE 1. The possible ways out of the ratification conundrum**

	Legal force	Precedent	Comment
A joint interpretation/ declaration	● If both parties agree that this document is an interpretative instrument in the sense of Article 31 of the Vienna Convention on the Law of Treaties, then it would have legal force, be binding and would need to be considered by the parties, arbitrators, and panel of experts under the FTA's dispute settlement procedures.	● EU-Canada in 2016 to persuade the Walloon government to drop its veto against signing the Comprehensive and Economic and Trade Agreement (CETA). This joint instrument included clarifications on the CETA's TSD provisions.	● Cannot go significantly beyond the commitments in the TSD chapter. At best, it can include more ambitious commitments in a non-binding way (i.e. a declaration of intentions).
A binding additional protocol	● Including additional TSD commitments in a binding way, through an additional protocol to the agreement. Such a protocol would legally be an integral part of the agreement.	● None	● Does not change the substantive standards.
A non-binding joint roadmap/ declaration	● Soft law instrument, which could include new TSD commitments beyond those included in the Agreement.	● None	● Does not change the substantive standards.
Pre-signature or ratification commitments	● The Commission, Parliament and Council should jointly come up with a single roadmap for ambitious but realistic reforms and initiatives to be adopted by the Mercosur bloc.	● EU-Vietnam FTA and Vietnam's ratification of several International Labour Organisation Conventions.	● Conditional approach unlikely to be accepted by Mercosur counterparts.
Unilateral statements or declarations	● Soft law instrument	● CETA	● Does not change the substantive standards. Contrary to a joint instrument, cannot give a binding interpretation to the Agreement.

Source: Based on Van der Loo, G. (2021). 'Mixed' feelings about the EU-Mercosur deal: How to leverage it for sustainable development. European Policy Centre. Commentary. <https://epc.eu/en/Publications/Mixed-feelings-about-the-EUMercosur-deal-How-to-leverage-it-for-su-3dad10>, Hoffmann, R.T., Krajewski, M. (2021). Legal opinion and proposals regarding a possible improvement or renegotiation of the draft EU-Mercosur Association Agreement. Misereor, Greenpeace, CIDSLE.

Voituriez, T., Cremers, K, Guimaraes, A., Moutinho, P., Zerbini Benin, O., (2022). Lula's election: A blessing for a green EU-Mercosur Association Agreement? IDDRI, *Policy Brief* N°09/22.

This work has received financial support from the French government in the framework of the programme "Investissements d'avenir" managed by ANR (French national agency for research) under the reference ANR-10-LABX-14-01.

**CONTACT**  
tancrede.voituriez@iddri.org  
klaudija.cremers@iddri.org

Institut du développement durable  
et des relations internationales  
41, rue du Four – 75006 Paris – France  
[WWW.IDDRI.ORG](http://WWW.IDDRI.ORG)  
[@IDDRI\\_THINKTANK](https://twitter.com/IDDRI_THINKTANK)