

Alternatives for a fair and sustainable partnership between the EU and Mercosur: scenarios and guidelines

CISDL, E3G, FTAO, IEEP and Veblen Institute

This study was commissioned by the Greens/EFA Group in the European Parliament



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Study: **Alternatives for a fair and sustainable partnership between the EU and Mercosur: scenarios and guidelines**

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The Cerrado savanna is home to 5% of the planet's animals and plants and is a critical carbon sink.

Disclaimer

The views expressed in this study are those of the authors, and do not necessarily reflect the opinion of any other party.

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FOREWORD

In 2019, we took office as MEPs as the EU had just reached a political agreement on a trade deal with Mercosur. This dinosaur deal disregarded the climate and social objectives of both the EU and the Mercosur region. Thanks to the mobilization of citizens, CSOs and progressive political forces, the deal was stopped in its tracks.

As the European cycle comes to an end, no real progress has been made to make this trade deal fall in line with the climate and social objectives of the EU and the Mercosur region. We know the reasons, and they are not going away. It is time for the next European Commission to endorse a new approach and regenerate the cooperation with our Mercosur allies.

To achieve our common goals under the Paris agreement, fight for social justice and strengthen our mutually beneficial partnership, the EU and Mercosur need to explore other avenues than the one that has been failing for almost 25 years.

We do need stronger cooperation with Mercosur. The EU-CELAC meeting of summer 2023 was long overdue. We fully endorse what EU-CELAC leaders stated when they affirmed that “by working together as sovereign partners, we are stronger and better placed to face the multiple crises and challenges of our times”.

Let us indeed face today’s green transition challenges together. This trade deal is not the way to go: it will aggravate deforestation by increasing EU imports of forest-risk commodities. It will also put health at risk in both blocks, by increasing EU exports of pesticides, agro-chemicals and combustion-engine cars to the Mercosur region and by driving up agricultural imports containing pesticides to the EU.

We also need to deliver on social goals together. Again, this trade deal is not fit for purpose. From creating unfair competition for both European and Mercosur farmers who are shifting to sustainable farming, to driving up indigenous land confiscation in Latin America and destroying decent jobs, this deal is set to heighten social inequalities and hinder human rights.

To work together as equals, the EU and Mercosur need to find a new way. One that takes into account the asymmetries between the two regions in terms of industrial development, not to exploit them, but to overcome them. And one that fosters value-added creation in the Southern bloc’s supply chains, securing a sustained increase of environmental and social standards.

It is clear to us that we need to pursue another partnership between the EU and Mercosur: a fair and sustainable partnership that puts people and the planet first.

How can we achieve this? What are concrete, untapped avenues for cooperation beyond this trade deal? We commissioned this study to open the discussion on a new, forward-looking approach, and a much-needed paradigm-shift. Trade can be part of the solution, but it must be fair, sustainable and promote a race to the top in terms of social, environmental and human rights.

Instead of worsening inequalities, the ecological crisis and the climate emergency, the EU needs to work with its Mercosur allies to pursue our common green and social objectives. This study proposes alternatives for the next Commission to explore.

Anna Cavazzini & Saskia Bricmont,
Greens/EFA Members of the European Parliament

17 April 2024



INTRODUCTION

On 28 June 2019, the European Union and the Mercosur countries (Brazil, Argentina, Uruguay and Paraguay¹) reached a political agreement towards a free trade agreement between the two regions, after two decades of negotiations. In the ensuing period, the path to ratification has been fraught with internal and external challenges. The sustainability impact assessment that should have informed the negotiations was completed long after the announcement that negotiations had concluded² – a situation that, according to the EU Ombudsman, constitutes a case of maladministration³. The agreement was highly scrutinised and criticised inside and outside Europe, in particular for its potential environmental impact, once again putting the issue of EU trade policy sustainability in the spotlight.

The EU-Mercosur trade agreement promotes trade flows of goods that are incompatible with the objectives of reducing global emissions, reducing deforestation and protecting biodiversity. It relegates Mercosur countries to the role of agro-exporters and suppliers of mining and energy resources, trapping them in an extractivist model that is destructive for the environment and local populations. The agreement encourages EU exports in all sectors, regardless of their environmental and social impact (e.g. reduced customs duties on automobiles, irrespective of engine type, vehicle size or energy efficiency, and on plastic products and pesticides banned on the EU market for health or environmental reasons). The agreement would also encourage the entry of agricultural products into the European market subject to production standards that are far less stringent than European standards. This is the case for food products. Nearly 30% of active substances of pesticides authorised in Brazil are not approved in the EU due to their harmful effects on health and the environment⁴. These regulatory differences in production standards also apply to meat. While Mercosur countries already account for over 50% of European beef imports, the agreement could increase EU beef imports from Mercosur by a further 23% to 52% by 2030 if the free trade agreement is fully implemented. Brazilian livestock farmers use antibiotics such as monensin as growth promoters – a practice strictly prohibited by the EU in the fight against antibiotic resistance. The meat industry is also one of the most concerned by forms of modern slavery listed in the Global Slavery Index, which affects in total more than 360,000 people in Brazil. Implementing this agreement could also exacerbate the destruction of ecosystems and

1 The agreement was finalised in 2019, well ahead of Bolivia's accession to Mercosur in 2023. However, Bolivia would naturally become a party to the agreement if it were concluded (see the legal analysis).

2 The agreement was completed without a comprehensive social and environmental impact assessment. The first SIA published in 2009 highlighted several harmful environmental and social consequences of trade liberalisation. It recommended implementing preventive measures to mitigate these effects, several of which were simply rejected by the European Commission. A second SIA was conducted after the resumption of negotiations. However, the first version of the draft EID interim report was not published until four months after the announcement that negotiations had been concluded, and this time, the negative impacts tended to be minimised. The final evaluation report containing a series of recommendations was only published in July 2020, without taking into account the agreement's final terms known a year earlier.

3 Decision in case 1026/2020/MAS concerning the failure by the European Commission to finalise an updated "sustainability impact assessment" before concluding the EU-Mercosur trade negotiations

4 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Visit to Brazil, A/HRC/45/12/Add.2, 5 August 2021, p. 7.

undermine European efforts to combat imported deforestation⁵. And the European regulation on imported deforestation would only provide a limited solution, notably because it does not cover all sensitive products and all forested land exposed to deforestation such as the Cerrado. Human rights of indigenous communities are directly threatened by the agreement, since areas at risk of deforestation often border indigenous territories⁶.

In the EU, these challenges have materialised through outright opposition from certain Member States' governments or national assemblies to the existing deal. In a resolution of 7 October 2020, the European Parliament emphasised that "the EU-Mercosur agreement cannot be ratified as it stands"⁷. In its annual report on the Common Foreign and Security Policy adopted on 28 February 2024, the European Parliament however included a call to "*the Commission and the Spanish and Belgian Council Presidencies to advance decisively and conclude the agreement with Mercosur before the end of the current parliamentary term, while keeping the highest level of ambition in relation to the enforcement of its sustainability provisions*"⁸. Attempts to amend this text failed. The agreement is also subject to strong opposition from civil society organisations: they stress its obsolete nature and the threat it poses to biodiversity, climate action and human rights⁹. Additionally, Mercosur officials have asked for the terms of the agreement to be better balanced (on the opening up of public procurement markets or trade in goods, for example). They have also requested additional measures from the EU's side to mitigate the economic repercussions of its autonomous environmental regulations, such as the deforestation-free products regulation, as well as climate finance and capacity building to support them in making these commitments. The recent election of a new climate-sceptic, far-right president in Argentina has brought new uncertainties. And unfortunately, the legislative proposals formulated during the first month of his mandate confirm the high risk of environmental regression¹⁰. This change of government will test the European doctrine that had been forged with regard to other countries led by climate-sceptic presidents such as D. Trump or J. Bolsonaro – whose terms of office have been marked by stagnation and even regression in terms of environmental policy, namely not to grant new trade preferences to partners who renege on their climate commitments.

The emergence of these obstacles prompts a critical examination of the viability and plausibility of ratifying the current agreement in its present state – from an environmental, social and democratic perspective, but also in terms of the level playing field to be upheld in relation to production standards, in the context of farmers' protests across Europe.

Gathering experts from the Centre for International Sustainable Development and the Law (CISDL), E3G, the Fair-Trade Advocacy Office to the EU, the Institute for European

5 Fern, [Why the EU Deforestation Regulation won't sugar coat the EU-Mercosur Trade Agreement](#), 20 April 2023

6 Fern, [Measuring the impacts of the EU Mercosur Trade deal on land use, forests, and the people who depend on them](#), 2 December 2020.

7 European Parliament resolution of 7 October 2020 on the implementation of the common commercial policy – annual report 2018

8 European Parliament annual report of 28 February 2024 on the implementation of the Common Foreign and Security Policy

9 <https://stopeumercosur.org/>

10 The "Ley de Bases y Puntos de Partida para la Libertad de los Argentinos" bill, known as Ley Omnibus, which the Executive Branch sent in December 2023 to Congress dedicates chapter three to weakening key environmental laws (the Glaciers Law, the Native Forests Law and the Environmental Protection Law for the Control of Burning Activities). [Glaciares, bosques y quema de tierras: qué plantea la Ley Ómnibus para el cuidado del ambiente - Infobae](#)

Environmental Policy (IEEP) and the Veblen Institute, this study delves into a series of credible alternatives to the 2019 agreement.

This work leads the authors to articulate a set of guidelines and policy recommendations for the next Commission towards a fair and sustainable partnership between the EU and the Mercosur countries as a regional bloc or on a more bilateral or even plurilateral basis. Commissioned by the Greens/EFA group in the European Parliament and coordinated under the "Green Trade Network," a project led by IEEP, this study stands as a key contribution to the ongoing debate surrounding the future of EU-Mercosur relations. The first section provides an in-depth legal analysis of the current text of the EU-Mercosur agreement and the so-called "side letters" issued by each of the two Parties to address a number of issues that stand in the way of a ratification, in particular those related to environmental protection and the deal's environmental impacts. Section two explores four alternatives, combined with actionable recommendations, to overcome the status quo and progress towards intensified cooperation between the two blocs on sustainability matters.

BOX - Policy Recommendations

To build future relations between the EU and Mercosur in the pursuit of sustainability for people and ecosystems, and regardless of the form and modalities of the partnership, authors have drawn up the following principles and action points, as a compass for decision-makers and negotiators on both sides of the Atlantic.

1. Any agreement or political partnership with Mercosur countries (as a bloc or individually) should be **compatible** with the **Paris agreement** and the **Kunming Montreal framework** in compliance with **international human rights law, ILO Standards, WTO law and Public International Law**.
2. Future cooperation vehicles between the two blocs should be based on **dynamic assessments of the impacts** of any market access measures on both **ecosystems and local communities**. They should include **tailored roadmaps** for addressing key environmental and social issues, combined with review and adjustment clauses.
3. Any EU-Mercosur partnership should be supported by a **financial package that facilitates compliance with EU market access requirements and contributes meaningfully and sustainably** to the **Mercosur region's clean and circular economy transition**, further linking the EU's trade policy with specific programmes such as the Global Gateway.

4. The future partnership should provide a **series of assistance measures** to ensure sustainable management of resources and a fair allocation of value as well as to raise the capacity of local actors to comply with the EU's environmental and labour regulations.

5. Parties should **refrain from seeking to increase trade** between the two blocs as a goal in itself, but primarily seek to improve commercial partnerships of products that are produced sustainably and are not easily available in the other bloc.

6. Market-opening provisions of such a partnership should **focus on trade in sustainable products produced by companies abiding by the CSDDD and similar laws**, favouring **local** and **domestic** products when possible. This shall also mean stopping the export of harmful substances that are banned in the EU (pesticides).

7. Any initiative for dialogue on standards should be aimed at increasing the level of protection for workers, consumers and the environment, and not at facilitating trade (which may be an indirect benefit but should never be a condition for it).

SECTION I: LEGAL FRAMEWORK ANALYSIS

Lead author: CISDL

The agreement should support the fulfilment of the UN Sustainable Development Goals (SDGs). That is, the end-goal is not trade *per se*, but rather the fulfilment of the SDGs. The latest progress report for the Latin America and Caribbean region showed that despite improvements in almost 3/4 of the measurable indicators, additional efforts would be needed for 41% of them to achieve the targets set for 2030¹¹. In this sense, trade policy should be designed to foster the development of sustainable economic activities. Under the legal aspects, some considerations are necessary.

According to its internal configuration and law, the EU has exclusive competence for its common commercial policy, which includes trade agreements, association agreements as well as agreements with trade and sustainable development obligations. Hence, under the auspices of the WTO framework, to be considered as a free trade agreement, any agreement with Mercosur should substantially cover all trade (goods, services, investment and IP) at its core¹². It is not required that all tariffs are eliminated. FTA parties have the capacity for differential elimination of tariffs (e.g. green and non-green goods).

Further, the EU is bound by international law and, under certain circumstances, actions by EU bodies can be subject to an action for annulment at the European Court of Justice.¹³ Thus, it is of vital importance to ensure compliance with public international law, as this ensures the credibility and legitimacy of the adopted measure. Still, it should be noted that sustainability commitments have long been recognised as essential elements of modern EU FTAs.¹⁴ A potential breach of those commitments under the FTA could even grant the right for unilateral termination or suspension of the FTA in question.¹⁵

Concerning the final product of negotiations, any instrument adopted by the parties, if annexed or added as an addendum to the main FTA, is legally binding.¹⁶ If an instrument is concluded

¹¹ Regional progress towards SDG targets (agenda2030lac.org)

¹² See Art. XXIV of the GATT. Note that Sectoral agreements (e.g. proposed Global Arrangement on Sustainable Steel and Aluminum) fail to meet this requirement and should be assessed under General Exception clauses.

¹³ Judgement of the Court of 12 December 1972, *International Fruit Company NV and others v Produktschap voor Groenten en Fruit*, Joined Cases 21/72 to 24/72, EU:C:1972:115; Judgement of the General Court of 3 September 2008, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, Joint cases C-402/05 P and C- 415/05 P, EU:C:2008:461; Judgement of the Court (Grand Chamber) of 21 December 2011, *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*, C- 366/ 10, ECLI:EU:C:2011:864

¹⁴ ECJ, Opinion 2/15, 16 May 2017; *EU-Korea Free Trade Agreement Labor Dispute*.

¹⁵ Extensive previous practice of the EU in the field of human rights commitments in FTAs (e.g. Council Decision (EU) 2016/394 instead of suspending the Cotonou Agreement (for Burundi))

¹⁶ ICJ *Ambatielos Case (Greece v United Kingdom) (Preliminary Objection)* [1952] ICJ Rep 28, 42–43; Oliver Dörr, 'Article 31. General Rule of Interpretation' in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012) 539.

separately, then the status will depend on the intention of the parties.¹⁷ A legally binding instrument may have hard and soft commitments;¹⁸ the latter are relevant for interpreting the original treaty, but hard commitments are more influential for treaty interpretation.¹⁹ Soft commitments cannot resolve inconsistencies between trade commitments and sustainable development actions; parties should rather rely on the general exceptions. On the contrary, sustainable development commitments become an integral component of the trade relations covered.²⁰ In any event, even if non-binding, the instrument is relevant for interpreting the original treaty.²¹ Finally, any instrument integral to the main treaty is considered relevant context for the rest of the treaty.²²

On 7 December 2023, on the occasion of the Mercosur summit in Rio de Janeiro, Bolivia joined the Mercosur bloc. The new member now has four years to adapt its internal legislation to the legal and institutional framework of the South American bloc. Legally, Bolivia can accede to the EU-Mercosur agreement with no substantive issues.²³ However, despite this legal feasibility, Bolivia has a worrying track record on deforestation, something that could add an additional layer of complexity to the current rounds of negotiation.²⁴

In comparison with other recent trade deals, the EU-Mercosur draft is less progressive than other FTAs concluded by the EU.²⁵ For instance, the EU-Mercosur draft is limited in its reference to Multilateral Environmental Agreements (MEAs); none of the specific obligations of MEAs are inserted into the draft agreement. The draft agreement also lags behind current EU practice on balancing the objectives related

17 This can be demonstrated by the text of the instrument itself. Note also that a separate legally binding instrument may supersede the original treaty in case of conflict (this depends on the actual language of the instrument). See Oliver Dörr and Kirsten Schmalenbach, "Article 1. Scope of the Present Convention"; "Article 30. Application of Successive Treaties Relating to the Same Subject Matter" and "Article 59. Termination or Suspension of the Operation of a Treaty Implied by Conclusion of a Later Treaty" in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties* (Springer Berlin Heidelberg 2012) 41; Anthony Aust, "The Theory and Practice of Informal International Instruments" (1986) 35 *The International and Comparative Law Quarterly* 787, 800-06

18 Marco Bronckers and Giovanni Gruni, "Retooling the Sustainability Standards in EU Free Trade Agreements" (2021) 24 *J Int Economic Law* 1, 25

19 Restrictions applied by Ukraine on exports of certain wood products to the European Union (Final Report) para 250 (Arbitration Panel pursuant to Article 307 EU-Ukraine Association Agreement)

20 EU-Korea Free Trade Agreement Labor Dispute. The Panel even made a distinction with the US-Guatemala dispute, which did not encompass such an extensive floor of labour rights as the Dominican Republic-Central America-United States Free Trade Agreement "does not have the same contextual setting of sustainable development as the EU-Korea FTA, nor does it refer to the range of multilateral and international agreements and declarations which the Parties have included in the EU-Korea FTA" [para. 93].

21 E.g. TBT Committee Decisions in WTO context [Appellate Body Report, US - Tuna II (Mexico), paras. 371-372]

22 Restrictions applied by Ukraine on exports of certain wood products to the European Union (Final Report) para 245. Note that if the instrument is concluded separately, then it may be considered an agreement in relation to the conclusion of the main treaty, which is still highly influential in the interpretive process. Should the instrument be concluded after the main agreement, then it may be considered a subsequent agreement, which is a highly influential method of "authentic" interpretation. For this, see Article 31.2 VCLT. Richard Gardiner, *Treaty Interpretation* (Oxford University Press 2015) 223-224 and Article 31.3(a) VCL. International Law Commission, "Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties" (Yearbook of the International Law Commission, 2018, vol. II, Part Two, 2018)

23 The main change would be in the Schedule of Tariff Concessions and Services Commitments [See: Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador]

24 For more details, please see Global Forest Watch, available at: <https://www.globalforestwatch.org/dashboards/country/BOL/>. Further, as part of the Andean Community, Bolivia could have joined the EU-Andean Communities FTA but has not done so.

25 Fabiano De Andrade Correa and Alessandra Lehmen, "Trade, Sustainable Development and Climate Change: How Can Free Trade Agreements Be Leveraged for Increased Climate Action? Perspectives on the EU-MERCOSUR Agreement" (2023) 50 *Legal Issues of Economic Integration* 287; Javiera Caceres et al., "Environment and Climate Change in the Draft EU-Mercosur Trade Agreement", CISDL (2021), <https://www.cisd.org/wp-content/uploads/2021/04/Environment-and-Climate-Change-in-the-Draft-EU-29.04.2021-Final.pdf> (accessed 31 Jul. 2023).

to the Trade and Sustainable Development (TSD) taken by the EU-Mercosur draft is less forceful compared to other Trade Agreements.²⁶

Further, the text does not integrate the innovations resulting from the trade policy review of 2021 and the new strategy for trade agreements of 2022. For example, it does not consider the Paris Agreement as an essential clause or a stronger enforcement mechanism in the TSD Chapter, such as sanctions in the case of non-compliance with the Paris Agreement and the core ILO convention. Similarly, the draft does not make reference to enhanced dialogue and capacity building in relation to the latest unilateral trade and sustainability measures of the EU, nor does it provide for country-specific climate cooperation roadmaps. Finally, it makes no mention of key sustainability areas such as critical minerals, clean technologies, sustainable finance, trade and gender and sustainable food systems.

EU and Mercosur Side Letters

Most recently, the Mercosur bloc and the EU have been negotiating additional commitments following concerns over sustainability issues. Regarding the EU, it wants to avoid a “race to the bottom”, in order not to reduce the level of ambition of each party’s NDC. The EU has also called for National Biodiversity Strategies and Action Plans (NBSAPs) to be reviewed, updated, communicated and implemented, while halting forest loss and degradation.²⁷ It includes, however, no mention of specific offers of European climate finance, export finance or connections to the EU’s Global Gateway to support the EU’s goals.

Regarding the South American bloc, the joint instrument calls for the internal legislation and different national circumstances of each of the parties to be considered and states that in no scenario should sanctions be applied. Mercosur has also emphasised that the agreement must guarantee the parties’ ability to implement public policies related to various areas such as: public health; science, technology and innovation; sustainable, secure and resilient interregional value chains in the energy transition; sustainable mobility and digitisation; and climate action and food security. To ensure a transition towards sustainable development and technologies, the bloc has requested EUR 12.5 billion from the EU (see table in Annex).

As the study aims at thinking “outside the box” and imagining ways to break the current deadlock, Section II explores a few alternative pathways that would make sustainability the primary principle of any future cooperation and market access vehicle.

26 Marios Tokas, “Highest Priority Trade Provisions Related to Sustainable Development and Climate Change: Streamlining Climate Change Commitments in Horizontal Chapters of EU-Americas FTAs” (2023), 50 *Legal Issues of Economic Integration* 263, 269–70.

27 Nevertheless the interim target to “reduce” deforestation by “at least 50% from current levels by 2025” (p5) would allow a 47% increase in Brazil’s 2020 deforestation target, according to the NGO Rainforest Foundation Norway. For more information, see <https://www.fern.org/publications-insight/still-got-it-as-discussions-aimed-at-ratification-begin-mercocur-deal-retains-its-capacity-to-dismay-2654/>

SECTION II:

FOUR ALTERNATIVE SCENARIOS TO BUILD A FAIR AND SUSTAINABLE PARTNERSHIP BETWEEN THE EU AND THE MERCOSUR REGION

The aim of this section is to present options that have been developed – from different perspectives and approaches – by a set of authors, members of the Green Trade Network. All the options presented below are WTO-compatible, which further ensures the plausibility of its application and provides legitimacy.²⁸

Alternative 1: “Back at the table”

Renegotiation of the deal

Lead author: Veblen Institute

If the EU-Mercosur agreement is renegotiated, the new draft should integrate the innovations resulting from the trade policy review of 2021 and the new strategy for trade agreements of 2022, and even go further to align the deal with EU commitments on sustainable development.

Non-exhaustive list of elements to consider²⁹:

Hierarchy clause

A hierarchy clause in the general chapter stipulating that in the event of inconsistency between the trade agreement and listed international instruments³⁰, obligations from the latter shall prevail.

²⁸ Preferential schemes have been previously successfully challenged at the WTO, even when related to sustainable development and taken within the context of regional integration processes (e.g. Mercosur exception in the Brazil-Tyres WTO case).

²⁹ This list contains some of the most obvious items but there are also other relevant chapters that would also require a further look (public procurement, IPR, thematic dialogues and cooperation, etc)

³⁰ Core list of multilateral environmental agreements (MEAs), international labour conventions, international human rights law and other relevant international standards (i.e. OIE recommendations on animal welfare).

Among MEAs, UN Framework Convention on Climate Change, the Paris Agreement, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety, the CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on the Conservation of Migratory Species of Wild Animals and the International Plant Protection Convention (IPPC) should be included.

□ **Compliance with environmental and climate commitments as well as core ILO conventions as an essential element of the EU-Mercosur Agreement**

In its 2021 trade policy review, the EC restates the objective of the EU Green Deal to make compliance with the Paris Agreement “an essential element in future trade and investment agreements”³¹. This approach should be extended to the protection of biological diversity: essential element clauses in EU-FTA should also integrate the Kunming-Montreal Global Biodiversity Framework. In order to be fully effective, what constitutes “essential elements”, as well as the scale of sanctions for violations of these essential elements, should be precisely defined.

In the context of the Paris Agreement, beyond the obligation to ratify, the essential element clause must be interpreted as restricting the possibility of leaving the Agreement. It should also cover cases of States’ non-compliance with their climate commitments. For example, failure to revise the NDCs upwards should be considered grounds for suspending all or part of the trade agreement³².

The new 2022 strategy also proposes applying this “essential element” approach to the ILO’s “Fundamental Principles and Rights at Work”. This principle should be extended to all the ILO’s fundamental conventions, and provide a lever to encourage Parties to the EU/Mercosur agreement to ratify and fully implement all these conventions, which is currently not the case (see annex 2).

□ **Specific and measurable commitments in the TSD chapter**

Identify country or region-specific sustainability priorities underpinned by concrete measures based on time-bound roadmaps during the implementation of the agreement:

Beyond the general commitments to implement international agreements on the environment, human rights or social rights, the TSD chapter must contain more detailed binding provisions that will better operationalise existing obligations deriving from MEAs and other international agreements on human and social rights, and even go beyond the commitments made by the parties to comply with them.

This should include the development of more detailed provisions in the context of national communications, strategies and implementation instruments (such as National Biodiversity Strategies and Action Plans (NBSAPs) under the Convention on Biological Diversity (CBD), Nationally Determined Contributions (NDCs) under the Paris Agreement and national reports submitted to the ILO Committee of Experts on the Application of Conventions and Recommendations.

31 EC Communication, [The European Green Deal](#), COM(2019)640 final, 11 December 2019; [Trade Policy Review - an Open, Sustainable and Assertive Trade Policy](#), COM (2021) 66 final, 18 February 2021.

32 Under the Paris Agreement, each Party is required to establish a Nationally Determined Contribution (NDC) and update it upward every five years. NDCs are climate action plans to cut emissions and adapt to climate impacts (Paris Agreement, article 4).

The TSD provisions, such as non-regression clauses, should introduce stand-alone obligations, the breach of which remains unaffected by the existence of negative trade or investment effects.

The only instance in which the EU has proposed such an approach was during the negotiations of the Trade and Cooperation Agreement with the UK. The textual proposal of the EU incorporated a strong operational obligation of non-regression with regards to environmental protection. See below the example on climate change:

A Party shall not adopt or maintain any measure that weakens or reduces the level of climate protection provided by the Party's law and practices, and by the enforcement thereof, below the level provided by the common commitments and targets applicable in the Union and the United Kingdom at the end of the transition period, and by their enforcement.³³

Equally, roadmaps attached to specific chapters could determine the phasing-out of harmful products in bilateral trade, such as plastics, highly hazardous chemicals or emissions-intensive commodities³⁴.

□ **Enforcement of TSD chapter**

The option of sanctions must be extended to all commitments included in TSD chapters, not only those on fundamental labour conventions and the Paris Agreement.

No threshold should apply to sustainability disputes. The activation of a dispute settlement procedure shall not be limited to "serious violations" of TSD commitments.

The initiation of a dispute settlement procedure should not be reserved solely for the contracting parties. This possibility should also be open to civil society organisations and trade unions. Indeed, the EU and its Member States are hardly willing to enter into government consultations in the event of a breach of TSD commitments by trading partners³⁵.

The type and nature of sanctions that would come in the case of a violation of TSD commitments and roadmaps should depend on the type of violation and be proportionate to its degree of seriousness.

³³ Article 2.34. The final text of the EU-UK TCA adopted a more effects-based approach. "A Party shall not weaken or reduce, **in a manner affecting trade or investment** between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection."

³⁴ [On track for sustainable trade? - Portal der Arbeiterkammern und des ÖGB Verlags](#)

³⁵ As regards the implementation of the EU-Korea agreement, the domestic advisory group twice called on the European Commission, in 2014 and 2016, to trigger the procedure provided for in the event of non-compliance of the TSD commitments, without success. In an impact study published in June 2016, the Commission even congratulated itself on the very good results of the agreement, without elaborating on the situation of workers' rights in South Korea. It was only after the intervention of the European Parliament in 2017, and in a context of growing mobilisation against trade policy, that the Commission began to assume its responsibilities towards this partner country. A dialogue procedure was launched in 2018 to demand respect for trade union rights.

These sanctions could take the shape of:

- The payment of financial compensation to be paid into a fund established for supporting appropriate environmental or social initiatives; or
- The imposition of targeted trade sanctions (including suspension of tariff liberalisation or other import restrictions) on goods that are implicated in the sustainability violation³⁶; or
- The termination or (partial) suspension of tariffs liberalisation under the agreement in response to a serious and substantial violation (such as of the “essential elements”)³⁷.

Sanctions should be triggered automatically on the basis of a report by a panel of climate / human rights experts – in other words, without having to wait for a joint decision by the two parties to the agreement³⁸.

Rapid response mechanism

Include a rapid response labour mechanism through which a party can take enforcement actions against individual companies if they fail to comply with core ILO conventions.

Tariff preferences conditionality

Tariff preferences should be made conditional on effective compliance with sustainability criteria for all the most sensitive products from a climate and biodiversity point of view. This is what was suggested in the 2009 Sustainability Impact Assessment on the EU-Mercosur Agreement³⁹.

For the moment, under the EU-Mercosur Agreement as it stands, tariff liberalisation for shell eggs is conditional on compliance with the relevant EU animal welfare standards for laying hens. However, the volumes traded in these products appear to be fairly negligible.

36 See the type of sanctions used for the rapid response mechanism in the USMCA: suspension of tariff benefits for products manufactured in the target company, penalties or even refusal of entry for goods from repeat offenders.

37 [Joint demands on the early TSD review \(version 2\).docx \(clientearth.org\)](#)

38 Sanctions should be graduated according to a predefined “scale” and a group of experts in the area concerned (climate, biodiversity, social rights, international human rights law, etc.) should be able to define the level of severity of the violation without waiting for a joint decision by the two parties to the agreement. See “Making trade agreements conditional on climate and environmental commitments”, Mathilde Dupré, and Stéphanie Kpenou, June 2023, Veblen Institute.

https://www.veblen-institute.org/IMG/pdf/june_2023_en_note_trade_agreements.pdf

39 [Final overview trade SIA EU-Mercosur Final Report](#), March 2009

→ **Breeding products**

The tariff preferences granted to Mercosur should concern only meat from cattle raised exclusively on pasture in order to exclude meat from cattle fattened industrially in feedlots from the quota⁴⁰.

Access to the quota should also be conditional on compliance with the European rule banning the use of antibiotics as growth promoters. This conditionality will expire once the EC has adopted all the implementing acts necessary to make the ban provided for in Article 18 of EU Regulation 2019/6 on veterinary medicinal products fully effective⁴¹.

→ **Pesticides**

Active substances whose use is banned in the EU because they are hazardous to health or the environment should not benefit from the tariff reductions provided for in the agreement for EU chemical exports. (If their exports are not banned soon in the EU, the EU should at least include a roadmap for their phase-out in the agreement.)

For all active substances banned in the EU because of their danger to health or the environment, a residue-free requirement should be applied to products imported into the EU from Mercosur countries⁴².

→ **Imported deforestation**

Introduce requirements similar to those set out in the European regulation against imported deforestation for all sensitive agricultural products (maize, agrofuels, sugar) that benefit from preferential access to the European market and for all high-risk areas such as the Cerrado or the Pantanal.

→ **Plastics**

EU Directive 2019/904 bans several harmful single-use plastic products, such as plastic cutlery, plates and expanded polystyrene food containers, from being placed on the EU market.

40 See the UE-NZ FTA mirror clause: "This paragraph applies to originating goods classified in the following tariff lines: 0201, 0202, 0206 10 95, 0206 29 91, 0210 20 10, 0210 20 90, 0210 99 51, 0210 99 59, 1502 10 90, ex 1502 90 90 (beef only), and 1602 50,1 to product from animals that have been raised under New Zealand's pastoral farming conditions. For greater certainty, this does not include commercial feedlots." But it is important to stress that this clause does not seem relevant in the New Zealand context, where cattle are not finished in feedlots.

41 On January 29, 2024, the EC published a new implementing regulation. However, it does not effectively implement the prohibition on importing animals or animal products treated with growth-promoting antibiotics. Indeed, it is based on a self-declaration approach, and the list of third countries approved to export products of animal origin to the EU is still lacking. In addition, the mirror measure will only be applied in two years' time.

42 While it is prohibited to treat crops in the EU with substances that are not approved/authorised by European regulations, crops produced outside the EU may have been treated with these substances provided that the foodstuffs imported into the EU comply with the MRLs set out in Regulation (EC) 369/2005. Member States, third countries and manufacturers may also request import tolerances. For the first time Regulation (EC) 2023/334 prohibits the importation of products containing traces of clothianidin and thiametoxam on environmental grounds.

Such products should at least be excluded from the tariff reductions provided for EU exports to Mercosur in the agreement:

- plastic kitchenware, tableware and other plastic household articles (currently subject to import tariffs of up to 18% in Mercosur).
- plastic waste scraps made from Polyethylene terephthalate (PET), Polyvinylchloride (PVC), and other polymers (currently subject to import duties of 14% in Mercosur).
- garments and accessories made of plastic (currently subject to import duties up to 35% in Mercosur).
- expansible polystyrene in primary forms (currently subject to import duties up to 14% in Mercosur).
- primary forms of polyvinylchloride (PVC) obtained in emulsion (currently subject to tariffs of up to 14% in Mercosur).⁴³

→ **Cars**

Introduce size or energy performance criteria for EU vehicle exports and consider phasing out exports of combustion engine vehicles, in line with the ban on commercialisation on the EU market in 2035.

Precautionary principle

The precautionary principle (with wording aligning with the General Court of the EU interpretation⁴⁴) should be introduced as guiding principles to the interpretation and implementation of the entire agreement.

Review clause

The agreement should include a review and revision clause providing that where the ex-post monitoring process show either: (1) negative impacts of commercial provisions on the environment, human rights or animals, or; (2) environmental or social provisions failing to be effective, action is then taken to address those issues either by revising the text agreement or by adopting any other appropriate action (e.g. suspension of trade preferences)⁴⁵.

43 [5af2b299-report-eu-dirty-plastic-secret.pdf \(greenpeace.org\)](#)

44 Judgement of the General Court of the EU in cases T-429/13 and T-451/13 of 17 May 2018, Bayer and Syngenta v. Commission, paras 109 to 111. For instance: "Where there is scientific uncertainty as to the existence or extent of risks to human health or to the environment, the precautionary principle allows the institutions to take protective measures without having to wait until the reality and seriousness of those risks become fully apparent or until the adverse health effects materialise".

45 [Joint demands on the early TSD review \(version 2\).docx \(clientearth.org\)](#)

□ **Pre-ratification commitments**

All Parties should commit to ratify (when not yet a Party) and effectively implement a core list of multilateral environmental agreements (MEAs), international labour conventions, international human rights law and other relevant international standards (i.e. OIE recommendations on animal welfare);

For instance, see the annex of the core ILO conventions, which are not ratified by EU and Mercosur countries that are parties to the agreement.

Alternative 2: “Sustainability above all”

A bilateral partnership on sustainability issues without access to market (high level of cooperation, low level of market integration)

Lead authors: FTAO, Veblen Institute, IEEP, and E3G teams

Other countries are working on other forms of partnerships on sustainability issues:

- Building on existing initiatives, the US and Brazil launched the First Joint Global Initiative to Advance Rights of Working People Around the World, on 20 September 2023⁴⁶.

The EU could pursue a sustainability partnership with the Mercosur region, putting the 2030 Agenda for Sustainable Development at the centre, linking with relevant MEAs and ongoing initiatives such as the Paris Agreement, the CBD and Global Biodiversity Framework and the WTO initiative on Fossil Fuel Subsidy Reform. This bilateral partnership could serve to highlight where additional efforts are required, such as tackling deforestation, establishing a framework for the responsible sourcing of critical raw materials and a joint strategy on investment protection.

These partnerships could also be seen/used as a way to support implementation of new EU market access requirements. Partnerships on sustainability should specifically target processes that seek to avoid and mitigate the impacts embedded in EU Regulation, overcome the Regulation’s limitations, and support countries in transitioning towards achievement of the SDGs. Ensuring that smallholder farmers and workers are able to make a decent

⁴⁶ [Joint U.S.-Brazil Statement on the Partnership for Workers’ Rights | The White House](#)
[FACT SHEET: The United States and Brazil Launch First Joint Global Initiative to Advance Rights of Working People Around the World | The White House](#)
[Remarks by President Biden, President Lula of Brazil, and Director-General Hounsgbo of the ILO Launching the Partnership for Workers’ Rights | New York, NY | The White House](#)

living when supplying EU markets should be a central element of achieving sustainability partnerships with Mercosur countries.

Partnerships on sustainability could, potentially, grant space to recognise and address past and current trade relations between the two blocs and what consequences those dynamics have had in terms of sustainability. Such a diagnosis should then lead to recognising the need to foster local value creation and to enable regional integration as well as diversification of local economies.

A sustainability partnership between EU and Mercosur countries should start by jointly identifying what are the main sustainability issues in the region and should integrate elements such as:

- ➔ country priorities

- ➔ minimum objectives (e.g. tackling underlying drivers of identified sustainability issues, assisting national actors in tackling sustainability issues, supporting sustainable transition across industries, etc.)

- ➔ core requirements (e.g. a rights-based approach to solving issues, a multistakeholder and inclusive process in which governments, private sectors (including small farmers and forest producers), local and international NGOs, and communities are all included in decision-making; clear and direct incentives to encourage change; independent and robust monitoring and evaluation systems linked to enforcement mechanisms; adequate long-term support (financial, human and political)).

- ➔ incentives (that are mutually agreed). Examples could be⁴⁷:
 - Work towards recognition of national traceability systems in benchmarking (especially on deforestation).
 - Establishing a sustainable transition fund.
 - Reducing or removing EU and Member State policy barriers preventing smallholders from receiving a living income.
 - A temporary commodity import ban.
 - Sustainable public procurement rules.
 - Scientific cooperation and knowledge transfer for sustainable transition.

⁴⁷ More details on these examples can be found here >> https://www.fern.org/fileadmin/uploads/fern/Documents/2023/Fern_-_Partnerships_-_EU_strategic_framework_for_working_with_countries.pdf

- Prioritising agroecological practices and sustainable agriculture, small-scale farmers, resilient food systems and providing governments with opportunities to develop their own agricultural markets.
- This sustainability partnership should be supported by a financial package that contributes to the Mercosur region's transition to a clean and circular economy.
- The EU should expand Global Gateway investments in Mercosur countries. This financing should not just target EU industries' immediate needs for energy carriers and raw materials, but actually address structural dependence on exporting commodities and improve their stake in the clean value chain to design a win-win partnership.
 - Financing should focus on sustaining new clean industries in Mercosur countries, from manufacturing cleantech components to producing green steel and chemicals, integrating them into global cleantech value chains.
 - The EU should provide more long-term affordable financing to Mercosur's clean economy, using levers such as the provision of climate-aligned export credits and the steering of other concessional climate finance and EU development aid towards this objective.

From a more thematic perspective, a new partnership between EU and Mercosur could cover:

□ **The Paris Agreement**

Develop a joint approach to be promoted at the COP30 in Brazil to include:

- international transport in the emission reduction targets of both parties and
- complementary domestic commitments to reduce imported emissions.

□ **Support to smallholder farmers for climate change adaptation and mitigation**

When considering partnerships on sustainability, a key aspect shall be climate change mitigation and adaptation. In addition, this should be targeted on smallholder farmers and local communities, so that they, especially, can benefit from climate finance.

This is particularly relevant considering the commodities to be exported by Mercosur

countries, the large share of that production that comes from smallholder farmers⁴⁸ and the (greater) impact that climate change has on smallholder farmers⁴⁹.

Measures the EU should introduce in this sustainability partnerships are:

- Scaling up adaptation finance and providing greater attention to adaptation-mitigation linkages and co-benefits.
- Developing financial products and services tailored to the needs of small-scale farmers, in a way that leverages local knowledge and expertise.
- Targeting farmers' organisations as direct recipients of grants (e.g. the grant portion of the Green Climate Fund).
- Building more effective bridges between climate and conventional agricultural finance tools available to smallholders to multiply their cross-benefits.
- Providing training and technical assistance to support the adoption of climate-resilient practices and/or technologies (e.g. weather monitoring systems, renewable energies technologies, training on sustainable land management practices).
- Switching to a new decision-making model that truly gives space to local actors in designing, prioritising, implementing and monitoring efficient climate finance tools that reflect regional and/or sectorial needs.

□ **Cooperation against deforestation**

A multi-pronged approach is needed to deal with complex problems like deforestation. There would be a need for joint assessments between the EU and the Mercosur countries on the root causes of deforestation, so as to ensure any solutions are tackling the right problem. This should be done through meaningful stakeholder engagement, paying special attention to smallholder farmers and local communities. Once that is done, strategic collaborations could help with implementation and enforcement of the new EU Deforestation Regulation. This should include support and endorsement of independent monitoring activities and of national commodity traceability systems; collective practical steps to enhance supply chain transparency; greater clarity and consensus around legal and procedural frameworks

48 For example, in Brazil, *circa* 75% of coffee growers are smallholder farmers; for cocoa, *circa* 60% of production comes from smallholder farmers; for sugar, around 60% of production comes from smallholder farmers in Brazil and in Paraguay around 50% of sugar production comes from smallholder farmers.

Sources:

https://www.sustaincoffee.org/assets/resources/Brazil_CountryProfile_Climate_Coffee_6-7.pdf

<https://www.gov.br/agricultura/pt-br/assuntos/ceplac/publicacoes/outras-publicacoes/cacau-do-brasil-versao-ingles-1#:~:text=With%20approximately%20600%2C000%20hectares%20of,200%2C000%20tons%20of%20cocoa%20beans>

<https://edepot.wur.nl/333654>

49 https://www.ifad.org/documents/38714170/41756746/Small+farms%2C+big+impacts+-+mainstreaming+climate+change+for+resilience+and+food+security_e.pdf/431635ce-4898-41a8-aaba-09275c84a5a9?t=1580480709000

relevant to complying with the Regulation; and dedicating technical and financial support for smallholders to comply.⁵⁰

Proper impact assessments and ambitious enforcement of the EU regulation (inclusion of all woodland and all agricultural commodities at risk).

A targeted programme of technical support and a financial contribution from the EU to a reform programme to guarantee compliance with traceability and deforestation-free requirements should be accompanied by a political commitment from the Mercosur countries not to initiate a WTO dispute over the European regulation.

Implementation of CBD and Montreal Kumming framework

National roadmaps for the reduction of the use of pesticides

- Phase-out of EU exports of EU-banned pesticides**
 - financial support and technical assistance to help in implementing the Kunming-Montreal Global Biodiversity Framework
- Fossil fuel subsidy phase-out**

EU countries spent EUR 56 billion on fossil fuel subsidies in 2019, with 15 states spending more on fossil fuels than green energy, according to the [European Court of Auditors](#). Between 2015 and 2019, the total amount of fossil fuel subsidies grew by 4% in the EU. The Commission acknowledged that such support must **end**, since they undermine policies to tackle climate change, including the EU's target to reduce net emissions by 55% by 2030 from 1990 levels⁵¹.

- Real partnership on critical raw materials (see alternative 4 for more details)**
- Strategic dialogue on investment protection**

According to the EU proposal included in the draft document for the EU-Mercosur Joint Instrument:

“Legislative, regulatory and policy action aiming at making finance flows

consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, in accordance with Art. 2.1.c. of the Paris Agreement”

50 https://www.fern.org/fileadmin/uploads/fern/Documents/2023/Fern_-_Partnerships_-_EU_strategic_framework_for_working_with_countries.pdf

51 [Is there a case for the EU to join the Agreement on Climate Change, Trade and Sustainability \(ACCTS\)? | IDDR!](#)

- Highlight the benefits of the Brazil approach (no BIT with ISDS)
- Define a joint strategy to promote at OECD, Uncitral, UNCTAD, the coalition of trade ministers on climate and G20 a reform of BIT in order to align them with article 2.1.c of the Paris Agreement. (termination of existing treaties, withdrawal of consent to ISDS, broad carve-out for investments in specific sectors, including energy or fossil fuels investments or “any other activities that pose significant harm to the environment and human rights”⁵² or thematic carve-out for climate-related measures).

Whether such a partnership is sufficient enough a carrot for the Mercosur region to bite...

The cooperative relation could evolve into signing equivalency or mutual recognition agreements on technical regulations, conformity assessment procedures and sanitary and phytosanitary measures for sustainable products.⁵³ This could encompass, for instance, eco-labelling and organic products. This would ensure preferential market access to compliant products, fully compatible with WTO law.

Alternative 3: “Focusing on what matters the most”

Targeted cooperation and integration: a bilateral partnership on sustainability with targeted market access

Lead authors: IEEP, E3G

In 2019, export-oriented countries Costa Rica, Fiji, Iceland, New Zealand and Norway launched negotiations on an Agreement on Climate Change, Trade and Sustainability (ACCTS), which aims to put climate and market liberalisation on a more equal footing by:

- removing trade barriers to environmental goods⁵⁴ and services⁵⁵ (on a Most Favoured Nation basis)
- phasing out their fossil fuel subsidies,
- promoting voluntary eco-labelling programmes and mechanisms.

⁵² See the thematic carve-out recommended in the EP INI report on investment policy, June 2022, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0268_EN.html

⁵³ See Articles 2.7, 6.1 of the TBT Agreement and Article 4.1 and 4.2 of the SPS Agreement.

⁵⁴ Environmental goods and services, according to a common definition developed in the 1990s by the Organisation for Economic Co-operation and Development (OECD) and Eurostat (the EU’s statistical agency), are “activities which produce goods and services to measure, prevent, limit, minimise or correct environmental damage to water, air and soil, as well as problems related to waste, noise and eco-systems.” See [Time to ACCTS? Five countries announce new initiative on trade and climate change | International Institute for Sustainable Development \(iisd.org\)](#)

⁵⁵ Including environmental services in ACCTS is something new.

The latest negotiations on the ACCTS have progressed to the point where the partners have agreed on a set of guiding principles for voluntary eco-labelling programmes, identified more than 300 environmental products for liberalisation and progressed on the development of a list of environmental services⁵⁶.

This alternative could contain some of the elements of the partnership presented in alternative 2 with additional market access elements.

The benefit of such an approach between the EU and Mercosur could be to strengthen cooperation on sustainability by facilitating trade and investment in environmental goods and services, creating a win-win scenario for both local businesses and communities and the environment. For example, Brazil and Argentina house a number of critical raw materials required for the green transition. With increased cooperation, local communities could stand to benefit from better-regulated processing and recycling facilities.

To enact a paradigm shift for the purpose and terms of trade, EU and Mercosur should:

- Refrain from seeking to increase trade between the two blocs as a goal in itself, but primarily seek to improve commercial partnerships of products that are produced sustainably and are not easily available on the other side.
- Promote the trade of sustainable products, favouring local and domestic products when possible. This shall also mean stopping the export of harmful substances that are banned in the EU (pesticides).
- Adapt the trade agreement model so that it establishes partnerships for global, fair and ecological transition, and not just cooperation for ensuring the EU's green transition. This means establishing collective international endeavours following the commitments of the Paris Agreement and requiring international cooperation and coordinated solutions at all levels.

Alternative 4: Targeted Bilateral Strategic Partnership(s) (on critical raw materials)

Alternative 3 provides a partnership in which (one of) the focal points would be granting (targeted) market access. Therefore, alternative 4 proposes a new Partnership framework in which both parties agree on core overarching objectives to deliver progress on sustainable development, climate action and environmental protection. Such partnerships could be thematic rather than attempting to encompass a plethora of SDGs under one framework.

⁵⁶ New Zealand Foreign Affairs and Trade. [ACCTS Chair's Statement from New Zealand - Round 13](#), 23 June 2023.

One option could be to leverage the objectives of the EU's Critical Raw Materials Act (CRMA) to explore Strategic Partnerships on critical raw materials (CRMs). Rather than pursuing the EU's main objective regarding CRMs – strategic autonomy – this new framework on CRMs could aim to prioritise responsible and circular CRM projects in third countries while being held (at least) to the same sustainability standards as EU-based projects. However, as they currently stand, Strategic Partnerships under the CRMA appear to be loose frameworks for enhanced cooperation on CRMs, particularly to support the roll-out of strategic projects in third countries⁵⁷. The partnerships do not uphold a sufficiently high level of ESG standards to ensure that projects and third countries' regulatory frameworks are aligned with international agreements and standards, and they lack concrete definitions or initiatives to foster value addition in the trade partner country, missing the opportunity to contribute to long-lasting benefits through green industrialisation⁵⁸.

Key elements of a successful partnership would guarantee:

- Long-term sustainable management of resources.
- The highest standards possible (protection of human rights including Free, Prior, and Informed Consent (FPIC), social rights and environment) and safeguards for the rights of indigenous people.
- Aid for green industrialisation efforts of resource-rich countries whose economies rely on exporting primary raw materials by transforming their industrial capacities to produce inputs or final products for the global green transition⁵⁹, providing adequate technical and financial support (e.g. through the Global Gateway).
- Technological developments shared with third countries by investing in R&D, encouraging technology transfers through joint venture partnerships or licensing⁶⁰, capacity building and knowledge sharing to share best practices along the CRM value chain and advance circular business practices.
- Fair share of and future-proof value addition in the third country by prioritising processing and recycling strategic projects above extractive projects, which, in comparison, generate little added value for local communities.
- EU extractive projects in third countries must prioritise value addition, especially for local communities, and should place people-centred and environment-centred development at the heart of their objectives and all operational frameworks⁶¹.

57 See Transport & Environment's briefing for more information on the strategic partnerships agreed so far. Transport & Environment. (Oct 2023). EU Strategic Partnerships: How to shape secure, diverse and sustainable trade in critical minerals. [Link](#)

58 See IEEP's upcoming briefing on trade and cooperation frameworks for securing CRMs (March 2024).

59 Medinilla, A., & Byiers, B. (2023). *The political economy of green industrialisation in Africa*. Retrieved from <https://ecdpm.org/application/files/1917/0263/7204/The-political-economy-green-industrialisation-Africa-ECDPM-Discussion-Paper-363-2023.pdf>

60 See Section 5.2.2, "The Future of Trade in a Net Zero World" by ECF and Foresight Intelligence <https://www.netzerotrade.org>

61 See the example the recent EU-Kenya IPA with a detailed investment projects Annex

Concerning the feasibility of alternative 4 (i.e. the political appeal to pursue such a Strategic Partnership), one could evaluate whether the carrot would be appetising enough to engage with the EU as a bloc (EU-Mercosur) or if it would be more productive to pursue more targeted partnerships (e.g. EU-Brazil Strategic Partnership on CRMs). Arguably, designated investments in and technical cooperation on long-term projects delivering both economic and sustainable development prospects could potentially persuade the Mercosur bloc.

CONCLUSION

The EU Mercosur FTA is not the end of the road, and decision-makers from both sides should be encouraged to think outside of the box, if they want to overcome the obstacles that ratification is currently faced with. As the study shows, different perspectives to the interaction between trade and sustainability challenges can lead to a range of credible and actionable alternative options that would make the pursuit of SDGs the overarching goal of any future partnership. The options developed go as far as going back to the negotiating table and reopening the FTA, designing a completely different type of partnership that puts sustainability objectives above the rest, or concluding more targeted and limited types of partnerships to respond to specific strategic challenges.

While the study highlights the diversity of approaches that may be taken by trade policy experts gathered in the Green Trade Network, it also stresses important overarching principles – lying at the core of each option – that should guide the work of the trade administrations on both sides for the future:

- ➔ Respect of multilateral rules, including those of the international human rights law, the ILO, the WTO, the Paris Agreement and the Global Biodiversity Framework.
- ➔ Putting environmental science and SSH at the heart of any partnership, by further looking into the impacts of market access measures on ecosystems and local communities, with tailored roadmaps and review clauses.
- ➔ Supporting the partnership with appropriate technical assistance, regulatory convergence discussion spaces and a financial package that contributes meaningfully and sustainably to the Mercosur region's clean economy transition.
- ➔ Focusing on quality, with special treatment for sustainable products, favouring local and domestic products when possible.

ANNEX 1

Comparison between the EU and Mercosur proposals for the interpretative instrument

EU's communication	Mercosur communication
<p>avoiding having a "race to the bottom"</p> <p>not reducing the level of ambition of each party's NDC</p>	<p>joint instrument must consider the internal legislation and different national circumstances of each of the parties</p>
<p>Enforcement mechanism for TSD provisions remains the specific forum set out in Article 14 of the TSD chapter.</p> <p>A formal review process of TSD aspects may relate, in particular, to further enhancing the enforcement mechanism in line with the new EU approach defined in 2022 (addition of a compliance phase, possible countermeasures as a last resort, inclusion of the Paris Agreement as an essential element).</p>	<p>no sanctions should be incorporated</p>
<p>timely review, updating, communication and implementation of National Biodiversity Strategies and Action Plans (NBSAPs)</p>	
<p>halt and reverse forest loss and land degradation by 2030.</p> <p>Nevertheless the interim target to "reduce" deforestation by "at least 50% from current levels by 2025" (p5) would allow a 47% increase of Brazil's 2020 deforestation target, according to the NGO Rainforest Foundation Norway.</p>	<p>mechanism to rebalance trade concessions in case such concessions are suspended due to internal EU legislation</p>

	<p>The agreement must guarantee the parties' ability to implement public policies related to "public health; science, technology and innovation, sustainable, secure and resilient interregional value chains in the energy transition; sustainable mobility and digitisation; and climate action and food security.</p>
<p>No mention of specific offers of European climate finance, export finance or connections to the EU's Global Gateway to support the EU's goals. Also no sustainable investment facilitation.</p>	<p>EUR 12.5 billion to aid Mercosur countries.</p>

ANNEX 2

Annex of the core ILO conventions, which are not ratified by countries that are parties to the agreement.

Brazil:

Fundamental

Instrument
C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Governance (Priority)

Instrument
C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Argentina:

Governance (Priority)

Instrument
C122 - Employment Policy Convention, 1964 (No. 122)

Uruguay:

Fundamental

Instrument
C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Paraguay:

Fundamental

Instrument
C155 - Occupational Safety and Health Convention, 1981 (No. 155)
C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Governance (Priority)

Instrument
C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Austria:

Fundamental

Instrument
C155 - Occupational Safety and Health Convention, 1981 (No. 155)

Governance (Priority)

Instrument
C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Belgium:

None

Bulgaria:

Fundamental

Instrument

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Governance (Priority)

Instrument

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Croatia:

Fundamental

Instrument

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Republic of Cyprus:

Governance (Priority)

Instrument

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Czech Republic:

None

Denmark:

None

Estonia:

Fundamental

Instrument
C155 - Occupational Safety and Health Convention, 1981 (No. 155)
C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Finland:

None

France:

Fundamental

Instrument
C155 - Occupational Safety and Health Convention, 1981 (No. 155)

Germany:

Fundamental

Instrument
C155 - Occupational Safety and Health Convention, 1981 (No. 155)

Greece:

Fundamental

Instrument
C155 - Occupational Safety and Health Convention, 1981 (No. 155)
P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Governance (Priority)

Instrument
C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Hungary:

Fundamental

Instrument

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Ireland:

Fundamental

Instrument

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Governance (Priority)

Instrument

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Italy:

Fundamental

Instrument

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Latvia:

Fundamental

Instrument

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Lithuania:

Fundamental

Instrument

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Governance (Priority)

Instrument

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Luxembourg:

None

Malta:

Fundamental

Instrument

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Governance (Priority)

Instrument

C122 - Employment Policy Convention, 1964 (No. 122)

Netherlands:

Fundamental

Instrument

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Poland:

Fundamental

Instrument

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Portugal:

None

Romania:

Fundamental

Instrument

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Slovakia:

Fundamental

Instrument

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Slovenia:

Fundamental

Instrument

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Spain:

None

Sweden:

None

Layout: OKAY WHEN agency

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