

The EU-Mercosur Trade Agreement: Human Rights Analysis

**The EU-Mercosur trade agreement
is not good enough
for Human Rights or
the Environment**



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This research paper has been compiled by three students of the Irish Centre for Human Rights, undertaking the LL.M. in International Human Rights Law. The paper investigates the EU-Mercosur free trade agreement ('EU-Mercosur'), its potential implications it would for the environment and human rights. International trade agreements contain complex terminology and for that reason often escape political scrutiny and public engagement. The objective of our research is to break this agreement down into smaller, digestible parts for the public to understand and debate. We hope this paper will act as an educational resource for use in the campaign to end negotiations of the trade agreement in its current form.

This paper discusses the history and background of the trade agreement, its legal framework, and questions of how it will affect the environment and human rights. Based on our findings, this paper offers suggestions for how the deal should be drastically reformed to better achieve long term environmental sustainability and protect human rights. If reformation of this deal is not possible, it is submitted that negotiations of this deal must end now, and we call on our European Member States to desist from ratification at all costs.

In undertaking this research, we reviewed academic commentary, published articles, newspaper articles and reports from NGOs. We produced a podcast series where we interviewed experts in different fields relating to the trade agreement Dr Laura Kehoe, a conservation scientist; Helmut Scholz, an M.E.P with the German 'Die Linke' party; Juliana Sassi, a member of the Brazilian Left Front; and Gerry Loftus, an Irish beef farmer. We discussed the sustainability of free trade agreements in general, focused specifically on what EU-Mercosur would mean, and examined how the deal would affect farmers in the Irish context.

Our objective as a group, together with activist Saoirse McHugh, is to expand the discussion around the EU-Mercosur trade agreement and to provide an accessible explanation of the environmental destruction and human rights violations that are entrenched in this trade agreement.

We are very grateful to those who assisted us in our research, including Saoirse McHugh, Dr Maeve O'Rourke and Cillian Bracken BL, as well as all of our podcast guests. All errors and opinions are the authors' own.

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General Facts about the Agreement

The EU-Mercosur trade agreement is a bilateral trade agreement between the EU Member States and the Member States in the Mercosur region of South America (Uruguay, Brazil, Argentina, and Paraguay) that has been in negotiation since 1995. The Mercosur region has 260 million consumers, making it the fifth-largest market outside of the EU.¹ Therefore, EU-Mercosur is the largest free trade agreement negotiated by the EU to date and follows on from recent European trade agreements with Canada, Japan, Mexico, and Vietnam.² The deal will mean trade liberalisation in many sectors, including clothing, chemicals, agricultural products, and services between the two regions.³ According to the European Commission website, this free trade agreement would be a ‘win-win for both the EU and Mercosur, creating opportunities for growth, jobs and sustainable development on both sides.’⁴ According to the European Commission, the goal is to remove barriers that potential investors and exporters face in Mercosur markets by lowering tariffs, creating opportunities for jobs and economic growth for both sides.⁵ The agreement would mean a ‘sharp reduction in import taxes levied on European goods and services exported to the South American block and a reciprocal reduction in taxes on imports from those countries to Europe’.⁶ The sectors expected to benefit from this deal in the EU are mainly pharmaceutical and chemical, machinery and car parts, by increasing their exports.⁷



Source: European Commission, 2019.

¹ George Lee, ‘EU and Mercosur Group Agree Draft Free Trade Deal’ (*RTE*, 2019) <<https://www.rte.ie/news/world/2019/0628/1059096-mercotur/>> accessed 19 May 2021.

² *ibid.*

³ *ibid.*

⁴ European Commission, ‘EU-Mercosur Association Agreement’ <<https://ec.europa.eu/trade/policy/in-focus/eu-mercotur-association-agreement/>> accessed 19 May 2021.

⁵ *ibid.*

⁶ George Lee (n 1).

⁷ *ibid.*

Stages of International Trade Deals

The European Commission is made up of 28 commissioners who propose laws and implement decisions, there is one commissioner per Member State and one president.⁸ Within the European Commission, when the initiative of a trade agreement is struck, the first step that is required is public consultation with civil society organisations.⁹ As part of this consultation stage, the European Commission commissions an impact assessment report, known as a sustainable impact assessment (SIA).¹⁰ The first phase of this report for EU-Mercosur was a more general overview, followed by sector-specific SIAs in the forestry, automotive and agricultural sectors.¹¹ A final draft of this report was carried out independently by The London School of Economics, and can be viewed on the European Commission's website as a publication.¹² According to the SIA, the EU-Mercosur FTA will benefit both trading blocs economically, with agricultural imports from the Mercosur countries increasing substantially.¹³

However, the SIA also reported concerns about the FTA's negative impact it will have on the environment, human rights and rights of indigenous people.¹⁴ The human rights and environment impacts of this deal, will be discussed in detail in the next sections.

The next stage is known as the mandate stage, where the European Commission will make a recommendation to the Council of the European Union.¹⁵ The Council of the European Union is made up of 28 ministers from the governments of Member States, the presidency rotates every 6 months, and is often referred to as the Council.¹⁶ The Council will then either decline the request to begin negotiations, or it will authorise it and outline a set of 'negotiating directive'¹⁷, which must be adhered to, or the Council will ultimately reject the deal.¹⁸

The negotiation stage is next, where it is led by the Commission who must keep the Trade Policy Committee and Committee for International Trade of the European Parliament updated throughout, however, any draft texts of the deal throughout this stage are not made public.¹⁹ Such texts are only made public once negotiations have closed.²⁰

⁸ Hannah Byrne, 'The European Union and its institutions' (*spunout.ie*, 25 April 2014) <https://spunout.ie/news/eu-news/european-union-and-its-institutions?gclid=EAlaIqobChMIloe0jNfW8AIVxe7tCh0edwFEEAAYASAAEgJ7afD_BwE> accessed 19 May 2021.

⁹ Kurt Hübner, Anne-Sophie Deman and Tugce Balik, 'EU and Trade Policy-Making: The Contentious Case of CETA' (2017) 39 *Journal of European Integration* 843, 850.

¹⁰ *ibid.*

¹¹ Lenoith Hinojosa, 'EU-Mercosur Trade Agreement: Potential Impacts on Rural Livelihoods and Gender (with Focus on Bio-Fuels Feedstock Expansion)' (2009) 1 *Sustainability* (Basel, Switzerland) 1120, 1121.

¹² European Commission, 'European Commission Publishes Final Sustainability Impact Assessment and Position Paper on the EU-Mercosur Trade Agreement' (*News Archive*, 29 March 2021)

<<https://trade.ec.europa.eu/doclib/press/index.cfm?id=2260>> accessed 19 May 2021.

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ Hübner, Deman and Balik (n 9) 851.

¹⁶ Byrne (n 8).

¹⁷ Hübner, Deman and Balik (n 9) 851.

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

Next, the English text of the proposed agreement is translated into the EU's 24 languages and it is presented to the Council and the Parliament.²¹ The European Parliament is made up of 751 MEPs, and is the only democratically elected institution in the EU. The MEPs are elected directly from member States every 5 years and a President is elected every two and a half years.²² Lastly, is the signing of the deal by the Council and the ratification stage in Parliament.²³ Once ratified in Parliament, the agreement will go back to the Council to be signed for a second time, in which it formally ratifies the agreement for the EU in a final decision to conclude.²⁴

With the EU-Mercosur deal, on the EU side, for it to get to the final two stages to be signed by the Council and Parliament and concluded, it has to be approved by all Parliaments of the EU Member States.²⁵ However, this is only the case if the deal is treated as a whole part, which for now it is. But the deal can be broken down into smaller parts of which the EU has competences to decide on, and be pushed through to ratification and brought into force without approval of all Member States, this was the case in the EU-Vietnam agreement and the EU-Canada Agreement.²⁶

Currently, according to the European Commission website, the agreement is being revised legally, and the Commission has stated on the website that it would need to 'seek real progress in Commitments on the Paris Agreement and deforestation'²⁷ from Mercosur countries before it could go to the final stage of the deal, as outlined in section one of this paper, in which it would propose the agreement to the Council and Parliament for signature and conclusion.²⁸ However, even if there are commitments from the Mercosur countries, we believe this is not good enough without a legally binding enforcement. Some Member States have announced they will not be supporting this deal, including Ireland²⁹; however, as we have shown, it is possible for the EU to break the deal down into smaller topics and push it through without approval from Member States.

²¹ *ibid.*

²² Byrne (n 8).

²³ Hübner, Deman and Balik (n 9) 851.

²⁴ *ibid.*

²⁵ FERN, 'What Is It, and What Could It Mean for Forests and Human Rights?' (*The EU-Mercosur Trade Agreement*, May 2020) <https://www.fern.org/fileadmin/uploads/fern/Documents/2020/The_EU-Mercosur_Trade_Agreement_explainer.pdf> accessed 19 May 2021.

²⁶ Hübner, Deman and Balik (n 9).

²⁷ European Commission (n 12).

²⁸ *ibid.*

²⁹ Stephen Cadogan, 'EU will be asked to ratify Mercosur deal in New Year' (*Irish Examiner*, 15 December 2020) <<https://www.irishexaminer.com/farming/arid-40191396.html>> accessed 19 May 2021.

Negative Impacts of the Agreement on Humans and the Environment

Fails the Sustainability Test

Although trade agreements can indeed promote economic growth by reducing costs, albeit in specific sectors exclusively, it has been noted that they can also have disastrous effects on the environment and human rights.³⁰ As Kehoe and others state:

Trade agreements could help protect human rights, critical ecosystems, and the climate—but only if sustainability becomes a cornerstone of international trade. The EU-Mercosur trade agreement fails to meet our three tenets of sustainable trade agreements: (1) inclusion of local communities, (2) transparency mechanisms to trace commodities and provide open-access information, and (3) enforcement to uphold sustainability commitments legally.³¹

Often in trade agreements, essential aspects can be overlooked, such as the environment and local communities, which can fuel, inter alia, biodiversity loss, conflict over land, displacement, and human rights abuses.³² Although trade liberalization would benefit farmers in the Mercosur countries in the short term, it would have a drastically negative impact on the environment and ultimately on the long-term viability of agriculture in the region.³³ It paves the way for a significant increase in EU imports of cheaper beef and other goods from South America.³⁴



Source: Friends of the Earth Europe, 2021.

³⁰ Laura Kehoe and others, ‘Inclusion, Transparency, and Enforcement: How the EU-Mercosur Trade Agreement Fails the Sustainability Test’ (2020) 3 One Earth 268.

³¹ *ibid.*

³² *ibid.*

³³ Leonith Hinojosa, ‘EU-Mercosur Trade Agreement: Potential Impacts on Rural Livelihoods and Gender (with Focus on Bio-fuels Feedstock Expansion)’ (2009) 1 MDPI 1120.

³⁴ George Lee (n 1).

Between one-quarter and two-thirds of greenhouse gas emissions, land use, and deforestation are entrenched in global trade flows.³⁵ Worryingly, there is no international standard yet, to ensure that free trade agreements meet sustainability criteria, despite what Kehoe et al. note to be the ‘obvious relevance of international trade for sustainability outcomes.’³⁶ As global trade is regulated in international trade agreements, they hold significant influence in leveraging action towards sustainability and planetary health.³⁷ Kehoe et al. call for the development of mechanisms to ensure trade agreements meet sustainability criteria, such as a legally binding mechanism to enforce international sustainability pledges such as the Paris Agreement, as well as the ‘genuine inclusion of local communities, and collective redress.’³⁸

The deal has been heavily criticised also by the agricultural community in Ireland, particularly beef farmers, who claim that they will lose out financially because of a significant increase in tariff-free beef from the Mercosur region flooding the European market, on which Irish farmers rely heavily for income.³⁹ European poultry, sugar, and ethanol producers are also expected to lose out to cheaper imports from South America.

Environmentally Unfriendly Trade

The EU-Mercosur trade agreement will allow ‘an annual quota of 99.000 tons of Mercosur beef to be exported to the EU at a low tariff rate and [boost] cheap soy imports’⁴⁰. According to the agreement in principle, which was published by the European Commission on 12 July 2019, the agricultural products that would benefit from easier market access apart from beef include poultry, sugar, ethanol, rice, cheese, milk powders and infant formula.⁴¹ Importantly, an increase in global greenhouse gas emissions would be the downside of such regulations in the EU-Mercosur trade agreement. Grain, an international non-profit organisation, estimated that ratification of the agreement will lead to a rise of greenhouse gas emissions up to 8.7 million tons annually from just these eight products mentioned above.⁴² According to Grain, ‘[c]ompared to the current level of emissions from trade in these products between the EU and Mercosur, the growth in emissions will be 34%.’⁴³ At the same time, it should be noted that the EU-Mercosur trade agreement will support industries that already have a harmful effect on the climate. In 2016, the four biggest meat processors in the world, which are all Brazilian companies, produced emissions that altogether ‘equal[ed] 377 million metric

³⁵ Kehoe and others (n 30) 268.

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ George Lee (n 1).

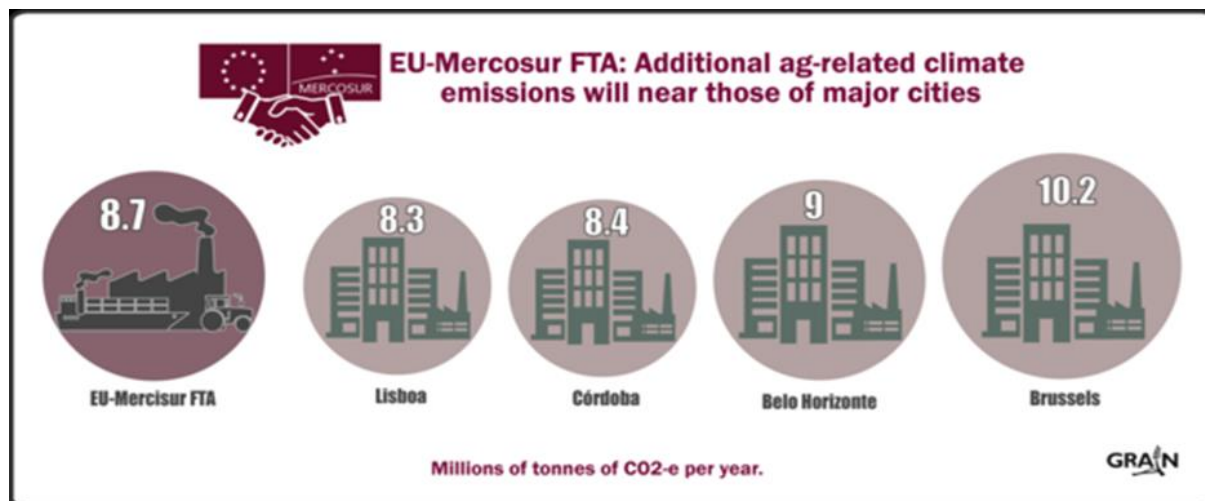
⁴⁰ ‘Stop the EU-Mercosur trade deal and make all trade agreements work for sustainable development’ (*European Greens*) <<https://europeangreens.eu/content/stop-eu-mercossur-trade-deal-and-make-all-trade-agreements-work-sustainable-development>> accessed 30 April 2021.

⁴¹ ‘EU-Mercosur trade agreement: The Agreement in Principle and its texts: The agreement in principle’ (*European Commission*, 12 July 2019) 2 <https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157964.pdf> accessed 30 April 2021.

⁴² ‘EU-Mercosur trade deal will intensify the climate crisis from agriculture’ (*GRAIN*, 25 November 2019) <<https://grain.org/en/article/6355-eu-mercossur-trade-deal-will-intensify-the-climate-crisis-from-agriculture>> accessed 30 April 2021.

⁴³ *ibid.*

tons of CO2 equivalent, nearly 42% of Germany’s total 2015 emissions’⁴⁴. The actual increase of emissions will be even higher, since Grain only considered some agricultural commodities in their calculation, but emissions will also be caused, inter alia, through a rise in trade flows of other fruits.⁴⁵ Furthermore, other industries that will benefit from the deal also have a huge carbon footprint such as the car industry.⁴⁶



Source: grain.org, 25 November 2019.

Excessive Use of Pesticides

Another serious threat to the environment is the excessive use of pesticides in all Mercosur countries. Some of these pesticides, many of which are highly toxic, are not even licensed to be used in agriculture in the EU. The use of such substances has serious negative impacts on the health of people who work in the agricultural sector and spray them, and communities who are located nearby fields and plantations. These negative consequences can be seen in Brazil, where thousands of people living in rural areas suffer health problems from the exposure to pesticides every year.⁴⁷ Baskut Tuncak, United Nations Special Rapporteur on human rights and hazardous substances and wastes, explains in the statement on his visit to Brazil in 2019 that for a long time, there have been reports of severe human rights violations that are linked to the excessive use of pesticides. In many cases, the public does not receive prior notice of pesticide application or the type of chemicals applied. Examples of systematic human rights violations include repeated failure to comply with legal requirements to respect buffer zones to keep villages and settlements of rural communities from being sprayed by

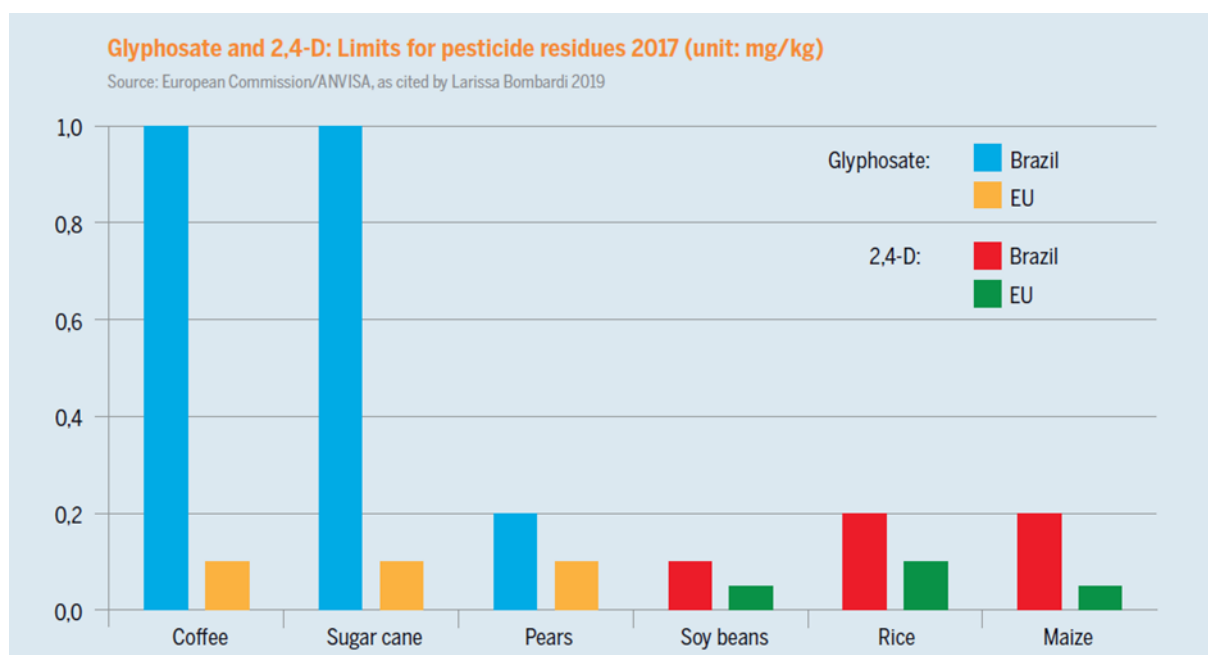
⁴⁴ Shefali Sharma, ‘Climate, land use change and the EU-Mercosur Agreement: Accelerating tipping points’ (IATP, 7 December 2020) <<https://www.iatp.org/documents/climate-land-use-change-and-eu-mercossur-agreement-accelerating-tipping-points>> accessed 30 April 2021.

⁴⁵ ‘EU-Mercosur trade deal will harm the climate and small producers’ (*global agriculture*, 17 January 2020) <<https://www.globalagriculture.org/whats-new/news/en/33913.html>> accessed 14 May 2021.

⁴⁶ ‘Car industry’s 2018 carbon footprint exceeds EU greenhouse gas emissions – Greenpeace’ (*Greenpeace International*, 10 September 2019) <<https://www.greenpeace.org/international/press-release/24131/car-industrys-2018-carbon-footprint-exceeds-eu-greenhouse-gas-emissions-greenpeace/>> accessed 30 April 2021.

⁴⁷ Thomas Fritz, ‘EU-Mercosur Agreement: Risks to Climate Protection and Human Rights’ (*CIDSE*, June 2020) 18 <<https://www.cidse.org/wp-content/uploads/2020/11/EN-EU-Mercosur-study-with-EU-branding.pdf>> accessed 30 April 2021.

agricultural business.⁴⁸ Furthermore, legal limits for pesticide residues are different for many products in the European Union and the four Mercosur countries. The EU, for instance, sets higher standards than Brazil for the level of residues of the herbicides glyphosate and 2,4-D in products like coffee, sugar cane and maize (*see graphic below*). In contrast, the EU allows higher glyphosate residue limits than Brazil in other products like soya beans and peas.⁴⁹ Accordingly, people from Brazil could be exposed to greater health risks from higher pesticide residues in products that are exported from the EU and vice versa. Additionally, it is remarkable that some pesticides that are not approved in the EU are nevertheless exported from EU-member countries to other countries in the world including Mercosur countries. As an example, Germany exports the insecticide cyfluthrin to Argentina and Brazil though the pesticide is not approved in the EU.⁵⁰



Source: European Commission, 2019.

Excessive Deforestation

Deforestation of the Amazon rainforest has reached a record high, with over 11,000 square km of woodland destroyed between August 2019 and July 2020.⁵¹ Every minute a forest area of the size of a football pitch disappears, though these newest figures of deforestation are

⁴⁸ Baskut Tuncak, 'End-of-visit statement by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak on his visit to Brazil, 2 to 13 December June 2019' (*UNOHCHR*) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25434&LangID=E>> accessed 30 April 2021.

⁴⁹ Fritz (n 47) 22.

⁵⁰ 'Toxic Exports – The export of highly hazardous pesticides from Germany into the world [Executive summary]' (*PAN Germany*, 13 November 2019) <<https://pan-germany.org/download/toxic-exports-the-export-of-highly-hazardous-pesticides-from-germany-into-the-world-executive-summary/>> accessed 30 April 2021.

⁵¹ Tom Phillips, 'Amazon deforestation surges to 12-year high under Bolsonaro' (*The Guardian*, 30 November 2020) <<https://www.theguardian.com/environment/2020/dec/01/amazon-deforestation-surges-to-12-year-high-under-bolsonaro>> accessed 30 April 2021.

even higher; forest areas are cleared for the purpose of creating new farmland for cattle farming and soya production.⁵² Notably, scientists have found that there is a close connection between the destruction of the Amazon region and rainforest fires. About 85 % of the rainforest fires in the Amazon that occurred in 2019 appeared near areas that had been destroyed through deforestation in 2018.⁵³ Furthermore, scientists have shown that forests store huge amounts of carbon. If vast pieces of woodlands disappear, temperatures will rise globally.⁵⁴ Large amounts of carbon dioxide are already released through illegal logging in the Amazon rainforest, which has negative effects on climate change, leads to the extinction of certain species and even facilitates future pandemics.⁵⁵ Therefore, excessive deforestation in the Amazon region affects all of us. Figures from a report that has been commissioned by the government of France show that ratification of the EU-Mercosur trade agreement will result in the expansion of deforestation by 25 percent per year, which equals the Netherlands by area.⁵⁶ At the same time, 17 percent of the Amazon region has already been destroyed through deforestation.⁵⁷ The EU-Mercosur trade agreement would bring us closer to the point where the Amazon cannot sustain its own rainfall patterns (between 20-25% deforestation) and would change into a fundamentally different, drier ecosystem, which would have ramification for weather patterns across the globe.⁵⁸

Human Rights Violations in the Mercosur Region

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that indigenous people have ‘the right to participate in decision-making in matters which would affect their rights’⁵⁹ and ‘have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.’⁶⁰ The declaration also includes the obligation of states to cooperate with indigenous peoples and ‘to obtain their free, prior and informed consent before adopting and implementing legislative or administrative

⁵² David Shukman, ‘Brazil’s Amazon: Deforestation ‘surges to 12-year high’ (BBC, 30 November 2020) <<https://www.bbc.com/news/world-latin-america-55130304>> accessed 30 April 2021.

⁵³ Brian Wallheimer, ‘Deforestation drove massive Amazon rainforest fires of 2019’ (Purdue University, 16 December 2021) <<https://www.purdue.edu/newsroom/releases/2020/Q4/deforestation-drove-massive-amazon-rainforest-fires-of-2019.html>> accessed 30 April 2021.

⁵⁴ Shukman (n 52).

⁵⁵ ‘The EU-Mercosur trade agreement – the flaw at the heart of EU’s Green Deal, new research finds’ (Humboldt-Universität zu Berlin, 9 September 2020) <<https://www.hu-berlin.de/en/press-portal/nachrichten-en/september-2020/nr-2099>> accessed 30 April 2021.

⁵⁶ Hannah Robinson, ‘Time is ticking to stop the EU-Mercosur trade deal’ (openDemocracy, 23 September 2020) <<https://www.opendemocracy.net/en/can-europe-make-it/time-ticking-stop-eu-mercosur-trade-deal/>> accessed 30 April 2021; ‘Dispositions et effets potentiels de la partie commerciale de l’Accord d’Association entre l’Union européenne et le Mercosur en matière de développement durable’ (Rapport au Premier ministre, 7 April 2020) <https://www.politico.eu/wp-content/uploads/2020/09/Rapport-evaluation-UE-Mercosur-francais.pdf?utm_source=POLITICO.EU&utm_campaign=0a915becba-EMAIL_CAMPAIGN_2020_09_18_04_59&utm_medium=email&utm_term=0_10959edeb5-0a915becba-190548415> accessed 30 April 2021.

⁵⁷ Sharma (n 44).

⁵⁸ *ibid.*

⁵⁹ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (adopted 13 December 2007) art 18 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf> accessed 11 May 2021.

⁶⁰ *ibid* art 32(1).

measures that may affect them.’⁶¹ However, one can observe the infringement of indigenous peoples’ rights is in Mercosur countries:

In Brazil, ‘rainforest mafias,’ which are linked to illegal logging and land grabbing and are tolerated by Brazilian president Bolsonaro, have used intimidation methods and violence, including killings, against small farmers and indigenous communities who are an obstacle to their activities.⁶² In Paraguay, the *Ayoreo Totobiegosode* community has been registering high deforestation rates, and the leading cause is the illegal sale of these territories to cattle ranchers.⁶³ In Argentina, the Amnesty International report from 2018 ‘denounces an investment plan for oil exploration in the *Vaca Muerta* region, partly located on the lands of the *Lof Campo Maripe* indigenous community.’⁶⁴ Furthermore, as McCabe et al. note, ‘most indigenous populations have not yet obtained legal rights to their lands, although these rights are generally recognized in the Constitution.’⁶⁵ They continue:

In 2018, 111 invasions, illegal exploitation of natural resources, and various types of damage to indigenous territories were registered within Brazil alone. These attacks have multiple motivations, including real estate speculation, hunting, and marketing of wild animals, logging, expansion of farming, and illegal mining.⁶⁶

Amnesty International has criticized the Bolsonaro government for its anti-human rights rhetoric, efforts to hinder the work of civil society organisations, and, in general, for ‘measures and actions that threaten and violate the human rights of all people in Brazil.’⁶⁷ The lack of transparency within the EU-Mercosur trade deal will do nothing to stop, and seems likely to increase, violence towards indigenous people and displacement of indigenous people from their natural habitat, which impacts the ecosystems and makes future climate disasters more likely in Europe and the rest of the world.⁶⁸

Other Human Rights Violations

Ratification of the EU-Mercosur trade agreement could have direct impacts on human rights in additional ways. An interim report published by the *London School of Economics and Political Science* entitled ‘Sustainability Impact Assessment in Support of the Association Agreement Negotiation between the European Union and Mercosur’ identifies four key human

⁶¹ *ibid* art 19.

⁶² ‘How the EU-Mercosur deal would wreck human rights and fuel forest fires’ (Friends of the Earth Europe, 2 August 2020) <<https://friendsoftheearth.eu/news/how-the-eu-merc-s-sur-deal-would-wreck-human-rights-and-fuel-forest-fires/>> accessed 11 May 2021.

⁶³ Seán McCabe and others, ‘ASSESSMENT OF THE SOCIAL AND ENVIRONMENTAL RISKS POSED BY THE EU-MERCOSUR TRADE AGREEMENT’ (UPLIFT.ie) 30 <<https://www.uplift.ie/wp-content/uploads/2020/08/UPLIFT-TASC-Final-Mercosur-Report-4.pdf>> accessed 11 May 2021.

⁶⁴ *ibid*.

⁶⁵ *ibid*.

⁶⁶ *ibid* 31.

⁶⁷ ‘Brazil: Bolsonaro administration is transforming anti-human-rights rhetoric into action’ (Amnesty International, 21 May 2019) <<https://www.amnesty.org/en/latest/news/2019/05/brazil-bolsonaro-anti-human-rights-rhetoric/>> accessed 11 May 2021.

⁶⁸ ‘What’s behind the EU-MERCOSUR trade agreement’ (Climate Alliance) <<https://www.climatealliance.org/activities/advocacy/european-policy/eu-merc-s-sur.html>> accessed 11 May 2021.

rights that will be impacted: the right to an adequate standard of living, the right to health, gender equality, and the rights of indigenous people.⁶⁹ The trade deal also raises concerns regarding working conditions in the Mercosur region. A report by McCabe et al. published by the people-powered campaigning community, UPLIFT, and the Think Tank for Action on Social Change (TASC) underlines the harsh treatment imposed on indigenous peoples, including forced labour and slavery.⁷⁰ Though Mercosur countries are signatories to a series of multilateral international environmental agreements, the same is not true for labour agreements.⁷¹ Brazil has not ratified the 1948 International Labour Organisation Convention on Freedom of Association and Protection of the Right to Organise, which means that it does not support the formation of trade unions and workers defending their rights in an organised way.⁷² Uruguay is the only country that has ratified all governance and fundamental rights conventions under the International Labour Organisation.⁷³ Although EU free trade agreements contain chapters about both parties having to comply with International Labour Organization standards, they are non-enforceable.⁷⁴ As noted by the European Commission, Brazil fails to make any efforts towards ‘ratifying the fundamental ILO Conventions, Protocols and other relevant ILO Conventions to which it is not yet a party and that are classified as up-to-date by the ILO’⁷⁵, which heightens the concerns of enforceability and accountability. The other concern raised by the critics is whether the deal meets appropriate health standards in both production and import into the EU. For example, “when it comes to beef, [Brazil] is a country with no database or traceability and in which growth promoters are widely available.”⁷⁶ With such poor track records and insufficient resources, the parties cannot be held responsible for any violations caused.⁷⁷

⁶⁹ Max Mendez-Parra, ‘Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur’ (The London School of Economics and Political Science, December 2020) 107 <<https://www.lse.ac.uk/business-and-consultancy/consulting/assets/documents/SIA-in-Support-of-the-Association-Agreement-Negotiations-between-the-EU-and-Mercosur-Final-Report.pdf>> accessed 11 May 2021.

⁷⁰ McCabe and others (n 63) 6.

⁷¹ *ibid* 5.

⁷² ‘EU failed to consider environmental and social impacts of South American trade deal: complaint’ (fern, 15 June 2020) < <https://www.fern.org/publications-insight/eu-failed-to-consider-environmental-and-social-impacts-of-south-american-trade-deal-complaint-2166/>> accessed 14 May 2021.

⁷³ *ibid*.

⁷⁴ ‘EU-Mercosur trade agreement: The Agreement in Principle and its texts: Texts of the agreement: Trade and sustainable development’ (*European Commission*, 12 July 2019) art 4 <https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158166.%20Trade%20and%20Sustainable%20Development.pdf> accessed 30 April 2021.

⁷⁵ *ibid*.

⁷⁶ McCabe and others (n 63) 7.

⁷⁷ *ibid*.

The Lack of Built-In Environment and Human Rights Protections in the EU-Mercosur Trade Agreement

Unsatisfactory Sustainability Policy

The EU-Mercosur trade agreement does not contain sufficient standards to ensure the protection of the environment and sustainable trade, which is in contrast to the requirements of the Paris Agreement.⁷⁸ The EU and all four Mercosur countries are parties to the Paris Agreement⁷⁹ (*also see graphic below*). As such, they are legally bound by the treaty, the goal of which is to reduce global warming.⁸⁰ States that ratified the Paris Agreement have agreed in article 2 to ensure that the rise in temperature will be held to well below 2°C above pre-industrial levels on the global average and to undertake effective measures to keep the global rise in temperature below 1.5°C above pre-industrial levels.⁸¹ In addition, parties to the Paris Agreement agreed to the global goal to adopt effective measures to reduce ‘vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.’⁸²

There are no enforcement mechanisms to guarantee compliance with existing sustainability mechanisms - most importantly the Paris Agreement - in the current draft of the EU-Mercosur trade agreement.⁸³ The current Trade and Sustainable Development chapter of the Trade Part of the EU-Mercosur trade agreement, which was published by the European Commission and is based on the agreement in principle announced on 28 June 2019, states that the parties to the agreement shall promote sustainable development.⁸⁴ As an example, the parties shall ‘implement measures to combat illegal logging and related trade’⁸⁵. However, the regulations are too lax and do not contain real obligations. Addressing dispute resolution, article 15 of the chapter on trade and sustainable development says that parties shall resolve disagreements on interpretation or application matters through dialogue, consultation and exchange of information.⁸⁶ The agreement does not consider recourse to dispute settlement for matters concerning sustainable development.⁸⁷

⁷⁸ Amandine Van der Berghe, ‘Will environmental failings bring down the EU-Mercosur deal?’ (*EURACTIV*, 25 September 2020) <<https://www.euractiv.com/section/economy-jobs/opinion/will-environmental-failings-bring-down-the-eu-mercoshur-deal/>> accessed 30 April 2021.

⁷⁹ ‘Paris Agreement’ (*UNTC*, 30 April 2021) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en#EndDec> accessed 30 April 2021.

⁸⁰ ‘The Paris Agreement’ (*UNFCCC*) <<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>> accessed 30 April 2021.

⁸¹ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS art 2(1)(a) <https://unfccc.int/sites/default/files/english_paris_agreement.pdf> accessed 30 April 2021.

⁸² *ibid* art 7(1).

⁸³ Kevin O’Sullivan, ‘Mercosur accord contradicts EU Green Deal and fails to protect communities, study says’ (*The Irish Times*, 9 September 2020) <<https://www.irishtimes.com/news/environment/mercoshur-accord-contradicts-eu-green-deal-and-fails-to-protect-communities-study-says-1.4350923>> accessed 30 April 2021.

⁸⁴ ‘EU-Mercosur trade agreement: The Agreement in Principle and its texts: Texts of the agreement’ (*European Commission*, 12 July 2019) art 1(4) <https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158166.%20Trade%20and%20Sustainable%20Development.pdf> accessed 30 April 2021.

⁸⁵ *ibid* art 8(2)(c).

⁸⁶ *ibid* art 15(1).

⁸⁷ *ibid* art 15(5).

In addition, the EU-Mercosur trade agreement would not be consistent with the European Green Deal. This deal commits the EU to becoming climate-neutral by 2050.⁸⁸ In contrast, ratification of the EU-Mercosur trade agreement will result in the rise of greenhouse gas emissions. The European Green Deal further says that no group or region should be put at a disadvantage through economic development. The EU-Mercosur trade agreement could be contrary to this goal, as indigenous peoples and other local communities were not even involved in the negotiations.⁸⁹



Source: Statista, 21 April 2021.

⁸⁸ Susanne Hufe, 'Das EU-Mercosur Freihandelsabkommen steht in direktem Widerspruch zum European Green Deal' (*idw*, 9 September 2020) <<https://nachrichten.idw-online.de/2020/09/09/das-eu-mercotur-freihandelsabkommen-steht-in-direktem-widerspruch-zum-european-green-deal/>> accessed 30 April 2021.

⁸⁹ *ibid.*

Violations of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

On the one hand, the EU-Mercosur trade agreement opens up markets, which increases employment and economic growth. On the other hand, it creates potential harm for the enjoyment of human rights and violates the rights of indigenous peoples.⁹⁰ The international community, by adopting UNDRIP through the UN General Assembly, agreed ‘to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources’⁹¹. Article 1 declares that ‘[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.’⁹² UNDRIP provides the principal international framework for states to protect and promote the rights of indigenous peoples. The trade deal only mentions human and indigenous people’s rights in its chapter on trade and sustainable development, which is not legally binding and cannot be enforced.⁹³

The irony is that all EU member states and all four of the Mercosur countries voted in favour of the adoption of UNDRIP during its 61st General Assembly plenary session.⁹⁴ The EU-Mercosur trade agreement does not include any clear clause, in which the parties commit to adhere to fundamental human rights principles and to overlook the international frameworks, such as UNDRIP.⁹⁵ An analysis published by three environmental and human rights NGOs, MISEREOR, Greenpeace, and CIDSE, highlights that the EU-Mercosur trade deal lacks effective human rights clauses and the inclusion of mechanisms to monitor compliance with the agreement and to handle complaints of agreement breaches.⁹⁶

Unsatisfactory Human Rights Law Policy

The EU-Mercosur trade agreement is far too weak to trigger the necessary reforms, be it the chapter on sustainability, the planned human rights clauses or the official impact assessment. The EU has previously, in non EU-Mercosur contexts, taken steps to link human rights to its trade agreements, and thus to use its leverage as the world’s biggest trade bloc in

⁹⁰ Mendez-Parra (n 69) 106.

⁹¹ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (adopted 13 December 2007) <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf> accessed 11 May 2021.

⁹² *ibid* art 1.

⁹³ European Commission, ‘Trade and Sustainable Development’ (28 June 2019) <http://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158166.%20Trade%20and%20Sustainable%20Development.pdf> accessed 11 May 2021.

⁹⁴ UN General Assembly Plenary, ‘General Assembly Adopts Declaration On Rights Of Indigenous Peoples; ‘Major Step Forward’ Towards Human Rights For All, Says President’ (United Nations Meeting Coverage and Press Releases, 13 September 2007) <<https://www.un.org/press/en/2007/ga10612.doc.htm>> accessed 11 May 2021.

⁹⁵ ‘Coalition launches to stop EU-Mercosur trade deal’ (GREEN NEWS.ie, 16 March 2021) <<https://greennews.ie/eu-mercousur-coalition-launches/>> accessed 11 May 2021.

⁹⁶ Fritz (n 47).

order to promote respect for its fundamental values such as democracy, human rights, and the rule of law which are clearly enshrined in its treaties.⁹⁷ For example, the international EU agreement with Korea⁹⁸ incorporates human rights clauses, mainly referred to as ‘essential elements’ which allow parties to partially or fully suspend an agreement unilaterally in case it is breached.⁹⁹ However, no such human rights clause is present in the EU-Mercosur trade agreement to hold the parties accountable for any breach.¹⁰⁰

The absence of meaningful human rights clauses in the EU-Mercosur trade deal appears in conflict with the EU’s own constitutional instruments. Article 21(1) of the Treaty on European Union (TEU) underpins the protection of human rights as an instrumental principle which values and guides fundamental rights such as freedom, equality, human dignity, and the rule of law.¹⁰¹ Further, these human rights commitments are strengthened in the Charter of fundamental rights of the European Union¹⁰², following the Lisbon treaty¹⁰³, which gives the EU the ability to sign international treaties in the areas of its attributed powers or to join an international organisation. However, ‘[m]ember states may only sign international agreements that are compatible with EU Law.’¹⁰⁴ The EU strategic framework on human rights and democracy underpins all aspects of the internal and external policies to promote peace and stability to build a world founded on respect for human rights.¹⁰⁵

The Need for Protection of Indigenous Peoples

The EU-Mercosur trade agreement should include a chapter ensuring human rights protection to protect those who preserve the Amazon forest, namely indigenous people. A report of the Food and Agriculture Organization of the United Nations evidences that indigenous and tribal peoples are the best guardians of the forests of Latin America and the Caribbean.¹⁰⁶ The ‘Amazon region [has] the highest concentration of indigenous peoples in terms of diversity and

⁹⁷ Ionel Zamfir, ‘Human rights in EU trade agreements’ (*European Parliamentary Research Service*, July 2019) 2 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI\(2019\)637975_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI(2019)637975_EN.pdf)> accessed 12 May 2021.

⁹⁸ ‘Framework agreement between EU and Republic of Korea’ (adopted 23 January 2013) art 1(1) <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013D0040&from=EN>> accessed 12 May 2021.

⁹⁹ Zamfir (n 75) 3.

¹⁰⁰ Fritz (n 47) 28.

¹⁰¹ Consolidated version of The Treaty on European Union (2012/ C 326/13) (adopted 26 October 2012) <https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF> accessed 12 May 2021.

¹⁰² Charter of Fundamental Right of the European Union (2000/C 364/01) (adopted 18 December 2000) <https://www.europarl.europa.eu/charter/pdf/text_en.pdf> accessed 11 May 2021.

¹⁰³ ‘Fact sheets of the European Union: The Treaty of Lisbon’ (*European Parliament*, 2017)

<[https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/010105/04A_FT\(2013\)010105_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/010105/04A_FT(2013)010105_EN.pdf)> accessed 14 May 2021.

¹⁰⁴ *ibid* 2.

¹⁰⁵ ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’ (*Council Of The European Union*, 25 June 2012) <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf> accessed 11 May 2021.

¹⁰⁶ FAO and FILAC, ‘Forest governance by indigenous and tribal peoples. An opportunity for climate action in Latin America and the Caribbean’ (Food and Agriculture Organization of the United Nations, 2021) <<http://www.fao.org/3/cb2953en/cb2953en.pdf>> accessed 11 May 2021.

population'¹⁰⁷, making them a very prominent guardian of the forest. It is alarming that a report published by Amnesty International in 2018 states that indigenous peoples' rights are being violated in Argentina, Brazil, and Paraguay¹⁰⁸, all three countries being involved in negotiations on the EU-Mercosur trade agreement. The trade agreement ignores their obligations to protect and promote the rights and the beneficial impact the indigenous peoples have. As Client Earth trade and environment lawyer Amandine Van Den Berghe has said: '[T]rade deals should only be struck when they will have a positive impact and, most importantly, will not have the negative environment and social impacts.'¹⁰⁹ By failing to consider this, 'the European Union is essentially turning a blind eye to the potential impact trading with these South American countries will have on Brazilian rainforests and indigenous rights.'¹¹⁰

Conclusion

Although we are told by some political institutions that free trade agreements will bring economic growth and create jobs for the citizens of member states that engage in them, some questions must be asked. Who will the deal truly benefit - citizens or large corporations? Will the economic growth be short term or long term? Will the 'new jobs' last? What effect will this deal have on the environment? What impact will this deal have on human rights? Will this deal cause states to break their international law obligations and fail to meet their climate change pledges?

This paper has outlined several ways in which the EU-Mercosur trade agreement raises stark concerns for both the environment and human rights. It has been noted that international trade agreements can potentially help to protect climate and human rights with the necessary mechanisms and clauses. It is clear, however, that this trade agreement will not trigger the required reforms. There is no legally binding mechanism to ensure that states from both trading blocs adhere to their international climate change agreements, such as the Paris Agreement. This trade agreement would increase industrial farming for ethanol, beef, and soy in Brazil, and is directly linked to deforestation of the Amazon rainforest. It has been shown that ratification of the agreement will lead to a rise of greenhouse gas emissions up to 8.7 million tons annually from just a small number of products surveyed. Food security and food safety would be compromised with this deal, with no traceability measures set up to ensure best practices, and clean food.

This paper has noted that the EU-Mercosur trade agreement excludes any human rights clause, which usually exists in the EU's free trade agreements. With this deal, the EU would enter into a locked trade agreement in a context where there are known human rights abuses of indigenous peoples in slavery and forced labour. Brazil has not ratified the International Labour Organisation treaty, creating a further absence of accountability for human rights violations. As states fail to meet their climate change commitments and as the human rights of indigenous

¹⁰⁷ Victoria Tauli-Corpuz, 'Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil' (UNGA, 8 August 2016) para 10 <<https://digitallibrary.un.org/record/847079>> accessed 11 May 2021.

¹⁰⁸ McCabe and others (n 63) 30.

¹⁰⁹ Fern (n 72).

¹¹⁰ *ibid.*

peoples are violated, the EU-Mercosur trade agreement very clearly seems to create further problems and exacerbate existing ones at a crucial point in the history of our planet.

We hope that this information paper will help to inform the public about negative implications that ratification of the EU Mercosur trade deal in its current form would entail. We also hope that it will contribute to making aware of the dangers of insufficient environmental and human rights policies in the EU-Mercosur trade agreement. We promote the inclusion of a human rights chapter and a sustainability chapter in the agreement, which must satisfy international human rights and environmental law standards. If both parties do not agree to these conditions, we reject the agreement as a whole.