Inclusion, transparency, & enforcement:

How the EU-Mercosur trade agreement fails the sustainability test

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Summary:

Trade agreements could help to 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 legally uphold sustainability commitments.

Keywords: Trade, Sustainability, EU-Mercosur, Environment, Trade Agreements, International Standards, Sustainability Criteria, Human Rights, Trade Flows, Tropical Deforestation.

Main Text: Trade can improve efficiency and reduce costs, but it can also have negative impacts on environmental and social outcomes. Natural habitat conversion, biodiversity loss, conflicts over land, displacement, and human rights abuses can all be fuelled by trade deals that overlook vulnerable local communities and the environment. Between one quarter and two thirds of all anthropogenic material, energy, and land use, as well as deforestation and greenhouse gas emissions are embodied in global trade flows.[1] However, despite the obvious relevance of international trade for sustainability outcomes, there is no broadly applicable international standard for ensuring that trade meets sustainability criteria.

Multiple levers influence the sustainability of international trade, including protectionist domestic policies and subsidies, power asymmetries, market distortions, and the dynamics of global markets. Today, trade is increasingly regulated through international trade agreements, making these agreements a critical means to leverage action towards sustainability. Comprehensive trade reform in line with the principles of triangular cooperation (international collaboration to facilitate South-South initiatives through the provision of funding, training, management and technological systems as well as other forms of support) could allow for the collective development of mechanisms needed to protect planetary health. Such mechanisms include binding legislation to enforce international sustainability commitments (such as the Paris Agreement), due diligence, the genuine inclusion of local communities, and collective redress.

After two decades of negotiations, in 2019 a historic trade agreement was provisionally reached between the EU and the Mercosur bloc (Brazil, Argentina, Paraguay, and Uruguay). While the EU-Mercosur agreement offers substantial reductions in tariffs and opens new markets, it also

has the potential to cause negative environmental and social impacts. The Mercosur bloc and neighbouring countries are undergoing rapid conversion of forests, savannas, and wetlands to meet rising domestic and global demand for meat and livestock feed.[2] While clearing forests for commodity production can bolster economic growth in the short term, the ongoing destruction of natural habitat makes future pandemics more likely along with jeopardizing global climate stability, biodiversity conservation, and the livelihoods of those who depend directly on native flora and fauna. The recent spike in deforestation in the Amazon is bringing this ecosystem closer to the brink of collapse, whereby our planet's largest rainforest could shift towards a novel ecosystem, supporting lower amounts of carbon stocks and biodiversity. This would cause major impacts to the global climate regulation system, irreversible damage to Indigenous and local communities' ways of life, and reductions in the rainfall on which the region´s agriculture depends.[3]

While efforts to address the underlying drivers of deforestation, for example the overconsumption of resource-inefficient foods such as meat and dairy, are critical, especially when consumption rates in the EU and Mercosur bloc far exceed sustainable levels, such efforts must be complemented by stricter trade policies. The EU is a major importer of goods and services associated with natural habitat conversion, importing over one third of all internationally traded commodities linked to deforestation.[4] The EU annually imports commodities from Mercosur countries with a deforestation footprint of 120,000 hectares (Figure 1) – equivalent to one football pitch of deforestation every three minutes[2] – predominantly for rearing beef and producing soy beans (used for livestock feed). High-income regions with a high carbon emissions debt and ongoing ties to deforestation abroad, such as the European Union, have a

clear responsibility to negotiate trade agreements that serve as sustainability beacons for further international collaboration.[5]

The Three Tenets

Inclusion

Local communities are affected in multiple ways by the production of commodities for export. The agriculture and fishing sector has the fourth highest proportion of victims of forced labour in the world,[6] with the global agribusiness sector responsible for the most assaults on defenders of land and the environment.[7] By guaranteeing long-term export partners, international trade deals financially support the highly problematic practices embedded in large-scale agribusiness. Despite international legal instruments mandating the participation of local actors, their voices remain peripheral due to a range of factors including: the absence of land ownership rights; power imbalances; weak enforcement of participation clauses; and the prioritization of industrialized resource extraction over community management of resources.

Several frameworks exist to support inclusiveness, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which requires nations to consult with Indigenous Peoples via their own institutions (Art. 15). Nevertheless, there is growing evidence that these principles are not adhered to within trade agreements.[8] Examples of trade agreements negatively impacting native communities include: the Peru-US Trade Preference Agreement, which catalysed state attempts to re-zone Indigenous forests for agriculture, leading to violent clashes that left 33 dead and over 170 injured;[9] and the expansion of coal mining in Colombia's La

Guajira province on foot of agreements with the US, Canada and the EU, that has resulted in Indigenous Wayúu people suffering displacement, water shortages and high child mortality.[10]

In the EU-Mercosur agreement, local communities were not systematically consulted during the negotiation phase of the deal and are only briefly referenced in the *Trade and Sustainable Development Chapter*, which proposes *"the inclusion of forest-based local communities and indigenous peoples in sustainable supply chains of timber and non-timber forest products"*. Cattle and soy production are not 'forest products,' but are the number one drivers of deforestation in the Mercosur bloc[2], posing an ongoing threat to both the forest and Indigenous and local communities' land rights and lives. In 2017, Brazil hit a global record by reaching the highest number of murdered environmental defenders ever registered in one year (57 people).[7] In 2019, according to the Pastoral Land Commission, murders of Indigenous leaders in the Brazilian Amazon hit the highest level in two decades.

Limiting forest-dependent local communities' inclusion only to matters related to the commercialization of forest products ignores this reality. There are examples of how Indigenous rights and values can be incorporated into decision making, such as moving from reactive to proactive development planning to conserve Indigenous community and biodiversity values.[11] Trade agreements provide an opportunity to make these practices more common place.

An effective participatory process could be achieved by reforming existing multi-stakeholder governance forums to include local communities via their representative bodies. In Argentina, for example, consultations could be linked to the activities of the Consultative and Participative

Council of Indigenous Peoples of the Argentine Republic. Triangular and south-south cooperation initiatives involving EU members and countries in the Mercosur bloc could develop improved consultation processes and multi-stakeholder forums.

Transparency

As policies frequently underestimate environmental and social costs arising in the country where extraction or production occurs, publicly available information on product supply chains is crucial. Protocols, procedures, and monitoring tools are required to identify commodities that have a high risk of negative environmental or social impacts across their supply chain.[2] Combining satellite-based monitoring, land registries, customs taxes, and other public databases can demonstrate the specific origins of commodities related to land conversion (e.g., Trase.Earth and GlobalForestWatch.org) or potential social conflicts (e.g., LandMatrix.org and ejatlas.org). Trade agreements should include mechanisms whereby all parties commit to make publicly available sectoral data on extraction, production, and supply routes of high-risk goods, and to implement internal traceability systems that would monitor flows and develop sustainability-oriented certification and conservation schemes. In addition, transparency in trade negotiations is also crucial, as deals and assessments supporting vested interests over public and environmental interests are likely to be less efficient and more destructive. Regular publicly accessible updates on draft texts, with adequate provisions for public feedback and stakeholder input, can help mitigate this risk.

While the EU-Mercosur agreement adopts the precautionary principle and states *"increased trade should not come at the expense of the environment or labour conditions"*, critical

information is lacking on how environmental and social sustainability standards will be set and enforced. Approximately 20% of all soy and 17% of beef exported to the EU from the Cerrado and Amazon regions of Brazil are linked to deforestation.[12] The cattle sector is the leading driver of deforestation in the region,[2] with the EU importing over 200,000 ton/year and set to commit to a new quota of 99,000 tons of reduced-tariff beef under the new agreement (Figure 1). Despite this, the EU-Mercosur agreement does not include mechanisms to trace the origin of high-risk commodities such as beef, soy, and sugarcane for ethanol production. Existing traceability systems, such as SISBOV in Brazil and DICOSE in Uruguay, should be strengthened and expanded via south-south cooperation, and their data made public and linked to information on environmental and social performance, so that producers, consumers, third party agencies and NGOS, Indigenous Peoples, and regulators are able to ensure that imports are not driving natural habitat loss or social conflicts. Crop traceability systems and certification schemes are also urgently needed. EU traceability systems must also be improved. For example, the system for illegal, unreported, and unregulated fishing could be strengthened and expanded with mandatory disclosure of vessel registries and fishing authorizations. In line with the principles of triangular cooperation, the EU should take responsibility for sharing knowledge and codeveloping technological systems regarding tracing and monitoring production and supply chains. Large-scale monitoring is particularly important, as public attention and enforcement tend to focus on more charismatic biomes (e.g. the Amazon), while neighbouring regions are often neglected (e.g., the Pantanal, Gran Chaco, Cerrado, and Bolivian Chiquitanía) despite their outstanding conservation value and capacity to store carbon.

Enforcement

In order to be effective, sustainability commitments in international trade agreements need to be legally binding and enforceable. Requirements for *ex post* sustainability impact assessments and active monitoring by independent third parties could identify non-compliance and in serious cases could allow for a suspension of the trade agreement, for example, if a breach of the Paris Agreement, UNDRIP, or the international standards of the International Labour Organization (ILO) is found (Figure 2). Importantly, bans on trade in specific goods and services should be introduced until commodities comply with basic legal and sustainability criteria in line with international agreements. This is a particularly powerful policy option given the lack of legal mechanisms to enforce international agreements such as the Paris Agreement. Other non-compliance issues could trigger a renegotiation of the terms of the agreement or increased tariffs or border taxes until compliance is reached.

To support vulnerable communities, trade deals should include procedures for collective redress. An opt-out class arbitration procedure[13] is considered the most effective form of collective redress, whereby communities have an impartial international legal forum to gain access to justice under equal legal arms with investors. Such legal protection is important, for example, if local communities are negatively affected by the production of commodities linked to a specific export market. Severely restricting mechanisms such as the ISDS (investor-state dispute settlement) could help to ensure that investors' rights do not undermine a nation's capacity to reach sustainability goals. Finally, introducing due diligence as a legal requirement would make the purchase of products linked to environmental and social harm a criminal offence, enforced through substantial fines and sanctions for companies sourcing non-compliant products or committing human rights abuses.

Alarmingly, there are no legally binding enforcement mechanisms in the EU-Mercosur agreement. Introducing binding legal procedures on an international level is likely one of the most effective options to ensure that EU commitments on human rights and the environment are upheld when importing commodities.[14,15] Importantly, enforcement does not imply that the EU, or any trading partner, directly intervenes in the management of an export country's resources. However, countries can and should act to avoid the import of non-compliant commodities.

Matching Ambition with Action

As global trade continues to present a major threat to the conservation of the worlds remaining forests, savannas and wetlands, connecting the demand for sustainable trade with realities on the ground requires a transformation in how international trade agreements are negotiated and implemented. The current EU-Mercosur agreement includes ambitious goals and principles, but the deforestation is in the detail. Clear mechanisms to include and protect local communities, to trace the origin of commodities, and to enforce sustainability standards are sorely lacking (Figure S1 in the Supplemental Information). Therefore, the proposed EU-Mercosur agreement puts the EU's own social and environmental sustainability goals at risk. For example, the proposed EU-Mercosur agreement as it currently stands is in direct contradiction with the recently announced European Green Deal goals of:

- "No net emissions of greenhouse gases by 2050". Beef and soy livestock feed from the Mercosur bloc have some of the highest emissions in the world.[2]

- "Economic growth is decoupled from resource use". This goal has not been achieved in any system to date.[16] There is a substantial risk that economic growth in the Mercosur bloc will come at the expense of natural habitat and climate stability (Figure 1).
- "No person and no place is left behind". This goal is in direct contradiction with closed-door negotiation of the EU-Mercosur agreement.

International trade agreements could provide a key opportunity to create robust mechanisms towards sustainable resource use. Considering the billions of dollars that bilateral trade deals save in tariffs and the access to new markets they provide, ample funding could be made available to protect the rights of Indigenous Peoples, local communities, and the environment. Our three tenets of sustainable trade – inclusion, transparency and enforcement - are widely applicable and provide policymakers, producers, consumers, and the wider international community with a clear and practical pathway towards supporting human rights, a habitable climate, and a healthy environment. Ultimately, achieving sustainable trade will depend on a transformation of the objectives of trade agreements, where global actors recognize that working together to protect human rights and the living world is fundamental to long-term prosperity.

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Supplemental Information: EU-Mercosur Policy Brief

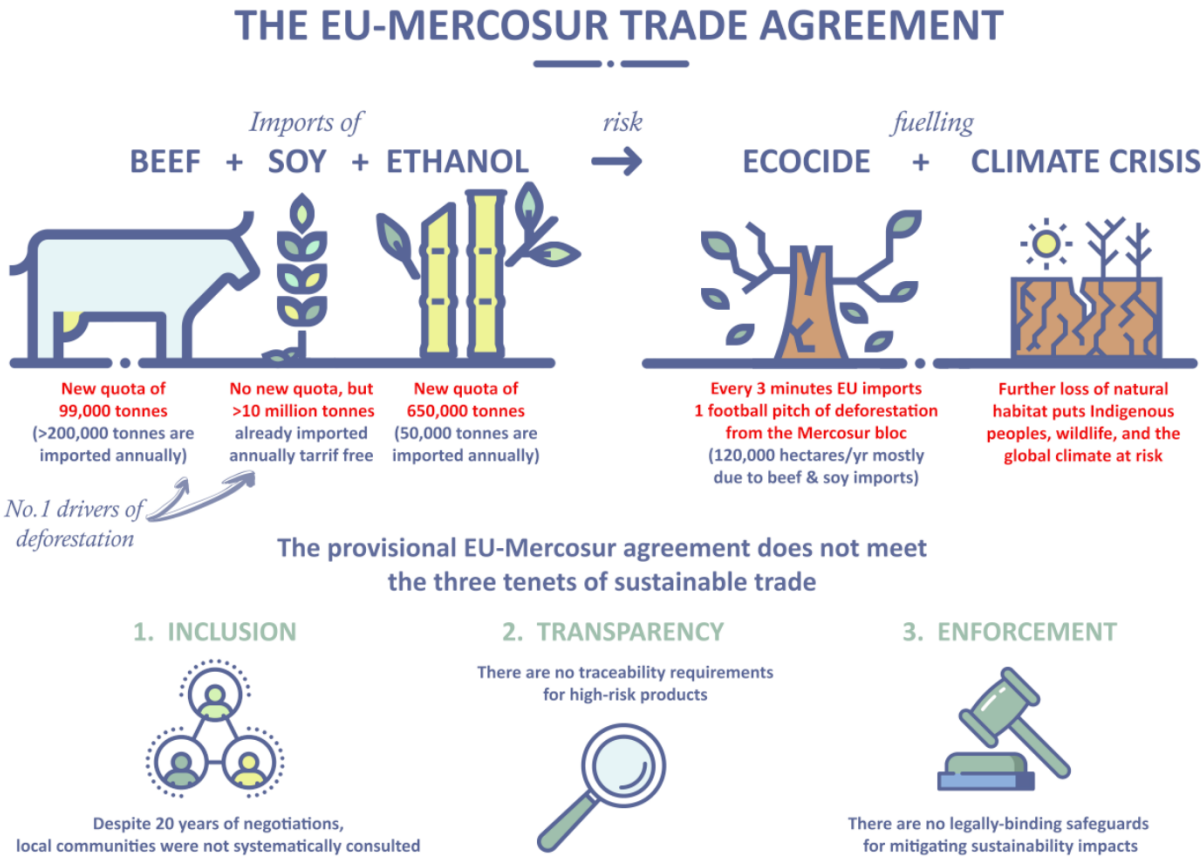

Figure 1. The EU-Mercosur Trade Agreement.

There are multiple risks embedded in both ongoing trade between the EU and the Mercosur bloc, and the ratification of the provisional trade agreement. Here we outline some of these risks in terms of the annual imports from the Mercosur bloc to the EU[17,18], the new quotas under the provisional agreement,[19] the ongoing deforestation footprint,[2] and associated risk to Indigenous peoples and local communities,[7,9,10,20,21] wildlife, & global climate.[3]

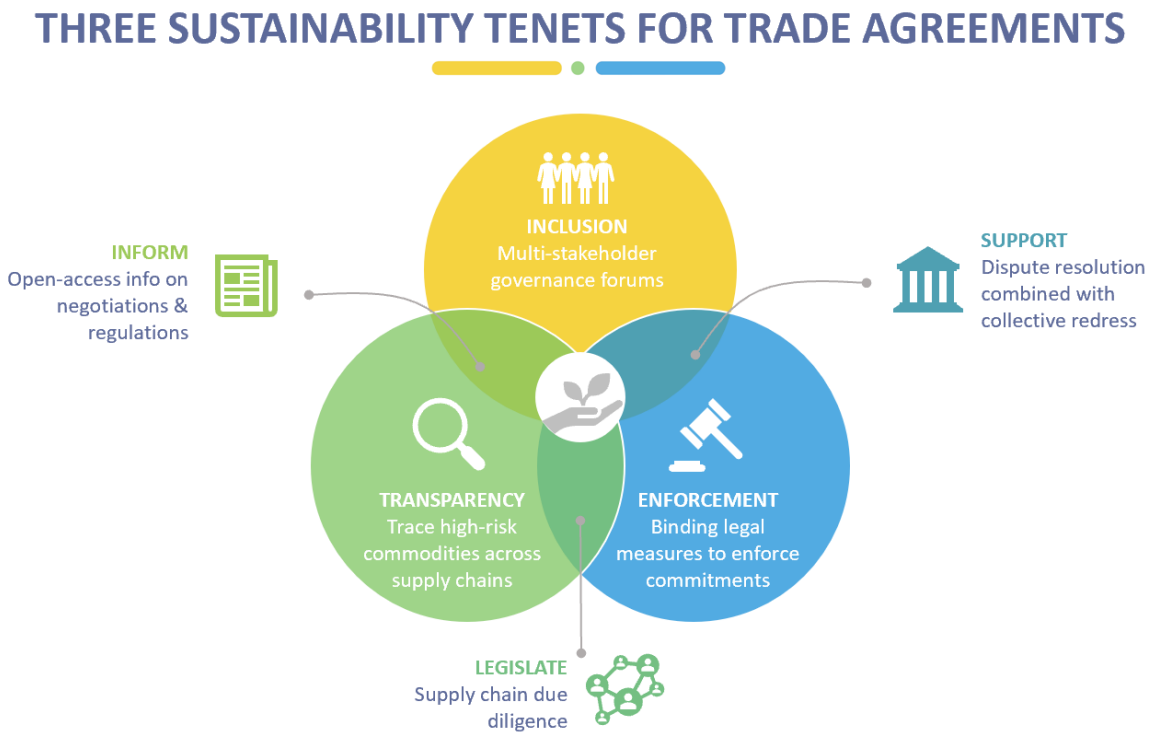

Figure 2. Three Sustainability Tenets for Trade Agreements: Inclusion, Transparency, and Enforcement.

Areas of overlap reflect the explicit duties of the parties to the agreement: *inform* through open access publication of information concerning negotiations and regulations included in the agreement; *legislate* at the national level, to ensure that supply chain tracking and due diligence are expressly included as legal duties for those engaged in economic activities carried out under the terms of the trade agreement; and *support* actors in both importing and exporting countries in processes of redress, in the event that the sustainability terms of the agreement have been violated. Binding legal measures to enforce international commitments should include the eight fundamental ILO conventions, the "Decent Work Agenda", the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 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, the International Plant Protection Convention (IPPC), and the International Covenant on Economic, Social and Cultural Rights[22]. For an EU-Mercosur specific policy brief, see supplemental information Figure S1.