



Key Insights into the Final EU-Mercosur Agreement

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January 2025

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Introduction

Negotiations between the EU and Mercosur countries, initiated in 1999, resulted in a 2019 agreement in principle on the trade component. However, new negotiations took place in 2023 and 2024 regarding an additional instrument. To address internal opposition, the EU demanded additional commitments concerning adherence to the Paris Agreement and combating deforestation. Meanwhile, Brazil sought to protect its industry better¹. Ultimately, changes were made to the text's content, though not to the agricultural chapter or the production's sanitary and environmental standards.

A preliminary analysis of these new texts indicates that the clauses added at the EU's request are insufficient to effectively prevent the anticipated health and environmental impacts from implementing the trade agreement (I). Furthermore, some new provisions—such as the rebalancing mechanism for trade concessions—could prove highly detrimental, making it exceedingly challenging to adopt and effectively implement mirror measures within the EU or in Mercosur countries in the future (II). This is why it would be very useful to ask the CJEU to examine the agreement's legality in light of the EU's sustainability objectives and its obligations under European law (III).

Finally, this note examines the democratic deficit in the negotiation process and the upcoming political steps. The content of these final negotiations was kept secret until their conclusion, even from parliamentarians and member state governments. The European Commission's communication on the negotiation outcomes appears overly "favourable," and even misleading on specific points (IV).

In any case, the three red lines France drew regarding the agreement in 2020 remain relevant, and their violation should continue to justify a definitive rejection of the EU-Mercosur agreement.

¹ This note does not examine all the modifications made to the text in this area, such as the restriction of the list of entities covered by public procurement market access commitments, the extension of the tariff reduction period on imports of electric vehicles by Mercosur, the strengthening of the automotive investment safeguard for Mercosur countries, or the flexibilities on export taxes in the critical materials sector in Brazil and the agricultural sector in Argentina. This note also does not cover aspects related to the enhanced cooperation fund of €1.8 billion that has been announced.

EU-Mercosur Agreement

Where do we stand regarding the three red lines set by France?



Ensure compliance with the climate commitments of the signatory countries



Avoid an increase in imported deforestation within the EU



Require compliance with sanitary and environmental standards for imported agricultural goods



1. Insufficient Environmental Guarantees

1.1 Paris Agreement as an Essential Element of the Agreement

The Paris Climate Agreement is now an essential element of the EU-Mercosur agreement, as in the EU-UK and EU-New Zealand agreements.

While this addition is valuable, it does not resolve contradictions between the trade agreement and the implementation of the Paris Agreement.

As drafted, the essential element clause applies only in cases where a party exits the Paris Agreement. Its wording is weaker than in past agreements with the UK and New Zealand².

"Paris Agreement as an essential element

Article XX

"2. The Parties shall cooperate, as appropriate, on trade-related climate change issues bilaterally, regionally and in relevant international fora. In this context, recognizing the role of trade in contributing to the response to the urgent threat of climate change, each Party shall remain a party, in good faith, of the UNFCCC and its Paris Agreement.

3. The Parties agree that the second sentence of paragraph 2 constitutes an essential element of this Agreement."

Article XY

"The suspension of this Agreement in the event of a violation of the essential element set out in Article XX [Paris] committed by a Signatory MERCOSUR State shall not entail the suspension of the operation of this Agreement in relation to the other Signatory MERCOSUR States".

This wording is legally less precise and binding than that contained in the agreements with the United Kingdom and New Zealand, which stipulate ³:

² "Acts or omissions that would materially defeat the object and purpose of the Paris Agreement (Articles 764(1) and 77153). In the EU/United Kingdom Trade and Cooperation Agreement, the Paris Agreement is enshrined as an essential element under Title II, "Basis for Cooperation". In the EU / New Zealand Trade Agreement, the Paris Agreement is raised as an essential element in Chapter 19 on TSD, as well as in the Final Provisions (Chapter 27) in a provision relating to "Fulfillment of obligations". See Mathilde Dupré and Stephanie Kpenou, [Making trade agreements conditional on climate and environmental commitments](#), June 2023

³ It is possible to take "appropriate measures" in the event of human rights violations, particularly under the Cotonou Agreement with the African, Caribbean and Pacific (ACP) countries. These measures include suspending development aid and/or technical cooperation in response to serious violations of democracy and human rights (Article 96). See

“Each Party shall respect the Paris Agreement and the process established by the UNFCCC and shall refrain from acts or omissions that materially defeat the object and purpose of the Paris Agreement.”

“A Party may also take such appropriate measures relating to this Agreement in the event of acts or omissions that materially defeat the object and purpose of the Paris Agreement”.

Moreover, essential clauses already exist for human rights⁴, but they are rarely invoked, as key actors in trade policy often view them more as deterrents than actual enforcement mechanisms⁵. The French expert panel’s report on the EU-Mercosur agreement stresses that the effectiveness of essential human rights clauses *“has been limited by the preference for incentives over the threat of sanctions”*⁶.

Activation would be even more complicated in the case of Mercosur because the agreement involves regional blocs. For example, if Argentina decided to leave the Paris Agreement, suspending the entire agreement seems politically unlikely, and a partial suspension affecting only Argentina would be technically challenging to implement.

Finally, the credibility of a clause on good faith implementation of the Paris Agreement is questionable. Hasn’t the Argentine government already shown bad faith by withdrawing its climate negotiators from COP 29 just three days after it began in November 2024? How credible, then, is this commitment?

also the economic partnership agreement between the EU and the CARIFORUM States of 2008, which refers to the “essential and fundamental” elements of the Cotonou Agreement, namely human rights, democratic principles, the rule of law and good governance.

⁴ FIDH, Vietnam Committee on Human Rights, “Vietnam: crackdown on civil society intensifies”, Briefing paper for the 10th EU-Vietnam human rights dialogue, 6 April 2022; Human Rights and Democracy Network, “Recommendations for the revision of the European Union (EU) Guidelines on human rights dialogues with third countries”, December 2020; “EU ‘ignoring’ its Human Rights Clause”, Politico, 17 March 2004. The NGOs criticise the EU for not enforcing the respect for human rights clause as an essential element with sufficient firmness. For example, no benchmark has been established to judge whether countries respect human rights. The NGOs also point to the lack of effectiveness of human rights dialogues, which have failed to bring about significant changes when they should be focused on results, concrete cooperation and more active participation by civil society.

⁵ Report to the Prime Minister, Provisions and potential effects of the trade part of the Association Agreement between the European Union and Mercosur on sustainable development, September 2020, p. 14 and 15: “the effectiveness of the “human rights and democracy” clause has been limited by the preference for incentives over the threat of sanctions. Political dialogue, as the “preferred form of preventive action”, and any “reporting procedures” aimed at making public a partner’s misconduct, have proved limited in impact, particularly in Africa”; because “human rights” clauses have done little to advance these values and practices in the hundred or so countries around the world covered by agreements with the EU”.

⁶ The power of trade partnerships: together for green and just economic growth, COM (2022) 409 final, 22 June 2022.

1.2 Deforestation

The agreement includes a vague and non-binding commitment to halt deforestation after 2030.

Annex to the Trade and Sustainable Development Chapter

16. Each Party reaffirms its relevant international commitments and shall implement measures, in accordance with its national laws and regulations, to prevent further deforestation and enhance efforts to stabilize or increase forest cover from 2030. In this context, the Parties should not weaken the levels of protection afforded in their environmental law.

The annex to the “Trade and Sustainable Development” chapter also contains provisions that could weaken the implementation of the EU regulation on deforestation.

The annex states that the EU commits to using information provided by Mercosur national authorities to verify compliance with requirements, including traceability. The agreement’s existence will also be considered when assessing Mercosur countries’ deforestation risk levels.

EUDR In Annex TSD Chapter

“55. Where a Party’s law provides for verification of compliance of an imported product with the relevant laws of another Party, the Parties acknowledge that the authorities of a Party are best placed to assess compliance with the law of that Party. Hence, when assessing compliance with the law of a Party, the Parties shall use the information provided by the latter’s authorities.

56. With regard to the implementation of sustainability measures affecting trade and the placement on the market related to the protection of wooded ecosystems and where EU law so allows:

(a) The EU recognises that this Agreement and actions taken to implement commitments thereunder shall be favourably considered, among other criteria, in the risk classification of countries.

(b) Documentation, licenses, information and data from certification schemes and traceability and monitoring systems officially recognized, registered or identified by Mercosur countries shall be used as a source by the relevant authorities in the EU for the purpose of verifying compliance of products covered by such measures with traceability requirements placed on the EU market.

(c) In case of a divergence between the documentation, licenses, information and data from certification schemes and traceability and monitoring systems officially recognized, registered or identified by Mercosur countries, and the information being used by the relevant authorities in the EU, the latter shall, upon request, promptly consider information and clarifications provided by Mercosur countries.”

In an earlier version, the parties had even considered automatically granting low-risk country status for the implementation of the European regulation on deforestation: *“Given the ambitious commitments reaffirmed by the Parties in the TSD chapter, inter alia by reference to Article 8, they will*

be assigned the lowest level of environmental risk provided for in legislation establishing links between trade and environmental objectives". This could suggest that it is indeed the implicit ambition of this addition.

There is no binding sanction mechanism for violations of the sustainable development chapter's provisions, such as social rights, biodiversity, or deforestation. The agreement does not align with the EU's recent commitments to integrating sustainable development into trade policy⁷.

1.3 No Mirror measures or clauses

Contrary to repeated claims by the French government, no formal proposal for introducing mirror clauses was tabled.

"Mirror measures were not part of these negotiations with Mercosur," stated Olof Gill, spokesperson for the European Commission on international trade, on December 9.

2. Rebalancing Mechanism: A shield against Mirror Measures

At Mercosur's request, the agreement activates the dispute settlement mechanism to seek compensation when one party's unilateral measures affect the use of trade concessions agreed between the two blocs.

This means the other party can initiate mediation, escalate to a dispute settlement panel, and take corrective measures.

Dispute settlement chapter

"Article XX.1 Objective

The objective of this Chapter is to establish an effective and efficient mechanism to :

(b) preserve the balance of concessions accorded by Part X of the Agreement, when applicable.

Article XX. 4

The provisions of this Chapter apply with respect to any dispute :

(b) concerning an allegation by a party that a measure applied by the other party nullifies or substantially impairs any benefit accruing to it under the covered provisions in a manner adversely

⁷ WTO | Disputes - Dispute Settlement CBT - Legal basis for a dispute - Types of complaints and required allegations in GATT 1994 - Page 2

affecting trade between the parties, whether or not such measure conflicts with the provisions of Part X of the Agreement, except if otherwise expressly provided.”

The parties interpret the scope of this clause differently. European officials argue that it is based on the WTO’s non-violation complaint⁸ and does not apply to regulations already adopted, such as the Carbon Border Adjustment Mechanism (CBAM) or the deforestation regulation (EUDR), nor to measures foreseeable when negotiations are concluded.

However, the newly added definition of “measure” appears to include legislation not yet implemented after negotiations and their implementing acts.

Definition of Measure

Article X.3

General Definitions

Unless otherwise specified, for the purposes of this Agreement: [...] “measure” includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement or practice ;¹ For greater certainty, the term “measure” includes omissions and legislation that has not been fully implemented at the conclusions of the negotiations of this Agreement as well as its implementing acts

Mercosur negotiators have a different interpretation from that of their European counterparts. Uruguay states in its analysis of the Agreement that the rebalancing mechanism “will enable Mercosur to counterbalance the effects that unilateral EU measures (such as the Green Deal) have or could have on exports from Mercosur countries”⁹. The Brazilian government seems to share this view.

⁸ Camille Cijs et Louise Guillot, “[Mercosur deal risks weakening EU anti-deforestation rules](#)”, Politico, 20 December 2024 et [Communication](#) published by the Ministry of foreign affairs of Uruguay, 6 December 2024

⁹ Marine Colli, Mathilde Dupré and Stéphanie Kpenou, [A quand la fin des importations de viandes issues d’animaux dopés aux antibiotiques activateurs de croissance ?](#) Enquête sur l’absence de mise en œuvre d’une mesure miroir essentielle pour la santé, June 2024

Factsheet published by the Brazilian government:

7. Setting up a Rebalancing Mechanism to prevent unilateral measures from jeopardizing negotiated trade concessions. An unprecedented mechanism has now been established preventing unilateral measures by one of the Parties to put in jeopardy the balance established in the Agreement, as such measures have the potential to affect negatively the negotiated trade concessions and breach the balance of the agreed outcome. After the 2019 “political agreement”, the European Union adopted legislation that, depending on how it is implemented, could disrupt the balance reflected in the 2019 understanding on issues that were not renegotiated in the phase that began in 2023. This is the case, for example, of the quotas offered by the EU for the export of meat from MERCOSUR, which were not reopened in the 2023 negotiating phase.

Parties established that an arbitration will determine whether there was a breach of the commitments made and to what extent, irrespective of whether there was a violation of the Agreement. If that is the case, the party that restricted trade must offer trade compensation

(market opening) to the other side. If there is no agreement regarding compensation, a party is allowed to adopt temporary remedies in response (suspension of benefits provided for in the Agreement), in the amount defined in arbitration, with a view to restoring the balance of the Agreement.

Such a mechanism could enable Mercosur countries, which have consistently opposed the effective implementation of mirror measures formally adopted by the EU (e.g., bans on imports of meat treated with growth-promoting antibiotics, the deforestation regulation¹⁰, and the ban on agricultural products containing certain neonicotinoids¹¹), to exert further pressure.

If implemented, Mercosur countries could demand additional trade concessions as compensation, even if these unilateral measures are deemed WTO-compliant

Furthermore, this would be a powerful regulatory freeze tool, impeding future measures on either side (e.g., phasing out internal combustion engine vehicles).

3. An agreement in violation of the EU's international commitments and European law

The EU-Mercosur agreement contravenes the EU's international obligations in terms of climate (in particular, the UNFCCC and the Paris Agreement) and biodiversity protection (Convention on Biological Diversity and the Kunming-Montreal Protocol) insofar as it seriously jeopardises the

¹⁰ [Environmental mirror measures : need and technical feasibility. A pesticides case study. Proposals for the operational implementation of environmental mirror measures". Veblen Institute, FNH and European Environmental Bureau, June 2023](#)

achievement of the binding objectives of these treaties¹¹. The EU should not implement an agreement that would lead to a global increase in GHG emissions, and the degradation of remarkable biomes as would be the case if the EU-Mercosur agreement came into force.

As a climate-damaging agreement, the **EU-Mercosur agreement also violates European law**, notably several of the rights protected by the EU Charter of Fundamental Rights (for example, the rights to life and health enshrined in Articles 2 and 3 of the Charter).

The EU-Mercosur agreement also infringes European law by running counter to Article 2 of the European Climate Act, which requires the EU to adopt measures to achieve its emission reduction targets. Article 6 requires the Commission to assess the compatibility of EU measures with the Union's climate neutrality objectives.

Requesting the opinion of the CJEU

Under Article 218(11) of the TFEU, a Member State or the European Parliament may “request the opinion of the Court of Justice on the compatibility of a proposed agreement with the Treaties. In the event of a negative opinion from the Court, the proposed agreement may not enter into force unless it is amended, or the Treaties are revised”.

This would mean referring to the CJEU agreement's legality concerning the EU's sustainability objectives and obligations under European law (cf. Articles 3, 6 and 21 of the Treaty on European Union; articles 11, 168, 169, 191, 205 and 207 of the Treaty on the Functioning of the European Union; and articles 1, 7, 35, 37 and 38 of the Charter of Fundamental Rights of the European Union).

This course of action must be taken quickly, as it is only possible before the formal conclusion of the agreement at the Union level, i.e. before a vote in the European Council and Parliament.

4. Opacity and Democratic Deficit

4.1 Opacity of Negotiations

The initial negotiations were already marked by significant opacity (e.g., non-publication of the negotiating mandate, Commission proposals, and draft texts) and violations of the Commission's commitments, which the EU Ombudsman criticised (e.g., delayed publication of the sustainability impact assessment after negotiations had concluded).

This opacity persisted in the 2023 and 2024 discussions. Member states, European parliamentarians, and stakeholders were not given timely opportunities to contribute to ongoing proposals. On December 6, 2024, Sabine Weyand, the European Commission's Director-General for Trade, told journalists that member states could not yet oppose the agreement because they were unaware of the changes made to the text.

Such practices are increasingly difficult to justify democratically. This approach deprives negotiators of essential expertise contributions for agreements encompassing broader public policy domains.

¹¹ DG(SANTE) 2024-8087, [Final report](#) of an audit of Brazil carried out from 27 May to June 2024 to evaluate controls on residues of pharmacologically active substances, pesticides and contaminants in animals and animal products

4.2 Misinformation

In preparing this note, several contradictions were identified between the European Commission's FAQ and the exact wording of clauses in the final text. This excessively "favourable" presentation of negotiation outcomes resembles misinformation inconsistent with democratic principles.

For example, the FAQ states: *"All food products must comply with EU sanitary and phytosanitary standards. European rules apply uniformly to all products marketed in the EU, whether produced locally or imported. Our robust control system ensures compliance with EU rules."*

- All imported food must comply with the EU's sanitary and phytosanitary standards
 - EU rules apply to all products sold in the EU, whether produced domestically or imported;
 - Our robust system of checks allows us to make sure that EU rules are respected.



Thanks to the agreement, the EU and Mercosur will work more closely with each other, including in the international standard-setting bodies.

The Commission refers here to EU market standards, which apply uniformly to all products regardless of origin. However, it omits that EU sanitary and phytosanitary production standards do not apply to imported products. Additionally, the control system detects violations (e.g., a recent DG Santé audit in Brazil on hormone-treated beef but relies on audits and sample checks. Total compliance cannot be guaranteed, and corrective measures sometimes face delays. Brazil unilaterally suspended exports in the hormone-treated beef¹² case, not the EU. Meanwhile, the EU has issued three successive reports highlighting unaddressed irregularities in Canada¹³.

4.3 Risk of Forcing Ratification

The text now requires legal review and translation into all official EU languages before being submitted for signature, conclusion by the Council, and examination by the European Parliament.

The agreement was initially negotiated as an association agreement, combining a trade and political components, mixing EU-exclusive and shared member States competencies. Under Article 218 of the Treaty on the Functioning of the EU, the Council must unanimously decide on such "mixed" agreements. Full ratification would then require a European Parliament vote and ratification by all member states following national procedures.

¹² DG(SANTE)/2019-6681 Summary report of an audit by the Directorate-General for Health and Food Safety conducted in Canada from September 9 to 20, 2019, to evaluate the control systems in place governing the production of beef and pork intended for export to the European Union. Similar shortcomings had already been identified during a previous audit conducted in 2014. These were noted again during a follow-up audit conducted in 2022.

¹³ Council of the EU, Draft Council conclusions on the negotiation and conclusion of EU Trade agreements Adoption, Brussels 8 May 2018, 8622/18

To bypass potential member state vetoes, the Commission aims to split the association agreement into two parts to isolate the “trade” component and facilitate ratification. The “trade” component would be presented as an interim trade agreement, falling under EU-exclusive competence, requiring only approval by qualified majority in the Council and the European Parliament. If ratification of the political agreement fails in one or more member states, the interim trade agreement would remain in effect.

The Commission has not officially finalized the ratification procedure.

FAQ EU DG Trade

The legal basis of any final EU-Mercosur agreement will be determined after an assessment of the outcome of the negotiations. This will be reflected in the Commission’s proposal when it submits the agreement for ratification to the Council and European Parliament.

The following main eligible models have been used in recent agreements:

i) a “mixed agreement” that requires the approval by the EU and all its Member States on the whole agreement before it can fully enter into force; and ii) a single political package of two legally separated agreements that are ideally to be signed in parallel: one “mixed” framework agreement, again requiring the approval by the EU and all its Member States before it can fully enter into force, and an interim agreement covering provisions falling under the exclusive competence of the EU, which would only require ratification on the part of the EU.

However, Uruguay’s document already mentions an “interim trade agreement.”

This approach would contradict the Council conclusions of May 22, 2018, where member states stated: *“It is up to the Council to decide, on a case-by-case basis, on the splitting of trade agreements. Depending on their content, association agreements should be mixed. Those currently under negotiation, such as with Mexico, Mercosur, and Chile, will remain mixed agreements.”*¹⁴

It is therefore up to member states to accept or reject this forced passage proposed by the European Commission.¹⁴

¹⁴ ClientEarth, EU-Mercosur Association Agreement Governance issues in the EU trade decision making process, 2021.

Main sources:

[Factsheet](https://www.gov.br/mre/en/content-centers/statements-and-other-documents/factsheet-mercosur-european-union-partnership-agreement-december-6-2024) Mercosur-European Union Partnership Agreement - December 6, 2024, published by the Brazilian government (<https://www.gov.br/mre/en/content-centers/statements-and-other-documents/factsheet-mercosur-european-union-partnership-agreement-december-6-2024>)

[FAQ](https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_6245), DG Trade, European Commission (https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_6245)

[Agreement Texts](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en) with 2024 Updates (https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en)

[Summary](https://www.gub.uy/ministerio-relaciones-exteriores/sites/ministerio-relaciones-exteriores/files/documentos/noticias/Sintesis%20del%20Acuerdo%20Mercosur%20-%20Uni%C3%B3n%20Europea_0.pdf) of the Agreement Published by Uruguay's Ministry of Foreign Affairs (https://www.gub.uy/ministerio-relaciones-exteriores/sites/ministerio-relaciones-exteriores/files/documentos/noticias/Sintesis%20del%20Acuerdo%20Mercosur%20-%20Uni%C3%B3n%20Europea_0.pdf)

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The Veblen Institute's trade program is supported by Funders for Fair Trade, the European Climate Foundation, and the Charles Leopold Mayer Foundation