



The EU-Mercosur agreement: towards integrated climate policy?

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The recently signed EU-Mercosur agreement has met with criticism from civil society, farmers and politicians around the EU. These criticisms have been amplified by recent forest fires in the Amazon. Although the Von der Leyen Commission's strategic documents highlight the importance of mainstreaming climate change and environment throughout all policies, including trade, the EU-Mercosur agreement lacks enforceable measures to this end. In light of recent events, ratification of the EU-Mercosur agreement by all member states seems unlikely. However, the EU itself could also use this opportunity to send a clear message as to where its priorities lie by taking unified action to shift the terms of the trade agreement.

INTRODUCTION

Twenty years after the launch of trade negotiations, the EU and Mercosur concluded their Agreement in Principle on 28 June 2019. Although regional organisation Mercosur is composed of Argentina, Brazil, Paraguay and Uruguay, Brazil is the largest member and much of the discussion – and this policy briefing – focuses on the economic and environmental

impact of trade specifically with Brazil. The preferential trade agreement (PTA), which fits into the context of a larger Association Agreement between the two regions, has not been without controversy: since the relaunch of negotiations in 2016 after a long hiatus, it has been criticised by civil society groups, farmers and politicians around the EU. Nevertheless, the agreement has never attracted as much public attention as other agreements with North-Atlantic partners, such as TTIP or CETA, which were subject to extensive public opposition from various EU member states during their negotiation and ratification periods respectively.

However, this changed in August 2019, as wildfires spread throughout the Amazon – many of them set intentionally by Brazilian farmers to illegally deforest land to be used for farming of cattle, one of the key export goods in the EU-Mercosur agreement. Combined with the way in which Brazilian president Jair Bolsonaro reacted to the natural disaster, public awareness and outrage has vastly increased. Critics have highlighted in particular the mismatch between the EU's climate ambitions – especially the 2015 Paris Agreement on combating climate change – and the terms of the trade deal. This lack of consistency between the EU's internal climate policy and its external policies threatens not only the effectiveness of these policies in combatting

climate change, but also calls into question the credibility of the goals themselves.

Some member states took unilateral action directly – including cutting aid towards the Amazon Fund and publicly criticising Bolsonaro’s reaction. However, with the renewed emphasis the 2019-2024 European Commission political guidelines put on mainstreaming climate change across EU internal and external policy, it is worth examining how the EU itself can react to the situation.

CLIMATE AND DEFORESTATION IN THE EU-MERCOSUR AGREEMENT

The EU-Mercosur agreement removes tariffs on many goods. On the EU side, the main added value is the removal of tariffs on cars and car parts, while the Mercosur countries benefit from an open market for the export of beef and sugar – leading to the agreement being labelled as ‘cars for cows’ by environmentalists.

The agricultural chapter in particular has led to controversy for two main reasons. First, these products are sensitive for agricultural exporters of sugar and beef in the EU, especially Ireland and France. The contrast between the EU’s small-scale farms and the large ranches in Mercosur countries have led to concerns that the agreement may threaten the EU model and its stronger standards of environmental protection and animal welfare. Second, the environmental consequences of cattle farming in Mercosur countries has led to fears for the climate. Beef farming is one of the main causes of (often illegal) deforestation in the Amazon, leading to a doubly negative climate effect, through both deforestation and emissions from the livestock. Additionally, many NGOs have been critical of the EU’s willingness to cooperate with the Bolsonaro government, which has already committed human rights violations against indigenous peoples and environmental activists since its election in January 2019.

These fears have led the EU to place a particular emphasis on measures to prevent deforestation in

the EU-Mercosur agreement. Like all of the EU’s PTAs, it includes a chapter on trade and sustainable development; however, in addition to the EU’s standard references to protection of the environment as an important principle, the EU-Mercosur agreement contains two points specifically relevant to the situation in Brazil.

The first of these is a specific reference to the Paris Agreement in the article on trade and climate change (Article 6). This references the United Nations Framework Convention on Climate Change (UNFCCC) and commits all parties to implement the Paris Agreement. This could be seen as a particular measure put into place after Bolsonaro threatened to withdraw Brazil from the Paris agreement early in his election campaign, although he reneged on this promise later in the campaign.

The second is an article on trade and sustainable forest management (Article 8). This states that the parties will encourage trade in sustainably harvested timber and ensure the inclusion of local and indigenous communities in these supply chains, as well as sharing information and cooperating on the issue. While the fact that this exists in an agreement including the largest part of the Amazon – the largest rainforest in the world – is hardly surprising, the Commission backed up this article with a communication, released shortly after the Agreement in Principle, showing that EU consumption was responsible for 10% of global deforestation. Combined with the measures on supply chain management in the EU-Mercosur agreement (Article 11), this has put the emphasis on comprehensive, multilateral action by both states and companies. This focus on deforestation is more detailed than measures contained in other agreements, including the EU-Andean Community agreement with Colombia, Peru and Ecuador (also Amazon basin countries) concluded in 2013, which did not contain any specific articles on deforestation.

Despite these articles, however, the EU-Mercosur agreement does not move radically beyond the EU’s general approach in trade

agreements, with low enforceability of the chapter on trade and sustainable development – a tendency that has been highlighted by the academic literature on EU PTAs (Horn, Mavroidis and Sapir, 2010). This chapter is subject to a specific dispute settlement procedure: a non-compliance complaint is first discussed in government consultations, and if it remains unresolved then an independent panel of experts is called to report and make public recommendations. This stands in contrast to the more stringent dispute settlement mechanism and arbitration procedure applicable to other chapters (outlined in Title VIII of the text). As a result, the agreement gives the EU little possibility to take stringent action on environmental problems – such as intentionally-lit wildfires or Brazil’s withdrawal from the Paris agreement – once the agreement is in place.

THE CURRENT SITUATION

The agreement as it currently stands is an ‘Agreement in Principle’, which is not a final text and – as the name suggests – not legally binding. All parties will now undertake legal scrubbing of the agreement to create the final text, which will be translated before being submitted to the Council and the European Parliament.

Given that the EU-Mercosur agreement is a mixed agreement – containing provisions that fall under member states’ competence as well as EU competence – it must be signed and ratified by both the EU and all member states before coming into force. Ratification in the member states follows national procedures, generally involving approval by national – and sometimes regional – parliaments. This means that one country, or even one region, can prevent an agreement from coming into effect, as was demonstrated by the Walloon postponement of the CETA agreement in 2017.

In August, the heads of two member states – Ireland and France – threatened to block the agreement in the Council if Brazil did not take action and fulfil its environmental commitments.

In July, the Irish parliament had already voted down the agreement in a non-binding, symbolic vote (Halpin, 2019). And in the strongest sign of discontent thus far, in September the Austrian lower house adopted a legally binding motion obliging the government to veto the agreement once it reaches the Council (Hanke and Von der Buchard, 2019). While tensions between Brazil and France have now simmered down, the Austrian parliament’s decision highlights the sensitivity of the issue and the strong opposition that remains in several countries.

Meanwhile, in a letter to EU High Representative Federica Mogherini, Finland – the current holder of the EU presidency – has suggested another route: temporarily banning imports of Brazilian beef, and subsequently excluding these from the agreement to disincentivise farmers from lighting fires in the first place.¹ While this was originally planned to be discussed in the Council during September or October, climate issues were pushed off the agenda by other issues, including Brexit and enlargement. As such, the issue remains unresolved and the EU’s response unclear.

LOOKING FORWARD: IS A SOLUTION POSSIBLE?

Although the situation is still evolving and the final outcome remains unclear, the next steps seem difficult, given the staunch opposition in several member states and sections of society.

The two most likely outcomes are that the agreement is either blocked by individual Member States in the Council – which seems a near-certainty unless the Austrian parliament reverses its motion – or held up at the ratification stage by individual national or regional parliaments. The latter has tended to be the case in the past, notably during CETA negotiations, as mentioned above. In this case, the EU can provisionally apply the agreement pending ratification, essentially meaning that those parts of the agreement falling under EU competence

come into effect once the European Parliament has ratified the agreement.

A third outcome, which would be unique at EU level, would be for the EU to implicitly or explicitly threatening to change the agreement to ban the import of Brazilian beef – as suggested in the Finnish letter to Mogherini. On Twitter, the president of the European Parliament’s INTA committee, Bernd Lange, also endorsed using a particular negotiating stance and eventually even adjustment of the agreement rather than a simple veto. While this would be popular among agricultural and environmental interests in the EU, it would also be a highly sensitive move, as it threatens unravelling the tricky negotiating work undertaken over the past two decades. Although it admittedly seems unlikely that the EU would even consider reopening the negotiations – not least due to the loss of political face that it would suffer – a similar effect may be able to be achieved through side letters or memoranda of understanding attached to the trade agreement. It is possible that a temporary ban on beef – combined with the threat of reopening the long-running negotiations or adding declarations – would be enough to spur the Bolsonaro government to take stronger action on the situation and clean up its act on the environment.

As the situation currently stands, the EU-Mercosur agreement does not look likely to be signed and ratified by all member states any time soon. (Even under ordinary circumstances, ratification can take years.) However, the three outcomes outlined here are not equal in the image of the EU that they portray. In options one and two – blockage by certain member states, either at the signature or ratification stages – the EU seems divided and unable to speak with one voice in international negotiations. In contrast, if the EU takes the third option and works a form of conditionality into the agreement – essentially making the enforceability of the climate and deforestation measures stronger – this sends a clear message to Brazil and other countries where the EU’s priorities lie. This conditionality could

echo the sort that is prevalent in other areas of EU external action – including, notably, enlargement, where the EU inserts requirements that countries must meet to become candidate members, with the reward of access to the EU market (Schimmelfenig, 2008). Moreover, if the agreement can be reworked to provide for more stringent climate or environmental provisions, twenty years of negotiations do not go to waste – and the EU’s legitimacy as a negotiating partner is better preserved. In this sense, it is extremely positive that there is even any discussion about taking trade measures against Brazil.

Such stronger conditionality has long been a concern of researchers and advocacy groups (Lowe, 2019), but it seems only more relevant with the incoming Commission’s mandate: a strong focus on the EU Green New Deal, climate-neutrality before 2050 and a mainstreaming of climate concerns across all areas of EU policy (including cohesion, transition, external affairs and trade). To succeed in this ambitious goal, new ways of approaching external negotiations will be necessary. Of course, using the ‘carrot’ of EU market access to shape environmental outcomes is a risky move when dealing with leaders who come to power on a platform of nationalism, mercantilism and protectionism. Nonetheless, trade remains one of – if not the most – important levers the EU has to affect other policy areas. With all eyes on the Amazon, the EU-Mercosur agreement gives the EU an opportunity to back up their climate ambitions with concrete action.

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